mobile tires were getting worn, one store offered a recognized brand for $7.99 each. More significant than the price, there was no reference to any Federal excise taxes on purchases. If you anticipated an unusually hard winter, a 12-month guaranteed battery for $6.44 may have interested you.

Sunday's editorial comment centered around economy in Government, and their words still have application today as our Federal Government struggles with the problem of establishing new priorities for the 1970's. The Statesman said:

No one in Washington seems to know how to save money. Non-defense squandering continues. America needs some oldfashioned pinchfist economy. A curious phenomenon has arisen, every bureau and department of the government whose existence is threatened by the demand for all-out defense has evolved some scheme to prove its worthiness as a defense project."

Continuing our search through the first edition, we noted the attention given to the problems of organized labor. Concern for such things as cost of living and wages was finding its way to the printed word, no doubt as inflation crept into our economic society.

If you were thinking about a bicycle for a Christmas present, Montgomery Ward had a "honey" for $39.95 with terms available—in case you needed to stretch your hard-earned dollars. If your wife's sweeper was worn out, one was available, with all of the attachments, for $39.95.

For entertainment, Jack Benny was at his usual spot on radio station KIDO at 5 o'clock—but you already knew that without looking. Charlie McCarthy was next, then, the entire family generally liked to listen to the Ford Sunday Evening Hour before tuning in Walter Winchel's "Dateline" at 10 on KSL.

If you happened to be a football fan, you no doubt noticed the drubbing Oregon received from the Texas Longhorns in Austin the day before. Final score 71 to 7 in favor of Texas—before a sellout crowd of 26,000. How many among us would have predicted 30 years ago that 60 million Americans would view a sports event, as was the case this year in the first televised World Series night game.

A baseball owners meeting was scheduled in Chicago the week of December 8 to discuss trades and player deals. Two new managers were destined to receive the scrutiny of watchful baseball lovers' eyes. They were: Mel Ott of the New York Giants and Lou Boudreau of the Cleveland Indians.

If you planned to go to a December 7, 1941, movie, "Blossoms in the Dust," starring Greer Garson and Walter Pidgeon, was playing at a Boise theater. However, the "best bet" for the kids was "Blondie in Society" at the Rio.

The New York Stock Exchange reported a pretty good week, posting across-the-board gains. Eastman Kodak—to name one—closed at $134.50, but not many of us had $134.50 to gamble on the market.

If you read the comics it was ironic that on that December 7, 1941, morning, Flash Gordon was engaged in an air battle over water with unidentified planes launched from enemy aircraft carriers.

Unfortunately, what started out to be just another Sunday morning was not to end uneventful. The afternoon at the movies, the Jack Benny program, were soon to be forgotten as Boise citizens and all Americans awaited anxiously for news about a place called Pearl Harbor. Statesman extras and "read all about it" soon hit the streets and people everywhere stayed glued to their radio stations for the latest news broadcasts. Tuesday, December 7, 1971 marks the 30th anniversary of "the day of infamy." We all know that 30 years ago today history turned the corner.

We know too that countless articles and books have been written on the subject of the Japanese attack on Pearl Harbor. However, I am reminded of the words of Vice Adm. Homer N. Wallin, U.S.N. retired, who was commissioned to document the series of events that led to the attack and subsequent salvaging operations. Admiral Wallin had this to say:

Warfare with its tremendous sacrifice in lives and treasure is abhorrent to all civilized people.

History tells us that armed conflict is and always has been a fact of life whenever covetous governments desire their neighbors' property or whenever thirst for power dictates the purpose and aim of officials in control.

Peace loving people teach and preach that National aggression and military force do not pay. But that would depend, it seems, whether or not the aggressor is met and repelled by a more powerful force in which righteousness adds to the power. That fact is true among nations even as among citizens who are menaced by criminals and bandits.

As we give thanks for the prospects for peace this December 7, 1971, let us use the occasion of the 30th anniversary of Pearl Harbor to remind our people that the United States of America remains, as it did 30 years ago, as mankind's last best hope for a generation of peace throughout the world.

And above all else let's make certain our Government has essential military and naval forces—not to "make war" but to discourage any would-be aggressor from launching another one.

SENATE—*Thursday, December 9, 1971*

The Senate met at 9 a.m. and was called to order by Hon. LAWTON CHILES, a Senator from the State of Florida.

PRAYER

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

O God whose splendor fills the earth, grant us eyes to behold and ears to hear the message of this holy season—of singing skies, of a baby's low murmur, of a mother's tender care, of simple shepherds and peasant workmen, of God in the midst of the family circle.

May we be star-guided to the manger where men of old tarried for wisdom. Quicken all our senses that each may be an opening door into the presence of the eternal. And may the anthem "Glory to God in the highest and on earth peace" become a reality in all men's hearts and in all the nations of the earth. And to Thee shall be all honor and glory, world without end. Amen.

DESIGNATION OF THE ACTING PRESIDENT PRO TEMPORE

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

The legislative clerk read the following letter.

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., December 9, 1971.

To the Senate:

Being temporarily absent from the Senate on official duties, I appoint Hon. LAWTON CHILES, a Senator from the State of Florida, to perform the duties of the Chair during my absence.

ALLEN J. ELLENDER,
President pro tempore.

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

REPORT OF A COMMITTEE SUBMITTED DURING ADJOURNMENT

Under authority of the order of the Senate of December 8, 1971, Mr. KENNEDY, from the Committee on Labor and Public Welfare, reported favorably, with an amendment, on December 8, 1971, the bill (S. 1874) to provide for the establishment of projects for the dental health of children, to increase the number of dental auxiliaries, to increase the availability of dental care through efficient use of dental personnel, and for other purposes, and submitted a report (No. 92–564) thereon, which was printed.

CONFERENCE REPORT SUBMITTED DURING ADJOURNMENT

Under authority of the order of the Senate of December 8, 1971, Mr. KENNEDY, from the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1828) to amend the Public Health Service Act so as to establish a Conquest of Cancer Agency in order to conquer cancer at the earliest possible date, submitted a conference report (No. 92–565) thereon, which was printed.

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Wednesday, December 8, 1971, be dispensed with.

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

COMMITTEE MEETINGS DURING SENATE SESSION

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

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

THE CALENDAR

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of the calendar beginning with No. 539 and ending with and including No. 542.

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

RESTORATION OF POSTAL SERVICE SENIORITY TO ELMER ERICKSON

The Senate proceeded to consider the bill (S. 889) to restore the postal service seniority of Elmer Erickson, which had been reported from the Committee on Post Office and Civil Service with an amendment, on page 2, after line 13, insert a new section, as follows:

SEC. 2. In making any adjustment in salary level or step authorized by section 1 of this Act, no payment shall be made by the United States Postal Service for any period prior to the date of enactment of this Act.

So as to make the bill read:

S. 889

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in the administration of the laws, rules, and regulations pertaining to the seniority rights of employees of the Post Office Department, Elmer O. Erickson, of Minneapolis, Minnesota, an employee of the postal service assigned to the Saint Paul and Aberdeen railway post office, Minnesota, shall be entitled to receive credit for service performed by him in the postal service during the period from August 12, 1940, through January 13, 1961, in like manner as if the provisions of sections 748.1 through 748.17 of the Postal Transportation Service seniority rules, Post Office Department Publication 31, dated August 18, 1958, under which certain employees who transfer from and later reenter an occupational group subject to such rules will have service seniority based upon the seniority they had attained before transferring from such group, had been applicable with respect to the said Elmer O. Erickson during the period from January 14, 1961, the date he transferred from the clerical group, which is the occupational group into which he and all other former employees of the Postal Transportation Service were placed when such Service was merged into the post offices, to April 29, 1961, the date he retransferred to such group.

SEC. 2. In making any adjustment in salary level or step authorized by section 1 of this Act, no payment shall be made by the United States Postal Service for any period prior to the date of enactment of this Act.

The amendment was agreed to.

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

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–559), explaining the purposes of the measure.

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

PURPOSE

The purpose of this legislation is to provide that, in the administration of the laws, rules, and regulations pertaining to the seniority rights of employees of the U.S. Postal Service, Elmer O. Erickson, of Minneapolis, Minn., an employee of the Postal Service formerly assigned to the St. Paul and Aberdeen railway post office, Minnesota, shall be entitled to receive credit for service performed by him in the Post Office Department during the period August 12, 1940, through January 13, 1961, as if the provisions of sections 748.1 through 748.17 of the Postal Transportation Service seniority rules, Post Office Department Publication 31, dated August 18, 1958, had been applicable to him in that period, and to permit him to retain his seniority as provided in those rules, which were terminated upon the merger of the Postal Transportation Service with the Post Office Service.

STATEMENT

On August 12, 1940, Elmer O. Erickson entered the Railway Mail Service, later known as the Postal Transportation Service. He served continuously with this branch of the post office until January 13, 1961. On January 14, 1961, Mr. Erickson transferred to a rural mail route in New Richland, Minn., and served as a rural mail carrier for approximately 15 weeks. At the end of that time, on April 29, 1961, he returned to the mobile unit section of the St. Paul and Aberdeen post office.

Under the Postal Transportation Service seniority rules (secs. 748.1 through 748.17 and particularly sec. 748.125) as they appeared in the Post Office Department Publication 31, dated August 18, 1958, Mr. Erickson could have transferred from the Postal Transportation Service into the rural mail service and, upon reentry into the Postal Transportation Service, lost only the 15 weeks' service acquired as a rural mail carrier. However, Mr. Erickson lost not only the 15 weeks' service he acquired as a rural mail carrier, but also the 20 years and 5 months' seniority he had attained in the Postal Transportation Service.

This 20 years' and 5 months' service seniority was lost by Mr. Erickson because of changes occurring in the functioning structure and rules of the Post Office beginning July 23, 1960. At that time, the Postal Transportation Service ceased to be a separate branch of the Post Office Department and was merged into the Post Office Service. In connection with this change, sections 748.1 through 748.17 of the Postal Transportation Service seniority rules were discarded. Employees of the Postal Transportation Service where to learn of these changes through notifications printed in the July 28, 1960, and the February 2, 1961, editions of the Postal Bulletin. However, at these times, employees like Mr. Erickson were primarily concerned with overcoming the difficulties involved in transferring the Postal Transportation Service from separate management into the management of the Mobile Unit Service in the Post Office Service. This involved the establishment of a completely new concept of mail service whereby sectional centers were established and a new network of star routes created. Mr. Erickson was not aware of the change in his seniority rules, and was not advised of these changes until after his seniority had been removed.

Mr. Erickson's seniority date is now listed as April 29, 1961. He is receiving credit for 10 years' seniority when, in reality, he has completed 30 years' service to the Postal Service.

The committee believes that under these particular circumstances, legislative relief should be granted to Mr. Erickson. Accordingly, it is recommended that the bill, as amended, be considered favorably.

The committee has amended the bill as referred to insure that no retroactive payment of salary shall be made to Elmer Erickson on account of the enactment of this legislation.

CIVIL SERVICE RETIREMENT CREDIT

The Senate proceeded to consider the bill (S. 1031) to credit certain service rendered by District of Columbia substitute teachers for purposes of civil service retirement, which had been reported from the Committee on Post Office and Civil Service with an amendment to strike out all after the enacting clause and insert:

That section 8332(b) of title 5, United States Code, is amended by—

(1) striking out the word "and" at the end of paragraph (7);

(2) striking out the period at the end of paragraph (8) and inserting in lieu thereof a semicolon and the word "and"; and

(3) inserting after paragraph (8) the following new paragraph:

"(9) subject to sections 8334(c) and 8339 (h) of this title, service as a substitute teacher for the government of the District of Columbia after July 1, 1955, if such service is not credited for benefits under any other retirement system established by a law of the United States."

SEC. 2. An annuity or survivor annuity based on the service of an employee or annuitant who performed service described in section 1 of this Act shall, upon application to the Civil Service Commission, be recomputed, effective on the first day of the first month following the date of enactment of this Act, in accordance with section 1 of this Act.

SEC. 3. Section 22 of Public Law 243, 84th Congress, enacted August 5, 1955 (69 Stat. 530), is repealed.

The amendment was agreed to.

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

DISTRICT OF COLUMBIA UNEMPLOYMENT COMPENSATION ACT AMENDMENTS OF 1971

The Senate proceeded to consider the bill (S. 2429) to amend the District of Columbia Unemployment Compensation Act in order to conform to Federal law, and for other purposes which had been reported from the Committee on the District of Columbia with amendments on page 2, line 15, after the word "as", strike out "any" and insert "an"; on page 3, line 23, after the word "education", strike out "located in the District"; on page 9, line 8, after the word "and", strike out "(III)" and insert "(II)"; on page 10, line 21, after the word "amended", strike out "by striking out paragraph (3)."; after line 21, insert:

(A) by striking out "; or" at the end of paragraph (2) and inserting in lieu thereof a period; and

(B) by striking out paragraph (3).

On page 11, line 4, after the word "as", strike out "wages" and insert "earnings"; on page 12, at the beginning of line 12, insert "all colleges and universities in the District are institutions of higher education for purposes of this section"; on page 18, line 25, after "3301", strike out "3308" and insert "3311"; on page 19, at the beginning of line 12, strike out "46–303 (f)) is amended by striking out in the first sentence '(i)' and inserting in lieu thereof '(A).'" and insert "46–303) (f) is amended—"; after line 14, insert:

"(A) by striking out in the first sentence "(i)" and inserting in lieu thereof "(A), or in the event any of its instrumentalities are required to be covered under this Act,"; and

"(B) by adding at the end of the second paragraph thereof the following: "The District of Columbia shall be liable only for 50 per centum of any extended benefits paid."

On page 25, line 18, after the word "in", strike out "paragraph" and insert "section"; on page 26, line 1, after the word "of", strike out "it selection" and insert "its election"; on page 35, line 14, after the word "wages", strike out "for" and insert "actually"; on page 40, line 25, after the word "benefits", insert "or"; on page 44, after line 21, insert:

(39) Section 10(d) of such Act (D.C. Code, sec. 46–310(d)) is amended by adding the following new paragraph:

"(3) Notwithstanding any other provision of this Act, compensation shall not be denied or reduced to an individual solely because he files a claim in another State (or a contiguous country with which the United States has an agreement with respect to unemployment compensation) or because he resides in another State (or such a contiguous country) at the time he files a claim for unemployment compensation."

On page 45, at the beginning of line 6, strike out "(39)" and insert "(40)"; after line 7, insert:

(A) by striking out the fifth sentence in subsection (b) and inserting in lieu thereof "The Board shall promptly notify the claimant and any party to the proceeding of its determination, and such determination shall be final within 10 days after the mailing of notice thereof to the party's last known address or in the absence of such mailing, within 10 days of actual delivery of such notice."

(B) by striking out the sixth sentence in subsection (b); by striking out the seventh sentence through the words *"Provided,* That" in subsection (b) and capitalize the word "if" immediately thereafter.

(C) by striking out "after the date of notification or" in the fourth sentence of subsection (e) and inserting in lieu thereof "of".

At the beginning of line 23, strike out "(A)" and insert "(D)"; at the beginning of line 25, strike out "(B)" and insert "(E)"; on page 46, at the beginning of line 3, strike out "(40)" and insert "(41)"; in line 17, after "1970", insert a comma and "or other Manpower Acts"; on page 47, after the word "Act", where it appears the second time, strike out the period and insert "and (B) by striking out 'the District of Columbia' in the third sentence of subsection (f) and inserting in lieu thereof 'any State' "; at the beginning of line 6, strike out "(40)" and insert "(42)"; on page 49, at the beginning of line 23, strike out "(41)" and insert "(43)"; on page 50, at the beginning of line 1, strike out "(42)" and insert "(44)"; so as to make the bill read:

S. 2429

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 "District of Columbia Unemployment Compensation Act Amendments of 1971".

SEC. 2. The District of Columbia Unemployment Compensation Act, approved August 28, 1935, as amended, is further amended as follows:

(1) Section 1(b)(1) of such Act (D.C. Code, sec. 46–301(b)(1)) is amended to read as follows:

"(1) 'Employment' means:

"(A) Any service performed prior to January 1, 1972, which was employment as defined in this subsection prior to such date and, subject to the other provisions of this subsection, service performed after December 31, 1971, including service in interstate commerce, by—

"(i) any officer of a corporation; or

"(ii) any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee; or

"(iii) any individual other than an individual who is an employee under subdivision (i) or (ii) who performs services for remuneration for any person—

"(I) as an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or drycleaning services, for his principal;

"(II) as a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his principal (except for side-line sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations: *Provided,* That for purposes of subparagraph (A)(iii), the term 'employment' shall include services described in (I) and (II) above performed after December 31, 1971, only if:

"1. The contract of service contemplates that substantially all of the services are to be performed personally by such individual;

"2. The individual does not have a substantial investment in facilities used in connection with the performance of the services (other than in facilities for transportation); and

"3. The services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed.

"(B) Service performed after December 31, 1971, by an individual in the employ of the District or any of its instrumentalities (or in the employ of the District and one or more States or their instrumentalities) for a hospital or institution of higher education: *Provided,* That such service is excluded from 'employment' as defined in the Federal Unemployment Tax Act solely by reason of section 3306(c)(7) of that Act and is not excluded from 'employment' under section 1(b)(1)(D) of this Act;

"(C) Service performed after March 30, 1962, by an individual in the employ of an educational organization, and service performed after December 31, 1971, by an individual in the employ of a religious, charitable, or other organization which is excluded from the term 'employment' as defined in the Federal Unemployment Tax Act solely by reason of section 3306(c)(8) of that Act, except as provided in section 1(b)(1)(D) of this Act;

"(D) For the purposes of subparagraphs (B) and (C) the term 'employment' does not apply to service performed after December 31, 1971—

"(i) in the employ of (I) a church or convention or association of churches, or (II) an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches; or

"(ii) by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; or

"(iii) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market, by an individual receiving such rehabilitation or remunerative work; or

"(iv) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any Federal agency or an agency of a State or political subdivision thereof, by an individual receiving such work relief or work training; or

"(v) for a hospital in a State prison or other State correctional institution, by an inmate of the prison or correctional institution.

"(E) The term 'employment' shall include the service of an individual who is a citizen of the United States, performed outside the United States (except in Canada or the Virgin Islands), after December 31, 1971, in the employ of an American employer (other than service which is deemed 'employment' under the provisions of section 1(b)(2) of this Act or the parallel provisions of another State's law), if:

"(i) the employer's principal place of business in the United States is located in the District; or

"(ii) the employer has no place of business in the United States, but

"(I) the employer is an individual who is a resident of the District; or

"(II) the employer is a corporation which is organized under the laws of the District or the laws of the United States; or

"(III) the employer is a partnership or a trust and the number of the partners or trustees who are residents of the District is greater than the number who are residents of any one other State; or

"(iii) none of the criteria of clauses (i) and (ii) of this subparagraph are met but the employer has elected coverage in the District or, the employer having failed to elect coverage in any State, the individual has filed a claim for benefits, based on such service, under the law of the District.

"(iv) an 'American employer', for purposes of this subparagraph, means a person who is—

"(I) an individual who is a resident of the United States; or

"(II) a partnership if two-thirds or more of the partners are residents of the United States; or

"(III) a trust, if all of the trustees are residents of the United States; or

"(IV) a corporation organized under the laws of the United States or of any State.

"(v) as used in this subparagraph the term 'United States' includes the States, the District of Columbia, and the Commonwealth of Puerto Rico.

"(F) The term 'employment' shall include personal or domestic service in a private

home for an employer who paid cash remuneration of $500 or more in any calendar quarter. 'Personal or domestic service' for the purpose of this subparagraph shall include all persons employed by an employer in his capacity as a householder, as distinguished from a person employed by the employer in the pursuit of a trade, occupation, profession, enterprise, or vocation."

(2) Section 1(b)(2) of such Act (D.C. Code, sec. 46-301(b)(2)) is amended—

(A) by striking out "or" after "performed within" and inserting in lieu thereof a comma;

(B) by inserting after "within and without" the following: "or entirely without";

(C) by adding after subparagraph (B) the following new paragraph:

"(C) the service is performed anywhere within the United States, the Virgin Islands, or Canada: *Provided,* That (i) such service is not covered under the unemployment compensation law of any State, the Virgin Islands, or Canada, and (ii) the place from which the service is directed or controlled is in the District."

(3) Section 1(b)(4) of such Act (D.C. Code, sec. 46-301(b)(4)) is amended to read as follows:

"(4) Notwithstanding any other provisions of this subsection, the term 'employment' shall also include all service performed after January 1, 1955, by an officer or member of the crew of an American vessel or American aircraft on or in connection with such vessel or aircraft: *Provided,* That the operating office from which the operations of such vessel or aircraft are ordinarily and regularly supervised, managed, directed, and controlled, is within the District."

(4) Section 1(b)(5) of such Act (D.C. Code, sec. 46-301(b)(5)) is amended—

(A) by amending subparagraph (A) to read as follows:

"(A) service performed by an individual under 18 years of age as a babysitter;";

(B) by redesignating clauses (a) and (b) of subparagraph (D) as (i) and (ii), respectively;

(C) by inserting immediately before the semicolon at the end of subparagraph (E) the following: ", except for service performed after December 31, 1971, as provided in section 1(b)(1)(B) of this Act";

(D) by striikng out in subparagraph (I)(1)(c) "at a" and inserting in lieu thereof "at such";

(E) by redesignating clauses (1), (2), and (5) of subparagraph (I) as (i), (ii), and (iii), respectively;

(F) by striking out clauses (3) and (4) of subparagraph (I);

(G) by redesignating (a) and (c) of clause (i) as (I) and (III) (II) respectively;

(H) by striking out (b) of clause (i);

(I) by redesignating clauses (1) and (2) of subparagraph (K) as (i) and (ii), respectively;

(J) by inserting in subparagraph (Q) "or aircraft" after "vessel" the first and third times it appears, and by inserting "or American aircraft" after "vessel" the second time it appears;

(K) by redesignating clauses (A) and (B) of subparagraph (R) as (i) and (ii), respectively;

(L) by striking out subparagraphs (G) and (P); and

(M) by redesignating subparagraphs (H) through (T) as subparagraphs (G) through (R), respectively.

(5) Section 1(b)(6) of such Act (D.C. Code, sec. 46-301(b)(6)) is amended by striking out "5(H)" in the last sentence and inserting in lieu thereof "5(G)".

(6) Section 1(b)(7) of such Act (D.C. Code, sec. 46-301(b)(7)) is amended by inserting before the period at the end thereof the following: "or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act is required to be covered under this Act".

(7) Section 1(b)(8) of such Act (D.C. Code, sec. 46-301(b)(8)) is amended—

(A) by inserting "localized" after "Any" in subparagraph (i);

(B) by striking out "section 1(b)(5)" in such subparagraph (i) and inserting in lieu thereof "section 1(b)";

(C) by striking out "section 1(b)(8)(i)" in subparagraph (ii) and inserting in lieu thereof "section 1(b)(8)(A)";

(D) by redesignating clauses (A) and (B) of subparagraph (i) as (i) and (ii), respectively; and

(E) by redesignating subparagraphs (i), (ii), and (iii) as (A), (B), and (C), respectively.

(8) Section 1(c) of such Act (D.C. Code, sec. 46-301(c)) is amended—

(A) by striking out "; or" at the end of paragraph (2) and inserting in lieu thereof a period; and

(B) by striking out paragraph (3).

(9) Section 1(d) of such Act (D.C. Code, sec. 46-301(d)) is amended by inserting immediately after the first sentence the following new sentence: "After August 29, 1946, back pay awarded under any statute of the District or of the United States shall be treated as earnings."

(10) Section 1(q) of such Act (D.C. Code, sec. 46-301(q)) is amended to read as follows:

"(q) 'State' includes, in addition to the States of the United States of America, the District of Columbia (herein referred to as the 'District'), Puerto Rico, and the Virgin Islands."

(11) Section 1(r) of such Act (D.C. Code, sec. 46-301(r)) is amended by inserting immediately after "including" the following: "the District government and its instrumentalities (as specified in section 1(b)(1)(B)) of this Act,".

(12) Section 1(t) of such Act (D.C. Code, sec. 46-301(t)) is amended by inserting immediately before the period at the end thereof the following "; and the term 'American aircraft' means an aircraft registered under the laws of the United States".

(13) Section 1 of such Act (D.C. Code, sec. 46-301) is amended by adding at the end thereof the following new subsections:

"(w) 'Institution of higher education', for the purposes of this section, means an educational institution which—

"(1) admits as regular students only individuals having a certificate of graduation from a high school, or recognized equivalent of such a certificate;

"(2) is legally authorized in the District to provide a program of education beyond high school;

"(3) provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and *all colleges and universities in the District are institutions of higher education for purposes of this section.*

"(4) is a public or other nonprofit institution.

"(x) 'Hospital' means an institution which has been licensed by the Commissioner of the District as a hospital."

(14) Section 3(b) of such Act (D.C. Code, sec. 46-303(b)) is amended by striking out ", until the effective date of this Act,".

(15) Section 3(c)(2) of such Act (D.C. Code, sec. 46-303(c)(2)) is amended by inserting immediately before the period at the end of the first sentence thereof a colon and the following: *"Provided,* That after December 31, 1971, benefits paid to an individual for any week during which he is attending a training or retraining course under the provisions of section 10(d)(2) of this Act or extended benefits paid to an exhaustee under the provisions of section 7(g) of this Act shall not be charged against such employer accounts".

(16) Section 3(c)(3) of such Act (D.C. Code, sec. 46-303(c)(3)) is amended to read as follows:

"(3) The standard rate of contributions shall be 2.7 per centum, except that after December 31, 1971, each employer newly subject to this Act shall pay contributions at a rate equal to the average rate on taxable wages of all employers for the preceding calendar year (rounded to the next higher one-tenth of 1 per centum), or 1 per centum, whichever is higher (not exceeding 2.7 per centum) until he has been an employer for a sufficient period to meet the requirement to qualify for a reduced rate as provided in paragraph (4) of this subsection; thereafter, his contribution rate shall be determined in accordance with the provisions of such paragraph (4)."

(17) Section 3(c)(4) of such Act (D.C. Code, sec. 46-303(c)(4) is amended—

(A) by striking out subparagraph (i) and inserting in lieu thereof:

"(A) No employer's rate of contribution for any calendar year or part thereof shall be reduced below the standard rate unless and until his account could have been charged with benefits paid throughout the thirty-six-consecutive-calendar-month period ending on the computation date applicable to such year or part thereof. For the calendar years 1963 to 1971, inclusive, any employer who is subject to this Act by virtue of the amendment of former section (1)(b)(5)(G) of this Act by the Act of March 30, 1962, and who has not been subject to this Act for a sufficient period to meet this requirement, may qualify for a rate less than the standard rate if his account could have been charged with benefit payments throughout a lesser period but, in no event, less than the twelve consecutive calendar months ending on the computation date (as herein defined) for that calendar year.";

(B) by striking out subparagraph (ii) and inserting in lieu thereof:

"(B) If the amount of the fund as of June 30 of any year is less than 4 per centum of the total payrolls subject to contributions under this Act for the twelve-consecutive-month period ending on the preceding December 31, the contribution rate for each employer (including newly subject employers) shall be increased by the percentage differential between said 4 per centum of such total payrolls and said fund's percentage of such total payrolls, but in no event shall the contribution rate for any employer be more than 2.7 per centum. Said percentage differential for each employer shall be computed to the next higher one-tenth of 1 per centum.";

(C) by striking out subparagraph (iii) and inserting in lieu thereof:

"(C) If on December 20 of any year, the amount in the fund becomes less than 2 per centum of the total annual payrolls subject to contributions under the Act for the twelve-consecutive-month period ending on the preceding June 30, the Board shall make a declaration to that effect. Effective the quarter following such announcement, each employer's (including each new subject employer's) rate of contribution shall be the standard rate.";

(D) by striking out "paragraph (iv)" in the last sentence of subparagraph (iv) and inserting in lieu thereof "subparagraph (D)"; and

(E) by redesignating subparagraph (iv) as subparagraph (D).

(18) Section 3(c)(5) of such Act (D.C. Code, sec. 46-303(c)(5)) is amended—

(A) by amending the first sentence to read as follows: "The Board shall for any uncompleted portion of the calendar year beginning July 1, 1943, and for each calendar year thereafter classify employers in accordance with their actual experience in the payment of

contributions and with respect to benefits charged against their accounts, except as provided in section 3(c)(3) of this Act."; and

(B) by striking out "3(c)(4)(i)" and inserting in lieu thereof "3(c)(4)(A)".

(19) Section 3(c)(7) of such Act (D.C. Code, sec. 46-303(c)(7)) is amended—

(A) by redesignating subclauses (1), (2), (3), and (4) of clause (ii) as (I), (II), (III), and (IV), respectively; and

(B) by redesignating subparagraphs (a) through (f) as subparagraphs (A) through (F), respectively.

(20) Section 3(c)(8) of such Act (D.C. Code, sec. 46-303(c)(8)) is amended—

(A) by amending subparagraph (i) to read as follows:

"(A) If as of the computation date the total of all contributions credited to any employer's account, with respect to employment since May 31, 1939, is in excess of the total benefits paid after June 30, 1939, then chargeable or charged to his account, such excess shall be known as the employer's reserve, and his contribution rate for the ensuing calendar year or part thereof shall be—

"(i) 2.7 per centum if such reserve is less than 0.5 per centum of his average annual payroll;

"(ii) 2 per centum if such reserve equals or exceeds 0.5 per centum but is less than 1 per centum of his average annual payroll;

"(iii) 1.5 per centum if such reserve equals or exceeds 1 per centum but is less than 1.5 per centum of his average annual payroll;

"(iv) 1 per centum if such reserve equals or exceeds 1.5 per centum but is less than 2.5 per centum of his average annual payroll;

"(v) 0.5 per centum if such reserve equals or exceeds 2.5 per centum but is less than 3 per centum of his average annual payroll;

"(vi) 0.1 per centum if such reserve equals or exceeds 3 per centum of his average annual payroll.";

(B) by inserting immediately before the period at the end of subparagraph (ii) "except as provided in subsection (c)(3) of this section."; and

(C) by redesignating subparagraphs (ii), (iii), and (iv) as subparagraphs (B), (C), and (D), respectively.

(21) Section 3(c)(9) of such Act (D.C. Code, sec. 46-303(c)(9)) is amended—

(A) by striking out "(iv)" in subparagraph (b) and inserting in lieu thereof "(D)"; and

(B) by redesignating subparagraphs (a), (b), (c), (d), and (e) as (A), (B), (C), (D), and (E), respectively.

(22) Section 3(c) of such Act (D.C. Code, sec. 46-303(c)) is amended by adding at the end thereof the following new paragraph:

"(11) After December 31, 1971, the separate account established for an employer under the provisions of paragraph (1) of this subsection shall be discontinued effective the calendar quarter next succeeding three calendar years after the employer has been determined out of business. Thereafter no employer shall have any right to or interest in such discontinued account."

(23) Section 3(e) of such Act (D.C. Code, sec. 46-303(e)) is amended to read as follows:

"(e) From December 31, 1939, to January 1, 1955, wages, for the purpose of section 3, shall not include any amount in excess of $3,000 paid by an employer to any person arising out of his or her employment during any calendar year. From January 1, 1955, to December 31, 1971, wages shall not include any amount in excess of $3,000 actually paid by an employer to any person during any calendar year. After December 31, 1971, wages shall not include any amount in excess of $4,200 (or in excess of the limitation on the amount of taxable wages fixed by the Federal Unemployment Tax Act (26 U.S.C. 3301-3311), whichever is greater) actually paid by an employer to any person during any calendar year. After December 31, 1954, the term 'employment' for the purpose of this subsection shall include services constituting employment under any employment security law of a State or of the Federal Government. After December 31, 1971, the term 'employment' for the purpose of this subsection shall include services constituting employment performed in the employ of a transferor as determined under the provisions of section 3(c)(7) of this Act."

(24) Section 3(f) of such Act (D.C. Code, sec. 46-303(f)) is amended—

"(A) by striking out in the first sentence "(i)" and inserting in lieu thereof "(A), or in the event any of its instrumentalities are required to be covered under this Act,"; and

"(B) by adding at the end of the second paragraph thereof the following: "The District of Columbia shall be liable only for 50 per centum of any extended benefits paid."

(25) Section 3(g) of such Act (D.C. Code, sec. 46-303(g)) is amended by inserting immediately before the period at the end of the first sentence a colon and the following: *"Provided,* That liability to the fund shall not exceed contributions for the three calendar years next preceding the quarter in which liability was determined."

(26) Section 3 of such Act (D.C. Code, sec. 46-303) is amended by adding at the end thereof the following new subsections:

"(h) Notwithstanding any other provisions of this section, benefits paid to employees of nonprofit organizations shall be financed in accordance with the provisions of this subsection. For the purpose of this subsection and subsection (i), a nonprofit organization is an organization (or group of organizations) described in section 501(c)(3) of the Internal Revenue Code of 1954 which is exempt from income tax under section 501(a) of such Code.

"(1) Any nonprofit organization which, pursuant to section 1(b)(1)(C), is, or becomes, subject to this Act on or after January 1, 1972, shall pay contributions under the provisions of section 3(c), unless it elects, in accordance with this paragraph to pay to the Board for the District Unemployment Fund an amount equal to the amount of regular benefits plus one-half of the amount of extended benefits paid that is attributable to service in the employ of such nonprofit organization, to individuals for weeks of unemployment which begin during the effective period of such election.

"(A) Any nonprofit organization which is, or becomes, subject to this Act on January 1, 1972, may elect to become liable for payments in lieu of contributions for a period of not less than one taxable year beginning with January 1, 1972: *Provided,* That it files with the Board a written notice of its election within the thirty-day period immediately following such date or within a like period immediately following the date of enactment of this subparagraph whichever occurs later.

"(B) Any nonprofit organization which becomes subject to this Act after January 1, 1972, may elect to become liable for payments in lieu of contributions for a period of not less than the remainder of that and the next year beginning with the date on which such liability begins by filing a written notice of its election with the Board not later than thirty days immediately following the date of the determination of such liability.

"(C) Any nonprofit organization which makes an election in accordance with subparagraph (A) or subparagraph (B) of this paragraph will continue to be liable for payments in lieu of contributions until it files with the Board a written notice terminating its election not later than thirty days prior to the beginning of the taxable year for which such termination shall first be effective.

"(D) Any nonprofit organization which has been paying contributions under this Act for a period subsequent to January 1, 1972 may change to a reimbursable basis by filing with the Board not later than thirty days prior to the beginning of any taxable year a written notice of election to become liable for payments in lieu of contributions. Such election shall not be terminable by the organization for that and the next year.

"(E) The Board may for good cause extend the period within which a notice of election, or a notice of termination, must be filed and may permit an election to be retroactive but not any earlier than with respect to benefits paid after December 31, 1969.

"(F) The Board, in accordance with such regulations as it may prescribe, shall notify each nonprofit organization of any determination which the Board may make of its status as an employer and of the effective date of any election which it makes and of any termination of such election. Such determinations shall be subject to reconsideration, appeal and review in accordance with the provisions of section 3(c).

"(2) Payments in lieu of contributions shall be made in accordance with the provisions of this paragraph including either subparagraph (A) or subparagraph (B).

"(A) At the end of each calendar quarter, or at the end of any other period as determined by the Board, the Board shall bill each nonprofit organization (or group of such organizations) which has elected to make payments in lieu of contributions for an amount equal to the full amount of regular benefits plus one-half of the amount of extended benefits paid that is attributable to service in the employ of such organization.

"(B) (i) Each nonprofit organization that has elected payments in lieu of contributions may request permission to make such payments as provided in this subparagraph. Such method of payment shall become effective upon approval by the Board.

"(ii) At the end of each calendar quarter, or at the end of such other period as determined by the Board, the Board shall bill each nonprofit organization for an amount representing one of the following:

"(I) For 1972, one-fourth of 1 percent of its total payroll for 1971.

"(II) For years after 1972, such percentage of its total payroll for the immediately preceding calendar year as the Board shall determine. Such determination shall be based each year on the average benefit costs attributable to service in the employ of nonprofit organizations during the preceding calendar year.

"(III) For any organization which did not pay wages throughout the four calendar quarters of the preceding calendar year, such percentage of its payroll during such year as the Board shall determine.

"(iii) At the end of each taxable year, the Board may modify the quarterly percentage of payroll thereafter payable by the nonprofit organization in order to minimize excess or insufficient payments.

"(iv) At the end of each taxable year, the Board shall determine whether the total of payments for such year made by a nonprofit organization is less than, or in excess of, the total amount of regular benefits plus one-half of the amount of extended benefits paid to individuals during such taxable year based on wages attributable to service in the employ of such organization. Each nonprofit organization whose total payments for such year are less than the amount so determined shall be liable for payment of the unpaid balance to the fund in accordance with subparagraph (C). If the total payments exceed the amount so determined for the taxable year, all or a part of the excess may, at the discretion of the Board, be refunded from the fund or retained in the fund as part of the payments which may be required for the next taxable year.

"(C) Payment of any bill rendered under subparagraph (A) or subparagraph (B) shall be made not later than thirty days after such bill was mailed to the last known address of

the nonprofit organization or was otherwise delivered to it, unless there has been an application for review and redetermination in accordance with subparagraph (E).

"(D) Payments made by a nonprofit organization under the provisions of this subsection shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the organization.

"(E) The amount due specified in any bill from the Board shall be conclusive on the organization unless, not later than fifteen days after the bill was mailed to its last known address or otherwise delivered to it, the organization files an application for redetermination by the Board, setting forth the grounds for such application or appeal. The Board shall promptly review and reconsider the amount due specified in the bill and shall thereafter issue a redetermination in any case in which such application for redetermination has been filed. Any such redetermination shall be conclusive on the organization unless the organization files an appeal as set forth in section 3(c)(10), setting forth the grounds for the appeal.

"(F) Past due payments of amounts in lieu of contributions shall be subject to the same interest and penalties that, pursuant to section 4(c), apply to past due contributions.

"(3) In the discretion of the Director, any nonprofit organization that elects to become liable for payments in lieu of contributions shall be required within thirty days after the effective date of its election, to execute and file with the Board a surety bond approved by the Director, or it may elect instead to deposit with the Board money. The amount of such bond or deposit shall be determined in accordance with the provisions of this paragraph.

"(A) The amount of the bond or deposit required by this paragraph shall be equal to one-fourth of 1 per centum of the organization's total wages paid for employment as defined in section 1(b)(1)(C) for the four calendar quarters immediately preceding the effective date of the election, the renewal date in the case of a bond, or the biennial anniversary of the effective date of election in the case of a deposit of money, whichever date shall be most recent and applicable. If the nonprofit organization did not pay wages in each of such four calendar quarters, the amount of the bond or deposit shall be as determined by the Director.

"(B) Any bond deposited under this paragraph shall be in force for a period of not less than two taxable years and shall be renewed with the approval of the Director at such times as the Director may prescribe, but not less frequently than at two-year intervals as long as the organization continues to be liable for payments in lieu of contributions. The Director shall require adjustments to be made in a previously filed bond as he deems appropriate. If the bond is to be increased, the adjusted bond shall be filed by the organization within fifteen days of the date notice of the required adjustment was mailed or otherwise delivered to it. Failure by any organization covered by such bond to pay the full amount of payments in lieu of contributions when due, together with any applicable interest and penalties provided for in section 4(c) of this Act, shall render the surety liable on said bond to the extent of the bond, as though the surety was such organization.

"(C) Any deposit of money in accordance with this paragraph shall be retained by the Board in an escrow account until liability under the election is terminated, at which time it shall be returned to the organization, less any deductions as hereinafter provided. The Director may deduct from the money deposited under this paragraph by a nonprofit organization to the extent necessary to satisfy any due and unpaid payments in lieu of contributions and any applicable interest and penalties provided for in section 4(c). The Director shall require the organization within fifteen days following any deduction from a money deposit under the provisions of this subparagraph to deposit sufficient additional money to make whole the organization's deposit at the prior level. The Director may, at anytime, review the adequacy of the deposit made by any organization. If, as the result of such review, he determines that an adjustment is necessary, he shall require the organization to make additional deposit within fifteen days of written notice of his determination or shall return to it such portion of the deposit as he no longer considers necessary, whichever action is appropriate.

"(D) If any nonprofit organization fails to file a bond or make a deposit, or to file a bond in an increased amount or to increase or make whole the amount of a previously made deposit, as provided under this paragraph, the Director may terminate such organization's election to make payments in lieu of contributions and such termination shall continue for not less than the four-consecutive-calendar-quarter period beginning with the quarter in which such termination becomes effective: *Provided*, That the Director may extend for good cause the applicable filing, deposit or adjustment period by not more than fifteen days.

"(4) If any nonprofit organization is delinquent in making payments in lieu of contributions as required under paragraph (2) of this subsection, the Board may terminate such organization's election to make payments in lieu of contributions as of the beginning of the next taxable year, and such termination shall be effective for that and the next taxable year.

"(5) Each employer that is liable for payments in lieu of contributions shall pay to the Board for the fund the amount of regular benefits plus one-half of the amount of extended benefits paid that are attributable to service in the employ of such employer. If benefits paid to an individual are based on wages paid by more than one employer and one or more of such employers are liable for payments in lieu of contributions, the amount payable to the fund by each employer that is liable for such payments shall be determined in accordance with the provisions of subparagraph (A) or subparagraph (B).

"(A) If benefits paid to an individual are based on wages paid by one or more employers that are liable for payments in lieu of contributions and on wages paid by one or more employers who are liable for contributions, the amount of benefits payable by each employer that is liable for payments in lieu of contributions shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base-period wages paid to the individual by such employer bear to the total base-period wages paid to the individual by all of his base-period employers.

"(B) If benefits paid to an individual are based on wages paid by two or more employers that are liable for payments in lieu of contributions, the amount of benefits payable by each such employer shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base-period wages paid to the individual by such employer bear to the total base-period wages paid to the individual by all of his base-period employers.

"(6) Two or more employers that have become liable for payments in lieu of contributions, in accordance with the provisions of subsection (h)(1), may file a joint application to the Board for the establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of such employers. Each such application shall identify and authorize a group representative to act as the group's agent for the purposes of this paragraph. Upon approval of the application, the Board shall establish a group account for such employers effective as of the beginning of the calendar quarter in which it receives the application and shall notify the group's representative of the effective date of the account. Such account shall remain in effect for not less than two years and thereafter until terminated at the discretion of the Board or upon application by the group. Upon establishment of the account, each member of the group shall be liable for payments in lieu of contributions with respect to each calendar quarter in the amount that bears the same ratio to the total benefits paid in such quarter that are attributable to service performed in the employ of all members of the group as the total wages paid for service in employment by such member in such quarter bear to the total wages paid during such quarter for service performed in the employ of all members of the group. The Board shall prescribe such regulations as it deems necessary with respect to applications for establishment, maintenance, and termination of group accounts that are authorized by this paragraph, for addition of new members to, and withdrawal of active members from, such accounts, and for the determination of the amounts that are payable under this paragraph by members of the group and the time and manner of such payments.

"(i) Notwithstanding any provisions in subsection (h) any nonprofit organization that prior to January 1, 1969, paid contributions required by subsection (c) of this section and, pursuant to subsection (h) of this section, elects, within thirty days after the effective date of such subsection (h), to make payments in lieu of contributions, shall not be required to make any such payment on account of any benefits paid, on the basis of wages paid by such organization to individuals for weeks of unemployment which began on or after the effective date of such election until the total amount of such benefits equals the amount of the positive balance in the experience rating account of such organization."

(27) Section 4(a) of such Act (D.C. Code, sec. 46–304(a)) is amended by inserting ", or payments in lieu of contributions under section 3(h)," immediately after "section 3".

(28) Section 4(b) of such Act (D.C. Code, sec. 46–304(b)) is amended my inserting ", except as provided in section 3(h) of this Act" immediately before the period at the end of the first sentence.

(29) Section 4(c) of such Act (D.C. Code, sec. 46–304(c)) is amended to read as follows:

"(c)(1) If contributions or payments in lieu of contributions under section 3(h) are not paid when due, there shall be added interest at the rate of one-half of 1 per centum per month or fraction thereof from the date they become due until paid: *Provided*, That interest shall not run against a court-appointed fiduciary when the contributions or payments in lieu of contributions under section 3(h) are not paid timely because of a court order.

"(2) If contributions or wage reports are not filed on or before the fifteenth day of the second month following the close of the calendar quarter for which they are due or contributions, or payments in lieu of contributions under section 3(h), are not paid by that time, there shall be added a penalty of 10 per centum of the contributions, or payments in lieu of contributions under section 3(h), but such penalty shall not be less than $5 nor more than $25 and for good cause such penalty may be waived by the Board."

(30) Section 4(d) of such Act (D.C. Code, sec. 46–304(d)) is amended by inserting ", or payments in lieu of contributions under section 3(h)," immediately after "contributions".

(31) Section 4(e) of such Act (D.C. Code, sec. 46–304(e)) is amended by striking out

"or tax" in the first and fifteenth sentences and inserting in lieu thereof ", or payments in lieu of contributions under section 3(h),".

(32) Section 4(h) of such Act (D.C. Code, sec. 46–304(h)) is amended by inserting "or penalty" immediately after "interest" in the second sentence.

(33) Section 4(i) of such Act (D.C. Code, sec. 46–304(i)) is amended to read as follows:

"(i) REFUNDS.—If not later than three years after the date on which any contributions (or payments in lieu of contributions under section 3(h) or interest thereon were paid, an employing unit which has paid such contributions (or payments in lieu of contributions under section 3(h)) or interest thereon shall make application for an adjustment thereof in connection with subsequent contribution payments (or payments in lieu of contributions under section 3(h)) or for a refund thereof because such adjustment cannot be made, and the Board shall determine that such contributions (or payments in lieu of contributions under section 3(h)) or interest on any portion thereof was erroneously collected, the Board shall allow such employing unit to make an adjustment thereof, without interest, in connection with subsequent contribution payments (or payments in lieu of contributions under section 3(h)) by it, or if such adjustment cannot be made the Board shall refund said amount, without interest, from the clearing account or benefit account upon checks issued by the Board or its duly authorized agent. For like cause and within the same period, adjustment or refund may be so made on the Board's own initiative. Should benefits have been paid based upon work records filed by the employing unit, claiming an adjustment or refund, such benefit should be disregarded for purposes of figuring such adjustment or refund, and any such benefit payments already having been made at the time of the adjustment or refund, based upon records filed with this Board by such employing unit, shall to that extent be allowed and shall not be deemed to have been paid erroneously."

(34) Section 4(1) of such Act (D.C. Code, sec. 46–304(1)) is amended by striking out the first and second sentences and inserting in lieu thereof the following:

"(1) The Board may compromise any civil case arising under this Act. Whenever a compromise is made by the Board in each such case, there shall be placed in the minutes of the Board the opinion of an attorney of the Board with the reasons therefor, including a statement of (1) the amount of the contributions, or payments in lieu of contributions under section 3(h), due, (2) the amount of interest due on the same, and (3) the amount actually paid in accordance with the terms of the compromise."

(35) Section 7(b) of such Act (D.C. Code, sec. 46–307(b)) is amended—

(A) by striking out the second sentence; and

(B) by striking out in the third sentence "50 per centum" and inserting in lieu thereof "66⅔ per centum".

(36) Section 7(c) of such Act (D.C. Code, sec. 46–307(c)) is amended to read as follows:

"(c) To qualify for benefits an individual must have (1) been paid wages for employment of not less than $300 in one quarter in his base period, (2) been paid wages for employment of not less than $450 in not less than two quarters in such period, and (3) received during such period wages the total amount of which is equal to at least one and one-half times the amount of his wages actually received in the quarter in such period in which his wages were the highest. Notwithstanding the provisions of paragraph (3), any otherwise qualified individual, the total amount of whose wages during such period is less than the amount required to have been received during such period under such paragraph, may qualify for benefits if the difference between the amounts so required to have been received and the total amount of his wages during such period does not exceed $70, but the amount of his weekly benefit, as computed under section 7(b), shall be reduced by $1 if such difference does not exceed $35 or by $2 if such difference is more than $35. Wages received by an individual in the period intervening between the end of his last base period and the beginning of his last benefit year shall not be available for benefit purposes in a subsequent benefit year unless he has, subsequent to the commencement of such last benefit year, performed services for which he received remuneration for personal services, whether or not such services were performed in employment as defined in this Act, in an amount equal to at least ten times the weekly benefit amount for which he qualifies in such last benefit year. Benefits payable to an individual with respect to a week shall be reduced, under regulations prescribed by the Board, by any amount received or applied for with respect to such week as a retirement pension or annuity under a public or private retirement plan or system provided, or contributed to, by any base period employer. An amount received with respect to a period other than a week shall be prorated by weeks. No reduction shall be made under the preceding two sentences for any amount received under title II of the Social Security Act."

(37) Section 7 of such Act (D.C. Code, sec. 46–307) is amended by adding the following new subsection:

(g) EXTENDED BENEFITS PROGRAM.—Notwithstanding any other provisions of this section, this subsection provides a program of extended benefits on and after January 1, 1972.

"(1) DEFINITIONS.—As used in this subsection, unless the context clearly requires otherwise—

"(A) 'Extended benefit period' means a period which—

"(i) begins with the third week after whichever of the following weeks occurs first: (I) a week for which there is a national 'on' indicator, or (II) a week for which there is a State 'on' indicator; and

"(ii) ends with either the following weeks, whichever occurs later: (I) the third week after the first week for which there is both a national 'off' indicator and a State 'off' indicator; or (II) the thirteenth consecutive week of such period: *Provided*, That no extended benefit period may begin by reason of a State 'on' indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to the District.

"(B) There is a 'national' 'on' 'indicator' for a week if the Secretary of Labor determines that for each of the three most recent completed calendar months ending before such week, the rate of insured unemployment (seasonally adjusted) for all the States equaled or exceeded 4.5 per centum.

"(C) There is a 'national' 'off' 'indicator' for a week if the Secretary of Labor determines that for each of the three most recent completed calendar months ending before such week, the rate of insured unemployment (seasonally adjusted) for all States was less than 4.5 per centum.

"(D) There is a 'State' 'on' 'indicator' for the District for a week if the Board determines, in accordance with regulations of the Secretary of Labor, that for the period consisting of such week and the immediately preceding twelve weeks, the rate of insured unemployment (not seasonally adjusted) under this Act—

"(i) equaled or exceeded 120 per centum of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years, and

"(ii) equaled or exceeded 4 per centum.

"(E) There is a 'State' 'off' 'indicator' for the District for a week if the Board determines in accordance with regulations of the Secretary of Labor, that for the period consisting of such week and the immediately preceding twelve weeks, the rate of insured unemployment (not seasonally adjusted) under this Act—

"(i) was less than 120 per centum of the average of such rates for the corresponding thirteen week period ending in each of the preceding two calendar years, or

"(ii) was less than 4 per centum.

"(F) 'Rate of insured unemployment', for purposes of subparagraphs (D) and (E) of this subsection, means the percentage derived by dividing (i) the average weekly number of individuals filing claims in the District for weeks of unemployment with respect to the most recent thirteen-consecutive-week period, as determined by the Board on the basis of its reports to the Secretary of Labor, by (ii) the average monthly employment covered under this Act for the first four of the most recent six completed calendar quarters ending before the end of such thirteen-week period.

"(G) 'Regular benefits' means benefits payable to an individual under this Act or under any State law (including benefits payable to Federal civilian employees and to ex-servicemen pursuant to chapter 85 of title 5, United States Code) other than extended benefits.

"(H) 'Extended benefits' mean benefits (including benefits payable to Federal civilian employees and to ex-servicemen pursuant to chapter 85 of title 5, United States Code) payable to an individual under the provisions of this subsection for weeks of unemployment in his eligibility period.

"(I) 'Eligibility period' of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begins in such period.

"(J) 'Exhaustee' means an individual who, with respect to any week of unemployment in his eligibility period:

"(i) has received, prior to such week, all of the regular benefits that were available to him under this Act or any State law (including dependents' allowances and benefits payable to Federal civilian employees and ex-servicemen under chapter 85 of title 5, United States Code) in his current benefit year that includes such week: *Provided*, That, for the purposes of this subparagraph, an individual shall be deemed to have received all of the regular benefits that were available to him although as a result of a pending appeal with respect to wages that were not considered in the original monetary determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits; or

"(ii) his benefit year having expired prior to such week, has no, or insufficient, wages on the basis of which he could establish a new benefit year that would include such week; and

"(iii) (I) has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, the Automotive Products Trade Act of 1965, and such other Federal laws as are specified in regulations issued by the Secretary of Labor; and (II) has not received and is not seeking unemployment benefits under the unemployment compensation law of the Virgin Islands or of Canada; but if he is seeking such benefits and the appropriate agency finally determines that he is not entitled to benefits under such law he is considered an exhaustee.

"(K) 'State law' means the unemployment insurance law of any State, approved by the Secretary of Labor under section 3304 of the Internal Revenue Code of 1954.

"(2) Except when the result would be inconsistent with the other provisions of this subsection, as provided in the regulations of the Board, the provisions of this Act which

apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits.

"(3) An individual shall be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period only if the Board finds that with respect to such week:

"(A) he is an 'exhaustee' as defined in paragraph (1)(J) of this subsection, and

"(B) he has satisfied the requirements of this Act for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits.

"(4) The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be an amount equal to the weekly basic or augmented benefit amount, whichever is appropriate, payable to him during his applicable benefit year.

"(5) The total extended benefit amount payable to any eligible individual with respect to his applicable year shall be the least of the following amounts:

"(A) 50 percent of the total amount of regular benefits (including dependents' allowances) which were payable to him under this Act in his applicable benefit year;

"(B) thirteen times his weekly benefit amount (including dependent's allowances) which was payable to him under this Act for a week of total unemployment in the applicable benefit year; or

"(C) thirty-nine times his weekly benefit amount (including dependents' allowances) which was payable to him under this Act for a week of total unemployment in the applicable benefit year, reduced by the total amount of regular benefits which were paid (or deemed paid) to him under this Act with respect to the benefit year.

"(D) For purposes of this paragraph, the total regular benefit amount shall be that amount (including dependents' allowances) provided in the individual's monetary determination or the amount of regular benefits (including dependents' allowances) actually received, whichever is the greater.

"(6) (A) Whenever an extended benefit period is to become effective in the District (or in all States) as a result of a State or a National 'on' indicator, or an extended benefit period is to be terminated in the District as a result of State and National 'off' indicators, the Director shall make an appropriate public announcement as provided in the regulations of the Board.

"(B) Computations required by the provisions of paragraph (1)(F) of this subsection shall be made by the Board in accordance with regulations prescribed by the Secretary of Labor."

(38) Section 9 of such Act (D.C. Code, sec. 46–309) is amended by adding the following new subsection:

"(g) Benefits based on service in employment defined in section 1(b)(1) (B) and (C) shall be payable in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to this Act; except that benefits based on service in an instructional, research, or principal administrative capacity in an institution of higher education (as defined in section 1(w)) shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years, or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or contracts to perform services in any such capacity for any institution or institutions of higher education for both such academic years or both such terms."

(39) Section 10(d) of such Act (D.C. Code, sec. 46–310(d)) is amended by adding the following new paragraph:

"(3) Notwithstanding any other provision of this Act, compensation shall not be denied or reduced to an individual solely because he files a claim in another State (or a contiguous country with which the United States has an agreement with respect to unemployment compensation) or because he resides in another State (or such a contiguous country) at the time he files a claim for unemployment compensation."

(40) Section 11 of such Act (D.C. Code, sec. 46–311) is amended—

(A) by striking out the fifth sentence in subsection (b) and inserting in lieu thereof "The Board shall promptly notify the claimant and any party to the proceeding of its determination, and such determinations shall be final within 10 days after the mailing of notice thereof to the party's last known address or in the absence of such mailing, within 10 days of actual delivery of such notice."

(B) by striking out the sixth sentence in subsection (b); by striking out the seventh sentence through the words "Provided, That" in subsection (b) and capitalize the word "if" immediately thereafter.

(C) by striking out "after the date of notification or" in the fourth sentence of subsection (e) and inserting in lieu thereof "of".

(D) by striking out "(a)" in the penultimate sentence of subsection (e); and

(E) by inserting "or recording device" immediately after "stenographer" in the second sentence of subsection (f).

(41) Section 13 of such Act (D.C. Code, sec. 46–313) is amended (A) by amending subsection (e) to read as follows:

"(e) FEDERAL-STATE COOPERATION.—(1) In the administration of this Act, the Board shall cooperate with the Department of Labor to the fullest extent consistent with the provisions of this Act, and shall take such action, through the adoption of appropriate rules, regulations, administrative methods, and standards, as may be necessary to secure to the District and its citizens all advantages available under the provisions of the Social Security Act that relate to unemployment compensation, the Federal Unemployment Tax Act, the Wagner-Peyser Act, and the Federal-State Extended Unemployment Compensation Act of 1970, or other Manpower Acts.

"(2) In the administration of the provisions in section 7 (g) of this Act, which are enacted to conform with the requirements of the Federal-State Extended Unemployment Compensation Act of 1970, the Board shall take such action as may be necessary (A) to ensure that the provisions are so interpreted and applied as to meet the requirements of such Federal Act as interpreted by the Department of Labor, and (B) to secure to the District the full reimbursement of the Federal share of extended and regular benefits paid under this Act that are reimbursable under the Federal Act." and (B) by striking out "the District of Columbia" in the third sentence of subsection (f) and inserting in lieu thereof "any State".

(42) Section 14 of such Act (D.C. Code, sec. 46–314) is amended—

(A) by inserting the subsection designation "(a)" immediately before "All";

(B) by striking out "$40" in such subsection (a) and inserting in lieu thereof "$65"; and

(C) by adding at the end thereof the following new subsection:

"(b)(1) There is hereby created a special deposit fund in the Treasury of the United States, separate and apart from the District Unemployment Fund, to be known as the Special Administrative Expense Fund. Notwithstanding any contrary provisions of this Act, (A) interest and penalties collected from employers, and dishonored check penalties authorized by Public Law 89–208 (79 Stat. 844), shall after January 31, 1972, be deposited into the clearing account in the District Unemployment Fund in the Treasury of the United States for clearance only and shall not, except as provided in paragraph (4) of this subsection, be deemed a part of the District Unemployment Fund; (B) thereafter, during each calendar quarter, there shall be transferred from the clearing account to such Special Administrative Expense Fund all moneys described in subparagraph (A) of this subsection collected during the preceding quarter; and (C) refunds of such moneys paid into the Special Administrative Expense Fund shall be made from such fund.

"(2) Said moneys shall not be expended or available for expenditure in any manner which would permit their substitution for, or a corresponding reduction in, Federal funds which would, in the absence of said moneys, be available to finance expenditures for the administration of this Act. Nothing in this subsection shall prevent said moneys from being used as a revolving fund to cover expenditures, necessary and proper under the law, for which Federal funds have been duly requested but not yet received, subject to the charging of such expenditures against such funds when received. The moneys in this fund shall be used by the Board for the payment of costs of administration which are found by the Board not to be proper and valid charges payable out of Federal grants or other funds received for the administration of this Act. All such payments of expenses shall be made by checks drawn by the Board and shall be subject to audit by the District in the same manner as are payments of other expenses of the District.

"(3) No expenditure of this fund shall be made unless and until the Board by resolution duly entered in its minutes finds that no other funds are available or can properly be used to finance such expenditures. Vouchers drawn to pay expenditures of this fund shall, among other things, include a duly certified copy of the resolution of the Board hereinbefore referred to.

"(4) The moneys in this fund shall be continuously available to the Board for expenditures and refunds in accordance with the provisions of this subsection and shall not lapse at any time or be transferred to any other fund or account except as herein provided. If, on June 30 of any calendar year, the balance in this fund exceeds $250,000 by $1,000 or more, the Board shall transfer such excess to the Unemployment Trust Fund. It shall be the duty of the Secretary of the Treasury to invest such portion of this fund in excess of $10,000 at the end of each month. Such investments shall be made in the same manner as provided in section 904 of the Social Security Act. The interest on, and the proceeds from, the sale of redemptions or any obligations held in this fund shall be credited to and form a part of this fund."

(43) Section 15 of such Act (D.C. Code, sec. 46–315) is amended by striking out "$25" in subsection (c) and inserting in lieu thereof "$50".

(44) Section 16 of such Act (D.C. Code, sec. 46–316) is amended to read as follows:

"(a) The Board is hereby authorized to enter into reciprocal arrangements with appropriate and duly authorized agencies of other States or of the Federal Government, or both, whereby services performed by an individual for a single employing unit for which services are customarily performed by such individual in more than one State shall be deemed to be services performed entirely within any one of the States (1) in which any part of such individual's service is performed or (2) in which such individual has his residence or (3) in which the employing unit maintains a place of business, provided there is in effect, as to such services, an election, approved by the agency charged with the administration of such State's unemployment-compensation law, pursuant to which

all the services performed by such individual for such employing unit are deemed to be performed entirely within such State.

"(b) The Board is hereby authorized to enter into reciprocal arrangements with appropriate and duly authorized agencies of other States or of the Federal Government, or both, whereby potential rights to benefits accumulated under the unemployment-compensation laws of one or more States or under one or more such laws of the Federal Government, or both, may constitute the basis for the payment of benefits through a single appropriate agency under terms which the Board finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the fund.

"(c) The Board shall participate in any arrangements for the payment of compensation on the basis of combining an individual's wages and employment covered under this Act with his wages and employment covered under the unemployment-compensation laws of other States which are approved by the Secretary of Labor in consultation with the State unemployment-compensation agencies as reasonbly calculated to assure the prompt and full payment of compensation in such situations and which include provisions for (1) applying the base period of a single State law to a claim involving the combining of an individual's wages and employment covered under two or more State unemployment-compensation laws, and (2) avoiding the duplicate use of wages and employment by reason of such combining.

"(d) The Board is hereby authorized to enter into reciprocal arrangements with appropriate and duly authorized agencies of other States or of the Federal Government, or both, whereby contributions due under this Act with respect to wages for employment shall for the purposes of section 4 of this Act be deemed to have been paid to the fund as of the date payment was made as contributions therefor under another State or Federal unemployment-compensation law, but no such arrangement shall be entered into unless it contains provisions for such reimbursement to the fund of such contributions and the actual earnings thereon as the Board finds will be fair and reasonable as to all affected interests.

"(e) Reimbursement paid from the fund pursuant to subsection (c) of this section shall be deemed to be benefits for the purpose of sections 6, 7, and 8 of this Act. The Board is authorized to make to other State or Federal agencies and to receive from such other State or Federal agencies reimbursements from or to the fund, in accordance with arrangements entered into pursuant to this section.

"(f) The administration of this Act and of State and Federal unemployment-compensation and public-employment-service laws will be promoted by cooperation between the District and such States and the appropriate Federal agencies in exchanging services and making available facilities and information. The Board is therefore authorized to make such investigations, secure and transmit such information, make available such services and facilities, and exercise such of the other powers provided herein with respect to the administration of this Act as it deems necessary or appropriate to facilitate the administration of any such unemployment-compensation or public-employment-service law, and in like manner to accept and utilize information, services, and facilities made available to the District by the agency charged with the administration of any such other unemployment-compensation or public-employment-service law.

"(g) To the extent permissible under the laws and Constitution of the United States, the Board is authorized to enter into or cooperate in arrangements whereby facilities and services provided under this Act and facilities and services provided under the unemployment-compensation law of any foreign government may be utilized for the taking of claims and the payment of benefits under the employment-security law of the District or under a similar law of such government."

SEC. 3. The amendments made by this Act shall take effect on January 1, 1972, except that the amendments made by sections 2(35) and 2(36) of this Act shall take effect only with respect to benefit years that begin on or after January 2, 1972.

The amendments were agreed to.

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

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–563), explaining the purposes of the measure.

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

PURPOSE OF THE BILL

S. 2429, as amended, is designed to implement provisions of the Employment Security Amendments of 1970 (P.L. 91–373) which made amendments to the Social Security Act and to the Federal Unemployment Tax Act, and for other purposes.

PROVISIONS OF THE BILL

In addition to giving effect to and implementing the amendments of the Employment Security Amendments of 1970 which extended and improved the protection provided to jobless workers, thus bringing the District of Columbia Unemployment Act in conformity with the federal law, the bill incorporates additional recommendations made by the President concerning state programs.

S. 2429 amends the D.C. unemployment compensation law by increasing the maximum weekly benefit amount, or ceiling on benefits, from 50 percent of the average wage of covered workers to 66⅔ percent. This would implement the goal for State benefit maximums established by President Nixon in his message to Congress of July 8, 1969. It also implements the recommendations of the Department of Labor with respect to maximum weekly benefit amounts in State laws. (The Federal Unemployment Tax and Social Security Acts provide that, for the purpose of those Acts, the District of Columbia is deemed to be a State.)

S. 2429 would also extend the coverage provisions and the protections of the District of Columbia law to workers employed in domestic service. The term "employment" in such law would be redefined to include "personal or domestic service in a private home for an employer who paid cash remuneration of $500 or more in any calendar quarter." The Department of Labor has recommended to States that State law coverage provisions be extended to include domestic service. The proposed D.C. extension is almost identical to a similiar provision in the unemployment insurance law of the State of New York which has successfully covered domestic service for more than 30 years. Coverage of domestic service employment in the District of Columbia is of particular importance to the District in view of the fact that domestic employment in the District labor market is of proportionately greater importance than in most States and because of the dependence on this type of employment in the District of significant numbers of members or disadvantaged groups.

Except for the provisions with respect to the maximum weekly benefit amount and domestic service coverage, the provisions of S. 2429 are designed merely to implement the provisions which P.L. 91–373 added to the Federal Unemployment Tax Act. The added Federal law provisions are, with few exceptions, *requirements*, and the District law must contain these required provisions effective January 1, 1972, if all employers in the District of Columbia are to continue to receive normal and additional credit against the Federal 3.2 percent tax on wages up to $4,200 in annual wages per individual worker. Should the D.C. law fail to contain all of the provisions which P.L. 91–373 requires State laws to contain by January 1, 1972, effective as of that date, the net Federal tax of D.C. employers of 0.5 percent on annual wages paid up to $4,200 per employee will increase to 3.2 percent of annual wages paid up to $4,200 per employee while their liability for tax payments to the D.C. fund would also continue. The additional and unnecessary Federal tax burden on D.C. employers, who have taxable payrolls approaching $1 billion, could amount to more than $25 million annually.

As recommended by the Committee, S. 2429 would be sufficient to implement the requirements of P.L. 91–373 and to keep the D.C. law in conformity with the Federal Unemployment Tax and Social Security Acts.

COMMITTEE AMENDMENTS

The bill contains amendments to the District of Columbia law that are designed to bring into conformity with the Social Security Act requirement for full payment of unemployment compensation when due (section 303(a)(1), Social Security Act) as interpreted by the U.S. Supreme Court in its April 26, 1971 decision in *Java* v. *California Department of Human Resources Development* 402 U.S. 121).

In that decision the Court held that payment of unemployment benefits awarded an individual by an initial eligibility determination may not be withheld during the pendency of an employer's appeal from that determination or during the period provided for the taking of such an appeal. Provisions for such withholding of benefit payments have hitherto been included in the District of Columbia law, as has also been the case in most State unemployment insurance laws.

This change is reflected on page 44 of the bill, lines 9 through 15.

In addition this same section is amended because of a difference in recent decisions of the District of Columbia Court of Appeals and the United States Court of Appeals for the District of Columbia Circuit. If the language remains unchanged under the District of Columbia Court of Appeals, the District Unemployment Compensation Board could never have any certainty about the finality of any of its determinations as all an interested party would have to do would be to testify that he did not receive the decision until a date within 10 days of the mailing of his appeal.

Other amendments are technical in nature.

HISTORY

On June 18, 1971, the Commissioner of the District of Columbia wrote a letter to the President of the Senate transmitting and recommending the proposed legislation. S. 2429 was introduced in the Senate on August 4, 1971, and hearings were held by the Subcommittee on Public Health, Education, Welfare, and Safety of the District Committee on November 24, 1971. Representatives of the District of Columbia government, the Metropolitan Washington Board of Trade, and the Greater Washington Central Labor Council of AFL–CIO were heard.

SICKLE CELL ANEMIA

The Senate proceeded to consider the bill (S. 2677) to authorize programs in the District of Columbia to combat and control the disease known as sickle cell anemia which had been reported from

the Committee on the District of Columbia with an amendment on page 1, after line 3 strike out:

(1) that sickle cell anemia is a disease resulting from the inheritance of a genetic factor relating to the so-called sickle cell trait which afflicts large numbers of American citizens, primarily among the black population of the United States;

(2) that this disease is a deadly and tragic burden which strikes approximately one of every five hundred young black children, and that less than half of these young people survive beyond the age of twenty;

And, in lieu thereof, insert:

(1) that sickle cell anemia is a disease resulting from the inheritance of a genetic factor relating to the so-called sickle cell trait which afflicts large numbers of American citizens;

(2) that this disease is a deadly and tragic burden which strikes many young children, and kills half of its victims before the age of twenty;

So as to make the bill read:

S. 2677

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the Congress hereby finds—

(1) that sickle cell anemia is a disease resulting from the inheritance of a genetic factor relating to the so-called sickle cell trait which afflicts large numbers of American citizens;

(2) that this disease is a deadly and tragic burden which strikes many young children, and kills half of its victims before the age of twenty;

(3) that approximately one thousand young children in the District of Columbia suffer from this disease and approximately fifty-four thousand persons in the District are carriers of the sickle cell trait;

(4) that sickle cell anemia has been one of the more common and serious childhood diseases, yet has not received the national commitment required to eradicate the disease;

(5) that efforts to control sickle cell enemia must be directed toward increased research in the causes and treatment of the disease and the education, voluntary screening, and counseling of carriers of the sickle cell trait;

(6) that simple and inexpensive screening tests have been devised which will identify those who have the disease or carry the trait; and

(7) that programs to combat sickle cell anemia must be based entirely upon the voluntary cooperation of citizens.

(b) Upon the basis of these findings, Congress declares that in order to preserve and protect the health and well-being of citizens of the District of Columbia and to provide a model for the health of the Nation, it is necessary to establish a pilot program for the prevention of sickle cell anemia in the District of Columbia, to authorize the establishment of programs to assist in that prevention and to enlist the voluntary cooperation of all citizens in that effort.

SEC. 2. (a) The Commissioner of the District of Columbia is authorized to establish and carry out programs in the District of Columbia involving the identification and counseling of persons with sickle cell anemia or the sickle cell trait, and educating the public concerning the nature and inheritance of the aforementioned disease and trait.

(b) As used in this section, the term "programs" includes programs—

(1) for the purpose of identifying and counseling of persons with the sickle cell trait and educating the public about the nature and inheritance of the sickle cell trait;

(2) providing for screening for the sickle cell trait at appropriate locations throughout the District or Columbia, including—

(A) educational institutions;

(B) day care centers;

(C) neighborhood health centers;

(D) family planning clinics;

(E) hospitals and medical clinics;

(3) providing referral services, for persons found to carry the sickle cell trait, to appropriate organizations which provide counseling services on the nature and inheritance of the sickle cell trait;

(4) providing counseling services regarding the nature and inheritance of the sickle cell trait; and

(5) to educate the public regarding the nature and inheritance of the sickle cell trait and sickle cell anemia.

(c) no program established pursuant to this Act shall be carried out other than on a voluntary basis.

DEMONSTRATION GRANTS

SEC. 3. For the purpose of financially assisting the District of Columbia in establishing programs to identify and counsel persons with the sickle cell trait and to educate the public concerning the nature and inheritance of the aforementioned trait and sickle cell anemia, the Secretary of Health, Education, and Welfare is authorized to make demonstration grants to: (a) the Commissioner of the District of Columbia for use in defraying expenses or other costs incurred by him in establishing and carrying out such programs; and (b) medical schools, hospitals, and research institutions in the District of Columbia for use in defraying expenses and other costs incurred by such institutions in developing and operating centers or programs for research, testing, counseling, or treatment regarding the sickle cell trait or sickle cell anemia.

Any application for a grant under this section shall be made in such manner and form and contain such information as the Secretary shall require. Such grants may be made on such conditions as the Secretary finds necessary to carry out the purposes of this Act.

SEC. 4. Any program established pursuant to this Act shall provide for strict confidentiality of all test results, medical records, and other information regarding screening, counseling, or treatment of any person treated, except for (A) such information as the patient or his guardian consents to be released or (B) statistical data compiled without reference to the identity of any such patient.

SEC. 5. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act. Such sums shall remain available until expended.

The amendment was agreed to.

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

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92-562), explaining the purposes of the measure.

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

PURPOSE OF THE BILL

The purpose of S. 2677 is to authorize programs in order to conduct voluntary screening, counseling, and public education regarding sickle cell anemia, and to aid in increased research in the prevention and treatment of the disease. The bill would achieve its purpose by authorizing two sources of funding, direct appropriations to the District of Columbia government and grants by the Department of Health, Education, and Welfare. To protect the rights and privacy of every individual, the bill provides that such programs must provide for voluntary participation and confidentiality of medical data.

HISTORY

The bill (S. 2677) was introduced on August 4, 1971, and hearings were held by the Subcommittee on Public Health, Education, Welfare, and Safety of the District Committee on October 27, 1971. Testimony was heard from Representatives of the Congress, Representatives of the District government, Howard University, Black Athlete's Foundation for Sickle Cell Anemia, National Medical Association, and the National Association for the the Advancement of Colored People. No testimony was received in opposition to the bill, nor has any expression of opposition to the legislation been received by the committee.

AMENDMENT

The committee amendment is in the nature of clarification of the findings of Congress and does not relate to the substantive provisions of the bill.

DESCRIPTION OF THE DISEASE

Sickle cell anemia is an inherited blood disease in which red blood cells form a crescent or sickle shape when deprived of oxygen. As the cells pass through the blood vessels, these sharp-edged, sickle-shaped cells tend to become snagged along the blood vessels' inner lining. When large numbers of the sickled cells have collected in one place, the flow of blood to vital organs is impeded. Characteristically, the resulting symptoms are stunted growth, pain, swelling of the joints, hemorrhage, and tissue death, with subsequent failure of such organs as the heart, the spleen, and the kidneys. Blindness, stroke, and ulcers of the leg are also observed in victims of the disease. While it is characteristic for the cells to assume the sickle shape, the victims of sickle cell disease also tend to lack energy and tire easily because their body produces too few blood cells, and those cells have a shortened life.

Medical records show that the lifespan of sickle cell anemia victims themselves is shorter than normal. Most patients fail to live beyond age 20, and only rarely do they live beyond age 40. The repeated crises resulting from oxygen shortages soon take their toll on the body's vital organs, so that sickle cell anemia patients frequently die from heart attack, stroke, kidney disease, respiratory infections, or a breakdown of other critical body functions.

Sickle cell anemia is believed to have developed in Africa centuries ago as a defense against certain types of malaria. African babies who received the sickle cell gene from both parents suffered the same effects seen today among many black Americans born with the disease. But those who carried the sickle cell trait—that is, carried only one hemoglobin gene for sickling—were usually successful in warding off the effects of malaria. Through the years, sickle cell anemia has been reported in people who live in southern European countries and in India. So that today, while the principal victims in this country are believed to be blacks, the disease is known among citizens of many other lands. In fact, the World Health Organization estimates that each year 80,000 children around the world die from sickle cell anemia.

It is important to distinguish between the people who suffer with the disease and those who bear the so-called sickle cell trait. Victims of sickle cell disease suffer attacks of excruciating pain, brought on as often as six to 10 times a year in children under age 6. It is during these crises that the seriously debilitating effects described above are likely to occur.

Genetically, we know that each child receives two genes from his parents that determine the kind of hemoglobin in the infant's

body. Scientists use an "S" to denote the abnormal hemoglobin that sickles. If both parents donate hemoglobin S, their child will suffer from the disease. If the child receives only one abnormal or S gene, he will have the trait and can transmit it to his children, but most likely he won't suffer from the disease himself. The child who receives two normal hemoglobin genes, however, will in no way be affected by sickle cell anemia. Thus, for parents who both carry the abnormal or S trait, one quarter of their offspring are likely to have two S genes and therefore suffer with the disease; another quarter can be expected to have two normal genes; and the remaining half will be expected to carry one S gene and one normal hemoglobin gene. Using that formula, experts have determined that of the 25 million black people in America, approximately 2.5 million may have the trait and at least 50,000 may suffer with the disease. The crucial importance of counseling can be seen in those screening programs that have identified people who carry the trait; that is, one S gene. Through continuing education and awareness projects, they can be advised of the possibility of transmitting sickle cell disease if they bear children with someone who also carries a gene for abnormal S hemoglobin.

TREATMENT OF THE DISEASE

Because people who suffer with sickle cell anemia undergo crises that are marked by attacks of extreme pain the principal efforts of treatment are designed to provide relief for these painful bouts. It is not known what precipitates such crises; neither is it possible to predict or anticipate when a crisis may occur, although some researchers have noted that conditions involving increased bodily demands for oxygen, such as high altitudes, severe infection, and stress, have been noted to precede the onset of a crisis in sickle cell patients. Most practitioners in treating sickle cell patients have used blood transfusions, surgery, and intravenous therapy to combat the disease effects. Patients are scheduled for periodic visits to clinics or hospitals in order to provide a constant monitoring of their condition. Consequently, treatment procedures for many sicklers involve a continuing contact with medical personnel to obtain therapy, medication, and vocational rehabilitation. Research to develop improved treatment procedures is receiving promising interest from many sources. Relief available for sicklers is clearly advanced beyond that of years ago. But the hope of the future lies in the development of a systematic effort to bring about the kind of effective control needed to end the scourage of sickle cell anemia.

In the meantime, with adequate medical attention from properly trained personnel, sickle cell victims can be counseled and guided so that they may enjoy life with the same fervor as others.

There is no doubt that if the problems associated with this disease had received the attention given to other maladies, particularly those striking white families, we may be much further along in understanding and learning to cope with it. But sickle cell anemia, like most other conditions affecting only blacks, has been grossly neglected through the 60 years since the first American case was diagnosed. Pioneers in the treatment and research of sickle cell anemia, like Dr. Roland Scott of Howard University, have seen sickle cell anemia patients grow to adulthood, marry, bear children, and maintain an otherwise normal life.

CONCLUSION

The committee urges the enactment of S. 2677 to establish a pilot program in the District of Columbia in view of the fact that the city has the highest percentage of black population among the major cities of the Nation and thus offers an opportunity as a demonstration laboratory.

DEATH OF FRANK CARPENTER PORTER—A GREAT REPORTER

Mr. MANSFIELD. Mr. President, all of us who knew Frank Carpenter Porter, a Washington Post reporter of outstanding ability, integrity, and knowledge, are saddened today because of his passing from life's scene.

I know that I speak for all who knew Frank and who bemoan the passing of this outstanding member of the news gathering and reporting profession. He was, as I have indicated, a man of solid knowledge—a decent man, a kindly man, a man who loved his work, and who always held the trust and confidence of those who came in contact with him.

It is ironic, as an article published in the Post this morning indicates, that one of the last acts in the life of Frank Carpenter Porter was to donate his eyes and his kidneys to patients who, unlike him, could still live. It is a mark of the generosity, the foresight, and the kindness of the man himself.

I express my deep personal sadness in the passing of this great reporter and extend to Mrs. Porter and the members of her family the Senate's deepest sympathy.

May his soul rest in peace.

Mr. President, I ask unanimous consent to have printed in the RECORD the editorial and the obituary published in today's Washington Post.

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

[From the Washington Post, Dec. 9, 1971]

FRANK CARPENTER PORTER

Frank C. Porter, The Washington Post economics and labor reporter, who died Wednesday at the age of 53, was a man very much in the middle of life—his own and the life of this newspaper and the life of the capital city whose economic policy struggles he had covered for years. Mr. Porter was the father of four young children. He was a reporter who plunged with ease and good humor into the demanding wage-price story that has dominated the news since summer. And he died as the result of a cruel and sudden accident, so that the sense of a life interrupted rather than finished is especially acute. Even the legendary disorder of his desk—a mountain of teetering papers in which it was alleged (and denied) that the telephone could be heard to ring from time to time but not found—only seemed, when he died, a painful confirmation of how deeply engaged he had been in life's affairs at the time and how abruptly cut off from them.

Frank Porter was known around this newspaper and among his colleagues and friends and news sources outside it for his gentleness, his humor, his hardworking objective approach to a story, and his thoroughly professional capacity to turn out good copy under pressure in an unflappable way. He had none of the posturing or pushiness about him that is supposed to go with the aggressive, "Front Page" reporter of widespread stereotype, especially with the "old pro," who, like Frank Porter, is respected for his ability to get the story and for his inability to permit himself to be conned.

If you were to seek a summation of the man, none could be more to the point than the manner in which he managed, before death, to transform the terrible nature of his death itself. He had told his wife that if the circumstances were such when he died that his own vital organs could be of help in saving others, he wanted the necessary steps to be taken. And the circumstances turned out—tragically for him—to be the right ones. So as a last act of life, Frank Porter donated eyes and kidneys to patients who, unlike him, could still live. That, as it turns out, is what can and must redeem the sheer cruelty of his death and take it from the grip of blind chance and give it meaning. No one who knew him could be surprised that even suffering such a sudden and untimely death, Frank Porter managed to memorialize his own generosity and his life by giving life and vision to others.

[From the Washington Post, Dec. 9, 1971]

POST REPORTER FRANK PORTER DIES

Frank C. Porter, 53, national labor and business reporter for The Washington Post, died yesterday at George Washington University Hospital after choking on food and falling unconscious Monday night at a downtown restaurant.

He was having a business dinner at Duke Zeibert's Restaurant when a piece of steak lodged in his throat. He was temporarily unable to breathe and never regained consciousness.

Mr. Porter was described by his colleagues and competitors and the labor, business and government officials he covered as a master of one of the most complex specialties in journalism.

"Frank Porter was a credit to his profession—a dedicated, honest, careful reporter," said AFL-CIO President George Meany. "He was a fine and decent gentleman. All of us in the trade union movement which he covered so long and so well truly mourn his death."

Secretary of Labor James D. Hodgson said, "The death of Frank Porter comes as a shock to all of us.

"He was a knowledgeable and perceptive reporter. His coverage of the labor and economic scene was characterized by objectivity and fairness. The high level of professionalism he brought to his work, combined with his gracious and considerate manner toward people he dealt with, earned him the respect of all of us.

"Personally, he was sharp and incisive, without being biting or bitter. He lightened numerous press gatherings with a warm wit and humor which aptly capsulized a situation.

"Both personally and professionally, he will be missed."

Walter Heller, former president of the President's Council of Economic Advisers, said Mr. Porter's coverage of the national economic scene "was very high fidelity reporting of facts and events it was very hard to reach the essence of; he was superb."

"He came to the job without the necessary background, but he gradually enveloped the field," Heller said. "The rate of growth was tremendous. He became such a perceptive reporter and was so full of compassion and concern about the human elements of economics."

Benjamin C. Bradlee, executive editor of The Washington Post, said, "What can you say? It always sounds so trite and stupid. He was a marvelous man, a marvelous journalist, a fine reporter. You could read his stories and understand what the hell it was all about."

"He was one of the best reporters in town," said Lee M. Cohn, labor reporter for the Washington Evening Star. "I competed with him for many years, and he was always fair and friendly as well as a fine reporter.

"I think he liked the labor part of the beat more because it was a more personal sort of thing with more colorful personalities and events. But he could do anything and do it well. He earned the respect of all his colleagues and of his news sources. We're going to miss him."

Mr. Porter was born on Jan. 16, 1918, in Winchester, Mass. He was graduated from Winchester High School in 1935, attended

Phillips Academy at Andover, Mass. the next year and was graduated from Amherst College in 1940.

At Amherst, he sang in the glee club, wrote for the school paper and played both defensive and offensive tackle for the football team.

After graduation, he applied for a copy boy's job at Times Magazine that then paid $15 a week. The slots were all filled, but he was able to sign in as a contributing editor at $35 a week, writing for the People, Milestone, Miscellany, Business & Finance and Books sections of the magazine until May, 1941.

His reason for leaving: "Discharged because I was apparently too young and inexperienced for the job and because of imminence of military service."

In December, 1941, he enlisted in the Navy and was assigned to the first class of "90 day wonders" at Annapolis, an emergency program to produce officers for service in the war.

After two years in Washington, he was assigned to the destroyer USS Mugford. He served as communications officer, surviving a kamikaze attack in the Pacific.

In 1946, he transferred to the reserves as a lieutenant commander. A civilian again, he joined the staff of the Daytona Beach, Fla., Journal and in two years covered "everything but society: editorials, movie reviews, features, substituting for telegraph and city editors."

His reason for leaving in June, 1948: "Low pay and dead-end job; wanderlust, wanted to try my hand at fiction."

He went to Peru. What became of The Novel is obscure, but while in Lima he atended the University of San Marcos for seven months and wrote the Peruvian Affairs section of La Semana, a Time-style weekly published in Arequipa. It folded after seven issues.

Mr. Porter returned to the States in 1949 and in November went to work for the Baltimore Evening Sun, where he worked as a copyreader, general assignment reporter, feature writer, rewrite man, picture editor and drama critic.

He came to The Post on March 5, 1954. One of the reporters who worked for him while Mr. Porter was assistant city editor was Jean Belle Jones. They were married in 1957. Their children are John King Porter, 7; Laurie Wing Porter, 9; Robert Carpenter Porter, 12, and Stephen Jones Porter, 13.

Other members of the Porter household at 3702 Morrison St. NW have included a host of Latin American students, who have been tutored in English and in American customs and who tried without much success to improve Mr. Porter's Spanish.

Mr. Porter was fond of sailing with the family on their 32-foot, raked ketch, the "Long Gone."

He was a licensed pilot who managed to keep an old two-seater flying when he was making only $110 a week at the Sun.

His kidneys were donated to two recipients at Georgetown University Hospital yesterday, and his corneas to the Lions Club eye bank.

A memorial service will be held at 11 a.m. Saturday at All Saints Episcopal Church on Chevy Chase Circle. The family asks that any contributions be given to the Foreign Student Council of Washington or Amherst College, and requests no flowers.

Mr. GRIFFIN. Mr. President, the distinguished majority leader has eloquently stated what is on the minds of many people today, following the news of the untimely and unfortunate death of Frank Porter.

His able and distinguished service earned him great respect, not only among his colleagues in the profession of journalism, but also among those whom he wrote about in the executive and legislative branches of the Government.

I wish to associate myself with what the distinguished majority leader has said, and I wish to indicate that he speaks for Senators on both sides of the aisle. I join him in extending sympathy and our condolences to the family of Frank Porter.

Mr. PROXMIRE. Mr. President, I was shocked and saddened to hear of the tragic death of Frank Porter who reported on economic affairs for the Washington Post. In a field dubbed "the dismal science" and in which so much writing is obscure and complex, Frank Porter did a marvelous job day in and day out covering the events concerned with economic activity.

He was present at most of the major hearings of the Joint Economic Committee where we came to know him as an able, honest, diligent working reporter. Frank knew his subject. He had a vast background and experience on which to draw. He sharpened the issues in a way which clarified them and made them meaningful in the public discussion of economic matters.

Not only was Frank Porter a superb reporter and craftsman—a man who excelled in his chosen profession—but he was also a thoroughly good man and a thoroughly decent man. He was calm, thoughtful, dedicated, and fair. And his humanity became even more clear when we learned on his tragic death that he had dedicated the organs of his body for the use of the living.

Frank Porter's death is a tragedy in every way. He was struck down at the peak of his career by a disastrous and freakish event. We can all take solace in knowing that the world is a better place and a better informed place because Frank Porter lived and worked here.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the distinguished Senator from West Virginia (Mr. BYRD) is now recognized for 15 minutes.

SENATE RESOLUTION 211—SUBMISSION OF A RESOLUTION RELATING TO THE PLACING OF A LIKENESS OF THE LATE SENATOR RICHARD BREVARD RUSSELL IN THE SENATE RECEPTION ROOM

(Referred to the Committee on Rules and Administration.)

Mr. BYRD of West Virginia. Mr. President, I submit a resolution and ask that it be appropriately referred.

The purpose of this resolution—which is being jointly offered and cosponsored by the distinguished senior Senator from Georgia (Mr. TALMADGE), the distinguished junior Senator from Georgia (Mr. GAMBRELL), the distinguished majority leader (Mr. MANSFIELD), and myself—is to authorize the placing of a likeness of the late Senator Richard Brevard Russell in the Senate reception room. This proposed likeness would be approximately the same size and type as the paintings of the five Senators which currently grace the walls of that room.

Senator Russell was a great man and one of the most highly respected Members ever to serve in this body. He was a man of the highest honor—a man of exceptional distinction. I am grateful to have counted myself among those who benefited from his wisdom. I am honored to have served with him and honored to have been his friend.

From the beginning of Senator Russell's service in the Senate in 1933 until his death in January of this year, he accumulated a vast wealth of knowledge and experience. For almost four decades, this outstanding Georgian used this knowledge and experience and gave of his unique intellect and extraordinary skill to enhance and protect the integrity of the Senate he so deeply revered. More than any other individual I have known, Senator Russell reflected the essence of what the U.S. Senate should be.

No tribute that we could pay to this distinguished American would be too great for his 38 years of love and dedication to the Senate and to his country. It is fitting that he take his place in the company of the most renowned Senators of all time. For:

They shall not grow old, as we that are left grow old . . .
At the going down of the sun and in the morning
We shall remember them . . .

Mr. President, the resolution reads as follows:

Resolved, That, in order to honor appropriately the late Senator Richard Brevard Russell of Georgia as an outstanding American and Senator, the Committee on Rules and Administration shall have an appropriate likeness of the said Senator Richard Brevard Russell painted on a wall of the Senate reception room outside the Senate Chamber. The likeness may be procured by purchase or gift and shall be of approximately the same size as the size of each of the likenesses of the other five outstanding Senators placed in the Senate reception room.

SEC. 2. The expenses of carrying out the provisions of the first section of this resolution shall be paid out of the contingent fund of the Senate upon vouchers signed by the chairman of the committee.

Mr. President, I ask unanimous consent to insert in the RECORD a statement by the distinguished junior Senator from Georgia (Mr. DAVID H. GAMBRELL).

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

STATEMENT BY SENATOR GAMBRELL

I am honored today to join with my distinguished colleague, the Senator from West Virginia, in co-sponsoring a bill to have Senator Russell's portrait placed in the Senate Reception Room.

Senator Russell exemplified all that the United States Senate is. His legislative skill, his courage of conviction and his personal brilliance made him a leader in this Senate, a mentor to Presidents. His presence is still felt, nearly a year after his passing, by the many who sought his guidance and inspiration.

I can think of no more fitting honor to his memory than that he stand with other giants of the Senate like Clay and Calhoun, in the anteroom of the Senate Chamber to remind those who enter the Senate Floor of the standard of excellence and dedication to our country, set by their forebears.

The ACTING PRESIDENT pro tempore. Without objection, the resolution will be received and appropriately referred.

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

Mr. BYRD of West Virginia. Mr. President, I yield to the distinguished senior Senator from Georgia.

Mr. TALMADGE. Mr. President, I congratulate my warm friend, the distinguished Senator from West Virginia, the majority whip of the Senate, for offering the resolution.

It is a particular pleasure for me to join as a cosponsor of the resolution. Dick Russell was admired and loved by every Member of the U.S. Senate from both parties.

By his unique skill and his tremendous ability he contributed greatly to this parliamentary body and to the Nation he loved and served so well and so honorably.

The late Senator Russell served this body for 38 years. He was the only Member of the Senate in the history of our country who served more than half of his life in the U.S. Senate. Only one other Senator in the long history of our country, Senator Hayden, served for a longer period of years in this body than did the late Senator Russell.

As the Senator from West Virginia has pointed out, the skills and the great ability of Dick Russell are qualities that we all respect.

I think it is immensely proper and appropriate that his portrait be placed in the Senate reception room with those of the alltime great Senators.

Mr. BYRD of West Virginia. Mr. President, I thank the senior Senator from Georgia.

Mr. GRIFFIN. Will the distinguished majority whip yield to me?

Mr. BYRD of West Virginia. Mr. President, I yield to the distinguished assistant Republican leader.

Mr. GRIFFIN. I wish to join and associate myself with the distinguished majority whip in his eloquent tribute to the late Senator Richard Russell, and I ask unanimous consent that I may be added as a cosponsor of the resolution.

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

Mr. GRIFFIN. Without doubt, Senator Russell was one of the greatest Senators in the entire history of the U.S. Senate. I believe the resolution merits not only consideration but also a favorable report by the Committee on Rules and Administration. As a member of that committee, I am glad to join in this effort.

Incidentally, I should like to take note of the fact, while I have such an appropriate opportunity—that there is no likeness of the late Senator Arthur Vandenberg in the Vandenberg Room. I believe that situation should be remedied. This room had been officially named after the late Senator from Michigan, Senator Vandenberg. There is a plaque on the wall which was authorized by the Senate.

So far as I have been able to determine, only one portrait was ever made of Senator Vandenberg. He only sat for only one artist, and that painting is in Grand Rapids, Mich. At a relatively nominal cost, I am sure that an artist could be commisisoned to duplicate and produce another painting to hang in the Vandenberg Room. Accordingly, at a later date I may offer an appropriate resolution for that purpose.

Mr. BYRD of West Virginia. Mr. President, I think it would be very appropriate—very appropriate—to have prepared such a likeness of the late Senator Vandenberg and have it placed in the Vandenberg Room. At some future time, should the distinguished assistant Republican leader deem it wise to take whatever action is necessary to consummate this suggestion, I should like to add my efforts to that cause.

I appreciate so much the request by the assistant Republican leader to join as a cosponsor in connection with the resolution I have introduced. I am very grateful for his cosponsorship.

The late Senator Russell was the man whom I most admired in Washington during my years of service in the Congress. I felt in my own heart that he was my mentor, and I have often stated that the two greatest men I ever knew, insofar as character and integrity were concerned, were my own foster father and the late Senator Richard B. Russell.

I thank all who have joined in the cosponsorship of the measure.

Mr. President, I yield the floor.

The PRESIDING OFFICER. What is the will of the Senate?

TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business for not to exceed 30 minutes, with statements limited therein to 3 minutes, at the conclusion of which the Senate will return to executive session and resume its consideration of the nomination of Mr. William H. Rehnquist for the office of Associate Justice of the Supreme Court of the United States.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

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

REPORT OF COMPTROLLER GENERAL

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Coordinating Deep-Ocean Geophysical Surveys Would Save Money", National Oceanic and Atmospheric Administration, Department of Commerce, Department of the Navy, dated December 8, 1971 (with an accompanying report); to the Committee on Government Operations.

REPORT ON SYSTEMS ANALYSIS OF NATIONAL HEALTH CARE PLANS

A letter from the Secretary of Health, Education, and Welfare, reporting, pursuant to law, that a report on Systems Analysis of National Health Care Plans had been delayed in order to include relevant analytical material that had not been received; to the Committee on Labor and Public Welfare.

PROPOSED EMPLOYEE BENEFITS PROTECTION ACT

A letter from the Secretary of Labor, transmitting a draft of proposed legislation to amend the Welfare and Pension Plans Disclosure Act (with accompanying papers); to the Committee on Labor and Public Welfare.

PETITIONS

Petitions were laid before the Senate and referred as indicated:

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

A letter from the Deputy Chief of Legislative Affairs, Department of the Navy, transmitting certain petitions signed by members of the Armed Forces, praying for an immediate cessation of hostilities in Southeast Asia; to the Committee on Foreign Relations.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. MCINTYRE, from the Committee on Armed Services, without amendment:

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. Rept. No. 92-566).

By Mr. PELL, from the Committee on Rules and Administration, without amendment:

S.J. Res. 173. A joint resolution to provide for the appointment of A. Leon Higginbotham, Jr., as citizen regent of the Board of Regents of the Smithsonian Institution (Rept. No. 92-567);

S.J. Res. 174. A joint resolution to provide for the appointment of John Paul Austin as citizen regent of the Board of Regents of the Smithsonian Institution (Rept. No. 92-568); and

S.J. Res. 175. A joint resolution to provide for the appointment of Robert Francis Goheen as citizen regent of the Board of Regents of the Smithsonian Institution (Rept. No. 92-569).

EXECUTIVE REPORTS OF COMMITTEES

The following favorable reports of nominations were submitted:

By Mr. GOLDWATER, from the Committee on Armed Services:

Maj. Gen. Louis Metzger, U.S. Marine Corps, for commands and other duties determined by the President, for appointment to the grade of lieutenant general while so serving.

Mr. GOLDWATER. Mr. President, I report favorably 1,357 appointments and promotions in the Army in grade of colonel and below; on appointment to grade of lieutenant general and 2,610 appointments and promotions in grade of lieutenant colonel and below in the Marine Corps, and 75 appointments in the Air Force to captain and below. Since these names have already ap-

peared in the CONGRESSIONAL RECORD, in order to save the expense of printing on the Executive Calendar, I ask unanimous consent that they be ordered to lie on the Secretary's desk for the information of any Senator.

The PRESIDING OFFICER (Mr. STEVENSON). Without objection, it is so ordered.

The nominations, ordered to lie on the desk, are as follows:

Aaron H. Wilson, and sundry other officers, for appointment in the Regular Air Force;

Kenneth W. Copeland, and sundry other persons, for appointment in the Regular Army of the United States;

Ralph P. Aaron, and sundry other distinguished military students, for appointment in the Regular Army of the United States;

Walter F. Dick, and sundry other scholarship students, for appointment in the Regular Army of the United States;

Patricia Accountius, and sundry other officers, for promotion in the Army of the United States;

James L. Anderson, for appointment as professor of physical education, U.S. Military Academy;

Maureen A. Ebert, for reappointment in the active list of the Regular Army of the United States;

Edwin H. J. Cairns, Jr., and sundry other persons, for appointment in the Regular Army;

John J. McFatridge, and sundry other persons, for appointment in the Regular Army of the United States;

Mark W. Appling, and sundry other distinguished military students, for appointment in the Regular Army of the United States;

John W. King, Jr., and sundry other scholarship students, for appointment in the Regular Army of the United States;

Carolyn J. Auldridge, and sundry other officers, for promotion in the Marine Corps; and

Russell R. Allen, Jr., and sundry other officers, for promotion in the Marine Corps.

By Mr. BYRD of Virginia, from the Committee on Armed Services:

Lt. Gen. Robert E. Cushman, Jr., U.S. Marine Corps, to be Commandant of the Marine Corps, with the rank of general.

By Mr. WILLIAMS, from the Committee on Labor and Public Welfare:

Nicholas W. Craw, of the District of Columbia, to be an Associate Director of Action.

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. BIBLE (for himself and Mr. CANNON):

S. 2975. A bill to declare that certain federally owned land is held by the United States in trust for the Fort McDermitt Paiute and Shoshone Tribe of the Fort McDermitt Indian Reservation, Nevada. Referred to the Committee on Interior and Insular Affairs.

By Mr. McCLELLAN:

S. 2976. A bill for the relief of United States Forgecraft Corp. Referred to the Committee on the Judiciary.

By Mr. BROOKE:

S. 2977. A bill to authorize the establishment of the Springfield Armory National Historic Site, Mass., and for other purposes. Referred to the Committee on Interior and Insular Affairs.

By Mr. GOLDWATER:

S. 2978. A bill to amend section 1331(c) of title 10, United States Code, to authorize the granting of retired pay to persons otherwise qualified who were Reserves before August 16, 1945, and who served on active duty during the Berlin crisis. Referred to the Committee on Armed Services.

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

S. 2979. 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. Referred to the Committee on Armed Services.

By Mr. INOUYE:

S. 2980. A bill for the relief of Miss Natividad F. Gonzales. Referred to the Committee on the Judiciary.

By Mr. AIKEN (for himself and Mr. TALMADGE):

S. 2981. A bill to provide for environmental improvement in rural America. Referred to the Committee on Agriculture and Forestry.

By Mr. STEVENSON:

S. 2982. A bill for the relief of Minnie E. Solger. Referred to the Committee on Finance.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BIBLE (for himself and Mr. CANNON):

S. 2975. A bill to declare that certain federally owned land is held by the United States in trust for the Fort McDermitt Paiute and Shoshone Tribe of the Fort McDermitt Indian Reservation, Nevada. Referred to the Committee on Interior and Insular Affairs.

Mr. BIBLE. Mr. President, on behalf of myself and my colleague, Senator CANNON, I introduce for appropriate reference a bill to declare that certain federally owned land is held by the United States in trust for the Fort McDermitt Paiute and Shoshone Tribe of the Fort McDermitt Indian Reservation, Nevada.

The purpose of the legislation is to add some 19,000 acres of grazing land to the existing reservation.

The Fort McDermitt Indians are an impoverished tribe living on the Nevada-Oregon border. Their chief source of income has historically been the result of inadequate livestock operations.

The Bureau of Land Management of the Department of the Interior has advised that the lands in question have been recommended for disposal. The inclusion of these public domain lands in the reservation would consolidate tribal ownership and improve range and other resource management. It would appear that the best use of this acreage would be to transfer the ownership in trust status to the tribe.

By resolution dated July 20, 1971, signed by Herman Crutcher, chairman, Fort McDermitt Paiute and Shoshone Tribe, the tribe petitioned the Nevada congressional delegation to introduce legislation to accomplish this purpose. I ask unanimous consent that this resolution be printed in the RECORD following my remarks.

I urge favorable action by the committee to secure enactment of this proposal.

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

RESOLUTION OF THE GOVERNING BODY OF THE FORT MCDERMITT PAIUTE AND SHOSHONE TRIBE

Be it resolved by the Fort McDermitt Tribal Council that:

Whereas, the Bureau of Land Management has advised that certain public domain lands in the vicinity of the Fort McDermitt Indian Reservation (see attached list) is being recommended for disposal, and

Whereas, the inclusion of these public domain lands in the Reservation would consolidate tribal ownership and improve range and other resource management, and

Whereas, the Tribe can utilize these adjacent lands to economic advantage,

Now, therefore, be it resolved that the Tribal Council of the Fort McDermitt Paiute and Shoshone Tribe does hereby request the Nevada Congressional Delegation to introduce legislation to declare that 19,094.16 acres of vacant public domain land is held in trust by the United States of America for the Fort McDermitt Paiute and Shoshone Tribe.

Be it further resolved that the Superintendent, Nevada Agency, is requested to endorse this application and notify the Bureau of Land Management to note their records of our intent to withdraw these lands in aid of legislation.

By Mr. BROOKE:

S. 2977. A bill to authorize the establishment of the Springfield Armory National Historic Site, Mass., and for other purposes. Referred to the Committee on Interior and Insular Affairs.

SPRINGFIELD ARMORY: A NATIONAL HISTORIC SITE

Mr. BROOKE. Mr. President, the legislation which I introduce today would authorize the establishment of the Springfield Armory as a national historic site.

Commissioned in 1794, the armory was the first so designated to serve the United States. Through the years until its deactivation in 1968, it produced high quality munitions that served to defend our Nation well. Its closing was regrettable because it signaled the termination of a facility to which generations of citizens of western Massachusetts had rendered dedicated and highly proficient service.

Coupled with the armory is a museum founded in 1871 and operated by the city of Springfield. The museum includes valuable collections of cannons and guns dating back to the 14th century. Owned by the Department of the Army, these instruments represent the most complete small arms collection in the Nation that is open to public view. Each year, more than 25,000 visitors tour the museum, including large numbers of school groups.

The legislation which I propose would authorize the Secretary of the Interior to take control of the property, which is currently on loan to the city of Springfield, as well as to make appropriate arrangements with the Secretary of the Army concerning the Armory's arms collection and other museum objects. The Secretary of the Interior would also be authorized to negotiate with the Commonwealth of Massachusetts for the preservation of historic buildings and lands within the Armory which are not owned by the Federal Government.

I believe this is a most worthwhile proposal which will help to preserve an historic monument for future generations.

I ask unanimous consent that the text of this bill be printed in full at this point in the RECORD.

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

S. 2977

A bill to authorize the establishment of the Springfield Armory National Historic Site, Massachusetts, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in order to preserve in public ownership for the benefit and inspiration of the people of the United States the property comprising the historically significant Springfield Armory, commissioned by President Washington in 1794 and, until deactivation in 1968, the oldest manufacturing arsenal in the United States, and the site of the defeat of insurgent farmers in Shays' Rebellion (1786–1787), the Secretary of the Interior (hereinafter referred to as the "Secretary") is authorized to accept a donation of such real property, as in his judgment will constitute an administrable unit, together with improvements and personal property thereon, which constitutes a part of the historic Springfield Armory property, Springfield, Massachusetts, from the city of Springfield or any instrumentality thereof, for establishment as the Springfield Armory National Historic Site.

SEC. 2. The Secretary shall establish the Springfield Armory National Historic Site by publication of a notice to that effect in the Federal Register when (a) he has accepted title to the real and personal property described in section 1 of this Act, (b) he has reached a satisfactory agreement with the Commonwealth of Massachusetts, or any agency or instrumentality thereof, for preservation of historic buildings and the physical setting of lands not in Federal ownership which comprised part of the historic Springfield Armory, and (c) he has reached a satisfactory agreement with the Secretary of the Army concerning the retention or transfer of the arms collection and other museum objects at the Armory. Prior to such establishment and thereafter, the property acquired for the Springfield Armory National Historic Site shall be administered by the Secretary in accordance with the Act of August 25, 1916 (39 Stat. 535; 16 U.S.C. 1, 2–4), as amended and supplemented, and the Act of August 21, 1935 (49 Stat. 666; 16 U.S.C. 461 et seq.).

SEC. 3. There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act.

By Mr. AIKEN (for himself and Mr. TALMADGE):

S. 2981. A bill to provide for environmental improvement in rural America. Referred to the Committee on Agriculture and Forestry.

Mr. AIKEN. Mr. President, I send a bill to the desk on behalf of myself and the senior Senator from Georgia (Mr. TALMADGE), the chairman of the Committee on Agriculture and Forestry.

The bill provides amendments to the Hope-Aiken Watershed Protection and Flood Prevention Act, Public Law 566, and also amendments to the Bankhead-Jones Farm Tenant Act, as amended.

Mr. President, I also point out that at the present time only the Senator from Georgia and I are listed as sponsors of the bill. Undoubtedly many other Senators will want to join as cosponsors. There will be an ample opportunity to do so before the next printing of the bill.

Mr. President, I ask unanimous consent that a short explanation of the bill and the bill, itself, be printed in the RECORD.

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

TITLE I—AMENDMENTS TO THE HOPE-AIKEN WATERSHED PROTECTION AND FLOOD PREVENTION ACT, PUBLIC LAW 566

1. Authorize federal cost-sharing for project measures to improve water quality and provide assistance in solving problems of land utilization and agricultural waste management within watershed projects.

2. Provide for federal cost-sharing of the costs of present and future municipal, industrial, and rural community water supply needs.

3. Allow the use of non-P.L. 566 funds (such as HUD and EDA funds) in acquiring land rights needed for works of improvement.

4. Enable the Department of Agriculture to enter into long-term contracts with landowners in watershed areas to assure orderly and complete establishment of needed land treatment measures. The contracts would be based on conservation plans developed with the cooperation and approval of the conservation districts concerned, and applications for assistance would be made to the districts.

TITLE II—AMENDMENTS TO THE BANKHEAD JONES FARM TENANT ACT, AS AMENDED

1. Provide for cost-sharing of costs of rural community water storage and water quality management.

2. Make assistance available in the control of agricultural pollution.

3. Authorize technical and cost-sharing assistance for storage of water for rural fire protection.

4. Direct the Secretary of Agriculture to inventory and monitor soil, water, and related resources conditions at five-year intervals.

S. 2981

A bill to provide for environmental improvement in rural America

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 "Rural Development Act of 1972."

TITLE I—AMENDMENTS TO THE WATERSHED PROTECTION AND FLOOD PREVENTION ACT, AS AMENDED

SEC. 101. The Watershed Protection and Flood Prevention Act (68 Stat. 666), as amended, is amended as follows:

(a) Section 1 is amended by striking out the words "the purpose of preventing such damages and of furthering the conservation, development, utilization, and disposal of water, and thereby of preserving and protecting the Nation's land and water resources" and substituting therefor the words "the purpose of preventing such damages, of furthering the conservation, development, utilization, and disposal of water, and the conservation and utilization of land and thereby of preserving, protecting, and improving the Nation's land and water resources and the quality of the environment."

(b) Section 2 is amended by substituting a comma for the word "or" after clause (1) and adding after the phrase "(2) the conservation, development, utilization, and disposal of water" a comma and the words "or (3) the conservation and proper utilization of land."

(c) Section 3 is amended by changing the period at the end of paragraph (5) to a semicolon and adding the following: "(6) to enter into agreements with landowners, operators, and occupiers, individually or collectively, based on conservation plans of such landowners, operators, and occupiers which are developed in cooperation with and approved by the soil and water conservation district in which the land described in the agreement is situated, to be carried out on such land during a period of not to exceed ten years, providing for changes in cropping systems and land uses and for the installation of soil and water conservation practices and measures needed to conserve and develop the soil, water, woodland, wildlife, and recreation resources of lands within the area included in plans for works of improvement, as provided for in such plans, including watershed or sub-watershed work plans in connection with the eleven watershed improvement programs authorized by section 13 of the Act of December 22, 1944 (58 Stat. 887), as amended and supplemented. Applications for assistance in developing such conservation plans shall be made in writing to the soil and water conservation district involved, and the proposed agreement shall be reviewed by such district. In return for such agreements by landowners, operators, and occupiers the Secretary shall agree to share the costs of carrying out those practices and measures set forth in the agreement for which he determines that cost sharing is appropriate and in the public interest. The portion of such costs, including labor, to be shared shall be that part which the Secretary determines is appropriate and in the public interest for the carrying out of the practices and measures set forth in the agreement, except that the Federal assistance shall not exceed the rate of assistance for similar practices and measures under existing national programs.

The Secretary may terminate any agreement with a landowner, operator, or occupier by mutual agreement if the Secretary determines that such termination would be in the public interest, and may agree to such modifications of agreements, previously entered into hereunder, as he deems desirable to carry out the purposes of this paragraph or to facilitate the practical administration of the agreements provided for herein. Notwithstanding any other provision of law, the Secretary, to the extent he deems it desirable to carry out the purposes of this paragraph, may provide in any agreement hereunder for (1) preservation for a period not to exceed the period covered by the agreement and an equal period thereafter of the cropland, crop acreage, and allotment history applicable to land covered by the agreement for the purpose of any Federal program under which such history is used as a basis for an allotment or other limitation on the production of any crop; or (2) surrender of any such history and allotments.

(d) Paragraph (1) of section 4 is amended by inserting after "without cost to the Federal Government" the words "from funds appropriated for the purposes of this Act."

(e) Clause (A) of paragraph (2) of section 4 is amended by striking all words after "fish and wildlife" and substituting therefor the words "development, recreational development, water quality management, or the conservation and proper utilization of land, and".

(f) All that part of clause (B) of paragraph (2) of section 4 which follows the word "Provided," is amended to read as follows: "That, in addition to and without limitation on the authority of the Secretary to make loans or advancements under section 8, the Secretary may pay for any storage of water for present or anticipated future demands or needs for municipal or industrial water included in any reservoir structure constucted or modified under the provisions of this Act as hereinafter provided: *Provided further,* That the cost of water storage to meet future demands may not exceed 30 per centum of the total estimated cost of such reservoir structure and the local organization shall give reasonable assurances, and there is evidence, that such demands for the use of such storage will be made within a period of time which will permit repayment within the life of the reservoir structure of the cost of such storage: *Provided further,* That the local organization shall, prior to initiation of construction or modification of any reservoir structure

including water supply storage, make provision satisfactory to the Secretary to pay for not less than 50 per centum of the cost of storage for present water supply demands, and all of the cost of storage for anticipated future demands; And provided further, That the cost to be borne by the local organization for anticipated future demand may be repaid within the life of the reservoir structure but in no event to exceed fifty years after the reservoir structure is first used for the storage of water for anticipated future water supply demands, except that (1) no payment on account of such cost need be made until such supply is first used, and (2) no interest shall be charged on such cost until such supply is first used, but in no case shall the interest-free period exceed ten years. The interest rate used for purposes of computing the interest on the unpaid balance shall be determined in accordance with the provisions of section 8."

(g) Subsection (4) of section 5 is amended to read as follows:

"(4) Any plans for works of improvement involving an estimated Federal contribution to construction costs in excess of $250,000 or including any structure having a total capacity in excess of twenty-five hundred acre-feet which includes (a) works of improvement for reclamation, irrigation, or which affects public or other lands or wildlife under the jurisdiction of the Secretary of the Interior, (b) Federal assistance for floodwater detention structures, (c) features which may affect the public health, or (d) measures for control or abatement of water pollution, shall be submitted to the Secretary of the Interior, the Secretary of the Army, the Secretary of Health, Education, and Welfare, or the Administrator of the Environmental Protection Agency, respectively, for his views and recommendations at least thirty days prior to transmission of the plan to the Congress through the President. The views and recommendations of the Secretary of the Interior, the Secretary of the Army, the Secretary of Health, Education, and Welfare, and the Administrator of the Environmental Protection Agency, if received by the Secretary prior to the expiration of the above thirty-day period, shall accompany the plan transmitted by the Secretary to the Congress through the President."

TITLE II—AMENDMENTS TO THE BANKHEAD-JONES FARM TENANT ACT, AS AMENDED

SEC. 201. Section 32(e) of title III of the Bankhead-Jones Farm Tenant Act, as amended (7 U.S.C. 1011), is amended by adding at the end thereof the following:

"The Secretary shall also be authorized in providing assistance for carrying out plans developed under this title:

"(1) To provide technical and other assistance, and to pay for any storage of water for present or anticipated future demands or needs for rural community water supply included in any reservoir structure constructed or modified pursuant to such plans: *Provided,* That the cost of water storage to meet future demands may not exceed 30 per centum of the total estimated cost of such reservoir structure and the public agency or local nonprofit organization shall give reasonable assurances, and there is evidence, that such demands for the use of such storage will be made within a period of time which will permit repayment of the cost of such water supply storage within the life of the reservoir structure: *Provided further,* That the public agency or local nonprofit organization prior to initiation or construction or modification of any reservoir structure including water supply storage, make provision satisfactory to the Secretary to pay for not less than 50 per centum of the cost of storage for present water supply demands, and all of the cost of storage for anticipated future demands: *And provided further,* That the cost to be borne by the public agency or local nonprofit organization for anticipated future demands may be repaid within the life of the reservoir structure but in no event to exceed fifty years after the reservoir structure is first used for the storage of water for anticipated future water supply demands except that (1) no payment on account of such cost need be made until such supply is first used, and (2) no interest shall be charged on such cost until such supply is first used, but in no case shall the interest-free period exceed ten years. The interest rate used for purposes of computing the interest on the unpaid balance shall be the average rate, as determined by the Secretary of the Treasury, payable by the Treasury upon its marketable public obligations outstanding at the beginning of the fiscal year in which the advancement for such water supply is first made, which are neither due nor callable for redemption for fifteen years from date of issue;

"(2) To provide, for the benefit of rural communities technical and other assistance and such proportionate share of the costs of installing measures and facilities for water quality management, for the control and abatement of agriculture-related pollution, for the disposal of solid wastes, and for the storage of water in reservoirs, farm ponds, or other impoundments, together with necessary water withdrawal appurtenances, for rural fire protection, as is determined by the Secretary to be equitable in consideration of national needs and assistance authorized for similar purposes under other Federal programs."

SEC. 202. In recognition of the increasing need for soil, water, and related resource data for land conservation, use, and development, for guidance of community development for a balanced rural-urban growth, for identification of prime agriculture producing areas that should be protected, and for use in protecting the quality of the environment, the Secretary of Agriculture is directed to carry out a land inventory and monitoring program to include, but not be limited to, studies and surveys of erosion and sediment damages, land use changes and trends, and degradation of the environment resulting from improper use of soil, water, and related resources. The Secretary shall issue at not less than five-year intervals a land inventory report reflecting soil, water, and related resource conditions.

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTION

S. 2689

At the request of Mr. CHURCH, the Senator from West Virginia (Mr. RANDOLPH), was added as a cosponsor of S. 2689, a bill to promote development and expansion of community schools throughout the United States.

S. 2843

At the request of Mr. DOLE, the Senator from New Hampshire (Mr. COTTON) was added as a cosponsor of S. 2843, a bill to designate November 11, each year, as Veterans Day and to make such a day a legal public holiday.

S. 2954

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent, at the request of the Senator from North Dakota (Mr. BURDICK), that the name of the Senator from North Dakota (Mr. YOUNG) be added as a cosponsor at the next printing of S. 2954, a bill to authorize the establishment of the Knife River Indian Villages National Historic Site.

The PRESIDING OFFICER (Mr. ALLEN). Without objection, it is so ordered.

SENATE JOINT RESOLUTION 171

At the request of Mr. MATHIAS, the Senator from New York (Mr. JAVITS), the Senator from Massachusetts (Mr. BROOKE), and the Senator from Maryland (Mr. BEALL) were added as cosponsors of Senate Joint Resolution 171, a joint resolution to designate March 1972 as "Exceptional Children's Month."

SENATE JOINT RESOLUTION 164

At the request of Mr. GRIFFIN, the Senator from Wyoming (Mr. HANSEN) was added as a cosponsor of Senate Joint Resolution 164, proposing an amendment to the Constitution of the United States relating to the assignment and transportation of pupils to public schools.

SENATE JOINT RESOLUTION 181

Mr. TOWER. Mr. President, I am extremely pleased to join with the Senator from Maryland (Mr. BEALL) in sponsoring Senate Joint Resolution 181, to establish a Joint Committee on Aging.

The passage of this joint resolution and the subsequent establishment of such a joint committee would represent the proper mechanism in which Congress could focus on the needs of elderly Americans.

President Nixon has already pledged to make the Federal establishment more responsive to the interests of older Americans. I believe the President has already established an excellent record in this field.

Yet, there is a great need for Congress to oversee and monitor better the actions of the executive branch of Government. No less than five departments within the executive branch are involved in programs directly benefiting the elderly. The problem is complicated by the diversity of congressional committee responsibility. In the Senate alone, the Committees on Finance, Banking, Housing, and Urban Affairs; Agriculture, Labor, and Public Welfare; and Veterans' Affairs all have the power to authorize legislation in this broad general area.

The Joint Committee on the Aging would have the potential to pool all of these executive and legislative resources in order to determine where we are in meeting the needs of elderly Americans, what we have done wrong, and what new steps should be taken to upgrade the living standards of the more than 20 million Americans who are age 65 and older.

It is timely that such a proposal might be considered as an aftermath to the White House Conference on the Aging. The White House Conference provided a splendid forum for the opportunity to express divergent opinions on what type of role government should play in advancing the interests of our elderly population.

Congress must meet its responsibility. The legislative branch can no longer afford to take a back seat to the executive branch in how policy affecting our elderly citizens is to be effectuated. Over the years we have seen a proliferation of programs affecting the elderly emanating from the executive branch. Yet, there are many concerned older members of our society who believe that the Government has not taken an active enough role in this field. Perhaps what Govern-

ment is doing is simply not effective. It is the constitutional responsibility of the Congress to investigate our Federal policy and see what can be done to improve it. I am convinced that a Joint Committee on the Aging could provide the means to achieve realistic and long sought after ends.

Mr. President, as a Senator representing a State having a large elderly population whose problems are in many instances compounded by unique geographical and cultural considerations, I am vitally concerned with how governmental policy is shaped. I have introduced legislation to bring about more equity into our social security system which would provide increased benefits for recipients as well as offering more incentives for these Americans to continue as a working force within our productive economic system. In addition, I have been a strong supporter of veterans' affairs legislation and continue to support such programs as the Department of Labor's Green Thumb Program which enables our elderly citizens to regain their sense of dignity by providing meaningful public service within their local community. Generally, I believe government should set as an overall objective the enactment of policies that will give elderly Americans a conclusive feeling that they are not simply to be given a small pension at retirement, but rather that they have a great stake in our system and in a variety of ways can work toward a fulfillment of the American dream for all citizens.

Congress must play an important role in seeing to it that government is responsive to the interests of older Americans in the manner I have just presented. The legislative branch can be a coordinating point between State and local governments, the executive branch, and society as a whole in focusing on these matters. There are a number of reforms and new initiatives that should be considered by the Congress. While the Joint Committee on Aging would have no real legislative authority, it would provide the impetus for a most intelligent congressional response to the myriad of ideas worthy of study that have been proposed and will be proposed in the future.

I urge Senators to give this joint resolution their close attention in the months ahead. All Americans have both a public and personal relationship with our elderly citizens who have made such a great contribution to our society and its Government.

NATIONAL COASTAL AND ESTUARINE ZONE MANAGEMENT ACT OF 1971—AMENDMENT

AMENDMENT NO. 786

(Ordered to be printed and to lie on the table.)

Mr. KENNEDY. Mr. President, I am submitting today an amendment to the coastal zone management bill S. 582, to provide for an independent in-depth investigation of the environmental risks and alternatives to offshore oil drilling on the Atlantic Outer Continental Shelf.

The amendment authorizes a $500,000 study to be conducted by the National Academy of Sciences and to be reported to the Congress and the Secretary of the Interior, by July 1, 1973.

The study would examine what the potential costs of offshore drilling could be to east coast residents—costs to the environment, costs to the area's beaches and recreation resources, costs to fishing grounds.

It is fine for the Secretary of the Interior to come to the Hill and discuss the geologic research that buttresses the oil compaies' view that there is a profit to be made in Atlantic offshore oil drilling. There may well be an enormous profit to be made; but if it is to be at the expense of the majority of citizens of the east coast, then the oil companies may have to forego the profit.

In that regard, let me quote from the statement of the U.S. Representative at a United Nations conclave. His opening words were:

> Subsea mineral exploitation inevitable carries the potential to create hazards to other uses of the sea and to damage other marine resources.

With that potential, it seems evident that insufficient information is now available to assure us that a go-ahead for the sale of oil leases will not expose the east coast to a Santa Barbara blowout.

For that reason, an independent, nongovernmental evaluation of the risks seems to be the least that we can demand. The National Academy has indicated its willingness and its competence to undertake this study. Also, I appreciate Secretary Morton's statement that he would favor such a study. But since he would not commit himself to requesting funding for such a study, I am joining with Senator NELSON and other Senators to offer this amendment for that purpose.

The independent study is also essential because regardless of the competence of Interior Department scientists, we have seen all too frequently that studies which conflict with the administration point of view may never see the light of day.

We found that to be the case with studies dealing with the SST. More recently, we discovered that the U.S. Geological Survey and Council of Environmental Quality comments on the Amchitka underground nuclear test were suppressed for nearly a year. Only a Federal court order permitted the Congress to have access to those studies and then only 3 days before the blast itself.

I believe that the Congress has a responsibility to acquire sufficient information upon which to judge Interior Department assertions concerning both the need for and the danger of Atlantic offshore drilling.

For that reason, Mr. President, I am submitting the amendment today. And I ask unanimous consent that the amendment, and certain correspondence relating thereto, be printed in the RECORD at this point.

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

On page 43, line 25, insert the following:

SEC. 316. (a) The Secretary of the Interior shall enter into appropriate arrangements with the National Academy of Sciences to undertake a full investigation of the environmental hazards attendant on offshore drilling on the Atlantic outer continental shelf. Such study should take into consideration the recreational, marine resources, ecological, esthetic and research values which might be impaired by the proposed drilling, as well as alternatives to such drilling in meeting the nation's energy needs. A report shall be made to the Congress and to the Secretary by July 1, 1973.

(b) There are authorized to be appropriated for the fiscal year in which this Act is enacted and for the next fiscal year thereafter such sums as may be necessary to carry out this section, but the sums appropriated may not exceed $500,000.

NOVEMBER 3, 1971.

Hon. ROGERS C. B. MORTON,
Secretary, Department of the Interior, Washington, D.C.

DEAR MR. SECRETARY: I am most disturbed at recent news accounts that the Department of Interior is preparing to lease Georges Bank for off shore oil-drilling. I strongly urge that no further action be taken until complete, objective environmental reports have been issued. That action would assure that public hearings will take place with all relevant information available.

I have written today to the Environmental Protection Agency and the National Academy of Sciences urging an immediate study of the potential environmental hazards of the proposed oil drilling and requested those agencies to make public their recommendations and conclusions. I would hope that all action to permit any drilling would be suspended until the Environmental Protection Agency could prepare a study on this question. Oil spills have occurred in the Louisiana Gulf and in Santa Barbara. I am deeply concerned of what an accident might do to the beaches of New England and to the fishing area of the Georges Bank. The same threat exists along the shores of the other Atlantic Coast states where your Department has indicated its plans to permit exploratory drilling.

It seems to me that the ecological investigation and concerned citizen comment should precede the plans, not follow in the uproar of announced intentions. If reports are accurate that oil companies and public utilities have been canvassed regarding their interest in the project, then it is doubly disheartening that no similar canvas was made of the area's residents, the fishermen who depend on those waters for their livelihood, or those most concerned about the preservation of our natural resurces.

If we have not learned from the history of giant oil spills, if the impact of these plans on a severely depressed industry such as the U.S. fishing industry has not been found terribly important, if the citizens most directly affected are the last to be consulted, then perhaps a major re-evaluation of governmental planning is in order.

I would hope that there will be no further action until after independent studies by the Environmental Protection Agency and the National Academy of Science are completed.

Thank you for your consideration.

Sincerely,

EDWARD M. KENNEDY.

NOVEMBER 3, 1971.

Hon. WILLIAM D. RUCKELSHAUS,
Administrator, Environmental Protection Agency, Washington, D.C.

DEAR MR. RUCKELSHAUS: The Interior Department has disclosed plans for permitting exploratory drilling for oil off the New England and New Jersey shores. Despite the indi-

cations from the Department that precautions will be undertaken to assure the protection of the environment, I would hope that a complete and objective investigation could be begun now into the potential ecological dangers presented by such drilling.

Both fishing and recreation resources for the 44 million residents of the Northeast Corridor would be endangered by oil spills in this area. I believe a full investigation of this situation is absolutely essential before any further steps are taken to permit exploratory drilling.

I would urge that this study be coordinated with outside environmental specialists and I might add that I have contacted the National Academy of Sciences and urged that they appoint a special task force to provide a study of this situation.

Sincerely,

EDWARD M. KENNEDY.

NOVEMBER 3, 1971.

Hon. PHILIP HANDLER,
President, National Academy of Sciences,
Washington, D.C.

DEAR MR. HANDLER: The Interior Department has disclosed plans for permitting exploratory drilling for oil off the New England and New Jersey shores. Despite assurances from the Department that precautions will be undertaken to protect the environment, I believe it would be invaluable to have an independent study by a special task force of the National Academy of Sciences. I am sure such a study would be helpful to the Department of Interior in order to alleviate the natural fears of East Coast residents. We have seen the results of oil spills in the ocean near Santa Barbara and in the Gulf of Mexico and it would be tragic if we did not learn from those experiences.

There are unique recreation facilities and fishing resources that are vital to the 44 million residents of the Northeast Corridor which could be permanently damaged by a spill.

I would hope that a full investigation of the ecological hazards from oil drilling could be conducted by the Academy, which, I believe, would be a particularly appropriate institution for this undertaking.

Sincerely,

EDWARD M. KENNEDY.

NOVEMBER 8, 1971.

Hon. ROGERS C. B. MORTON,
Secretary, Department of the Interior,
Washington, D.C.

DEAR MR. SECRETARY: I appreciate your expeditious reply to my letter concerning the Department's plans for leasing oil drilling rights off the east coast.

Although I appreciate your statement of intent to follow the requirements of the National Environmental Protection Act, I believe that the magnitude of the environmental dangers attendant on off-shore oil drilling in the Atlantic requires some additional precautions. At the outset, let me note that the history of the Santa Barbara spill and the oil spills in the Gulf of Mexico are sufficient in my mind to veto any off-shore drilling in the Atlantic in the absence of new technology that absolutely guarantees against oil spills.

Therefore, in addition to the planned activities within the Department to evaluate the environmental hazards, I would suggest that you consider the following actions:

First, I suggest that you request the Environmental Protection Agency to undertake a separate investigation of the potential environmental hazards of off-shore drilling.

Second, for a totally independent study of these matters, I would urge that you request a study from the National Academy of Sciences of the ecological risks attendant on off-shore drilling in the Atlantic.

I have contacted the Academy, and I am informed that they have the scientific skills necessary to undertake this task.

I would appreciate hearing from you on this subject.

Sincerely,

EDWARD M. KENNEDY.

NATIONAL ACADEMY OF SCIENCES,
Washington, D.C., November 12, 1971.

Hon. EDWARD M. KENNEDY,
U.S. Senate,
Washington, D.C.

DEAR SENATOR KENNEDY: I am responding to the issue raised in your letter of 2 November 1971 suggesting that the National Academy of Sciences study the question of ecological hazards from proposed exploratory drilling for oil off the New England and New Jersey shores. The Academy is quite willing to consider a request for conduct of such a study from the Department of the Interior, from any other component of the Executive Branch of the government, or indeed, from a committee of either House of the Congress, which is prepared to finance such an undertaking. It is my understanding that the Department of the Interior already has various aspects of these problems under consideration, although I am not in position to provide any details thereof.

I regret that the response of the Academy must be conditioned by financial considerations, but we receive no directly appropriated funds from the government, have limited internal financial resources, and can undertake major studies for the government only on a cost reimbursement basis. As you may also know, neither those who serve on our advisory committees nor the Academy itself receive a fee for such services. These considerations are particularly relevant in the present instance, since the matter you have raised for our consideration would require a major study which should be carried out in a broad, multidisciplinary fashion that would include examination of social and economic, as well as biological, engineering, and geological questions.

Moreover the study should also examine alternative courses of action, and their probable consequences. It might, in fact, be desirable to broaden the study to include the entire coastline of the United States, since oil seems to appear in so many new and unexpected places under the ocean these days.

As an alternative to this broad, thorough investigation, the Academy might also review, upon request from a sponsoring agency in the government, environmental impact statements that now have to be issued in connection with any offshore drilling proposals. This is a much narrower task and, although perhaps not quite so well suited to the resources and style of the Academy, would indeed be feasible.

A committee has recently been established in our Environmental Studies Board to plan a major, multidisciplinary study of "the energy problem," with particular emphasis on the questions of resources, environmental effects, and factors that influence the demand for energy. I am certain that this study will give much thought to the issues involved in offshore drilling for oil, and I trust that some of the answers we all seek may emerge from that study.

Sincerely yours,

PHILIP HANDLER, *President.*

U.S. DEPARTMENT
OF THE INTERIOR,
Washington, D.C., November 24, 1971.

Hon. EDWARD M. KENNEDY,
U.S. Senate,
Washington, D.C.

DEAR SENATOR KENNEDY: In the absence of Secretary Morton, permit me to acknowledge your letter to him dated November 8 on the subject of the Atlantic Outer Continental Shelf.

Following the Chevron fire in the Gulf of Mexico in 1970, the Department established a continuing advisory arrangement with the National Academy of Engineering. A symposium is being jointly planned for next Spring on offshore safety systems. Also, at the request of the Geological Survey, a NASA quality control study of offshore drilling and production facilities has been underway for some time and the report nearly complete. Since 1962, the Woods Hole Oceanographic Institute has engaged in joint research with the Geological Survey of the bottom features of the Atlantic Continental Shelf which, with other information that has been or will be published, has provided valuable scientific information for continuing assessment.

We see no immediacy of leasing and subsequent exploratory deep drilling. As pointed out in the Secretary's telegram of November 4 to Governor Sargent, full public disclosure will be made as soon as our current geologic assessment is completed. This may take a few weeks to a few months. Review and substantive comment from the Environmental Protection Agency, National Academy of Sciences/Engineering and other institutions will form a valuable part of the analytical process.

It is our belief that scientists in the Department of the Interior and their counterparts in the Coastal States possess the greatest competency in evaluating the environmental and technical aspects of current and potential continental shelf resources. If, as information to date suggests, the petroleum and gas potential reservoirs lie at considerable distance off shore, the circumstances will have to be reviewed in light of present technology for safety of personnel and operations, as well as potential pollution probability and consequences. In either case, "zero risk" is the ideal goal to be aimed at, and hopefully to be achieved. There appears to be no potential near shore.

I would hope that you and your colleagues will continue to have the highest confidence in the Department's professionals for carrying out the obligations imposed by the Outer Continental Shelf Act of 1953 and the National Environmental Policy Act of 1969. We have an important mission in acquiring adequate information relating to our total resource base. This is particularly important to such regions as New England, which lack indigenous energy resources and which must rely totally on economics and deliverability instead of a secure supply. We really don't know if oil and gas do or do not exist in deep lying geologic formations off shore. We have the need to know.

In 1970, 886 tankers delivered 188 million barrels of oil to the single port of Portland, Maine. More than 50 percent of the cargo on the high seas is recorded as petroleum or its derivatives. Pollution from tankers is calculated to be more than 10 times greater than pollution from drilling off shore. As a matter of record, the one accident near Santa Barbara was the first significant shoreline pollution incident in several thousand drilling operations over a 20-year period.

The primary question before the nation is not exclusion or reduction of petroleum and natural gas from our economy, but development of technologically safer delivery systems to provide adequate and secure resources to our nation. The Executive and Legislative Branches of Government need to know what and where our resources are before they can make policy decisions for the future.

Sincerely yours,

W. T. PECORA,
Under Secretary.

ENROLLED BILL SIGNED

The PRESIDENT pro tempore signed the enrolled bill (S. 2007) to provide for the continuation of programs authorized under the Economic Opportunity Act of 1964, and for other purposes, which had

previously been signed by the Speaker of the House of Representatives.

POSTPONEMENT OF HEARINGS ON EGG INDUSTRY ADJUSTMENT ACT

Mr. JORDAN of North Carolina. Mr. President, due to the imminent adjournment of this session of the 92d Congress, there is insufficient time for witnesses to prepare for and attend hearings this session on the Egg Industry Adjustment Act, S. 2895. It is, therefore, my intention that my Subcommittee on Agricultural Production, Marketing and Stabilization of Prices will hold these hearings as soon as is practical after Congress resumes business in January.

ANNOUNCEMENT OF HEARINGS BY DISTRICT OF COLUMBIA COMMITTEE

Mr. EAGLETON. Mr. President, on behalf of the District of Columbia Committee, I wish to announce that at 9:30 a.m. on Monday, December 13, 1971, a public hearing will be held on the nominations of H. Mason Neely, to be a member of the Public Service Commission of the District of Columbia, and George Draper, to be a judge in the Superior Court of the District of Columbia. Persons wishing to testify on these nominations should contact Robert Harris, staff director of the District Committee, 6222 New Senate Office Building.

ADDITIONAL STATEMENTS

ANOTHER FRENCH GIFT TO AMERICA

Mr. MONTOYA. Mr. President, America has always shown strong loyalties toward allies, particularly those of long standing. One such is France. The United States has, in the 20th century, more than repaid any debt owed to France incurred during the American Revolution.

In World War I, as France lay exhausted, fresh American doughboys saved the day. Approximately 175,000 American boys gave their lives on French soil in that conflict.

In World War II, American troops again poured into France to liberate her from Hitler's rule. Many French villages contain two American military cemeteries; one from each war. We even bowed aside and allowed French troops under General LeClerc to officially liberate Paris, to lift the spirit of the French people.

Billions of dollars in Marshall plan money were given to France after the war to re-create her economy. All this the United States has given, and more. What have we received in return?

In the past several years it has been heroin, smuggled in vast quantities into the United States from France after being processed in facilities on French soil. A startling, severe accusation, to be sure.

Nevertheless, mounting evidence continues to point a finger at France as the source of so much of the hard drugs which can only be characterized as a cancer within the body of our society. Even worse, it is more than likely that this traffic is being carried on with the knowledge and even connivance of certain segments of French officialdom.

Today our country is face to face with the horror of hard drug addiction. Heroin is seeping into this Nation from many sources, addicting our youth, compounding the crime problem and tearing apart the fabric of millions of lives. New addicts, or potential ones are trickling back to the United States from Southeast Asia, ready to be exploited by the purveyors of this poison here at home.

Our streets have become addict-infested jungles. Street corners teem with pushers. Colleges each contain their share of heroin users. Now even our high schools are beginning to crawl with this infamous traffic, courtesy of the international drug smuggling rings.

Entire neighborhoods of many cities are almost uninhabitable by law-abiding people because of this state of affairs. The fabric of our society is straining to cope with it. No family, whatever its social standing or economic well-being, is immune.

It has reached a point where we either successfully choke off the overseas sources of heroin, or face the consequences, which are out of the question. For all these reasons, I believe the time has come for very plain talk, regardless of whose sensibilities are involved. In this case, they affect France, a so-called ally of this country. In light of recent developments, this is a highly questionable claim.

My first premise is simple. The U.S. Government and its law enforcement people know quite well where the raw opium is coming from, who buys and ships it, where it goes to, where it is refined, who ships it, and who takes over the business end of it here at home.

Dick Gregory, well known for his bitter humor in the face of ugly realities, has coined a devastating phrase. It goes as follows: "If a 12-year-old child can find the heroin man, how come the police cannot?"

That fact lands like a salvo from a battleship. And what is true of every city in the land is also true of every foreign supplier. Narcotics bureaus of Federal law enforcement agencies know the entire structure of this traffic, yet do nothing, or are prevented from doing so. Why? It seems that offending our foreign allies comes before stamping out this obscene presence pervading American life.

Most of the heroin marketed in the United States has its genesis in the opium poppy fields of Turkey. Harvested there, it is shipped to the western Mediterranean in bulk. In the process, much of it is transshipped across Syria and through Lebanon. Some traffic in the raw material takes place in Beruit, Lebanon. Governments of both countries are fully aware of what is transpiring within their borders.

Purchasers of this bulk opium are cartels of Sicilian and Corsican criminals, who oversee shipment of the material to the southern French port of Marseilles. Here is the center of refining for the drug market. Raw opium in bulk is taken to one of a dozen sophisticated chemical laboratories in that city, most or all of which are known to the French authorities. Opium must be first converted to morphine base by one reasonably sophisticated and rather dangerous chemical refining process. Then it is again treated in order to be turned into pure heroin. This is the poison that eventually reaches America's cities and our children.

It has been known for years that such operations are carried out in such manner in this area. Significant amounts of electric power are required for these transformations. At least half a dozen such operations are presently working merrily away with full knowledge of the French authorities. Once converted, pure heroin again enters the conduit that leads it eventually into the United States and hands of those who cut, wholesale, and peddle it to our children. Every Member of this House knows the truth of these accusations. We also know what the end result is in every town and city of this Nation.

Dead teenagers. Shoplifting. Muggings. Housebreaking. Fences. Prostitution. Bought-off officials and law enforcement personnel. Filthy needles. Infectious hepatitis. Scarred arms. Murder. Utter degradation. Ad infinitum. Ad nauseum.

We can stop it. We must stop it. Let every parent know the truth. Let every addict know the facts. Now is the time for us to rip away the false mask of friendship from France's face and expose the deceit, duplicity, and hatred underlying its grotesque grimace.

Here are a few hard facts. Claude Gravagna, spokesman for the French Confederation of Labor, has stated that the number of customs agents at Marseilles has dropped from 940 in 1950 to 670 in 1971. Meanwhile, traffic passing through this major port has been constantly escalating.

This gentleman has also exposed French duplicity in another area of concern. While she boasts of her share in the international war upon narcotics, the U.N. Division of Narcotics Drugs reports France has not paid her promised contribution to the U.N. Fund for Drug Abuse Control as of the end of last month. Under intense light and heat of such publicity, she at last announced a $100,000 contribution for 1972.

Even the efforts and courage of dedicated public servants go by the boards in this situation. Mr. Fitzgerald of C5–A fame may be joined by John Cusak, who is, or has been, desk chief for Europe for the Bureau of Narcotics and Dangerous Drugs. In spite of obvious efforts to shut him up, he has courageously spoken out about this intolerable situation, estimating that between eight and 12 clandestine laboratories are currently operating in the Marseilles area alone.

And as for shutting them down, only 13 such facilities have been closed by the French since the early 1950's. None have been raided and closed since fall of 1969—a period of more than 2 years.

In light of the safe environment existing in France, it is not particularly surprising that so much heroin is finding its way from there to the United States. Interceptions made here are an indication of the extent of this traffic.

On April 5, 1971, 96 pounds of pure heroin, worth $12 million, is found in a car shipped from Le Havre by an American customs agent. In May of 1971, 201 pounds of heroin, worth an estimated $30 million at street prices, is found in San Juan, hidden in a Citroen being shipped here by two French citizens. One was an employee of the French city of Menasque.

On July 23 of this year, 100 kilos of heroin, seized in San Juan, was found hidden in a car shipped from Marseilles, 113 kilos were seized at Valencia, Spain, and a French couple en route from Marseilles were arrested.

Mr. President, at this point we should remember a few little blessings this traffic is giving America. In New York, addiction is the greatest single cause of death among those between 15 and 35. Drug related crime now costs us at least $8 billion annually in theft and court costs.

Yet Cusak is deliberately shut up by our own Government because he had the outraged courage to damn official French corruption protecting the scum profiting from American teenagers' drug addiction.

The most recent imbroglio points up the situation even more glaringly. A former French ambassador, Roger Barberot, said recently that charges of French counterespionage agents smuggling narcotics into the United States were justified. A former French ambassador to Uruguay, he made the charge in an interview on radio Luxembourg reported by Reuters several weeks ago.

Again it is obvious top French and American governmental figures are battling frantically to hush this matter up—to make it sink out of public sight—to muffle the impact it undoubtedly must make. Do mangled lives of hundreds of thousands of American young people mean anything to these diplomatic gentlemen? Do they know about young addicts returning from Vietnam? Have they any idea of the degradation a young prostitute endures to maintain her heroin habit? Do they have to live in the atmosphere of terror prevailing in so many American neighborhoods? Have they ever been confronted with the living fruits of their complicity?

Most Americans must. Most Americans should know what is going on. Most Americans are asking in bewildered outrage why we cannot stem this tide of destruction. As it grows, their frustration and anger mounts.

Mr. President, this is the truth of it and America must know. Ordinary French opportunism would be one matter. We have watched her purvey arms to all who will buy, except Israel. She has taken advantage of every opportunity to harm America. Our leading critic on Southeast Asia, France has conveniently forgotten her vicious colonialism which created the Indochinese morass. She has contentedly squatted on the sidelines, enjoying our agony, while selling weapons, encouraging Quebec separatism, opposing us in the U.N. and generally doing Uncle Sam as much harm as possible.

The growing heroin epidemic in this country, however, is another matter altogether. Obviously, France has neither the desire nor ability to act. So we must act in self-defense. The evidence is overwhelming. The United Nations is helpless and unwilling to act. In fact, I believe its officials in charge of such activities, like the French, secretly enjoy what is taking place in our country because of the heroin traffic. Our own State Department, always ready to sublimate American well-being to false foreign friends, merely makes excuses for our French "allies." While French heroin is eviscerating our youngsters, they blatter on about "unique relationships" and "long term views." Mr. President, this is so much idiocy. Congress and the President are our court of last resort. We can and must do something.

President Nixon emits noisy gurglings ever so often about law and order. What better way to commence an assault upon crime than by holding France's feet to the fire over the heroin traffic and be damned to their indignation? No amount of protestations can refute such evidence.

A nationwide boycott of French goods is another distinct possibility. Or perhaps a double surcharge on all French-made goods entering this Nation. No matter what anyone says, we must do something. Certainly the time has come to an end when we can sit calmly by and watch this situation grow worse daily with equanimity.

VIOLATIONS OF CROP SUBSIDY REGULATIONS

Mr. BELLMON. Mr. President, yesterday, the Washington Post published an article entitled "Subsidy Chief's Farm Probed," written by reporter Nick Kotz. The article points out that—

Mr. Kenneth Frick, along with more than one-third of his farmer neighbors in Kern County, California, have been reported in violation of crop subsidy regulations. Frick runs the Federal program.

The article goes on to describe a condition brought out 3 months ago by a check of compliance with farm program requirements in Kern County by an out-of-State team of USDA spot checkers. The article further states that—

The Frick farm had been cited for using several acres of nonfarm land—previously used as a windbreak—as a retirement land, and for using other land of questionable value for "set aside" purposes. The Frick farm and numerous others were cited by inspectors as retiring alkali land—high in salt content—rather than land comparable to that in production.

The article further states:

Questioned whether he is not, in effect, investigating a violation of his own farm, Frick said: "I have confidence in our inspection system. The system triggered this examination of farms. As to my farm, my brother is in charge of it and will have to answer for it."

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

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

[From the Washington Post, Dec. 8, 1971]

SUBSIDY CHIEF'S FARM PROBED

(By Nick Kotz)

Agriculture Department official Kenneth E. Frick, along with more than one-third of his farmer neighbors in Kern County, Calif., have been reported in violation of crop subsidy regulations. Frick runs the federal program.

Frick, administrator of USDA's Agricultural Stabilization and Conservation Service, confirmed reports to The Washington Post that his own farm, now operated by a trust, and 467 others have been cited for violations. Kern County is the nation's second richest in farm receipts and ranks second in federal subsidies. The county's 1,190 farmers will receive $27 billion in federal payments this year, primarily from the cotton program.

Farmers are paid federal crop subsidies in return for taking part of their land out of production in an effort to balance supply and demand. The alleged Kern County violations include failure to take enough land out of production, counting non-farm land as retired land, and illegally evading the $55,000 per crop limitation on farm payments.

Frick stressed that official findings have not been made in any of the cases, and that farmers still may prove that they were complying with program regulations. Frick's office is in charge of enforcing regulations for the several million farmers in the subsidy program.

In addition to an investigation by Frick's farm program office, the Kern County situation now is being investigated by the General Accounting Office and USDA's Office of Inspector General.

Frick said the alleged violations in Kern County would be the most extensive in any county in the country. He said many violations probably resulted from the unfamiliarity of farmers with a new cotton program. Nevertheless, the federal official running the program in Kern County has been suspended.

Frick and his deputy administrator, Charles Cox, said the alleged violations on Frick's farm involved use of improper land as retirement land.

Cotton farmers such as Frick are required to "set aside" from production acreage equal to 20 per cent of their cotton allotment acreage. The retired acreage must be as productive as the land in production.

Cox said the Frick farm had been cited for using several acres of non-farm land (previously used as a windbreak) as his retirement land, and for using other land of questionable value for "set aside" purposes. The Frick farm and numerous others were cited by inspectors as retiring alkali land (high in salt content) rather than land comparable to that in production.

Frick said his farm interests are held in trust by the Bank of America and his farm land is managed by his brother Howard. He said the 3,000-acre farm received $190,000 in cotton payments in 1970 and about $95,000 this year. Both Frick and his brother would be entitled to a maximum $55,000 payment.

Questioned whether he is not, in effect, investigating a violation on his own farm, Frick said: "I have confidence in our inspection system. The system triggered this examination of farms. As to my farm, my brother is in charge of it and will have to answer for it."

Frick's assistant Cox then added: "Our instructions (from Frick) are to treat his farm like any other farm."

Frick said discrepancies were first turned up in Kern County in a routine "spot check," in which department inspectors visited states in which they do not normally work. Because of numerous discrepancies, Frick said, his deputies then ordered a check made of each of the county's 1,190 farms. Again, the check was made by inspectors from out of state.

He said the determination of violations is now in the hands of the Kern county ASCS committee, under supervision of the California state committee. However, he said one member of the three-man county com-

mittee is not participating in decisions because his own farm is being questioned.

Frick stressed that the county and state committeemen are elected by fellow farmers and thus are free to criticize any farm, including his own.

Cox said the inspection team turned up 547 violations on 468 farms. He said the team considered violations as "serious" on about 200 farms.

Cox said farmers could lose part of their federal farm payment for minor infractions and the entire payment for major violations. Severe violations, including fraudulent evasion of the $55,000 payment limitation, could lead to criminal prosecution.

Frick emphasized that he had initiated the "spot checks" that turned up the Kern County situation, because "we wanted to make sure that farmers understood the new cotton program and that it was working adequately."

"What we found in Kern County, I would have to describe as 'bad'," said Cox, in a joint interview with Frick. "It was not typical."

Mr. BELLMON. Mr. President, as an active farmer and a Member of the Senate, I know of the importance of the farm program to the prosperity of American agriculture and the ability of this Nation's food producers to provide the abundant low-cost food which American consumers have come to expect. I also know the farm program has many problems and that it is increasingly difficult to gain the support which it must have to secure passage through the Congress.

These conditions make it absolutely imperative that the farm program be administered in a way that is completely above reproach. Certainly, in an effort as vast as the farm program, there is reason to expect that there will be cases where—either intentionally or through ignorance—violations occur. When this happens, immediate corrective action must be taken. But when it appears that a farm owned by the official charged with the national administration of the program is in violation and when he excuses this condition by saying, "My brother is in charge and will have to answer for it," I am appalled.

My personal investigation into this matter convinces me that there is much more going on inside the farm program in Kern County, Calif., than even reporter Kotz has stated. The situation there seems to raise real questions as to whether the present system for policing the program is adequate, since it places enforcement responsibility upon the same persons the program is intended to regulate.

Mr. President, I have today addressed a letter to the distinguished senior Senator from Georgia, Chairman TALMADGE of the Senate Agriculture Committee, suggesting that an investigation of this matter be undertaken by the Senate Agriculture Committee at the earliest possible date. I ask unanimous consent that the text be made a part of the record.

Mr. President, I believe the Senate and the country need the full facts of this matter.

DECEMBER 9, 1971.

Hon. HERMAN E. TALMADGE,
Chairman, Senate Committee on Agriculture and Forestry, Senate Building, Washington, D.C.

DEAR MR. CHAIRMAN: It has come to my attention that serious allegations regarding evasion of provisions of the Farm Program have been made, concerning the administration of the farm program in Kern County, California. These conditions have been brought to light as a result of the work of a team of out-of-state USDA spot checkers. Apparently, these conditions have existed with the knowledge and the sanction of the Kern County Committee.

These charges, if true, raise several serious questions in my mind:

1. Is there a serious deficiency in the policing provisions of the 1970 Farm Bill.

2. Are the compliance requirements of the Bill strong enough to give administrators the authority they need to assure compliance.

3. Is the provision which places primary responsibility for policing the program in the hands of cooperating farmers proper, or does it contribute to evasion of the law.

4. Is the Department of Agriculture making maximum effort to uncover the true conditions in Kern County and to punish any persons found guilty of violating the law.

In an effort to get the answers to these and any other questions which may arise, I strongly recommend the Senate Agriculture Committee undertake full investigation of the administration of the farm program in Kern County, California.

Sincerely,

HENRY BELLMON.

THE PRESIDENT, THE BRITISH PRIME MINISTER, AND NORTHERN IRELAND

Mr. RIBICOFF. Mr. President, while attention has been focused on the conflict raging on the Indian subcontinent, the violence and killing in Northern Ireland continues with new fury.

As I have pointed out before, the causes of the conflict in Ulster should concern all of us because they involve a denial of the basic principles of human decency and social justice. The evil of religious and racial intolerance should be denounced and opposed whether it occurs in Northern Ireland, East Pakistan, the Soviet Union, or in our own country.

Later this month, the President will be meeting with British Prime Minister Heath in Bermuda. The agenda for their discussions is certain to contain a lengthy list of outstanding issues of active interest to both governments. But I would urge the President to add another topic—the subject of Northern Ireland. In doing so, the President would not only be following in the highest traditions of compassion and concern for the suffering of others, but also would be acting in the interests of an ally whose present role in Northern Ireland raises the real possibility that Northern Ireland is becoming Britain's Vietnam.

Our own Nation's failure to speak out at the highest levels when clear moral issues are raised is puzzling to many of our friends abroad and to concerned Americans.

The President's expression of concern over the situation in Northern Ireland to Prime Minister Heath coupled with an offer of appropriate support for new British policies in Ulster would help Britain to face up to its growing dilemma. It would also be an important step in bringing justice to the oppressed minority in Northern Ireland.

The signs are becoming clear that major changes in British policy are now urgently needed. A majority of the British public now favors removal of British troops from Northern Ireland and former Prime Minister Wilson is now advocating the unification of Ireland.

If he takes up this issue with Prime Minister Heath, the President will have the support and gratitude of growing numbers of Americans concerned over developments in Northern Ireland. The guidelines set forth in Senate Resolution 180, which I introduced originally with Senator KENNEDY's cosponsorship, and which is now also being cosponsored by Senator WILLIAMS, are attracting increasing support both in this country and in Britain. On November 22, at its meeting in Miami, the AFL–CIO unanimously passed its own resolution on Northern Ireland. I invite attention to this expression of sentiment whose provisions are similar to those of Senate Resolution 180.

I ask unanimous consent that this resolution be printed in the RECORD.

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

DISCRIMINATION IN NORTHERN IRELAND

Whereas, For a period of half a century there has existed in Northern Ireland, a government sponsored practice of deliberate discrimination against the state's half million Catholics in a variety of ways causing them to be reduced to second-class citizens in their own country, and

Whereas, discrimination in employment has caused a chronic high rate of unemployment to exist amongst the Catholic minority for several decades, and

Whereas, For an equal period of time the government of Northern Ireland has practiced discrimination in housing against the same minority relegating them into barely habitable ghettos, and

Whereas, This program has existed in public as well as private employment and has been devised to cause unnatural divisions between the Catholic and Protestant workers of Northern Ireland, and

Whereas, After long and continued suffering from the aforesaid conditions the Catholic minority sought to demand their civil rights by marches and other peaceful and constitutional means, and

Whereas, These minority protests were met with vicious attacks and shootings, including the burning of the homes of the Catholic minority, and

Whereas, To protect the Catholic minority against Protestant extremists, the London Government sent military troops into the Derry-Belfast regions, and

Whereas, The troops were at first welcomed by the Catholic minority, but soon were found to be used to aid the persecutors, and

Whereas, Over 400 Catholics have been arrested by the British Army and interned without charge and are held without hope of trial, and

Whereas, London based prestigious Amnesty International, an organization dedicated to investigating the conditions of political prisoners everywhere, have concluded from its investigation that prisoners in Belfast are being subjected to torture, and

Whereas, The representatives of the Catholic minority have withdrawn from the Stormont Government, and

Whereas, The Catholic minority are in the streets in open revolt against these oppressors, armed resistance to the British Army is seen everywhere, and there exists an atmosphere of hate and bloodshed, and

Whereas, The source of this deplorable situation can be traced to the unnatural division of Ireland by an Act of the British Parliament in 1920 which allocated Six Counties from the 32 Counties of Ireland with a puppet government, dominated by an all Protestant Sectarian Unionist Party which has gerrymandered the population so as to maintain Sectarian control of the governmental bureaucratics and which party has been directed and manipulated by aristocrats and landlords, who for fifty years past have been exploiting the working class of Northern Ireland and for their purpose have been keeping the working population divided on religious lines, and

Whereas, Labor Representatives of our sister trade unions in England and Ireland have condemned this exploitation and discrimination pattern, and a national poll of the people of England shows that 60 percent of the people of Great Britain wish to have their military totally withdrawn from Ireland, and

Whereas, Many of our brethren in the trade union movement in England have demanded an end to British involvement in Ireland and many of the leaders of the Labor Party of England have severely criticized the prevailing British Government for permitting the British Army to be used by the Stormont Government in one sided activities against the Catholic minority; therefore, be it

Resolved: We the AFL–CIO, at its National Convention held in Miami, Florida on November 18, 1971, do hereby join our brothers and sisters in the Republic of Ireland and our brothers and sisters in Northern Ireland in condemning these insidious practices which have caused so much bloodshed and which threaten to engulf Ireland in further needless carnage and Civil War, and

We further call for the withdrawal of British troops from Northern Ireland and the establishment of a U.N. peacekeeping force until peace and reason prevails, and

We urge an immediate end to the Hitlerian policy of internment without charge or trial and a dissolution of the Stormont Parliament and the immediate establishment of laws which guarantee equal and just treatment for all the citizens of Northern Ireland.

We urge the establishment of a Free and Independent United Ireland with guarantees of liberty and justice to all its people.

We urge the Congress of the United States and our President to make our people's wishes known to the Government of Great Britain to the end that violence ends and peace, and full freedom come to a United Free Ireland.

Referred to Committee on Resolutions.

A JOURNEY TO INDIA AND PAKISTAN

Mr. SAXBE. Mr. President, I returned Sunday night from an informative but saddening journey which took me to both India and Pakistan and gave me an opportunity to meet with leaders of both countries. Upon my return I was asked by the Cleveland Plain Dealer to write an article detailing some of my views on the war and events leading up to it.

Because I know that Senators are interested in the subject, I ask unanimous consent that the article be printed in the RECORD. I also ask unanimous consent to have printed in the RECORD an editorial and a signed column published in today's New York Times.

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

A JOURNEY TO INDIA AND PAKISTAN

(By Senator WILLIAM B. SAXBE)

WASHINGTON.—The Indian-Pakistan war can only end in tragedy, and I am more convinced than ever that both sides are at fault. This is perhaps the basic conclusion I gained during my just-ended mission to that troubled part of a troubled world.

I thought that if I could talk to both Mrs. Gandhi and Pakistan's Yahya Khan and impress on them the danger of the war they were plunging headlong into, that perhaps we could help get a political settlement. This will have to be done sooner or later, and I'm further convinced that tens of thousands of lives will be saved if it's sooner. The real danger, of course, is communal or religious war. They've had communal war, hot and cold, since 1947. Passions run very deeply there, and the only thing the fighting can do is plunge the picture more deeply into gloom.

My plan when I departed for India before Thanksgiving was a simple one. India, for whom I hold high regard, was feeling the pressure of public opinion. Everyone knew that in the beginning, Pakistan had invaded East Pakistan. This conflict ended up in the forming of the Bangladesh military arm—the Mukti Bahini—and India was training these troops, giving them arms. India wanted East Pakistan to succeed in revolting.

It soon became apparent to India, however, that the Bangladesh wasn't capable of making many inroads against the organized, professional, West Pakistan army. So India began putting on pressure with her own troops—there are hawks in India just as there are in the United States—and this finally resulted in Indians crossing the border last week. I talked to Mrs. Gandhi with the idea that, if she didn't want to lose the world support she had, then the wisest course would be not to invade East Pakistan.

Meantime, I talked to Yahya Khan. Certainly as a military man, I said, you know that this is a ridiculous logistic situation for West Pakistan. There are 1,500 miles of kinks and turns between West and East Pakistan, thus making extremely difficult the supplying of 70,000 or 75,000 troops in East Pakistan. Moreover, I told him, you are completely surrounded by Indians, the people are hostile to you because the Awami League (the majority party in East Pakistan) was outlawed by West Pakistani leaders. I suggested to Yahya that he proceed with granting at least a degree of autonomy to East Pakistan. He told me he was willing to do this and he seemed very sincere. But 10 hours later, Pakistani planes bombed six military airfields inside India and this, in turn, triggered a land invasion of East Pakistan by Indian troops. Yahya Khan lied to me. He had planned that bombing mission at the time he talked to me. I believe the shooting war could have been averted and India could have been kept from launching an invasion if Pakistan had granted autonomy to East Pakistan.

Of course, Mrs. Gandhi was somewhat less than candid when I spoke with her a week earlier. There are strong doses of arrogance and pride on both sides.

In a way, this mutual arrogance and pride constitute a supreme irony. Here we have both sides telling me and others that they are reasonable people, that they don't want war, that war would be giant blows to the people and economy of both sides. Moreover, Pakistan knows it is outgunned by India on every level—planes, tanks and manpower—and it would be ridiculous for them to presume they could carry on a long war. Neither country has more than three weeks oil supply, vital in fighting any kind of prolonged war. In short, this entire pending bloodbath makes no sense whatsoever.

Another distressing factor driven home to me on the trip: substantial anti-American feeling exists on both sides, perhaps even more in India than Pakistan. This is particularly saddening. We have funneled literally billions of dollars to India since 1947. We have virtually saved entire states within India with our economic aid. We have staved off famine in dozens of places. Russia has done none of these things, but the Soviets have given India tanks and planes. Isn't it odd that our humanitarian and economic relief has resulted in very little friendship, in fact, open hostility in many quarters, where Russia—by supplying arms—is India's bosom friend today. This is precisely why I have said so often that America, despite its honorable intentions, can't buy friendship.

I found myself on more than one occasion during the trip forced into the position as an unofficial peacemaker, yet here I was without official authority outside of a strong personal interest—without portfolio, so to speak. My point is that I believe the United States maybe didn't do all it could have or should have to bring about a solution before the two sides went over the brink.

Our good offices simply were not used as much as they should have been. Look at my situation, for example. It developed that I was the only person from the United States to talk to both Mrs. Gandhi and Yahya in the final 10 days before the shooting war broke out in full fury. It seems to me that there could have been more work at the top level—our Secretary of State, for example—to accomplish a little more. They were both galloping into war.

As I indicated earlier, this shooting war will be over within three weeks or so, when both sides have exhausted their fuel supplies. India, with its superior arms and manpower, will crush Pakistan. And then our country and Russia will likely be able to impose some sort of political settlement. But what is most troublesome of all to me is that even a political agreement may not end the bloodshed on the Indian subcontinent.

The spectre of communal riots hangs over the subcontinent. This would be a holocaust, a blood bath of the kind the world has never seen. And a tragedy during the holidays of the first order. I am very sad.

THE EMERGENCE OF BANGLA DESH

Defying a United Nations plea for a ceasefire, Indian forces appear on the verge of achieving New Delhi's major objectives in East Pakistan. These are the defeat of West Pakistani military repression in the disaffected Bengali province and the creation of conditions that will facilitate the speedy repatriation of nearly ten million refugees—Moslem and Hindu—to an independent, friendly and secular "Bangla Desh."

These would represent large short-term gains for the Indians, whose fragile internal stability has been gravely threatened by recent events in East Pakistan. The dismemberment of Pakistan would all but eliminate the menace of a militant Moslem neighbor which would be reduced to less than half of its original size.

But India will have paid a heavy price for these achievements, even if the wider war with Pakistan is speedily ended without further serious loss of Indian territory in the West.

New Delhi's resort to force without first exhausting all possibilities for a peaceful resolution of the conflict—especially the cold rejection of U.N. Secretary General Thant's reasonable mediation offer—has shocked many of India's stanchest friends and alienated important segments of world opinion. India's violation of the United Nations

Charter and defiance of the General Assembly has sharply diminished India's once proud moral standing.

India's support for full Bengali independence may have been made inescapable by the incredibly shortsighted and brutal policies of the Pakistani Government. But no one—especially the Indians—can ignore the new dangers and problems that will be posed by the emergence of Bangla Desh.

The success of secession in East Bengal could touch off a chain reaction of separatist demands throughout the subcontinent, in India as well as Pakistan. Desperately poor and heavily overpopulated—the present population of 75 million is expected to double in twenty years—Bangla Desh is likely to become a breeding ground for domestic unrest and a lightning rod for foreign meddling. It could become a magnet for the Bengalis of India and a destructive influence on the delicate structure of Indian unity.

To avert further impoverishment, fragmentation and conflict throughout the subcontinent it is essential that leaders in Delhi, Dacca and Islamabad thrust aside present divisions and acrimony and join in a search for new ties and institutions that will enable them to attack overriding common problems in dignity and peace. As the emerging dominant power, India has a special responsibility to assert the moral leadership for reconciliation that has been so sadly lacking in the present conflict.

[From the New York Times, Dec. 9, 1971]

WAR ON THE SUBCONTINENT—MR. NIXON AND SOUTH ASIA

(By John P. Lewis)

PRINCETON, N.J.—The Nixon Administration's South Asia policy, which had been edging toward disaster for the last eight months, finally, in a cloud of pious inanities, plunged over the brink this last weekend. Presumably for the time being the policy is beyond redemption. What now selfishly concerns me as an American is that India's leaders may exaggerate the degree to which the Administration's present aberrations represent thoughtful and enduring American opinion.

All the evidence suggests that within the Administration the aberrations trace directly and primarily to Mr. Nixon himself. For eight months he has remained officially blind to the most massive calculated savagery that has been visited on a civil population in recent times. He has been faithful to his good friend, the chairman of the savagery, Yahya Khan. Neither his hand-holding of nor any hidden leverage on the Pakistan regime has had evident effect in advancing a political solution in East Bengal.

To an Indian Government that, in the face of moral and human outrage next door and of an outlandish refugee burden, was showing remarkable restraint until recently, Mr. Nixon offered mainly counsels of restraint. He supplied no moral support. Instead for months he continued to trickle arms to Pakistan like so much gasoline onto smouldering Indian passions. The President has been fully aware both of the explosive domestic political risks the refugees posed in Indian Bengal and of the way they have totally derailed the cause of Indian development at its very moment of greatest opportunity. Yet he has not begun to exercise the leadership, either before the Congress or in the international community, needed to accomplish a quick and adequate sharing of refugee costs.

Such is the footing from which Mr. Nixon, first via his nameless State Department mouthpiece last Saturday, now from the White House itself, has branded India an aggressor. It is on this record that he has turned off, not just fresh economic assistance (which he had, in any event, been blocking since early in the fiscal year) but the unobligated portions of loans already committed. This last is extraordinarily tough action in terms of past aid practice, and one—lacking any prospect of cramping India's military capability—that can have only punitive intent.

Historians are bound to boggle at the cumulative ineptitude of this performance. In one series of strokes we have managed to align ourselves with the wrong side of about as big and simple a moral issue as the world has seen lately; we have sided with a minor military dictatorship against the world's second largest nation which happens also to be the stanches of all developing countries in its adherence to our own deepest political values; we have joined the sure-fire loser in a subcontinental confrontation; and we have depleted a once abundant, durable fund of Indo-American goodwill at a sickening rate.

It certainly would be wrong to claim to our Indian friends that, in all this, the President is swimming against a tide of public opinion. There is little American tide of opinion of any kind about the subcontinent, and its surface flow is considerably influenced by what any President does and says. Moreover many of our best editorial writers and columnists have such an absolute abhorrence of war—especially when escalated by others—whatever the provocation and whatever the closure of other options, that they cannot, just now, see much beyond the proximate causes of the Bengal border crossings.

I would like to emphasize one point that tends to be skirted, because no one wants to be caught these days suggesting that any good—even relative good, weighed against the alternative—can come of a war. The point, and it is pivotal, is that the only possible basis for a stable, peaceful East Bengal to which a large portion of the ten million refugees can return and help rebuild their nations is an independent East Bengal. Such is the effect of the program of terror since March 25; the scenario cannot be wound backwards. Hence (1) the premise of undivided Pakistan's sovereign integrity upon which American policy has rested, for at least five months, has been a nonstarter, and (2) India's support of the insurgency by the previously elected Bangla Desh regime has not been merely human and understandable; lacking alternatives, it has been the only constructive policy available.

I myself wish the Indians had escalated less, accepted a longer time frame, and kept their support less overt. But if there is any group which, having contributed most to the frustration of restraint, has least cause to fault her ensuing impatience, it is the Nixon Administration. It remains now for India to demonstrate that her objectives are those, and only those, she held out; namely, establishment of a genuinely independent East Bengal to which the refugees can return. There is a heavy obligation on Indian leaders to make sure that war fervor does not spill over into more self-serving ventures, either to the east or to the west. Meanwhile, as this demonstration is being rendered there is an obligation on Washington to keep quiet.

THE WHITE HOUSE CONFERENCE ON AGING—ADDRESS BY RUBIN MORRIS HANAN

Mr. ALLEN. Mr. President, all of us have been much impressed by the comprehensive and well-reasoned policies and recommendations emanating from the recently concluded 1971 White House Conference on Aging. The senior citizens of Alabama were well and ably represented at the Conference and particularly so by a close personal friend, Hon. Rubin Morris Hanan, president of the Alabama League of Aging Citizens, Inc., Montgomery, Ala.

Mr. President, Mr. Hanan delivered a very persuasive speech to the income maintenance section of the Conference in which he made some very forceful observations and thoughtful recommendations on the tremendously important problem of providing a workable solution to the problems of national health care under conditions which do not Sovietize our people or socialize medical care.

Mr. President, I am sure that Senators will find Mr. Hanan's speech informative and constructive. I ask unanimous consent that his speech entitled "The Right to Health," be printed in the RECORD.

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

THE RIGHT TO HEALTH

(Speech by Rubin Morris Hanan)

Fellow delegates, ladies and gentlemen, the health of the American people is the basic foundation upon which all their happiness and their security rests. Regardless of a person's wealth or his freedom or independence, he cannot truly be happy or secure without good health and good health care. Although America is a country of unlimited wealth, offering great personal freedom and possessing the highest standard of medical technology in the world-America still has great problems providing adequate health care to all its citizens.

We find ourselves living through dramatic hours; hours which demand of each of you, as delegates to the White House Conference on Aging, and as Americans, a determined and unwavering course in support of the right of health care for all Americans.

One of the great unresolved issues of the Conference is whether or not a national health system of some type should be adopted. Before going any further, I want to make one point very clear. America cannot solve its national health problem by sovietizing its people and socializing its medicine.

The type health care program made available to our citizens is something that should be examined in depth in order to safeguard quality and quantity of medicine. In my opinion, Senator Edward Kennedy's Health Security Plan has many flaws, and this and other similar plans must be studied in detail before Congress forces them upon the American people.

It is often said and agreed by many in the health field that at its best, American medicine is the best in the world. I know that because I have visited Europe and most recently the Middle East Countries. I know what socialized medicine is: half slave and half man. No American who truly prides freedom can really wish to see himself and his fellow citizens plagued by unreasonable health taxation, unwarranted government interference in his health, and unfair restriction on the exercise of individual rights. But in a society governed totally by bureaucracy, there is no such thing as total freedom. I believe the Federal Government can improve health care in America without Federal domination of the healing arts profession and the patients.

The Federal Government could rectify the shortage of medical manpower, medical schools facilities and equipment, regional cancer, heart and diabetes hospitals and research centers. The Federal Government, through its great wealth, can assist in establishing more medical schools and can create a resource distribution pattern which will assure access to health care for all Americans.

In attempting to solve America's major problems, Congress has forgotten the need to improve financially our medical colleges, our regional research centers, and centers for many other areas of service.

I am Chairman of the joint City and County of Montgomery Health Clinic. We are charged with the responsibility of providing health care service to the indigent population of the city and county. I can verify that approximately 40,300 persons live in families which earn less than $3,000 per year in our area. Our present clinic of 9,072 square feet has overflowed into four mobile trailers in order to better serve the 10,755 patients who made over 24,000 visits to the clinic last year. Our facilities are being taxed beyond all reasonable limits. Add to this the average of 300 new patients who visit the clinic each month and it becomes obvious that either services must be curtailed, new eligible patients refused, or additional facilities must be provided. The same situation exists all over America today.

The social and economic problems of America's poor, are directly related to the solution of their health care problems. Major diseases do not respect national boundaries, neither do they respect age, sex, race or economic levels. There can be no North-South conflict over health care in this country.

What America needs is to launch an all-out attack on the causes of disease. Medical colleges and research centers and clinics need hard cash in order to conquer cancer, heart disease, diabetes, and the many crippling diseases, and to make health care and medical research in America second to no other nation.

What we don't need is Federal control of the doctor-patient relationship, and socialized medicine.

In 1968 I, and a few other ordinary citizens of Alabama started one of the largest public fund drives in the State's history to build a cancer hospital and research center as a lasting memorial to Alabama's only woman governor who died of cancer. What makes this memorial unique however is that unlike other memorials, it will provide life. The Lurleen B. Wallace Memorial Hospital and Tumor Institute will be more than brick and mortar. It will be the embodiment of a comprehensive concept for the care of cancer patients which will be available to all the people in the Southeastern part of the United States. This great hospital will become part of the University of Alabama Medical Center in Birmingham, under the leadership of Dr. Joseph Volker, Dr. S. Richardson Hill, Dr. John Durant, and the Dean of the Medical College of Alabama, Dr. Clifton K. Meador.

If we supply each citizen with a form of national health insurance, but we do not provide enough doctors, and fail in our research of major diseases, then we have taken the wrong approach to health care. Our citizens should not look to government first for all health care. I have traveled widely to participate in planning and acceleration of research programs against the dread diseases. Wherever I have gone, I have seen human beings reacting much the same way. Whatever the claims of nationality, the peculiarities of religions, the color of skin, or political practices, they have the same human reactions. The anguished cry of a mother who has lost her child, of the grief of one marriage partner after the death of the other is basically the same everywhere. Giving these people health insurance is little help, if the dread diseases are not conquered in the research centers and medical schools of the nation.

I make the following recommendations:

1. We must urge adequate Hill-Burton appropriations for constructing medical colleges and for construction and improvement of regional medical centers, research centers dedicated to conquering cancer, heart disease, diabetes, and the major crippling diseases.

2. The Federal Government must target all health resources assistance on bringing health care to all people who are sick with the dreaded diseases. We must focus our primary concern—not on expanded research for the sake of publishing more technical monographs—nor improving hospitals for the greater convenience of doctors or nurses alone but on regional medical research and treatment centers.

3. The number of medical personnel is growing less every day in relation to the population. We must urge the administration and Congress to reinstate the financial assistance to medical schools, and must assist individual students with scholarships and tax incentives in order to bring doctors into the areas most needed. The time has come when America must recognize that for millions of people the financing of educational costs is more than a mere personal problem. It is a vital national problem, and should be recognized as such in our tax laws.

4. The present shortage of health manpower is in part due to maldistribution. It is concentrated in middle class suburban America. The total supply of health personnel to all citizens is more important than a national health insurance program.

5. We must expand the range of health education opportunities, particularly for youths of lower income families. This can be done through expanded and improved medical schools and streamlined curriculum by placing greater emphasis on the paraprofessional fields. We recommend screening programs in a limited number of regional and community clinical centers, equipped with the latest in instrumentation and communication systems. It could become the cornerstone for a genuine national effort to prevent or reduce chronic diseases by detecting them in their early stages. In other words, doctors treat disease when it occurs. It has been said that the American doctors do not attempt to put obstacles in the path of disease. The American people give disease a head start, then we run to catch up with it, after it has already begun to cause real damage to the body.

6. We must permit admissions directly to nursing homes rather than only via hospitals, so that persons who are too sick to remain in their homes, but not eligible for hospital care could not be denied service.

7. We should recommend "Fall Tune Up" Programs to provide free medical tests for people 55 and over.

And finally, just as we have a Federal system of guaranteeing bank accounts, I recommend the same type system to guarantee the insurers, the physicians, nurses, and hospitals of their rights to receive fair and just compensation for their services.

I believe that every person at this conference is a humanitarian, attending today to seek a means to better man's life. Then, let the conference embrace with fatherly love, all those who suffer—the sick, the poor, the disabled.

In closing, I want to read a prayer I wrote which I hope this conference will adopt:

"Dear God, give us an understanding heart,

Clear thinking to find the essential good,

Purpose to find true goals for lasting values,

Honesty to hold and do what's right in God's sight,

Humility to know our weakness and mistakes,

Strength to meet the increasing daily demands,

Recognition to see the words of our colleague's sincere plan,

Confidence to always press forward when the cause is just,

Independence if needs to stand alone when our conscience says we must,

Gratitude for this great privilege to serve America and mankind,

Spiritual Awareness of our Nation's pledge "In God We Trust",

And now we pledge with grateful hearts our loyal service to man and God.

Thank You.

ECONOMIC PRESSURES AND NATIONAL SECURITY

Mr. HANSEN. Mr. President, a former Secretary of State, the late distinguished Dean Acheson, wrote, shortly before his passing in October, an article comparing the self-absorption circumstances prior to World War II with the inclinations among some in the Nation today to concentrate on domestic interests to the extent of ignoring the very real necessity of maintaining adequate defense capabilities.

The article was published in the Washington Evening Star of December 5, 1971. I ask unanimous consent that Mr. Acheson's thoughtful reflections be printed in the RECORD.

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

ECONOMIC PRESSURES ENDANGER OUR SECURITY

(By Dean Acheson)

Crises do not always come upon us with premonitory crashes of thunder. Too often they move at a "petty pace from day to day." So, just 40 years ago, there was moving upon us, if not the greatest crisis in our history, at least the greatest since that of 1861. Made up of convergent foreign dangers, it was hidden from us by pressing domestic troubles. Across both eastern and western oceans formidable and hostile states were finding this country an obstacle to their ambitions and were preparing to remove or reduce that obstacle. At home our economy was approaching collapse. Skillful attack on maladroit government was destroying confidence in the leadership of the state. Growing panic gripped the country and for years obscured the foreign menace.

In Germany the same depression had brought havoc to the Weimar republic. In 1930 the Nazi party rose to second place in the state. In 1933, a month before Roosevelt's inauguration, Hitler became Chancellor. By July the Nazis were the only legal political party in Germany. A year later, after President von Hindenburg's death and the murders of the "second revolution," Hitler was declared *Fuhrer und Reichskanzler* and the supreme power in the state. In "Mein Kampf" he had proclaimed his plans and methods.

Meanwhile Roosevelt, turning impatiently from international affairs after the aborted London Economic Conference, plunged into the bravura of the New Deal, pumping depreciated currency into a flat economy.

COLLISION COURSE

Japan for years had been committed to a collision course, absorbing Western technology and building an industrial and military system to drive the foreigner out of East Asia. Controversy between the strike-north and strike-south strategists—the former seeing Russia as the enemy; the latter, the United States-France-Britain-the Netherlands—was decided by imperial decision to strike south. Movement began in 1931 into Manchuria. When the League of Nations and Secretary of State Stimson fulminated, a diversionary attack on Shanghai distracted attention. Neither the League nor Washington acted.

On the contrary Mr. Roosevelt as the 1930's progressed led the country into bitter division by attacks on economic royalists, the

Supreme Court, and "horse-and-buggy" philosophy. Europe and the League fell apart over the Spanish Civil War. Meanwhile, the Germans and Japanese, undisturbed and unopposed, pushed to near completion their conquests of Europe and East Asia; the former by a series of brilliant coups d'etat backed by force; the latter, by armed attack at its most brutal. In 1939 Hitler grasped at hegemony in Europe by outright war. The President reacted with the Chicago speech calling for quarantine of aggression, but a divided country shrank from involvement abroad and the rebuffed President, in the third-term election, promised there would be none. When Europe collapsed before Hitler, Hitler turned eastward smashing Russian defenses. Japanese armies having taken eastern and northern China moved south, overwhelming French and British resistance. Still the United States seemed paralyzed until the suicidal folly of the blow at Pearl Harbor, followed four days later by Hitler's equally mad declaration of war, forced the country to fight.

Now, 40 years on, our economy is again in trouble, though its productivity has vastly increased. New consumption demands are enforced by paralyzing strikes. Population growth and movement have created seemingly insoluble problems. Social discontent and frustration are widespread. Again an anarchaic activity is busy destroying confidence in government as in 1931 and 1951—though this time aimed at the past party leaders of those instigating it.

"If I feel," with Justice Holmes, "what are perhaps an old man's apprehensions, that competition from new races (and, I may add, more disciplined peoples) will cut deeper than workinug men's disputes and will test whether we can hang together and can fight," it is because I remember and see once again foreign menace hanging over us even more ominously than 40 years ago.

STALIN AND ARMS

Since 1946, when Stalin announced that he would amass armaments capable of overcoming any that might (and according to Communist doctrine would) be brought against the Soviet Union, we have watched it happen. In 1949 Stalin added nuclear weapons, after rejecting proposals for international control of the atom; and two years later, limitation and control of all armaments. Despite Soviet aggression in eastern Europe and eastern Asia, wishful thinkers maintained, as they still do, belief in the peaceful intentions of the Kremlin. Wishful thought springs eternal and strong.

In appraising the future deterrent value of our present nuclear armament, it makes little difference whether we assume that it is now somewhat greater or less than or equal to that of the Soviet Union. Both ours and theirs have been in movement, with theirs gaining. In the Strategic Arms Limitation Talks both sides are seeking some sort of standstill; we, on offensive weapons, ICBMs, they on defensive ones. These positions throw light on each side's view of its own strength and concern. As in all bargaining, the side more eager for agreement will pay more to get it.

The coming crisis will be decided not only by the nature of an agreement made with Moscow but by what we do with one or without one. In 1922 Secretary of State Hughes negotiated an unwise treaty on limitation of naval armaments with, among others, Japan. Not only was it founded on erroneous premises but the United States did not build up to its limitations. Japan did. In 1936, Japan repudiated the treaty, obtained superiority in the western Pacific, and in 1941 took it over.

Today the pressures here to increase domestic spending are enormous. So is distrust of "the military-industrial complex." The legislative and executive branches of our government are deeply divided. Under our present suffrage, the separation of powers of government, and political method, it will be hard to stop the upward movement of wages and prices and maintain an adequate national defense. We apparently do not believe in the existence of a foreign menace and are pricing ourselves out of national security. The real crisis is thus concealed.

REPORT OF CARNEGIE COMMISSION ON HIGHER EDUCATION—"INSTITUTIONAL AID: FEDERAL SUPPORT TO COLLEGES AND UNIVERSITIES"

Mr. PELL. Mr. President, I am delighted that the Carnegie Commission on Higher Education, in its report entitled "Institutional Aid: Federal Support to Colleges and Universities," supported the philosophy and principles pertaining to student assistance and institutional aid, which are part and parcel of the Pell bill, S. 659. The subcommittee in its deliberations on higher education studied the work of the Commission, and it is, indeed, gratifying to read this latest report which clearly buttresses the Senate position. It is my hope that the report will prompt the higher education community to support our bill.

DEMOCRACY AND THE GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, some people who oppose the Genocide Convention do so because they believe that its adoption will mean the end of democracy in the United States. They believe that if the Senate gives its consent to the ratification of this treaty the American people will lose rights guaranteed them under the Constitution. To determine if there is any truth to this fear, it will be helpful for us to consider other nations which have democracies and which have ratified the Genocide Convention.

Two nations which are very similar to the United States in the rights accorded their citizens are the United Kingdom and Canada. Both guarantee freedom of speech, press, religion, assembly, and the right to a fair trial by an impartial jury. Canada has been a party to the Genocide Convention since 1952. England gave its ratification in 1970. No Canadian or British citizen has been extradited for genocide. No Canadian or British citizen has had his freedom of speech abridged by this treaty. No Canadian or British citizen has been denied his right to a fair trial, because his country ratified the Genocide Convention.

The Genocide Convention has not threatened or reduced democracy in these two countries. It is reasonable to believe that it will not do so in the United States. Rather, the Genocide Convention will protect the people of Canada, the United Kingdom, and the United States from the prospect of mass murder. Instead of denying freedom, it will increase freedom by helping to protect the greatest freedom of all—the freedom to live.

Mr. President, I call upon the Senate to ratify the Genocide Convention without delay.

IGNORANCE OF INTERNATIONAL MONETARY AFFAIRS

Mr. McINTYRE. Mr. President, since August 15 the topic of international economics has shifted from the back page of the financial section of the paper to a front page story. As a member of the Committee on Banking, Housing, and Urban Affairs, I can testify how little is known about monetary affairs in general and international monetary affairs in particular. This is unfortunate, because international monetary affairs affect all of us.

Recently the Florida Times-Union in Jacksonville, Fla., published a UPI story on the comments of John F. Cogan, Jr. Mr. Cogan, president of Fund Research and Management, Inc., of Boston, commented on the lack of general knowledge of most Americans about international monetary affairs. If we are to compete successfully in the world's markets of tomorrow, Americans and their representatives must enhance their knowledge of international economics.

Mr. President, I ask unanimous consent that the article be printed in the RECORD.

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

DOLLAR "IGNORANCE" HIT

BOSTON.—Most Americans are ignorant about the international economic developments that affect their own welfare and the welfare of the country, according to John F. Cogan Jr., president of Fund Research & Management Inc.

"Only a handful of Americans are even faintly aware of effects on our economy, of developments on the international monetary scene," he said. "About the only currency devaluation is what happens when they are traveling abroad. They discover their dollars will not buy as much as they would like. In some places, U.S. dollars aren't even accepted."

Cogan said people show no more understanding of the consequences of balance of payments deficits than they do of the current state of the art in nuclear physics.

He said the confused reactions of Americans to the dramatic developments on the international monetary front in recent months is shocking.

RELIGIOUS FREEDOM

Mr. SCHWEIKER. Mr. President, yesterday the Supreme Court of the United States heard arguments in the case of the State of Wisconsin against Jonas Yoder et al. The ultimate decision of the Court in this case will no doubt be one of its most significant on the question of religious freedom. The issue involves the right of a State to require the children of the members of the Amish faith to attend public schools under a compulsory education law which is contary to the religious principles of the Amish. Clearly, this is a most sensitive matter.

I ask unanimous consent that an article written by Mr. William R. MacKaye, entitled "High Court Hears Amish School Case" and published in the Washington Post today be printed in the RECORD. The article briefly describes the case.

Mr. President, also I ask that a summary of the case with excerpts of the

brief filed on behalf of the Amish provided by the Reverend William C. Lindholm, Holy Cross Lutheran Church, Livonia, Mich., who is chairman of the National Committee for Amish Religious Freedom, be printed in the RECORD.

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

HIGH COURT HEARS AMISH SCHOOL CASE

(By William R. MacKaye)

The U.S. Supreme Court was asked yesterday to decide whether the responsibility of a state to ensure the adequate education of children should override the religious conviction of the Amish that eight years' schooling is enough.

The case, which pits the state of Wisconsin against three Amish fathers, poses one of the most critical religious freedom questions to come before the high court in some time.

The Wisconsin Supreme Court ruled in January that the three fathers, Jonas Yoder, Wallace Miller and Adin Yutzy, had a constitutionally guaranteed religious right to keep their children out of high school despite Wisconsin's compulsory education law.

One of Wisconsin's assistant attorneys general, John W. Calhoun, urged the federal high court to overturn the 6-to-1 ruling of his state's justices. Wisconsin's responsibility to defend its citizens' children from "the disease of ignorance" must take precedence over the Amish religious position, he said.

William B. Ball, a Harrisburg, Pa., lawyer who is one of the nation's principal legal experts on church-state matters, argued on behalf of the parents.

He laid before the clearly fascinated justices a picture of a tightly knit religious community in which wisdom is learned in the household and at the plow, and secondary schools are seen largely as purveyors of temptation and worldliness.

Wisconsin vs Yoder, as the case is known, represents the first time that the conflicts between the technology-shunning Amish and the government have been argued before the nation's highest court.

But it stands at the end of a long line of efforts by governments on this continent and in Europe to compel the Amish to soften their sturdy resistance to the ways of the modern world.

Usually the "plain people" have not combatted these efforts, but simply packed up and moved somewhere else in a continuing search to find a place where they will be left alone.

Four bearded, overalled Amish elders, three from Lancaster County, Pennsylvania, and one from Mifflin County, Pennsylvania, sat quietly in the courtroom yesterday listening to the arguments.

There are in the United States about 20,000 adherents of the most conservative Amish tradition, the Old Order Amish Church, according to the 1971 Yearbook of American Churches. Many of them may emigrate to other countries if the Supreme Court rules against them, Dr. John A. Hostetler predicted after yesterday's hearing.

Hostetler, a former Amish member who left the fold and is now a professor at Temple University and the world's leading academic expert on Amish custom, has served as an expert witness for the defense since Wisconsin vs. Yoder began.

Yoder, Miller and Yutzy, at that time all farmers in the rolling countryside outside New Glarus, Wis., were haled into county court in October, 1968, on charges that they had failed to enroll their children, Frieda Yoder, 15, Barbara Miller, 15, and Vernon Yutzy, 14, in school.

Testimony in the case noted that the New Glarus school administrator signed the criminal complaint against the three fathers immediately after learning that the Amish in the public school district had opened a private church-run elementary school.

The three fathers were convicted in the county court and again in the circuit court, and fined $5 each. At that point they appealed to the state supreme court, where for the first time in American legal history they won a decision that the Amish have a constitutional right to keep their children out of high school.

Earlier state supreme court decisions on similar cases in Kansas, Ohio and Pennsylvania upheld the right of states to maintain compulsory education.

Funds to defend the New Glarus fathers were raised by the National Committee for Amish Religious Freedom, an organization created by a Livonia, Mich., Lutheran pastor, the Rev. William C. Lindholm. Contributions paved the way for the participation by Hostetler, University of Chicago education expert Donald A. Erickson, and attorney Ball from the inception of the case.

Lindholm said he formed the organization some years ago after seeing photographs of truant officers chasing terrified Amish children through a cornfield in his native Iowa.

"I decided it wasn't right," he said.

U.S. SUPREME COURT CASE—IS THERE RELIGIOUS FREEDOM IN AMERICA—FOR THE AMISH?

(By the Reverend William C. Lindholm)

If the Old Order Amish must partake of the value system in a regular high school "their religion will be destroyed," said an anthropologist from Temple University at the trial of three Amish fathers in Wisconsin who refused to send their children to high school.

The Wisconsin Supreme Court last January in a landmark decision overturned the arrests of the Amish saying that "no liberty is more important . . . than religious liberty," and the Amish "will not be required to attend school beyond the eighth grade" because the state had shown no "compelling state interest" which would justify the overriding of the freedom of religion guarantee of the Constitution of the United States.

Moreover, the court said that Amish "education produces as good a product as two additional years of compulsory high school."

Compulsory education laws in Wisconsin require attendance to age sixteen.

The State of Wisconsin claiming that religious liberty is no defense against compulsory education laws appealed to the United States Supreme Court, and this court heard oral arguments on Wednesday, December 8, 1971.

The U.S. Supreme Court will probably issue this term their ruling on whether the Amish can be forced into high school, which is against their religious beliefs and which will apparently result in the destruction of their church-community. The questions involved in the Amish case are significant ones, may the government require a religious group to perform an action which they believe will send them to hell? Specifically, is the government's policy requiring a certain type of secondary schooling so important that it can command that policy against the religious conscience of the Amish young people and their parents to produce the effect of destroying their church?

The Old Order Amish—a minority religious group known for their shunning of modern conveniences and the driving of horses and buggies, who were among America's earliest settlers—are supported in the high court by many of America's religious denominations.

Filing friend of the court briefs in support of the Amish were the National Council of Churches of Christ in the U.S.A. representing thirty-three Protestant and Orthodox denominations, the Seventh-day Adventist Church, the Mennonite Central Committee, the American Jewish Congress, the Synagogue Council of America and the National Jewish Commission on Law and Public Affairs.

The U.S. Catholic Conference (although not filing legal briefs) also supported the Amish.

The three Amish fathers—Jonas Yoder and Wallace Miller of rural New Glarus, and Adin Yutzy, now of Elsinore, Missouri—were arrested for failure to send their high school-age youth to the two years of required high school attendance and instead gave them what the Amish always give their adolescent youth—vocational training in the community. Wisconsin law requires attendance until age sixteen.

All three courts in Wisconsin were unanimous in their findings: "the Wisconsin compulsory education law does interfere with the freedom of the defendants to act in accordance with their sincere religious beliefs." Said the Wisconsin Supreme Court, "Any high school—public or private—represents a deterrent to Amish salvation." "To the Amish secondary schools not only teach an unacceptable value system," said the court, "but they seek to integrate ethnic groups into a homogenized society, resulting in psychological alienation from their parents and cause great harm to the child."

Defense attorneys for the Amish were William B. Ball, chief counsel; Joseph Skelly both of Harrisburg, Pennsylvania and Thomas Eckerle of Madison, Wisconsin. Assistant Attorney General John W. Calhoun handled the prosecution.

Since the Amish will not defend themselves, believing literally in the Bible—"turn the other cheek," it says—their defense was paid for by public donations through an inter faith group called the National Committee for Amish Religious Freedom, 30650 Six Mile Road, Livonia, Michigan 48152.

FACTS OF THE CASE

The facts of the case before the U.S. Supreme Court are:

Dr. John A. Hostetler, an anthropologist from Temple University testified that if the Amish are forced to partake of the values in a regular high school, "their religion will be destroyed."

A U.S. Office of Education study introduced into the trial record concluded that the Amish youth tested slightly above the norm on basic skills when compared to regular high school students.

Dr. Donald A. Erickson, education professor at the University of Chicago, said the Amish received in their own communities definitely what could be called "an education." The Amish training is of the "best kind," he said, "they learn by doing, and I would be inclined to say they do a better job than most of the rest of us judging by the fact that they have little unemployment, delinquency or divorce."

A law officer (Wilbur E. Deininger) of Monroe, Wisconsin said that even though the Amish do not go to high school, they were not involved in any crime.

The Welfare Director (Ray F. Kaskey) said that the fact that Amish to do not go to high school does not threaten the tax structure of the county because no Amish have ever been on welfare or public assistance.

Frieda Yoder, 15 year old Amish girl and old enough to marry in Wisconsin, took the stand and testified that it was against her beliefs to attend high school, and that she wanted to live the way of her people.

It was brought out at the trial that the arrests against the Amish were lodged directly upon the loss of $17,000 in state aid to the New Glarus school district because the Amish opened their own schools after disputes with authorities over such problems as shorts for gym classes.

Beyond establishing that the Amish were not attending New Glarus High School, the

prosecution presented no other testimony or witnesses.

Upon these facts the Wisconsin Supreme Court ruled that the state had failed its proofs. "There is not such a compelling state interest in two years high school compulsory education as will justify the burden it places upon appellant's free exercise of their religion."

DEATH KNELL FOR AMISH?

William B. Ball, defense lawyer for the Amish, said, "The State makes no bones about its desire to enter the minds of these young people, expose them to worldly education, fill up their minds with state packaged learning, alien to the Amish way, threatening the privacy of their psyche and threatening painful personality restructuring by placing them in a high school with stress upon competition, ambition, consumerism and speed."

The attorney said in his brief to the U.S. Supreme Court, "The state is insisting that there cannot be different kinds of education . . . all education must be dictated by the state with values derived from technology or related to consumption and competition and must be imposed upon every child."

"As all three courts in Wisconsin found," said Ball, "the state is violating the free exercise of the Amish religion by interfering with the whole fabric of Amish worship life which permiates the whole of their ceremonial community and daily farm living, stopping parents from nurturing their children in the Amish faith, preventing the Amish youth from following their religious faith and farm vocations, and violating their right of communal association."

Ball said that if the U.S. Supreme Court does not stop this invasion by the state "it will sound the death knell for an old, distinctive and innocent culture."

The Wisconsin Attorney General, Robert W. Warren, in his brief to the U.S. Supreme Court said that the Amish are "neglecting" their children. Moreover, he asserts, the legislature alone controls educational policy and until that body changes the law the Amish "should be required to attend a more 'worldly' high school." (Pennsylvania, Indiana and Kansas have exempted Amish, but Wisconsin's legislature rejected consideration of the Amish problems).

The Supreme Court will now have to decide whether the constitutional guarantees of religious freedom apply to the Amish, or whether they will have to move once more this time from the United States to find a haven where they can be let alone. One whole group left Arkansas a few years ago for Central America saying, "The government is gradually taken away our religious freedom."

FRIENDS OF THE COURT

The National Council of Churches urged the U.S. Supreme Court to affirm the decision favorable to the Amish and said, "responsible religious groups in this country have the right to undertake, not just an imitation of conventional education, but a fundamentally different *type* of education from that generally prevailing in a given state—if necessary to embody and inculcate their understanding of what the Divine Will requires." The Council further said, the Amish "were engaged in general education centuries before there was a State of Wisconsin and are as fully capable of choosing among arguable theories of pedagogy as are the civil entities which have entered the field of education more recently. The Amish have made significant contributions to Western Civilization as a whole," stated the NCC, "and the entire Christian movement would be poorer if the Amish were forced to conform or emigrate."

In addition to the National Council of Churches several other religious groups supported the Amish.

The brief of the Seventh-day Adventist Church said, "A child should not, except for the gravest causes, be forced to make the psychological decision of disobeying the religious precepts of his parent . . . and the denial to a parent of the right to control the religious upbringing of his child is a denial of the free exercise of religion."

The Mennonite Central Committee through its attorney Donald Showalter of Harrisonburg, Virginia said in his friend of the court brief, "The education given Amish youth adequately prepares them for the future. . . . then clearly the legitimate state interest has been satisfied. . . . enforcement of the law beyond the rudiments will threaten the "very existence of the Amish religion in America." "Freedom of religion—a constitutionally guaranteed right—must prevail over the more nebulous and uncertain claim of the State of Wisconsin."

Nathan Lewis of Washington, D.C., counsel for the National Jewish Commission on Law and Public Affairs, said in his brief *amicus curiae,* "This case presents a disturbing illustration of an attempt by the state authorities to compel nonconformists, whose beliefs and practices are constitutionally protected, to adhere to norms that are entirely sound and desirable for most inhabitants of this country, but are offensive and harmful to the affected religious minority. . . . the Constitution and the traditions of this nation do not permit this kind of coercion which endangers all religious or ethnic minorities."

Attorney Leo Pfeffer of New York City representing the Synagogue Council of America and the American Jewish Congress said their organizations have "a strong interest in religious freedom and a religiously and culturally pluralistic America. . . . a reversal of the decision of the Supreme Court of the State of Wisconsin may imperil these precious values." Wisconsin has failed to "establish a compelling state interest to outweigh the religious freedom, parental liberty, the rights of mature minors and family privacy," said the Jewish group, and moreover, "an education which includes eight grades is adequate to insure an informed citizenry."

AMISH ARE NOT IGNORANT

Some people who are uninformed are under the impression that the Amish are ignorant and that their children are denied an exposure to a knowledge of the world and will not be able to make their living. Such is contrary to fact. The Amish are not against education, but are dissenting from a culture which is increasingly materialistic and technical. They want an education that makes men good, compassionate, God-fearing, law-abiding, heaven-preparing, and which will enable a person to earn an honest living. Since their culture is transmitted in the oral tradition—from faith to faith and father to son—and consists of on-the-job training not within four walls, it is felt by some to be "no school." However, Dr. John A. Hostetler of Temple University did a three year study under the auspices of the U.S. Office of Education and testified as to his findings at the trial of the Amish fathers. Comparing Amish students with students in regular schools "the Amish," he said, "test above the norm on the Iowa Test of Basic Skills and their I.Q. is above the norm." Dr. Donald A. Erickson, education professor at the University of Chicago, testified at their trial that the Amish are "educated" by their community. "They do a better job than most of us judging by the fact that there is no unemployment among them, very little divorce and juvenile delinquency." "They learn by doing," he said, "which is the best way." They are not an ignorant people, and these facts were in no way disputed by the State of Wisconsin. No one is contending that Amish education would fit the needs of all, but it is obviously adequate for them. Bear in mind that we are talking about only one or two years of required compulsory schooling which will not go far toward making them become scientists or engineers, but it does deprive them of a serious amount of liberty.

Chief Justice E. Harold Hallows of the Wisconsin Supreme Court stated in his eighteen page opinion favoring the Amish: "The Amish claim, with compelling merit, that their education produces as good a product as two additional years of compulsory high school education does." The Court further stated. "To force a wordly education on all Amish children, the majority of whom do not want it or need it, in order to confer a dubious benefit on the few who might later reject their religion, is not a compelling interest. Two more years of schooling do not help the Amish in his environment," the Court said.

Two former Amishmen are members of the National Committee for Amish Religious Freedom and who now hold doctorates in their fields; they strongly support the Amish in their struggle for religious freedom. These scholars say that Amish children are not seriously deprived of leaving the church if they wish—some do—and those who leave have had no difficulty in finding a place in the larger society. Employers have been eager to hire the honest self-reliant Amish craftsmen, and a number have easily passed college entrance tests. In the Wisconsin case the Amish young people testified that they did not want to go to high school, and that they wanted to follow the religion of their parents. These young people—physically capable of being parents in their own right—asked the court to grant their religious liberty to choose their faith. What many people do not realize is that they are really punishing the Amish children when they advocate that they be removed from their community for schooling, because they are being deprived of meaningful relationships which they want in their own community—and this causes psychological harm.

EXEMPTION FOR THE AMISH

Wisconsin is contending before the United States Supreme Court that the exemption of the Amish as required by the Wisconsin Supreme Court will cause educational chaos, and other dangerous groups will rush through the open doors. Experience contradicts such an assertion. States which have granted the Amish legislative or administrative exemption report that in fifteen years there have not been other groups rushing in to seek an exemption. Also the states which do not require such high school attendance report that their rates of voluntary high school attendance is not different from Wisconsin's compulsory attendance.

It must be remembered also that the Wisconsin Supreme Court only excused the readily identifiable Amish church groups until they "pose a threat" to the state. There is no known similar group which has such unique religious requirements and constitutional claims.

The Amish still drive horses and buggies, shun modern conveniences such as electricity and telephones, wear plain clothing and observe the Bible literally, "Be ye not conformed to this world."

These "Plain People" are descendants of an impressive list of Christian martyrs. In the sixteenth century their women were buried alive and the men were put in sacks and drowned in rivers because they would not accept infant baptism and the union of church and state. They were saved from extinction by William Penn who afforded them freedom in America.

The "crime" of the Amish people today is that they are dissenting from an education that is increasingly technical, secular and materialistic. The Amish want an education that makes men good, compassionate, law abiding, heaven-preparing and able to earn an honest living. They believe that "God has shown that the world's wisdom is foolishness with God." (I Cor. 1:20).

The larger society socializes young people in a culture that stresses competitiveness, emphasizing the materialistic, pecuniary, highly technical pursuits in a teenage atmosphere of fast cars, rock music and Hot Pants. While the Amish are taught by their elders a different set of attitudes and religious values—like slowness of pace, peace, love of hard work, democratic cooperativeness, close-to-the-soil living. Sitting at a desk learning intellectual disciplines blocks Amish religious training and takes them from the training in the skills and attitudes the special life in the shops and fields requires.

(The following are summary paragraphs and excerpts of Attorney William B. Ball's defense brief for the Amish:)

Who the Amish Are. The Amish come in a familiar role: the passive and peaceful objects of civil wrath. Neither wanderers nor gypsies, but seeking always to hold fast to the land, their history nevertheless reaches back from today in Washington, D.C., and Wisconsin through yesterdays of many migrations and ultimately to the Switzerland of 1525 where their ancestors sought a return to a Golden Age. These were the "Anabaptists" who attempted, not Church reform, but restoration of a lost and primitive Christianity. To be "First Century Christians" demanded *nonconformity* to all things worldly and sinful and therefore both a life style of *austerity* and a *separated community of peaceableness and mutual aid*, the individual—*baptized only when adult*—undergoing a rebirth through Christ and the working of the Holy Spirit. See generally, F. Littell, *Secretarian Protestantism and the Pursuit of Wisdom*, Public Control of Nonpublic Schools (Erickson ed.) 61–82 (1969).)

The "separated community" implied not only separation from "the world" but also *the separation of church and state* as a safeguard of religious liberty.

From their literal reading of the New Testament ("I will destroy the wisdom of the wise, and the cleverness of the clever I will thwart . . . Has not God made foolish the wisdom of the world?" I Cor. 1:21, and ". . . I thank thee, O Father, Lord of heaven and earth, that thou has hid these things from the wise and prudent and revealed them unto babes . . ." Luke 10:21) came their sense of austerity from which flowed the "rejection of speculative philosophy and sophisticated theological reasoning" as well as rejection of technology—"opposition to the achievements of the artificer, the inventor, the scientist." Indeed it was exactly the violent persecution that well-educated authorities launched against these simple Christians that made firm their theological position and made them more determined to stress the strict moral principles of the Sermon on the Mount and the "turning of the other cheek", rather than technical cunning. Therefore, they emphasized the manifestations of God "in closeness to nature, in the soil, and in the weather, among plants and animals," [7] which were to be enjoyed and embraced.

The Anabaptists felt the fury of persecution in Europe especially for their rejecting of infant baptism, and refusal to bear arms.

"The anti-social character of these [Anabaptist] sects disturbed the Lutherans just as much as Catholics. Charles V legislated against them most rigorously. Of 877 names which appear in the Protestant martyrologies for the Low Countries, 617 were those of Anabaptists. Numerous executions took place at Louvain, Ruremonde, Maastricht, Liege, Antwerp and Bruges; the men were burned and the women buried alive. But this did not stop Mennonism and other kindred types of Anabaptism from gaining grounds . . . Slowly but surely this extremely simple form of Christianity, with its elementary dogmas, continued to spread. It was soon found in Prussia, in the duchy of Holstein, in southern Russia and in England. Crossing the Atlantic it reached North America . . ." (Danil-Rops, The Protestant Reformation)

The Anabaptists who come under the leadership of Jakob Amman (*circa* 1693), and hence were known as "Amish", migrated to America from Switzerland at least as early as 1727. They came to Pennsylvania, having selected that colony in reliance upon the pledge of religious freedom given in William Penn's "Great Law" of 1682 and the repute gained by that colony for religious freedom in actual practice. In perfect integrity, the foregoing religious beliefs, actualized in living communities, have come down to the Amish of today. To call their beliefs "nondoctrinal", or to infer that these beliefs constitute eccentric but dispensable customs, merely because they are not expressed in printed texts, decrees and regulations, is misleading. Amish "doctrine" (*i.e.*, teaching) is supremely certain and clearly known, being safeguarded to each generation by means of an *oral tradition* which contains and repeats the essential teachings. "Antiquity much preferred that which was taught from the lips of a living person and was skeptical of the written word. The same spirit prevails in much sectarian Protestantism." (See: Littell, "Sectarian Protestantism", at 76). The moral character of any "teacher" in Amish life is basic. "There is no distinct boundary between these deliberate pedagogical measures [of the oral tradition] and the teacher's way of life as a whole.' ")

Amish Education. Some contend that Amish children are consigned to a life of "ignorance" and that the Amish do not receive an "education". But these charges depend upon definitions of education and of education's proper goals. Wisconsin infers that only a secondary education which is aimed at fitting a person for acceptance and "success" in the technological society—and which comes out of books and takes place in school buildings—is a genuine education, indeed the only education which may be constitutionally enjoyed. But, as has been seen, Amish religious principles forbid the "higher learning" whether in a public high school or any other high school.

The Amish are emphatically in favor of education—but an "education for life" as seen in terms of their religious view as to how life should be lived and as to the single goal of life which is union with God. Amish education has followed the pattern of classical *wisdom* rather than *technos*. It has emphasized the moral wisdom of producing good men, rather than the technical, which can produce the competent barbarian, the intellectual rioter, the revolutionist, and the criminal.

Only if it be deemed a crime to be an Amishman, or that the Amish should have no liberty to live the Amish life, can it be said that Amish education is not a real "education". The Amish consider that the study of elementary reading, writing and arithmetic has its place in helping a child become a participating member of the community.

As has also been shown, the Amish system of education beyond the eighth grade of "learning by doing" in the agricultural life of crop-raising, animal husbandry, farm maintenance and management—coupled with living as a helping and responsible family man and neighbor in the self-sustaining Amish faith-community—may be regarded as ideal education. Surely, not all education need take place in a school. Only those will disagree who, like the State of Wisconsin, deny that there can be *different kinds of education*, or who insist that all education must be aimed at life goals dictated by the state, or who demand that values derived from science and technology, or related to consumption and competition, must be imposed upon every child. While products of Amish education measure up well in certain accepted forms of standardized testing, showing secular competence, their admirable attitudes toward nature, the ecology, war, peace, violence, lawfulness, thrift, family, marriage, hard work, and love of neighbor are the direct outflow of that great area of their educational formation which is *religious* and concerned with the possession of *wisdom*.

Amish society uniquely recognizes the desire of individuals at the dawn of young manhood and young womanhood to get on with their life's work and to be challenged by high responsibility. Adult baptism implies, for the Amish, a time of choice, and its taking place in late adolescence accords with that recognition. Far from being denied his rights at the coming of adolescence, as the State of Wisconsin charges, the Amish person begins to move rapidly into the full enjoyment of adult rights and privileges.

The Action of the State Directly Violates Amish Religious Freedom Through Penalizing, by Criminal Sanctions, the Enjoyment of Religious Liberties Related to: Worship, Parental Nurture, Individual Choice of Religion, Vocation, Communal Association, Teaching and Learning, and Privacy

The State of Wisconsin seeks to provide Amishmen with its own definition of their religion. Carefully ignoring authoritative sources, the State bids the Amish to get in line with that version of the Amish religion which the State feels it can tolerate. So, for example, the State asserts:

"The Amish may establish their own secondary schools consistent with their religious beliefs."

This, as has been seen, the Amish religion does not permit. Similarly, in lieu of Amish high schooling, the State would require public high schooling. Indeed it is because the Amish defendants in this case refused to send their children to the New Glarus Public High School that the present criminal prosecution was instituted. But in a public high school, the Amish young person plainly could not pursue the religious life which his faith requires. The State, however, telescopes these claims into "the right to worship", thus inferentially redefining the Amish religion by reducing it to one core essential and dismissing all of the other manifestations of the Amish Way as nonessential.

It is no business of the state to define men's religions. The Petitioner State can no more do away with an essential of the Amish religion than it can an essential of any other religion. Surely, the State would not be heard to redefine Orthodox Judaism so as to exclude from it the concept of authority of the Bible. The State's contracting of the essential Amish religion into an affair consisting of worship (with beards and buggies perhaps thrown in) is an effort to camouflage and minimize the scope and impact of Wisconsin's free exercise violation. That violation strikes at the following essentials of Amish religious liberty:

Worship. Worship, in Amish life, whether for the old or the young, is not confined to a "prayer period" or a weekly hour of church-attendance. Worship permeates Amish life, and in a variety of forms. The Amish society is a "ceremonial community", its religious ceremonial life being governed by the days of the week, by seasons and by the calendar. At the time of adolescence, the Amish young adult is growing rapidly in the *life of worship* of the "ceremonial community" in which harvesting, sewing and all daily work, learning and activity are consciously offered in praise and love of God. If he is forced into high schooling at this point in his life, this life of worship is very largely ousted.

Parental nurture. The Amish religion requires Amish parents to raise their children in the Amish faith. Family life is extremely strong in the Amish community, and the close bonds related to love, nurture and obedience between parent and child are considered to be founded upon the Bible.

The U.S. Supreme Court has stated that "[t]he child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." *Pierce* v. *Society of Sisters*, 268 U.S. 510, 534 (1925). While the Amish parents are in the very midst of recognizing and preparing their children for the "additional obligations" of Amish life, the State of Wisconsin seeks to stop these parents in their carrying out this work of nurture which is to them a fundamental religious obligation.

Individual religious choice. Implicit in the State's defense of its criminal prosecution is its view—based on nothing in the record—that the Amish young people in question are not able to make a real choice that they desire to follow the Amish religion and that, for religious reasons, they feel compelled to not attend high school. Upon the trial, the defense placed on the witness stand one of the three Amish children here involved, Frieda Yoder, in order that testimony representative of Amish young people of like age might be heard with respect to whether these young men and women choose to pursue the Amish way of life. Miss Yoder was fifteen, an age at which a female in Wisconsin may marry. She testified that she believed in the Amish religion, desired to pursue the Amish way of life and that going to high school would be against her religious beliefs. It is clear the one effect of enforced high schooling of Amish young people is to violate their liberty to pursue the Amish religion.

Vocation. A unique feature of the Amish religion is that it allows of but one vocation: farm life. To interfere with the vocation is to interfere with the religion. The State interferes with the farming and farm life vocations of Amish young men and women by requiring them to attend high school, this necessarily displacing (at a vital time in the young person's development and maturation) their vocational training in the Amish farming community. They are thus "prevented from learning things they must know in order to live a successful life in the Amish community." The technical skills, attitudes toward manual work, and knowledge required to live in the Amish community cannot be acquired in the classroom. "A boy learns to plow by plowing, by knowing the condition of the soil, the degrees of moisture, the weight of the plow, the temperament of the horses." (See: J. Hostetler and G. Huntington, Children in Amish Society, 102 (1971).)

Communal association. The Amish religion is a communal religion. There exists no Amish religion apart from the concept of the Amish community. A person cannot take up the Amish religion and practice it individually. The community subsists spiritually upon the bonds of a common, lived faith, sustained by "common traditions and ideals which have been revered by the whole community from generation to generation." The Amish community remains a small brotherhood where primary face-to-face relationships are essential. The Amish religion requires pursuit of the simple life of the soil and mutual assistance; it is the community which is the indispensable means for such a life. The Amish religion requires separation from the world; this separation is made possible only through the closed, symbolic community. As expert witnesses upon the trial showed the action of the State of Wisconsin directly threatens the continued existence of the Amish church-community, *which will plainly not be able to sustain itself against the disruption caused to it by the marshalling of its youth into high schools.* This Court, however, has held that there is a fundamental constitutional "freedom to engage in association for the advancement of beliefs" *NAACP* v. *Alabama*, 377 U.S. 288, 307 (1964), and that "[t]he the right of 'association', like the right of belief" is necessary to make the guarantees of the First Amendment meaningful. *Griswold* v. *Connecticut*, 381 U.S. 479, 483 (1965). In the Amish case, the right of association is inseparable from the right of free exercise of religion and must be deemed a part of the latter right, now directly attacked by the State.

Privacy. Closely related to the right of association is the right of privacy. The Amish principle of separation of the self-sustaining faith-community from the world is not based upon hatred of other human beings and arises out of no tradition of aggressions against others, or any principle of racial pride. It is based, rather, upon love of God and the belief that the life of separation, as a pilgrim people, is necessary to salvation. But here the right of privacy is also inextricably bound up with the right of free exercise of religion, since the Amish religion cannot be lived except in separation of the community from the world.

The State of Wisconsin seeks to invade the privacy of the Amish, so far as the Amish of high school age are concerned. The State makes no bones about its desire to enter into the lives of these young people, expose them to "worldly" education, fill up their minds with state-packaged learning, alien to the Amish way, which (in the phrasing of the dissenting opinion below) will "equip them for modern American life". Even the privacy of the psyche is here threatened. Amish personalities are quiet mannered, nonaggressive, considerate and careful in action; they are threatened with painful restructuring by stress upon the competition, ambition, consumerism, and speed emphasized in the larger society. For the State to reach into the Amish community with this sort of conscription of minor children is plainly to enter upon the domain of privacy of the Amish people. As has been seen, the effect will necessarily be disruptive of the Amish community, which here seeks only protection of "conditions favorable to the pursuit of happiness" among which is "the right to be let alone.",

Teaching and learning. Central to free exercise is the right of religious groups to transmit their religious beliefs and heritage to their young. Correlative to the right of the parent to teach his religion to his child is the right of the child to receive this religion—a right asserted in testimony given in this case. That the Amish religion is taught according to methods which, in considerable part, differ from those employed by other religious bodies, should in no sense be deemed to result in a diminution of those liberties for Amish people. While, for many Catholics, Jews and Protestants religious expression in the family, attendance at a parochial high school, or involvement in events at church or temple are the means whereby religion is taught and received, the Amish religion is transmitted, at the time of adolescence, through directed participation and apprenticed community activities, in addition to the formal religious teaching which is carried out in instruction for baptism and in church services. The moral example of the teacher's life is central. Thus the teaching of the Amish religion does not consist of a weekly Sunday sermon, or morning and night prayers, or an hour of religion class per day, or school instruction in secular subjects with religious insights thrown in—but instead in a constant directing, in a "school without walls", of life, in its totality, to religious ends. The State of Wisconsin would here interpose itself between parent and child in the transmitting of a sacred deposit of the Amish religion and at a supremely sensitive time in the life of the child when such interposition will interrupt and thus plainly upset and supplant (perhaps permanenty) the effort to impart the religion.

The religious liberty invasion in sum. As all three courts in Wisconsin found, the State's action, as applied to the Amish, plainly impinges upon the free exercise of their religion. They face an impossible choice: to obey the State and thereby violate their religion, or to follow their religion and thereby suffer criminal penalty. But the action of the State entails more. The Amish religion is a single fabric into which strands of worship, community, farm life, nature, parental role and the role of children are inseparably interwoven with one another, and all with the set religious teaching. The pulling out of any one strand destroys the fabric.

What is more high schooling presents the Amish with an unacceptable value system. Not only is this due to the very fact of "higher education" but to numerous specifics related to the education afforded at New Glarus High School. These pertain not only to social life, entertainment, curriculum, and the encouraging of competition, but also to the effort of that school to "teach values" with respect to life and moral conduct—without, however, offering the law of God as normative. The defense presented testimony, moreover, as to the traumatic effect upon an Amish person of fourteen or fifteen years of age caused by placing him or her in a high school. After living for that period of time within the Amish community and being completely conditioned by it, it is only logical that the most severe disturbance and alienation will result to the Amish person from the radical forced change of daily environment, especially at adolescence. As the court below truly stated,

"They would experience a useless anguish in living in two worlds. Either the education they receive in the public school is irrelevant to their lives as members of the Old Order Amish or these secondary school values will make life as Amish impossible."

The State nevertheless demands the obedience of the Amish. Placing all of the foregoing considerations of religious liberty on one side of the scale, the State says that these are outweighed by state interests so compelling as to require conformity by the Amish. While the punishment demanded by the State may have to be suffered by defendants, the State's demand that they violate their religion will almost certainly be in vain. The Amish answer to forms of legal harassment, which would force them to violate their religion, has been to sell their farms and to remove to jurisdictions, here or abroad, wherein hopefully they will be allowed peaceably to follow the will of God. While such enforced exile of the Wisconsin Amish community would constitute but one further aspect of the State's invasion of Amish freedom, it would, if this Court sustains this prosecution, sound the death knell, in this country, for an old, distinctive and innocent culture. The Amish could very soon have no place to go in this country, nowhere to be themselves, and there would take place in America yet another tragic example of the forced extinction of a culture. ("The whites were always trying to make the Indians give up their life and live like white men . . . and the Indians did not know how to do that, and did not want to anyway. . . . If the Indians had tried to make the whites live like them, the whites would have resisted, and it was the same way with many Indians." Statement of Wamditanka, Chief of the Santee Sioux, *circa* 1885, in D. Brown, Bury My Heart at Wounded Knee, 38 (1970).).

In 1849 Henry David Thoreau expressed a principle of justice profoundly relevant here:

"I please myself with imagining a State at last which can afford to be just to all men, and to treat the individual with respect as a neighbor; which even would not think it inconsistent with its own repose if a few were to live aloof from it, not meddling with it, nor embraced by it, who fulfilled all the duties of neighbors and fellow-men."

TRAGIC HEROISM

Mr. SPARKMAN. Mr. President, all too often these days, we read newspaper accounts of people being attacked on streets or in other public places within the presence or the hearing of bystanders who completely ignore the victim's plight. It would seem that many people today simply will not get involved in behalf of their fellow man.

Fortunately, everyone does not react in such a selfish way, and I feel that recognition should be given to more of the incidents that occur concerning people who do get involved with and for others. One such incident involves the late Carlton Allen Thomas, Jr., of Albertville, Ala.

On November 25, 1971, Carlton Thomas, who could not swim, plunged into the icy waters of Guntersville Lake in Alabama, trying to save the life of a man he did not know, whose car had moments before gone out of control and fallen into the lake. Carlton Thomas died as a result of this heroic act. The unselfish concern for others that was a part of Carlton Thomas' character will never be forgotten by his family and those who knew him. It should also be recognized and remembered by others. It is for this purpose and for the purpose of saluting him that I speak on this occasion.

Mr. President, the entire incident that occurred last month at Guntersville was described in an article published in the Birmingham Post Herald of November 27. 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:

MAN WHO COULD NOT SWIM DROWNS IN RESCUE ATTEMPT

GUNTERSVILLE.—A 29-year-old Guntersville man, who family members say couldn't swim, drowned in 30 feet of icy water in Lake Guntersville Thursday trying to save another man's life.

Marshall County Coroner Billy Dyar said Carlton Allen Thomas Jr., 29, of Albertville Rt. 5, drowned trying to save the life of James Breedlove of Albertville, who had lost control of his car and run off in the lake.

The accident happened at about 3:30 p.m. in the Spring Creek section of the lake off Alabama Highway 227.

Dyar and State Trooper Cpl. Larry Hardin said Thomas was traveling along the road behind Breedlove and saw him lose control and go off into the lake.

Thomas immediately stopped his car, his wife told officers, and said he was going to try to save the man whom he didn't know who had left the road. Mrs. Thomas said she urged her husband not to try the rescue because he couldn't swim, but he insisted he would be all right, she said.

Mrs. Thomas said her husband said he didn't think the water was too deep, and he was going to try and save the man.

A policeman who arrived on the scene in minutes was able to get Breedlove to shore but couldn't find Thomas.

A local rescue squad came and in their first dive, located Thomas' body.

Breedlove was taken to a Guntersville hospital where he was treated and released.

In addition to his wife, Audrey, Thomas is survived by his parents, Mr. and Mrs. Carlton Thomas.

Funeral arrangements will be announced by Adams Funeral Home in Albertville.

THE ISSUES IN THE INDIA-PAKISTAN WAR

Mr. GOLDWATER. Mr. President, having had more than a little experience in presidential election years, I know what a temptation it is to look under every rug, to listen to every whim, and to peer into every corner for issues. We have a prime example of this in presidential hopefuls now attacking the Nixon administration for action, or lack of action, or not too much action in the India-Pakistan War.

The Nixon administration's position in this unfortunate incident is, to me, sound and wise as it will not pull us into another war as we have been pulled into before by Democratic Presidents.

The best way to understand the administration's position, in my mind, is to go to the root of it, which I have done by asking the White House to send me a copy of the background briefing held December 7, 1971. The briefing, conducted by Dr. Henry Kissinger and Mr. Ronald Ziegler, points out step by step what this administration has been doing and is doing and will do, first to prevent this war, but it having started, to end it and do our best to patch up the differences that exist on that continent.

I ask unanimous consent that the background briefing and an accompanying paper entitled "The Issues" be printed in the RECORD.

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

INDIA-PAKISTAN

(Background briefing with Henry A. Kissinger)

Mr. ZIEGLER. Dr. Kissinger is here with us this afternoon. What he says to you will be background. You can attribute it to White House officials, but no direct quotations.

We have, of course, had a number of inquiries and questions about the situation in South Asia. What I am saying to you now is, of course, on background because it relates to this. We thought it might be worthwhile for Henry to come out this afternoon to discuss our views on a background basis with you to put the matter into further perspective for you.

Q. Ron, is there any necessity for no direct quotation? Could you explain why that is?

Mr. ZIEGLER. The purpose of this session is more putting our view and our position into perspective, and we would just prefer no direct quotation. I think it would be more productive for you.

Dr. KISSINGER. I thought I would talk to you about how we have approached the problem in South Asia: what we have done and what has led to the number of pronouncements that have been made by official spokesmen at the U.N. in recent days.

I do not have any organized notes, so I am going to speak to you extemporaneously, and I may refer to an occasional paper just for accuracy in the question period.

First of all, let us get a number of things straight. There have been some comments that the Administration is anti-Indian. This is totally inaccurate. India is a great country. It is the most populous free country. It is governed by democratic procedures.

Americans through all Administrations in the postwar period have felt a commitment to the progress and development of India, and the American people have contributed to this to the extent of $10 billion. Last year, in this Administration, India received from all sources $1.2 billion for development assistance, economic assistance, of which $700 million came from the United States in various forms. Therefore, we have a commitment to the progress and to the future of India, and we have always recognized that the success of India, and the Indian democratic experiment, would be of profound significance to many of the countries in the underdeveloped world.

Therefore, when we have differed with India, as we have in recent weeks, we do so with great sadness and with great disappointment.

Now let me describe the situation as we saw it going back to March 25th. March 25th is, of course, the day when the central government of Pakistan decided to establish military rule in East Bengal and started the process which has led to the present situation.

The United States has never supported the particular action that led to this tragic series of events, and the United States has always recognized that this action had consequences which had a considerable impact on India. We have always recognized that the influx of refugees into India produced the danger of communal strife in a country always precariously poised on the edge of communal strife. We have known that it is a strain on the already scarce economic resources of a country in the process of development.

Therefore, from the beginning, the United States has played a very active role in attempting to ease the suffering of the refugees and the impact on India of this large influx of unexpected people. The United States position has been to attempt two efforts simultaneously: One, to ease the human suffering and to bring about the return of the refugees; and secondly, we have attempted to bring about a political resolution of the conflict which generated the refugees in the first place.

One of the difficulties has been that the time required to bring about a political evolution is somewhat longer than what is needed to be done immediately to bring about an easing of human suffering.

Now, you have been given by Ron the figures of what we have contributed, but let me summarize them and let me refer here, because I do not have them all in my head.

There were two aspects to the refugee problem: One, taking care of the refugees that were inside India; and secondly, to avert conditions inside East Pakistan that would generate more refugees, particularly to ease famine conditions. We committed $90 million for the support of the refugees in India and $155 million to avert famine in East Pakistan, which is more than the rest of the world has done combined.

I might add that the sums that have been devoted to averting famine in East Pakistan have been contributed at the specific request of the Indian Government, which was concerned that there would be another major outflow of refugees which would make their problem totally unmanageable.

The President has requested Congress, in the present AID appropriation, for an additional $250 million to continue this work, and this is in addition to food shipments which we were prepared to make. In other words, the United States has contributed $500 million for the relief of refugees and to ease suffering in India, and to prevent more refugees from coming into India.

The United States also financed the chartering of 26 vessels to increase their capacity to transport grain from ocean ports into the interior of East Pakistan. We will give you a breakdown of all of these figures, but we wanted to give you a flavor of what was done.

Now, the United States did not condone what happened in March 1971; on the contrary, the United States has made no new development loans to Pakistan since March 1971.

Secondly, there has been a great deal of talk about military supplies to Pakistan. The fact of the matter is that immediately after the actions in East Pakistan at the end of March of this past year, the United States suspended any new licenses. It stopped the shipment of all military supplies out of American depots or that were under American governmental control. The only arms that were continued to be shipped to Pakistan were arms on old licenses in commercial channels, and those were spare parts. There were no lethal end-items involved.

To give you a sense of the magnitude, the United States cut off $35 million worth of arms at the end of March of this year, or early April of this year, immediately after the actions in East Bengal, and continued to ship something less than $5 million worth; whereupon, all the remainder of the pipeline was cut off. In other words, when one is reading some of the commentaries, the impression is created that we were equipping four armored divisions. The fact of the matter is that $35 million worth of arms were cut off immediately, and the only thing that was continued to be shipped was something less than $5 million—I don't have the precise figure; I think it is between $4 and $5 million—of spare parts that were in commercial channels under existing licenses.

So I believe it is correct to say that the United States, by its actions, took a stand, starting in March of this year; and that the United States did indicate, through its performance, what evolution it wanted to take, and that the United States has made a greater contribution than the rest of the world combined to ease the suffering in India and Pakistan, but especially the suffering generated by the actions of the end of March.

Now, then, we come to the problem of political evolution. What has the United States done in this respect?

It is true the United States did not make any public declarations on its views of the evolution, because the United States wanted to use its influence with both Delhi and Islamabad to bring about a political settlement that would enable the refugees to return. At the request of the President, this was explained by me to the Indian Foreign Minister and to the Indian Prime Minister when I was in New Delhi in early July, and both indicated that they understood our decision in this respect and made no criticism of our decision.

They did make a criticism of the arms shipments. Secondly, we consistently used our influence that we gained in this manner to urge the Government of Pakistan in the direction of a political evolution. We urged the Government of Pakistan and they agreed that relief supplies be distributed by international agencies, in order to take away the criticism in East Pakistan that they might be used to strengthen the central authority, and the Government agreed that a timetable be established for returning Pakistan to civilian rule. That was supposed to be done by the end of December.

We urged a mutual withdrawal of troops from the border, and when India rejected this, we urged a unilateral withdrawal of Pakistan troops from the border, and that was accepted by Pakistan and never replied to by India.

We urged an amnesty for all refugees, and that was accepted.

Q. By whom?

Dr. KISSINGER. By Pakistan. There are no refugees from India in Pakistan.

We urged Pakistan to extend an amnesty to all refugees so that they could return without fear of reprisals.

We went further. We established contact with the Bangla Desh people in Calcutta, and during August, September and October of this year no fewer than eight such contacts took place.

We approached President Yahya Khan three times in order to begin negotiations with the Bangla Desh people in Calcutta. The Government of Pakistan accepted. We were told by our contacts in Calcutta that the Indian Government discouraged such negotiations. In other words, we attempted to promote a political settlement, and if I can sum up the difference that may have existed between us and the Government of India, it was this:

We told the Government of India on many occasions—the Secretary of State saw the Indian Ambassador 18 times; I saw him seven times since the end of August on behalf of the President. We all said that political autonomy for East Bengal was the inevitable outcome of a political evolution, and that we favored it. The difference may have been that the Government of India wanted things so rapidly that it was no longer talking about political evolution, but about political collapse.

Without attempting to speculate on the motives of the Indian Government, the fact of the matter, as they presented themselves to us, was as follows: We told the Indian Prime Minister when she was here of the Pakistan offer to withdraw their troops unilaterally from the border. There was no response.

We told the Indian Prime Minister when she was here that we would try to arrange negotiations between the Pakistanis and members of the Awami League, specifically approved by Mujibur, who is in prison. We told the Indian Ambassador shortly before his return to India that we were prepared even to discuss with them a political timetable, a precise timetable for the establishment of political autonomy in East Bengal. That conversation was held on November 19th. On November 22nd, military action started in East Bengal.

We told the Pakistan Foreign Secretary when he was here that it was desirable on November 15th; that we thought it was time for Pakistan to develop a maximum program. He said he could not give us an answer until the week of November 22nd when he would return to his country. He also pointed out to us that there would be a return to civilian rule at the end of December, at which time it might be easier to bring about such matters as the release of Mujibur, whose imprisonment had occurred under military rule.

This information was transmitted, and military action, nevertheless, started during the week of November 22nd. So when we say that there was no need for military action, we do not say that India did not suffer. We do not say that we are unsympathetic to India's problems or that we do not value India.

This country, which in many respects has had a love affair with India, can only, with enormous pain, accept the fact that military action was taken in our view without adequate cause, and if we express this opinion in the United Nations, we do not do so because we want to support one particular point of view on the subcontinent, or because we want to forego our friendship with what will always be one of the great countries in the world; but because we believe that if, as some of the phrases go, the right of military attack is determined by arithmetic, if political wisdom consists of saying the attacker has 500 million and the defender has 100 million, and, therefore, the United States must always be on the side of the numerically stronger, then we are creating a situation where, in the foreseeable future, we will have international anarchy, and where the period of peace, which is the greatest desire for the President to establish, will be jeopardized; not at first for Americans, necessarily, but for peoples all over the world.

I have taken the liberty of coming in here to explain our point of view. You can see the necessity for a background basis, because there have been misconceptions of what we have done and of our motives. I have given you extemporaneously this brief sketch, and now I will be glad to answer any questions, or to go into more detail.

Q. Why was the first semi-public explanation of the American position one of condemning India, and why this belated explanation that you are now giving? The perception of the world is that the United States regards India as an aggressor; that it is anti-India, and you make a fairly persuasive case here that that is not the case. So why this late date?

Dr. KISSINGER. This is the highest praise I have ever had from Peter Lisagor. (Laughter)

We were reluctant to believe for a long time that the matter had come down to a naked recourse to force, and we were attempting for the first two weeks of the military operations to see what could be done to quiet it through personal diplomacy conducted by the Department of State.

We made two appeals to the Indian Prime Minister. We appealed also to the Pakistan President, and we appealed also to the Soviet Union.

Now, then, on Friday the situation burst into full-blown war and it was decided to put the facts before the public. Now, I cannot, of course, accept the characterization that you made of the way these facts were put forward; that they were put forward as anti-Indian.

Q. I said the perception of the world public was that the United States was anti-Indian because of the nature of that first background briefing at the State Department on Friday.

Dr. KISSINGER. We are opposed to the use of military force in this crisis, and we do not believe that it was necessary to engage in military action. We believe that what started as a tragedy in East Bengal is now becoming an attempt to dismember a sovereign state and a member of the United Nations.

So the view that was expressed on Saturday is not inconsistent with the view that is expressed today. What was done today is an explanation of the background that led to the statement on Saturday, and it might have been better if we had put the whole case forward.

Q. If I understand what you said, you said prior to the outbreak of full-scale hostilities between India and Pakistan that the Pakistani Government had assured the United States that it was going to take a number of steps, including return to civilian rule by the end of this month, to enter into negotiations with the Bangla Desh representatives operating in Calcutta, to withdraw its troops from the borders unilaterally. Do you know at this point whether any of those commitments by the Pakistani Government still stand? If the war can be stopped some way, are they still willing to do all those things?

Dr. KISSINGER. In fairness, let me put these into perspective, these various things.

The unilateral withdrawal, that was without any qualifications. The willingness to talk to the Bangla Desh people involved a disagreement between the Indians and the Bangla Desh on the one side, and the Pakistanis on the other. The Indians took the view that the negotiations had to begin with Mujibur, who was in prison.

What we attempted to promote was a negotiation with Bangla Desh people who were not in prison, and who were in Calcutta. The Pakistanis said they would talk only to those Bangla Desh people who were not charged with any particular crime in Pakistan, and I don't know whom that would have excluded.

But I think that part of it was not the breakdown. What created the major difference between us—not us so much, because we were not a party; we were just trans-

mitting information—between those who wanted to get negotiations started and the Indian side, was that the Indians took the view that the negotiations had to begin with Mujibur.

Let me go off the record here for a minute.

We took the view that once negotiations started, the release of Mujibur would be an inevitable consequence after some period of time, and, therefore, we felt that the most important thing was to get the negotiations started.

This part I consider off the record. It is simply for your understanding. I think it is safe to say the Indian side wanted a maximum of rapidity, and perhaps more speed than the Pakistan political process would stand. We were urging movement at the greatest speed that the Pakistan political process could stand. We felt that one way to resolve this would be for the Indians to give us a timetable of what they would consider a reasonable timetable, and this was raised first when I was there in the summer, and received no clear reply. It was raised again with the Indian Ambassador just before he left, and it was not answered.

So we never got a concrete expression of what the difference in time was. They knew that we believed that political autonomy was the logical outcome of a negotiation. Do these offers still stand? I don't know. [End off the record.]

We would be prepared, certainly from our side, if the fighting stopped and there were a withdrawal of forces, if anything, to redouble our efforts to move matters in the direction in which I have indicated.

Q. Is it a fact that two other factors that you did not deal with in your opening remarks here were also major causes in your and the President accepting India as an aggressor—that is, accusing India as an aggressor—the fact that (1) to do otherwise might lead to a collapse of the President's trip to China and the often stated in print personal preference of the President and you for General Khan over what were considered to be the unrealistic leaders in New Delhi?

Dr. KISSINGER. With respect to the first question, we do not have the impression that the Peoples Republic of China considers agreement with us a prerequisite for a successful visit on other issues in the United Nations, and, therefore, we do not consider that the Peoples Republic of China has a veto over our policies.

In short, our policy has been consistent. We have told the Indian Government all summer long that we want or favored political evolution leading toward autonomy; and secondly, that we were opposed to the use of military force, and we did this quite independent of what the Chinese views might be. We had no advance information of what position the Chinese would take at the United Nations, and we operated quite independently.

Secondly, speaking first about myself, the first time I visited the Indian subcontinent I was the subject, in 1962, as can easily be checked in newspaper files, to the most violent newspaper criticisms in Pakistan for my allegedly Harvard-produced preference for Indians, and so much so that I even suggested that I might cancel my visit to Pakistan.

There is no personal preference on my part for Pakistan, and the views that I expressed at the beginning, of the American position—that is, about the crucial importance of India as a country in the world and in the subcontinent—have always been strongly held by me, and I, therefore, enthusiastically support those as an expression of bipartisan American policy in the postwar period.

As for the President, I was not aware of his preference for Pakistan leaders over Indian leaders, and I, therefore, asked him this morning what this might be based on. He pointed out—as you know, I was not acquainted with the President before his present position—but he pointed out to me that on his trip in 1967, he was received very warmly by the Prime Minister and by the President of India; that the reports that he was snubbed at any point are without any foundation, and that in any event, the warmth of the reception that we extended to the Indian Prime Minister two weeks before the attacks on Pakistan started should make clear what enormous value we attach to Indian friendship.

While I can understand that there can be sincere differences of opinion about the wise course to take, I do not think we do ourselves any justice if we ascribe policies to the personal pique of individuals. Besides, the charge of aggression was not made in this building in the first place.

Q. Was there a failure of understanding between the President and the Prime Minister when she was here last month; a failure of understanding of what this country wanted and what she was planning to do?

Dr. KISSINGER. We explained to the Indian leaders, the President did and so did the Secretary of State, exactly what our position was. We pointed out the offers that had been made. We were not given any reply to the offers, and we were not given the slightest inkling that such a military operation was in any way imminent; indeed, in the interval between her departure and the beginning of military operations, we did three things:

One, we attempted to promote these negotiations between the government in Islamabad and Bangla Desh representatives approved by Mujibur. We did not get the agreement of the government in Islamabad, at the time the war had broken out, to that procedure. I am just saying what we were trying to do.

Secondly, we urged very strenuously on the Pakistan Foreign Secretary when he was here that the greatest possible number of concessions that could be made were urgently required and we were promised an answer, as it turned out, for the week that the military attacks took place.

Thirdly, and I did not mention this before, we had the approval of the Government of Pakistan to establish contact with Mujibur through his defense lawyer. All of these facts were communicated to the Indian Government, and nevertheless, military attacks took place.

Q. Dr. Kissinger, I would like to ask you a clarifying question about something you said just a moment ago.

You said that the charge of aggression was not made in this building. Two questions about that. One,——

Dr. KISSINGER. We do not disagree with it, but it was in reference to a point that the President and I have an anti-Indian bias.

Q. Does this carry the implication that you are putting the responsibility for that original charge of aggression on the State Department? That is my first question.

Dr. KISSINGER. No. There is a united governmental view on it.

Q. Secondly, I am still trying to clarify the question in Mr. Lisagor's mind and others, Mr. Ziegler did say in Florida on Saturday that India had engaged in a massive military action and he used the word "massive" which sounds like this building to us.

Dr. KISSINGER. Sounds like a what?

Q. Like a charge of aggression from this building, to me, at least.

Dr. KISSINGER. We don't disagree with it. I was trying to explain that this was not a personal idiosyncrasy. The phrase "massive military action" that Ron Ziegler used was a quote from an official Indian statement saying that massive military operations have begun in East Pakistan and Ron was simply referring to the quote from the Indian officials' statement.

Q. Dr. Kissinger, would you clarify the situation on the negotiations between the Islamabad Government and Bangla Desh? How much did they agree to do? I seem to be totally confused on what you said. Did the Government agree to negotiate with Bangla Desh representatives approved by Mujibur?

Dr. KISSINGER. No. That was a point which we were still trying to get accomplished. They had said they would consider it. They had agreed to talk to Bangla Desh representatives.

Q. Why, then, were you so certain that the results of these negotiations for which apparently you had no assurances would end in autonomy?

Dr. KISSINGER. Wait a minute. We had assurances for negotiations between the Bangla Desh people and Islamabad. We did not have assurances yet that Mujibur would select the negotiator.

Q. What, then, was the basis of your belief that the result of these negotiations would in fact be autonomy for East Pakistan?

Dr. KISSINGER. I didn't say that this would in fact be the case. I said that we had said we would support this, that we would use our influence in Pakistan to help bring this about and that we were willing to listen to a specific timetable.

Q. I thought you said that——

Dr. KISSINGER. I said it was our personal judgment; that could not be proved, and it was off the record, that it was likely that once negotiations started and were showing some progress that it would lead to the release of Mujibur, but we don't insist on this.

Q. I thought you said it was inevitable.

Dr. KISSINGER. I said off the record, that it was our judgment that the inevitable outcome would be political autonomy for East Pakistan and we had talked in this sense to the Government of Pakistan and they had in fact proclaimed that they were prepared to grant political autonomy for everything but foreign policy, defense, and currency, I believe.

Q. We have been very much involved in the negotiations, from what you say.

Dr. KISSINGER. Not on substance.

Q. Not on substance? Autonomy for East Pakistan, et cetera?

Dr. KISSINGER. Well, the negotiations had never, in fact, started.

Q. Well, in arranging them. The question I really have is: Today there is a report that Yahya Khan has called for assistance from East Pakistan in forming a coalition government. Is this in accordance with the path we were following and our goals? Did we approve this and is it encouraging in any way?

Dr. KISSINGER. We cannot accept the position that we are responsible for every detail of this negotiation. We, in general, have encouraged the return to civilian government. I do not want to go into the details of the political moves that are now being made. We were not in the position where we were taking responsibility, as a country, for every move in this negotiation. I was simply trying to explain, one, that we did show humanitarian concern, two, that we did take action at the end of March with respect to the East Bengal situation, three, that we did try to bring about the political conditions in East Pakistan that would make it possible for refugees to return.

The details of the negotiations would have had to be between Islamabad and the Bangla Desh and whether one particular government or another is the right mix is a detail into which we cannot go, particularly since I have not studied this now.

Q. May I follow that up? Were we then actually attempting to play the same role in South Asia as we have attempted to play in the Middle East, that of an honest broker? Is that what you are telling us?

Dr. KISSINGER. We were attempting to promote a political evolution which would make recourse to war unnecessary. We recognized that India had a major problem. We recognized that the conditions in East Bengal

made it difficult for the refugees to return and we tried for humanitarian and other reasons and in order to preserve the peace, to bring about a humane and peaceful solution.

What we are saying now and what we said on Saturday was that the peaceful means had not been exhausted and that in the circumstances that existed on November 22 and November 29, the use of military force was not justified. That is the basis for our position and that has nothing to do with any preference for one country or another. It has to do with the impact on the peace of the world of such matters.

Q. Is it your judgment that the Indians were never interested solely in political autonomy for Bangla Desh, but wanted this——

Dr. KISSINGER. I cannot speculate on this. We have certainly told them from the beginning what we were willing to do and I don't want to speculate on that.

Q. Regardless of who was to blame for the breakdown in the negotiations you referred to, do you and the President feel personally that India is the sole aggressor in the current outbreak of hostilities?

Dr. KISSINGER. I can only repeat—I don't want to use emotionally-charged words—we are saying that military action was not justified. We are saying that there should be a cease-fire and a withdrawal of forces, after which the political evolution which we have described should be addressed with even greater vigor than before.

Q. Henry, what explanation, if any, have we received in the United States from India as to why it did resort to military action?

Dr. KISSINGER. We have received no explanation.

Q. Henry, in the beginning you talked about using our political influence with the Pakistanis as one of the reasons why we did not do anything in public; we were working privately. Can you give us any concrete illustration of where that private political influence was successful, other than promises which were either not kept or impossible to keep because of the problems that occurred subsequently?

Dr. KISSINGER. Now, wait a minute, we are not talking about promises that were not kept. Let me mention a few of the things that had been accomplished since May 1: The fact that all of the relief supplies, the relief supplies in East Pakistan, were distributed through international agencies; the announcement of a timetable for the return to civilian rule; the replacement of the military governor who had been in charge at the time that the Pakistan Army moved in at the end of March; the replacement of that military governor in East Pakistan and the establishment of a civilian governor; the declaration of amnesty; the willingness to talk to Bangla Desh representatives, even if there might have been some dispute about who they were, it never even reached that point because the thing aborted before candidates for the negotiations were ever presented by the Bangla Desh people or rejected by the Pakistanis. They never rejected anybody. The willingness to let us establish contact with Mujibur by talking to his defense attorney; the indication that substantial political autonomy would be granted to East Pakistan—all of these, I am not saying they did them only because we urged them, but it is true that they were always done after we urged them.

But I don't want to speak for the Pakistan Government and claim that everything they did was as a result of our urging, but all of these actions I have mentioned occurred after we recommended them.

Q. Do you feel that Madam Gandhi betrayed us?

Dr. KISSINGER. I would not use such words.

Q. Did she give any indication that she would seek a peaceful solution and instead do something else?

Dr. KISSINGER. All I can say is we had no reason to believe that military action was that imminent and that we did not have some time to begin to work on a peaceful resolution.

Let me make it clear, we recognize that there was not an unlimited period of time, but it seemed to us that either they could have given us a timetable or one could have waited for the return to civilian rule which was only three weeks away, to see whether that would bring about a change in the situation by bringing to the forefront individuals less intimately connected with the events that brought about the difficulties.

Q. Henry, you said earlier that we have had contact with the Soviet Union, consultations with them on the problems there. Were they aware of our actions and the progress and the hopeful circumstances as time went along, from March up until the shooting started Friday?

Dr. KISSINGER. I think they were generally aware.

Q. Were they kept aware?

Dr. KISSINGER. Well, maybe not of every last move, but I think they were aware of our general approach.

Q. What was their attitude as far as it was given to us, can you tell us?

Dr. KISSINGER. They took a formal "hands-off" attitude which may or may not have had the practical consequence of at least not discouraging what happened.

Q. What impact do you think the crisis will have on our relations with the Soviet Union now? Do you think it might have an impact on the President's trip to Moscow, for example?

Dr. KISSINGER. We believe that the basis of a peaceful evolution with the Soviet Union requires that both countries exercise great restraint in the many crisis areas around the world and that they both subordinate short-term advantages to the long-term interests of peace.

We certainly are making a great effort. We may not always succeed, but we are making an effort to approach problems everywhere, including in South Asia, with this attitude. As I have pointed out in innumerable backgrounders, the attempt to achieve unilateral advantage sooner or later will lead to an escalation of tensions which must jeopardize the prospects of relaxation. We hope that the Soviet Union will use its undoubted influence to approach problems in the subcontinent in the same spirit and not to jeopardize the very hopeful evolution that has started by a short-term approach, but we are still waiting to see. We have no judgment yet.

Q. Is it a proper role for a great nation which has maintained a posture of impartiality in South Asia for about 25 years now to take a side or to appear to take a side in this present crisis?

Dr. KISSINGER. Well, we have attempted to alleviate the suffering and we have attempted to be true to our principles of giving people an opportunity to determine their political future, but we have not done it in a pressing way. We have done it in an attempt to preserve the peace with the approval of both sides. With respect to the immediate issue which is before the United Nations, we have an obligation to make clear for the sake of peace that we do not favor recourse to military forces as a member of the United Nations, and as one of the principal countries in the world.

So, you have to separate, Peter, our attitude towards the overall problem from our attitude towards the immediate problem. On the immediate problem the facts are that, one, the vote in the Security Council has been 11 to 2. There were only two countries against our position—the Soviet Union and Poland. Eleven other countries supported our position. It is not our position. It is not a quarrel between us and India. It is our attempt to make clear to the world community that we do stand for a peaceful resolution of disputes, and it would be wrong to say one side has 600 million, and whoever has the power to settle disputes by force should do it. That would lead to international anarchy.

So what was said on Saturday refers to the military actions that are now taking place, and what was said today was to put our overall attitude in its right perspective.

Q. Why didn't you do that Saturday? You said a while ago it might have been better if you had.

Dr. KISSINGER. Because we thought that what was done on Saturday would take care of the then existing problem. There was no profound reason.

The PRESS. Thank you.

THE ISSUES

The policy of this Administration toward South Asia must be understood. It is neither anti-Indian nor pro-Pakistani.

Americans through all administrations in the post-war period have felt a commitment to the progress and development of India.

India is the most populous free country in the world. It is the world's largest working democracy.

The American people in the post-war period have contributed some $10 billion to the progress and development of India.

Last year in this Administration, India received from all sources $1.2 billion for development assistance. $700 million dollars of that came from the United States in various forms.

In short, the United States has always recognized that the success of India and India's democratic experiment would be of profound significance to many countries in the underdeveloped world.

The issue today is not opposition to India but opposition to the use of armed forces across borders to change the political structure of a neighboring state.

There is no question that the events in East Pakistan since March 25 require a political solution. The position of the United States has been that any solution must be worked out between the people of East and West Pakistan. The United States has not supported the particular solution that was attempted in March. The United States has also recognized that events there—principally the influx of refugees into India—imposed a substantial burden on India. We have recognized that it imposed a strain on the already scarce economic resources of that developing country and created the danger of communal strife there.

U.S. STRATEGY

What has been the Administration's strategy? United States has attempted two efforts simultaneously:

On the one hand, the Administration has made a major humanitarian effort (a) to ease the suffering of those refugees who had already fled their homes and (b) to avert the possibility of famine in East Pakistan which could have created more refugees.

On the other hand, we have attempted to bring about a political resolution of the conflict which caused the refugees to leave their homes in the first place.

The US recognized that the time required to bring about a political evolution would be longer than the time required to alleviate the immediate suffering of human beings and also might be longer than the Indian capacity to withstand the pressures generated by the refugees.

HUMANITARIAN

Nevertheless, the President directed an all-out effort to cope with the humanitarian problem (a) because of the simple human need to alleviate suffering and (b) the necessity to lessen the political pressures

generated by the refugees in order to buy time for the necessary political evolution.

We committed $90 million for the support of the refugees in India and $155 million to avert famine in East Pakistan. [Note: The problem in India was to care for upwards of 5 million refugees during this period. The problem in Pakistan was to avert famine for a province of 60–70 million people.]

The President requested the Congress to appropriate under the Foreign Assistance Act an additional $250 million to continue this work. He made clear that this would be supplemented by food shipment as necessary.

In short, the United States has committed or has in prospect some $500 million for the relief of refugees already in India and to prevent more refugees from coming into India, and to create a framework within which normal political and Administrative life could return to East Pakistan.

This humanitarian effort by October had assured that there would be no province-wide famine in East Pakistan. There would be no new flood of refugees from hunger.

DEVELOPMENT ASSISTANCE AND MILITARY AID

At the same time, the Administration did not support what was done in East Pakistan.

No new development assistance has been committed to Pakistan since March. All of the economic assistance committed has been for the purpose of relief in East Pakistan.

The Administration also began the prospect of restricting military supplies immediately after the outbreak of fighting in March The U.S. immediately suspended the issuance of any new licenses for Munitions List exports and stopped the shipment of military supplies out of American depots that were under American governmental control. It stopped renewing old licenses. This immediately ended the prospect of some $35 million worth of arms in early April. In the months that followed old licenses progressively expired until the pipeline was dried up at the end of October. During these intervening months only some $5 million worth of spare parts were shipped to Pakistan on old licenses in commercial channels. There was no lethal equipment involved.

POLITICAL

As has been said, the Administration recognized that the problem was essentially one of political evolution. There were limits on what an outsider could achieve in this field because the problem was essentially an internal problem of Pakistan. The United States did not make any public declarations of its views on the kind of political settlement required because the United States wanted to retain influence both in New Delhi and in Islamabad to bring about a political settlement that would enable the refugees to return.

This was explained to the Indian Foreign Minister here in June and to the Indian Prime Minister in New Delhi in July.

The government of Pakistan agreed to a number of steps that could facilitate a return to normal conditions in East Pakistan: They agreed that relief supplies should be distributed by international agencies in order to increase assurance of their fair distribution. The government of Pakistan agreed that a timetable would be established for returning to civilian rule by the end of December. The government of Pakistan announced an amnesty for refugees, established a civilian governor in East Pakistan and finally, as tension mounted this fall, accepted the idea of a unilateral pullback of Pakistan troops from the border.

The Administration also established contact with the Bangla Desh people in Calcutta in August, September and October. President Yahya expressed his willingness to begin negotiations with those in Calcutta who had not been charged with crime in Pakistan. The Administration understood that the Indian government discouraged such negotiations.

In short, the Administration attempted to supplement the political process in Pakistan with negotiations between the government of Pakistan and those Pakistanis outside Pakistan. The government of India was aware of this exercise and was invited to help make it a serious negotiation. The Administration also told Prime Minister Gandhi when she was here of Pakistan's offer to withdraw its troops to the border, but there was no response.

No one claims that the negotiating procedures were adequate or that they had achieved the necessary. The point is that efforts were made at negotiation and that there was little effort in India to make those potential negotiations the principal vehicle of their policy.

SUMMARY

In summary, the Administration:

Through humanitarian efforts sought to achieve a framework which would allow sufficient time for a political solution;

Supplemented the political process already going on within Pakistan by seeking to facilitate a serious negotiation between the government of Pakistan and Bangla Desh leaders outside;

Painstakingly, though unsuccessfully, sought India's cooperation in making the necessary political process succeed;

Put forward numerous proposals to reduce military tension which threatened to disrupt the political process—proposals which were by and large accepted by Pakistan and ignored by India.

In short, the Administration made energetic efforts towards the achievement of a peaceful solution. Throughout the process, India refused to contribute in a constructive way and instead chose to resort to armed force to achieve its objectives. It is the U.S. view that India's recourse to military action was unjustified. Under these circumstances, the American people cannot but question the use to which extensive U.S. economic assistance to India will be put. If the U.S. were to accept the principle that "might makes right" and that a nation, by greater numbers and power, can impose political solutions on its neighbors, then anarchy must ensue.

THE FINAL TRAGEDY OF THE VIETNAM WAR

Mr. MONDALE. Mr. President, almost a year ago I read to the Senate a letter from a mother in Minnesota. Her son was killed in Vietnam in December 1970. This is a part of what she wrote me:

> We have just buried my son, who never had a chance to hold his baby daughter in his arms . . . Mike went not believing in the cause but only because he felt he was no better than anyone else who was forced to go.
>
> From the outpouring of sympathy from our relatives, friends and total strangers, I realize the people want an immediate withdrawal so no more will die in vain.
>
> Please lead the people of this truly great country in a cry for immediate withdrawal so no more sons, brothers, and fathers will die in vain.

I said then, a year ago, that all of us—the Congress as well as the President—had to answer this mother.

But we have not answered her plea. And our failure will earn for all of us a cruel indictment in history.

As I said in that speech a year ago, this issue is far beyond partisan differences. It can never be simply Johnson's war or Nixon's war. This tragedy is the responsibility of every public official—including myself—who watched it begin and go on and on.

Some of us may have had doubts in the early years, but we found reasons to hesitate, reasons to go along.

Just as I suspect so many of us are going along now, mercifully returning to other business because we somehow believe that this horrible war is no longer an issue. And our escape now is no less blind or irresponsible than the rationalizations so many of us made in supporting the war earlier.

That mother in Minnesota, and too many others like her around the country, know what we have preferred to forget—that behind all the talk about winding down the war, behind all the claims of progress in declining casualty rates, behind all the seeming public apathy is the inexcusable fact that their sons, brothers, and fathers are still dying and suffering in this war.

For 1971, through November 20, the Pentagon informs me that only 1,355 Americans have died from hostile action in Indochina. It is even hard nowadays to find the casualty figures tucked away in the back pages of the newspaper or spoken as an incidental item on television news programs.

But how can we pretend that those 1,355 lives are incidental items for the men who died, for their loved ones, or indeed for a country whose historic greatness is supposed to be the value it places on the individual human being.

Since 1969, only 207 young men from my State of Minnesota have been killed in action in Vietnam. Yet how is any one of these deaths less painful, how can any one be less an issue for this Government, simply because it is a part of a dropping line on casualty charts in the Pentagon?

What does it say about us as a people that we turn our backs, that we go along to other business, that we let this nightmare continue one more day, because 1,355 Americans are somehow a better, more acceptable number than 9,000 or 15,000? Have we become so numb by the carnage of the last several years that American boys can go on dying so long as their numbers are below some gruesome threshold of public outrage?

It is not only our own loss we have tried to put out of our minds. The dehumanized illusions of "progress" in ending the war also hide the terrible toll of what we are doing to others.

A recent Cornell University study on the air war in Indochina tells us that civilian casualties in Laos have totalled 10,000 more in the period 1969 to 1971 than in the earlier period 1965 through 1968. That study estimated that throughout Indochina an average of 130,000 civilians have been killed, wounded, or refugeed each month since 1969. That compares to an estimated 98,000 each month during the period 1965–68.

According to Senator KENNEDY's Subcommittee on Refugees, the number of refugees in Laos since 1969 has grown to twice the total number during the period from 1965 through 1968. Homeless victims of the war in Laos now number more than 10 percent of the population of that country. Senator KENNEDY told us last April that our bombing in Laos is responsible for at least 75 percent of these refugees.

If one is a villager in Laos, Cambodia, or South Vietnam, the terror of this supposedly disappearing war is greater than ever before. According to our own official Department of Defense figures, the United States dropped 400,000 tons of bombs more in the period 1969 to the present than in the period 1965 to 1968. The tonnage totals for the period since 1969 are greater than those of all the bombs we dropped in World War II and the Korean war combined.

Or to put it another way, every month our bombs are falling on Indochina at the equivalent tonnage of twice the nuclear bomb we dropped on Hiroshima.

Of course there is no end to these numbers games. This administration and its supporters—like the last administration and those of us who supported it—can always summon reassuring statistics. The sorties are substantially down, they tell us; the casualties are low; the troops are withdrawing; the other side is exhausted; and the end is in sight.

And so it may be.

Perhaps this President will find a way to make the war disappear before the American people by the time he faces them for his reelection. Perhaps this Congress will find a way to explain to its constituents why it has not been able to cut through all the words and claims to end this war thousands of lives and billions of dollars earlier than the President would end it.

But I do not think those answers are ever going to be enough for the mother in Minneapolis. Her son's death was one of those lonely single tragedies lost in statistics that just need not have happened. For her and others like her, there will be no explanation slick enough to conceal the truth that when they cried out, no one really listened.

I do not know—nor, I suspect, does President Nixon know—exactly what will happen in Indochina when we have finally gone. But the odds are that we will leave behind there largely the same corruption and turmoil and unhappiness that we came upon more than a decade ago.

I am afraid that when that depressing fact sinks in on the American people—when they know at last the awful truth that we really had no business there and that we made so little difference in the long run—there will be no comfort in comparative casualty rates or the dropping lines on Pentagon graphs.

Then the American people are going to see clearly that their Government too long lacked the courage to face the facts, and that it too long asked American sons, brothers, and fathers to die for that lack of courage.

One of the final casualties of this war will surely be the belief of the American people in all of us in public life. And one of its ultimate tragedies will be that this casualty, like the others, could have been avoided.

U.S. RELATIONS WITH LATIN AMERICA

Mr. JAVITS. Mr. President, on December 6, David Rockefeller, the honorary chairman of the Council of the Americas, made an enlightened address about U.S. relations with Latin America. Mr. Rockefeller called for a new cooperative effort between the nations of North and South America—an Alliance for Development.

In describing this concept, Mr. Rockefeller stated:

It should embrace political development, economic development, and social development. To accomplish this far reaching goal, it would have to draw together business and governments—organizations and people—universities and international agencies. Only through such concerted efforts can it expect to overcome the common and inter-related problems that have stalled true development as one sector or the other sought domination.

Mr. Rockefeller also had some wise words on the future role of private capital in Latin America and continuing U.S. private sector involvement in the area.

I ask unanimous consent that his speech be printed in the RECORD.

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

REMARKS BY DAVID ROCKEFELLER

Seven years ago this week, I was one of a group of businessmen who had an appointment with the President of the United States. We were to discuss ways in which the U.S. Business Group for Latin America could help to realize the goals of an ambitious program—an Alliance between the free and independent countries of the Southern and Northern continents of America to assure the economic and social advancement of all the people.

President John F. Kennedy was unable to keep that appointment, having decided at the last moment to go to Dallas. The next day, he met his tragic end; so that our group never did meet with President Kennedy. Although the idea of government-business cooperation in Latin America was picked up and actively pursued by President Johnson and his Administration.

Regrettably, the main thrust of his Alliance for Progress, which started with such promise, has since been blunted, deflected and largely dissipated by a steadily rising demand for nationalization in Latin America and, more recently, by a short-sighted reversion to "Fortress America" sentiment here at home. Nevertheless, the Alliance in its conception, despite its critics then and now, was a significant move in the right direction.

That Alliance bound us together for a while in a single purpose—to make human existence throughout the Americas something more than merely scratching out inadequate food from the barren soil of the hills. It held out the hope that being alive in the Americas need not mean the wail of hungry children or the unbearable knowledge that there would not be enough schools or enough jobs for them even if they managed to survive and grow.

The Alliance was to have coordinated a flow of technical skills and investment resources from the U.S. private sector—in cooperation with our own and Latin American governments—to create jobs, modernize agricultural techniques, stimulate manufacturing and increase international trade in Latin American nations. To understand why an Alliance founded on these worthy objectives has fallen into its present disarray, we will have to consider—without the emotions that usually surround it—the rise of chauvinism and nationalization in many countries of Latin America.

To a considerable extent their striving for self-identity and self sufficiency, however premature from an economic viewpoint, is understandable, especially when one takes into account the extreme youthfulness of the people of Latin countries. Because of their high birth rate and rapid population growth, nearly two-thirds of the Latin American population is less than twenty-five years old. As Eduardo Frei Montalvo, former President of Chile, has pointed out, "This youthful mass is in a deeply critical mood, like their peers in the rest of the world." Consequently, he concludes, "headquarters, both for ideas and for actual change, are . . . the universities and student groups."

If that sounds familiar, it is because we, in the United States, have been responding to the same passionate involvement and political concern of our own young people who are playing a growing role in public issues. In response to their concerns, we amended our Constitution to lower the voting age to eighteen. As a nation, we should have little trouble in recognizing and accepting the reality of comparable changes in other countries. But many of us are reluctant to accept the consequences.

When these youthful nations express their independence of thought and purpose through aggressive action affecting our interests, we find many of our own legislators are tempted to respond in kind with punitive and retaliatory measures.

But neither an arbitrary, uncompensated expropriation of foreign investments, nor a resort to violence in retaliation, is an acceptable assertion of self-determination in the context of today's world. In the long run, however, ill-considered expropriation is bound to be self-defeating for those nations that have not as yet accumulated sufficient capital or managerial depth to plan and carry out self-sustaining programs for internal development. On the other hand, in view of our own revolutionary origins as a nation, there are many other expressions of the new rising nationalism in Latin America to which we should not be able to comprehend and accept with patience and insight.

This breach in our hemispheric alliance, caused in large part by the growing spirit of independence in Latin America, is further widened by a growing indifference here at home. As we approach 1972, we are preoccupied with the problems of our own people and our own nation. The young and the radicals among us, the disadvantaged minorities, the affluent and the conservative are all asking if we shouldn't solve our own internal problems of the cities, of our economy, of our youth and of our educational system before we worry about others outside our borders.

But even if it were possible to solve all our own problems without concern for and in total isolation from the rest of the world, it would prove an empty victory to emerge as an island of prosperity in a sea of misery. The truth is, of course, that we share too many common interests, cultural ties, and mutual dependencies with other nations ever to return to "Fortress America." Whether we like it or not, we live in one world and we have to act accordingly.

When I spoke before this Council one year ago, I expressed the earnest hope that we would be able to prevail on Congress, our State Department and the Executive Branch generally to respond more fully to that mutuality of interests especially as it concerns our neighbors to the south. Now, a year later, we must regretfully acknowledge that the need is greater than ever. But we can temper our disappointment by reflecting that on a number of fronts progress has been made in meeting the goals of the Alliance.

As a result of cooperative efforts over the past decade, I know of tens of thousands of miles of new roads—thousands of new schools—millions of children going to them—falling death rates—more jobs—more income—and hope that was not there before. But in the face of rapidly rising populations, the question remains, how can more progress be accomplished? The record as revealed in case after case, seems to indicate that government-to-government programs alone never really affect the root problems

of development. What is needed is the total involvement of all sectors . . . government and private.

In the United States, the business sector from the beginning has been an integral part of our own highly successful development process and so, we realize that it must play a comparable role in helping other nations now in the process of development. The faith that this gives the Council of the Americas a noble mission which we must not abandon. It has been part of our credo from the beginning.

In my years as Chairman, I saw many U.S. companies offer their help, their manpower, their technology and their skills to the governments and people of Latin America. They were "citizens first and businessmen second." They did this without publicity or full-page advertisements boasting of their involvement. As appropriate as this modesty may have been, the lack of publicity about what U.S. companies were doing, has often resulted—even in the business community itself—in ignorance of the facts. This in turn has sometimes drawn the criticism that perhaps the Council was not fulfilling its primary mission and I fear that no detailed accounting of the impact of the U.S. private investor in Latin America, such as Herbert May's study for the Council of the Americas last year will convince the unconvinced. But even though more has been done than is generally recognized, I still do not believe the full potential of the private sector has been tapped—either by local businessmen or by foreign investors. For this reason, I hope the Council programs for 1972 which you have heard this morning will be pursued aggressively by all of us.

The U.S. business community must make the case in the most forceful terms that development depends not only on capital, manpower, technology, and skills, but on a willingness to employ every opportunity that presents itself. Development is not the exclusive goal of one political system—or of one economic system. It can best be achieved by an electric synthesis of whatever works, regardless of its origin.

The Council program for 1972 calls for a heightening of business-to-government and business-to-business missions. It does not call for confrontation, but rather for cooperation. And planning for the future, it requires genuine appreciation by all of us of the necessary elements of development, and a continuous dialogue between those who desire development assistance and those who believe they can provide it. This calls for a new Alliance, if you will—not one pronounced by governments but one agreed to by the participants.

Societies and economies, like people, must grow. They cannot simply be conceived and executed by the fiat of an outside government or by the spontaneous inspiration of an academic theorist. Only governments within the developing nations must be the ones to engage in the long-range and sustained planning necessary for their own lasting development.

On the other hand, I do not find that governments anywhere are accomplishing development entirely by themselves. Certainly the Soviet Union and the other nations of Eastern Europe are not only recognizing the necessity for private initiative, but they are approaching the great companies of the West to become involved in their development process.

But curiously as the Marxist countries in the Soviet orbit are opening their doors to Western technology. Western capital and Western know-how, some countries in Latin America are slamming their doors against such foreign assistance. That is but one paradox in a "continent of paradoxes." Another is that many Latin American nations which openly admit their need for the free enterprise elements of development, adopt regulations, sign mutual investment codes, and create a climate of uncertainty by expropriation which inevitably militate against the very investments they concede they must have.

There is still another paradox which relates to attitudes in this country. Latin America represents an enormous actual and potential market to U.S. businessmen. And yet, we find many, both in business and in government, who through neglect and by actions that discourage trade seem prepared to place our Latin trade in jeopardy.

These paradoxes do not have to remain forever unsolved. They are not riddles wrapped in mysteries inside enigmas. They are quite simply differences or outlook. Just as business no longer looks to the countries of the development world as mere stockpiles of raw materials for Western industry, Latin governments, however youthful and impetuous, should not look at business as sinister and exploitative. To resolve these misunderstandings, I believe there should be a new Alliance—an Alliance for Development. It should embrace political development, economic development and social development. To accomplish this far reaching goal, it would have to draw together business and governments—organizations and people—universities and international agencies. Only through such concerted effort can it expect to overcome the common and interrelated problems that have stalled true development as one sector or the other sought domination.

What I have described is what the Council will be attempting to do in 1972—coalesce all those who are sincere in their desire for true development, into a well-planned, coordinated, thoroughly expert and professional effort—an all-out Alliance which has the will and capacity to help.

I urge that you engage yourselves wholeheartedly to that new Alliance for Development and that you support the Council of the Americas as it seeks to lead the way.

OUR CONTEMPT FOR A POPULAR CAUSE

Mr. CHURCH. Mr. President, an informed and thoughtful columnist, Milton Viorst, has written a three-part series about the historical antecedents to the hostilities between India and Pakistan. These pieces, which appeared in the Washington, D.C., Evening Star of November 18, 20, and 22, are based on the findings of Mr. Viorst during a recent trip to that troubled region.

He demonstrates that American military assistance to Pakistan has materially helped to make its military government intransigent toward the legitimate grievances of East Pakistan—grievances which have led to bloodshed and an estimated 10 million East Pakistanis fleeing across the border into India.

At one point, Mr. Viorst correctly points out:

Sadly, the United States has once again fallen in with the oppressors—as we did in Cuba, the Dominican Republic, Greece, China, Vietnam. We have a tragic talent for it."

Mr. President, I ask unanimous consent that these three articles be printed in the RECORD.

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

INDIA CONDITIONED TO ACCEPT WAR

NEW DELHI.—Within the highest circles of the Indian government, one can feel the elation that comes with the imminent war.

It's not that anyone is seeking war—and certainly no one will admit to looking forward to war. But there is a feeling that war is inevitable—if not within weeks, then within months—and no one is wringing his hands in despair.

Why? War, as an adventure, would surely be a relief from the relentless and tedious struggle in which the government is engaged against the unbelievable poverty one sees everywhere. War, as every Indian official sees it, would bring an exhilarating and prestigious victory.

But most important, war would remove—once and for all—the one military threat and the single greatest irritant that Indians see to their historical development: Pakistan.

It's apparent, after many talks in the ministries here, that India has no territorial designs in the present crisis. Whatever resentment Indians may have felt over the partition of the subcontinent when the British left in 1947, they now seem to recognize that they have enough problems without trying to swallow up parts of Pakistan, too.

But they are angry at Pakistan for continuing to be a thorn in their side—as they are angry at the United States for having made Pakistan, with a fraction of India's wealth and population, into a military power capable of giving them a good fight.

Somehow, John Foster Dulles got the idea back in the 1950s that the Pakistani nation could be forged with tanks and planes into the ring he was building around the Sino-Soviet bloc. It was a grieviously bad forecast.

Within a few years, there was no Sino-Soviet bloc. Pakistan, after flirting on and off with Russia, became an intimate friend of Communist China. America's tanks and planes, furthermore, were used only to threaten its neighbor, India. India, as a neutrality had moved closer and closer to the Soviet camp.

Now, the final proof of short-sighted—and counterproductive—American foreign policy is being played out. Pakistan is coming apart at the seams. The artificial product of British decolonization, it is showing itself to a no nation at all.

To sum up the current crisis, East Pakistan, an enclave of 75 million Bengalis surrounded on three sides by India, is in open revolt against West Pakistan, whose 65 million Punjabis have dominated the union since independence.

While West Pakistan's 60,000-man army has brutally attempted—with American arms—to suppress the rebellion, no fewer than 10 million East Pakistanis have fled into India. The number could reach 15 million by Christmas.

For India, those refugees are the rub. The Indian government is paying out at the rate of $700 million a year to support them. That's more than even a rich country could afford. For India, it represents a substantial proportion of the funds that would otherwise go to economic development.

Quite understandably, the Indians regard the burden as intolerable. The pledges of assistance made by a few countries—including our own—come up to a fraction of the cost.

The refugees, furthermore, are concentrated in the northeast, particularly around Calcutta, which is already the poorest and most explosive section of the country. They are an additional bit of kindling, waiting for a spark.

The Indians say they would like to settle the matter peaceably, and no doubt they would. But they maintain—probably correctly—that no solution short of independence for East Pakistan would get the refugees back home.

The Pakistani government, however, does not seem disposed to compromise. It has declared it will attack India if the rebels—to whom Indian help is indispensable—show signs of defeating their army.

Both sides may be bluffing about war—but there is an ominous quality to the bluff of both. Pakistan is tempted to gamble, while India is sure it would win. Indeed, the Indian government seems elated at the prospect of a rousing fight.

THE REFUGEES AND BANGLA DESH

CALCUTTA.—Of the 550 camps that the Indians have set up for the refugees of military terror in East Pakistan, I have just visited three—and the spirit I found was unmistakably of buoyancy and of anticipation.

They are restless. Yet, if they are still in the camps next year, they will, like the Palestinians, be broken, too.

The Indians know that, and are frightened by it. Once the refugees get comfortable and lethargy triumphs, they may never want to return home. There are 10 million of them. They are still coming. India cannot support them indefinitely.

Yet India has done a remarkable job in the camps. The refugees are adequately fed. They receive medical attention. Though sanitation is a problem, it is generally under control. It's not saying much—but life in the camps is probably equal to what it is here in Calcutta and in the surrounding countryside.

Winter is coming, however, and already refugee families must huddle together in their bamboo shacks to keep warm at night. The Bengalis fled with what they had on their backs. They have no warm clothes. They desperately need blankets. So the pressure intensifies to settle the matter—quickly.

Hussein Ali is the nearest thing the refugees have to a spokesman. An East Bengali Moslem, he was Pakistan's high commissioner in Calcutta. A husky, fiery man in his 40s, he describes himself as a civil servant, not a revolutionary.

But he became a revolutionary after Gen. Yahya Khan, head of the Pakistani military junta, revoked the election that had given East Bengal a majority in the Pakistan assembly and jailed Mujibur Rahman, its political leader.

Ali says he declared his loyalty to an independent East Bengal only after he became convinced of the truth of the refugees' stories of rape and pillage by the Pakistan army. Now he represents Bangla Desh in India.

"Bangla Desh is a reality," said Hussein Ali. "It's gone from West Pakistan forever. After what they did to us, there can be no compromise. It's independence or death."

Indeed, in the refugee camps, Bangla Desh is on the lips of everyone, especially the young men. They all insist they are waiting only for space to open up in the training camps, so they can fight for their country's liberation.

When asked whether a compromise was possible between Pakistan and Bangla Desh, Ali gave the standard Hanoi-Viet Cong answer: "We will be glad to negotiate the withdrawal of the Pakistani army from our country. What else is there?"

Ali dismissed Yahya's contention that the rebel movement is just another episode—stirred up by India—in the timeless conflict between Hindus and Moslems on the subcontinent.

"Pakistan has used Islam as a political weapon to suppress dissent," he said. "They have destroyed our mosques and our temples. They have desecrated the name of God."

He said that, though India was assisting the rebels, it had not in any way instigated the rebellion. He said Bangla Desh would never become a client state of India. It would, he said, be a secular democracy in which Hindus and Moslems would be treated as equals.

All insisted the rebels would defeat the Pakistani army—and would have done so long ago, were it not for American arms. In fact, most dispassionate observers here see rebel strength gaining, and consider it a matter of time before West Pakistan must surrender its rule of East Bengal.

But time is the key factor. Washington has asked India and Pakistan to withdraw their forces from the frontiers, to avoid provocations. But withdrawal does not deal with the problems of Pakistani tyranny and the 10 million refugees.

The refugees want to go home—and India wants them to go even more. But they will never go back to an East Bengal governed by West Pakistanis and ruled by their murderous army.

India will not wait much longer—but will Yahya Khan recognize his defeat in Bangla Desh soon enough? If not, there's going to be one fierce and terrible war.

OUR CONTEMPT FOR A POPULAR CAUSE

NEW DELHI.—If 10 million refugees from East Bengal explain the imminence of an Indo-Pakistan war, the imperatives of recent recent history explain its underlying causes.

On India's side, this imperative grows out of a drive toward the concentration of power in the single entity, the central government, that has the capacity to move a basically primitive country into the 20th century.

When India was a colony, the British always pursued a divide-and-rule strategy. After independence, power remained scattered and the central government was weak.

Since becoming prime minister in 1966, Mrs. Indira Gandhi has pursued a course designed to change that. She is easily the most powerful figure of the post-independence era, far more so than her revered but indecisive father, Jawaharlal Nehru.

One by one, Mrs. Gandhi has broken bastions of resistance to strong government. She routed the conservative oligarchy that dominated the Congress party. She wiped away the anachronistic prerogatives of the maharajas, who used their princedoms to thwart Delhi and enrich themselves.

In last year's election, Mrs. Gandhi won 352 of 518 parliamentary seats, an unprecedented majority. Her leadership is currently undisputed.

To Mrs. Gandhi, Pakistan is just one more obstacle to India's aspirations. As long as the government must look over its shoulder at a threatening neighbor, it is not free to pursue economic and social development at home.

To say the refugees are India's pretext for neutralizing Pakistan is an exaggeration. But they certainly present an opportunity—and Mrs. Gandhi is decisive enough to seize it.

As for Pakistan, the imperative toward war proceeds from a determination by a military and landed elite—nurtured by the United States—to retain control of the state.

The efforts of this elite began when Pakistan was founded in 1947. Its victory over the democratic forces within the country was sealed when the United States decided in 1953 to add Pakistan to its worldwide anti-Communist network.

Once Washington resolved to arm Pakistan, power gravitated relentlessly to the military. The army negotiated with the Pentagon behind the government's back. In 1958, it abandoned all pretense of working within a constitutional framework and simply took over.

The role that the military-landed ruling elite cut out for itself, thenceforth, had little to do with the American crusade against communism.

On the one hand, Pakistan used its new military hardware to threaten India, against which—in the territorial dispute over Kashmir—it had an arguable grievance. On the other, this hardware was devoted to the suppression of dissent in East Bengal, whose inhabitants were never happy sharing nationality with the dominating Punjabis of West Pakistan.

Indeed, the military junta and its moneyed allies treated East Bengal like a colony. The figures show, for instance, that only an eighth of developmental funds were spent in East Pakistan, though it is poorer and more populous than West Pakistan.

Pakistan, then, became a classic example of American foreign aid principles gone fearsomely awry. American liberals surely thought they were helping the Pakistanis. But all they achieved was to destroy Pakistan's democracy, drive India into closer relations with the Soviet Union and insure that, ultimately, the repression in East Bengal would lead to civil war.

The military-landed ruling caste still refuses to surrender its colonial prerogatives. The repression of two decades has, since the revolutionary movement surfaced in March, turned to outright terror. By this time, too much blood has been spilled for either side to turn back.

To be sure, India took advantage of the crisis by encouraging the Bengali rebels and by welcoming the refugees from the terror. Yet it would have been inhumane to do otherwise. The conflict is not of India's making but of Pakistan's.

Sadly, the United States has once again fallen in with the oppressors—as we did in Cuba, the Dominican Republic, Greece, China, Vietnam. We have a tragic talent for it.

But we also seem to have a talent—as Vietnam best demonstrates—for siding with losers. The favorites in this conflict are India and East Bengal. In our contempt for a popular cause, we seem again to be at odds with history.

THE 25 MILLION NEW VOTERS

Mr. BROCK. Mr. President, we are all aware that there will be 25 million new voters eligible to cast their first ballot for President of the United States.

President Nixon has always supported the 18-year-old vote. He endorsed it in his campaign of 1968 and he kept that promise.

The President and other Americans supported that measure because they believe that the young Americans—18, 19, and 20 years old—have the competence and the intelligence to make their own decisions as to who should govern in Washington, D.C.

And that is how we will approach the new voters in 1972—as thinking individuals, not as a voting bloc awaiting manipulation.

However, there are those who would do otherwise. There are those who believe the new voters are a political resource to be exploited, not as individuals, but in the aggregate, en masse.

We saw an example of that type thinking last weekend during the Emergency Conference of New Voters, hosted in Chicago by the Association of Student Governments.

The announced purpose was to get young voters involved in the political process to gain a voice.

However, the supposedly nonpartisan conference leadership carefully controlled the presentations and refused to allow all points of view to be presented.

No supporter of the President, for example, was allowed to speak at the conference although several offered. One Congressman, in fact, had his invitation withdrawn at the last minute when it

was learned he would support the President.

One word of advice to those who seek the support of this generation—no one is going to tell them how to vote, or think. Those who believe they can refuse to present both sides, can limit the input for these young men and women, or try to make their decisions for them, are in for a shock.

Our young deserve better, and they know better.

U.S. RELATIONS WITH PERU

Mr. CHURCH. Mr. President, in April 1969, the Subcommittee on Western Hemisphere Affairs of the Foreign Relations Committee held hearings on U.S. Relations with Peru. One of the witnesses at those hearings was Richard M. Goodwin, a former Deputy Assistant Secretary of State for Inter-American Affairs.

A portion of Mr. Goodwin's testimony, referring to past U.S. Government policies, has elicited a demurrer from former Ambassador J. Wesley Jones. Ambassador Jones has sent me a copy of a letter which he wrote to Mr. Goodwin and has asked that it be included in the RECORD. Inasmuch as the hearings on Peru have long since been printed, I ask unanimous consent that Ambassador Jones' letter be printed in the RECORD.

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

FORT LESLEY J. MCNAIR,
Washington, D.C., June 22, 1971.

Prof. RICHARD N. GOODWIN,
Boston, Mass.

DEAR PROFESSOR GOODWIN: Your testimony before the Senate Foreign Relations Committee (Western Hemisphere Subcommittee) in April 1969 has only recently come to my attention and I have some reservation about that portion of it relating to the 1963 elections. On page 85 of the Hearings on "United States Relations with Peru" you are reported to have testified:

"In 1963 Belaunde was elected against our wishes, because the United States supported the candidacy of Raul *Haya de la TORRE.*"

In response to a question from Sen. Church you went on, reportedly, to say:

"Well, I suppose all I am saying at this point is that we strongly expressed and made clear to the people in Peru *through the Embassy* and elsewhere that he (Haya) was strongly favored, that we were for him, etc." (italics are mine)

Since, as you know, I was the Ambassador to Peru during that period (I presented my credentials in early February 1963 and the elections were held in mid-June of that year) I can assure you that the Embassy maintained a policy of complete neutrality and non-intervention in those elections both overtly and covertly. Further, from the time I arrived in Peru until the 1963 elections, some 4½ months later, the policy of the U.S. Government as it emanated from Washington was also one of absolute non-intervention in the electoral campaign involving Belaunde, Haya de la Torre, Odria and Samame.

Consequently the statements attributed to you and quoted above have absolutely no basis in fact and I would be greatful if you would write to the Senate Foreign Relations Staff to correct the record. I am sending a copy of this letter to Pat Holt, the Consultant to the Western Hemisphere Subcommittee.

It has occurred to me that the error in your statement may be attributable to a confusion in dates; that you were referring in your testimony to the Elections of June 1962, when the principal candidates, Haya de la Torre, Belaunde and Odria were the same, when Jim Loeb was ambassador to Peru and when you were Deputy Assistant Secretary of State. (As I remember, you left the Department in April 1963 at least 2 months before the Peruvian Elections of that year which resulted in Belaunde's election). Since I was still in Libya for that Electoral Campaign I cannot answer for our policies and actions in it. But for the 1963 Elections, I was in Peru and very much in charge of our Embassy and its activities.

Sincerely yours,

J. WESLEY JONES.

BUSING

Mr. TOWER. Mr. President, as this year, 1971, is drawing to a close, I believe that a truly significant thing has happened in the Nation. The people of this country, North, South, East, and West, have realized that the busing of schoolchildren for the sake of racial balance simply does not make sense, nor does it further education. As the year started, the only ones vitally concerned with this issue were the parents and schoolchildren living in the South. Very quickly, however, people all over the country discovered this threat to their school systems and began trying to do something about it.

In June of this year, my colleague from Tennessee (Mr. BROCK) and I, along with several of our other Senators, introduced a constitutional amendment which would prohibit forced busing in order to achieve a racial balance. At the time that we introduced the resolution, Senate Joint Resolution 112, few thought that we had much chance to get hearings held on it. We knew that the odds against us in Congress were long, but we were determined to pursue our goal. With the help of many colleagues in the House of Representatives, we have finally reached the first stage in our goal of eventual passage of the constitutional amendment. On Tuesday, December 7, Chairman CELLER, of the House Judiciary Committee, officially announced that his committee would have full hearings on the proposed amendment early in the next session of Congress. I plan to make certain that the case of Texans on this issue is fully heard at that time.

Much yet remains to be done before we can say with certainty that the amendment will be passed and forced busing eradicated. In the meantime, we will try to see that the strong, House-passed antibusing amendments to the Higher Education Act are also adopted by the Senate. A bipartisan group, of which I am a member, is already at work in this regard. We will also be aware of other ways by which we can combat the wasteful practice of busing. Nevertheless, in the long run, I believe that what we haved one in 1971, what the people of Texas and the Nation have said this year, will hasten the day when we can restore the neighborhood school and work diligently on ways to make it an even better place to get an education. When, as the Gallup poll reports, 76 percent of all Americans say that they are opposed to busing and say that they would rather spend this money on sound, educational purposes, then I believe that we will get action. I pledge my continuing activity in this fight.

A LOOK BEHIND THE SCENES

Mr. CHURCH. Mr. President, our bloody military involvement in the unnecessary war in Indochina has not even yet been concluded, but memoirs, recountings, and recollections are already being circulated in books and newspapers and periodicals.

A most recent example was printed in Science magazine for November 26, 1971, under the title "After the Pentagon Papers: Talk With Kistiakowsky, Wiesner."

Drs. Kistiakowsky and Wiesner give us a fascinating glimpse of what they saw—and were kept from seeing—during their service in the Federal Government as Presidential scientific advisers. Particularly disturbing is the misshaping of background information as it is channeled through the governmental labyrinths to the heads of departments and to the desk of the President.

I found this oral description of the powerlessness of men in high positions most disturbing, and I hope that the Science magazine's exclusive interview will be widely read. I ask unanimous consent that the interview, as published, be printed in the RECORD.

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

AFTER THE PENTAGON PAPERS: TALK WITH KISTIAKOWSKY, WIESNER

(NOTE.—The interview took place in mid-August at Woods Hole, Massachusetts, in the offices of the National Academy of Sciences. Readers should know the conditions on which it was agreed that the interview would appear in print. Wiesner and Kistiakowsky retained the right to edit their remarks, a right both have exercised. The few places where the printed version truncates the actual discussion, or where amplification is required, are indicated in italics. A few topics have left no traces. It does not seem fair, in the case of an interview, for the interviewer to have the last word. Readers can judge for themselves to what extent the interview measured up to its purpose in candor and relevance.—E.L.)

The interview transcribed below grew out of the belief of the *Science* news department that the Pentagon Papers published by The *New York Times* in July deserved further study and discussion by the scientific community. Accordingly, *Science* asked Jerome Wiesner, now president of Massachusetts Institute of Technology, and George Kistiakowsky, professor emeritus of chemistry at Harvard University, to participate in an interview that would take the Pentagon Papers at least as a starting point. Wiesner and Kistiakowsky were science advisers to Presidents Kennedy and Eisenhower, respectively, and were among the leading spokesmen for the scientific community during the period covered by the Pentagon Papers. The interviewer was Elinor Langer, a former member of the *Science* news staff. In the introduction that follows, Miss Langer describes the ground rules under which the interview was conducted.

LANGER. [Let me start by saying that] the assumption behind this interview is that the Pentagon Papers may have more serious implications than the level of public discussion so far has really indicated. It was conceived as a kind of fishing expedition to see what

people like yourselves, who were in positions of some power—at least we were led to believe at the time—[and of] relative knowledgeability when some of the events were going on, made of the Papers. I have the impression that you're both very anxious to talk about Scientists and Engineers for Johnson, and your support for Johnson in 1964 [which is,of course, a very important part of it], but I hope our discussion can go beyond that.

WIESNER. I told you on the phone that I didn't think that anything has come out in the Pentagon Papers—though I haven't read all 47 volumes or even studied everything that's been printed—that would change my view of what Johnson did, or my attitude towards my participation in Scientists and Engineers for Johnson. I became badly disenchanted long before these papers came out, so they didn't really affect me in this respect. I don't know whether George has different views.

KISTIAKOWSKY. I have really little to say about Scientists and Engineers for Johnson-Humphrey. The amount of my active, personal involvement was relatively small.

WIESNER. Well, it was never really for Johnson, it was against Goldwater. That was the central thing. I think both of us were reacting against what Goldwater stood for and, on balance, I think I am still not sure. I wouldn't work for Johnson knowing what I know, but I would not care for Goldwater either.

KISTIAKOWSKY. I might add to that now. I vividly remember one specific issue when Dr. [Donald)] McArthur, [former deputy director for research and technology, Office of the Director of Defense Research and Engineering (DDR&E)], who was the moving spirit behind the organization, sent me, as one of the members of the central committee, a draft of election-year pamphlets to be distributed by the million. When I read it, I telephoned him and said that I was flatly opposed to it because the whole theme of it was to extol Lyndon Johnson. I said that Scientists and Engineers were a nonpartisan group who were against what Goldwater stood for, and that a pamphlet saying so is the only kind of pamphlet that I would authorize over my signature. But I would not sign the pamphlet that was being proposed. Do you remember that?

WIESNER. I remember that, and I concurred, because my own personal experiences with Lyndon Johnson in the Kennedy administration did not leave me fond of him. But nonetheless, I must admit that I believed he was interested in de-escalating the war in Vietnam.

LANGER. You were not familiar, at that time, with the plans and projections that were being made about the bombing campaign in North Vietnam?

WIESNER. I certainly knew nothing about it.

KISTIAKOWSKY. Well, you were already out of office.

WIESNER. I had been out of Washington since March '64 and the war blew up after that. In addition, I haven't studied newly released papers sufficiently to be able to talk about what was just contingency planning that is necessary and what was, in effect, government policy. I think that one has to be very careful in making such interpretations.

KISTIAKOWSKY. Yes, I must say for myself that by that time I was already, I think, sophisticated enough to sense the internal workings of the government: the fact that not everybody speaks the same language, not everybody has the same objectives. The Pentagon, for instance, is very different from the Arms Control and Disarmament Agency, and so on. But I was naive enough to think that when the President of the United States was running for election and made quite a flat, public statement that he was for peace as contrasted with his opponent—I was naive enough to believe him.

WIESNER. Well, I believed him for other reasons, too, in spite of the fact that, as I said earlier, I was not on good terms with the President. I had seen him push for disarmament initiatives inside the White House: press on the White House staff, including myself. I was not involved in Vietnam discussions because they were not a prominent part of the government business during the first months that he was President and I was still working there. There were other issues that were much more important. But in the contacts we had with him and with his senior staff during the campaign, he certainly gave us the impression of very different views about Vietnam than those that emerged later. And I suspect that neither of us would have worked for him to the degree that we did, or at all, if we had been able to anticipate the way the war was going to go.

LANGER. Does it strike you in retrospect as surprising that in your position you didn't know very much? I'm struck by the way you both sound like ordinary citizens, like the "man on the street," when in fact you both were in and out of Washington, knew a lot of people, and presumably had some power.

KISTIAKOWSKY. I think you exaggerate my position. By then I ceased to be—not that I was fired or anything—I ceased to be a member of the President's Science Advisory Committee [PSAC]. Jerry, you still were a member, weren't you?

WIESNER. Yes, I attended meetings, but even so, strategy issues were not discussed in PSAC. The point is, the thing that appalled us about Goldwater was his threats to use nuclear weapons and his very strong jingoism. Johnson never talked like that, and the contrast was attractive. We never asked the President about Vietnam specifically, so we can't say we were deceived in any literal sense. On the other hand, we were given the impression that we were supporting a peace platform: there is no question about that.

LANGER. I have a question that might clarify what the role and limits of the science advisory apparatus was at that time. When you were science adviser, did you attend National Security Council [NSC] meetings?

WIESNER. Yes.

LANGER. And did you when you were science adviser under Eisenhower?

KISTIAKOWSKY. I had a standing invitation to attend all of them. Did you?

WIESNER. I occasionally did not go if the issue was far outside my field of competence and I was not interested in it. I wasn't concerned about gold flow, for example. And occasionally I would elect not to go if I was very busy on something vital. You should remember that the National Security Council mechanism was much less formal under Kennedy than under Eisenhower, and I believe that it remained that way under Johnson. Frequently Kennedy would call together small groups of particularly interested people to discuss an issue, the Cuba crisis, for example. Before an issue was finally resolved, the entire National Security Council would discuss it, but I believe that there were many more informal discussions in the Kennedy government than there were under Eisenhower.

KISTIAKOWSKY. There were very few. The NSC met once a week unless the President was out of town, and most of the issues were usually discussed. There were a few very sensitive issues, such as U-2, which were not discussed in NSC, to some of which I nonetheless was privy. My impression is that in the Kennedy administration three men, namely the President, [Secretary of Defense Robert] McNamara, and [McGeorge] Bundy [special assistant to the President for national security affairs in the Kennedy and Johnson administrations], met frequently in private and made the major military decisions.

WIESNER. No major decision was made without a full NSC discussion, but it was frequently obvious that there had been a lot of private talk beforehand.

KISTIAKOWSKY. Were plans for the Cuban invasion discussed in NSC?

WIESNER. The Cuban invasion was not. But I think that was the experience from which he learned that he should be more careful.

LANGER. In preparing for meeting with you today, I reread a story I wrote for *Science* in 1967 based on telephone interviews with everybody who had been on Scientists and Engineers for Johnson. The range of disaffection then was certainly very great, but the article ended up by commenting on the feeling of powerlessness of all the people who had been on that committee, and I remembered wondering to myself, if those people felt powerless, who was feeling powerful at that time? Who was feeling in control?

WIESNER. I don't know.

KISTIAKOWSKY. As a reward for my services during the election campaign, I was appointed a member of—as it turned out—a fictitious organization called something like the President's advisors or board of advisors on foreign policy. It met once or twice during the campaign for a briefing and never met afterwards. But I was never formally dismissed. Hence, I wrote a letter to the President urging him to de-escalate the war in the fall of '65, about Christmas of '65. Remember?

WIESNER. I remember that.

KISTIAKOWSKY. You and I were working on it together. And that letter got no attention, shall we say?

WIESNER. And I later wrote another one with Roger Fisher [professor of law, Harvard University] which we sent in through the vice president, but the only effect was that the vice president caught a lot of hell for delivering it, according to him.

KISTIAKOWSKY. That's right, and a third letter was written by [former Ambassador to India, John Kenneth] Galbraith, who also got only a telephone message in return asking him to desist.

WIESNER. I don't know what you mean by power, because I don't think we organized Scientists and Engineers to achieve power. What we were attempting to do was publicize the issues and avoid having Barry Goldwater for President.

KISTIAKOWSKY. It was a strictly election-year organization.

WIESNER. Afterwards, many people tried to persuade us to keep it together, but we didn't believe this made any sense because it had been organized for a specific purpose and it would be wrong to try to use it for something else.

KISTIAKOWSKY. I must say my first strong, explicit disappointment with President Johnson was in January or early February '65, when the so-called Gilpatrick [Roswell Gilpartick, Deputy Secretary of Defense, 1961–1964] committee (appointed by the President) of which I was a member, orally recommended to him that he should place great emphasis on the issue of nonproliferation of nuclear weapons. The recommendation was immediately buried. There was hardly a "thank you" to the members of that committee.

WIESNER. Well, you remember what happened to us on the ABM issue? In '67 we were inivited by Secretary McNamara to come to the White House to discuss the ABM.

LANGER. You two, or you two with a large group?

WIESNER. With a larger group.

KISTIAKOWSKY. All the former science advisers.

WIESNER. All the science advisers and all the previous directors of DDR&E, including [Harold] York and Harold Brown, who was head of DDR&E at that time. To a man, we were opposed to both the big system and, as far as I recall, the smaller system too, some of us more vigorously than others. And he

not only made the decision to deploy the small system, but McNamara then sort of misused, I'd say, our position there in *support* of the small system. I think that we may have had many reasons to feel ill-used, but I didn't think the President ever owed me anything. I wasn't supporting him for his own sake or because of any personal trust. I did it for what I thought was the best interest of the country. You can question whether it was, of course, as things turned out. I think it was probably still better to have had Johnson than Goldwater, but that's a poor choice.

KISTIAKOWSKY. And of course the issue of the use of nuclear weapons in Vietnam was very much in our minds. I might mention another episode. It was about the period of of the Tet offensive, when one of our senior generals from Vietnam made a public statement saying that there was no need to worry about the fate of Khe Sanh, because if conventional weapons didn't work, we would use tactical nuclear weapons. When I read that I became very much exercised and I telephoned the two gentlemen, who were science advisers before I was, and chairmen of PSAC under Eisenhower, namely [James] Killian [chairman, M.I.T. Corporation] and [I. I.] Rabi [professor of physics, Columbia University]. They agreed with me that this was a very dangerous thing even to talk about. And we constructed a telegram to ex-President Eisenhower (who was then in Palm Springs) quoting the general and saying that this would be disastrous in its own right and also raised a danger of expanding the war. We sent that telegram to Eisenhower, and as luck would have it, President Johnson was visiting Eisenhower a day or so after he got the telegram. Apparently Eisenhower was very much concerned and talked very vigorously to Johnson about it. I judge that that was the case because within less than 48 hours, each of us, Killian, Rabi, and myself, had a personal phone call from Secretary McNamara saying that he had been instructed by the President to state firmly that there was no planning, even contingency planning, to use nuclear weapons.

The "summer study" discussed below was a seminar of 47 scientists which was held under the auspices of the Jason Division of the Institute for Defense Analyses in the summer of 1966. Further discussion of it can be found in the Bantam edition of the Pentagon Papers, (pp. 483–485) and in Document No. 117 (p. 502). The New York Times, citing the original Pentagon study, emphasizes that the scientists' work was a major influence in persuading then Secretary of Defense Robert McNamara that the bombing of North Vietnam was ineffective in curtailing North Vietnam's military activities in the south.

LANGER. What was the kind of thinking that led up eventually to the 1966 summer study which at least according to the Times, turns out to have been so important?

KISTIAKOWSKY. I'll try to summarize that briefly. Jerry and I probably were responsible for its start. We had prepared several letters to President Johnson in the winter of '65–'66. We got what amounted very much to a brush-off.

WIESNER. A pointed brush-off.

LANGER. Did the study require some kind of presidential assent to set it up?

WIESNER. No, the study came about in another way. We had a small, self-initiated discussion group in Boston whose purpose was to see whether we couldn't find an acceptable way of stopping the war. We looked at a large variety of different ideas, and every time we thought we had one that looked acceptable to all sides, we would try to get the President to listen to it.

KISTIAKOWSKY. There was no substantive consideration of our proposals. They were all just dismissed.

WIESNER. What actually happened on the study referred to in the Times was that we began to examine General [James] Cavin's enclave proposal seriously and we decided we didn't have enough facts about where the troops were, where the civilian population was, and a great number of other important questions. We called somebody, I believe it was John McNaughton [Assistant Secretary of Defense for international security affairs] and asked him for a briefing and he said he would send up [Adam] Yarmolinsky [Special Assistant to the Secretary of Defense] to give us the data we wanted. And Yarmolinsky came up with a lot of facts and data and . . .

KISTIAKOWSKY. Then he went back and there were some discussions in which I didn't take part. The result of them, however, was an offer to finance, out of the funds available to the Office of International Security Affairs, a study in the summer of '66 in which a considerable group, largely of physical scientists but also some social scientists, would be involved. I don't know that I'm at liberty to mention who they were, though Jerry and I were in the steering group. Out of that study came a number of recommendations to the Secretary.

WIESNER. And a number of observations, some of which have been in the Pentagon Papers. I think, as the paper said, the study probably played a very decisive role in convincing Secretary McNamara that, in certain respects, the intelligence information he was getting was wrong, that the estimates he was getting of where they were going were not very useful.

LANGER. Just reading what's in the New York Times edition, [I think] the study seemed remarkable for the character of its thinking. It is a very agnostic document. It keeps stressing the things which can't be known—such as the effects of the bombing—and asking how can you go on basing your assumptions on these unknowables. It seems as if the social scientists around the government, the Bundys, Rostows, [Walt W. Rostow, special assistant to President Johnson for national security affairs] et cetera, were always making recommendations which implied that a certain level of military action would have certain results. What seemed remarkable to me about this was its caution and conservatism and its insistence that the relationship between the bombing and Hanoi's "will to resist" could not be known.

WIESNER. Well, you see, we were trying to deal with known facts, with statements that were being made then.

KISTIAKOWSKY. Let me put it a little differently. What we found was that the, so to speak, low-echelon findings—whether on the effect of bombing North Vietnam or on the amount of materiel and military supplies and manpower which were being brought into the south, or the number of the enemy killed—that extraordinary device, the body count . . . On all these things we found that the numbers which were deduced at the lower echelons were uncritically and selectively used. By the time this enormous mass of detailed bits and pieces are synthesized into papers of manageable size to be read by the top echelon of the government, those people—for instance the Secretary of Defense—were in no position to find the time to read the detailed stacks.

WIESNER. You see, what is important to McNamara is how the information is distilled.

KISTIAKOWSKY. He gets a short summary. The President gets a summary of a few pages and the Secretary gets 50 pages, but it is that kind of thing. By the time those papers were prepared, there was so much selection and value judgment and so-called agency position—in other words, you don't admit when you are wrong—that, in effect, the top-level papers were bearing very little resemblance to the basic background data.

WIESNER. And this is very important—they didn't show the true uncertainty. That was particularly striking. They simply appeared as if they had real validity. Of course, this problem isn't particularly unique to this situation. I remember that, after I became science adviser, I set out to see where some of the data we were given came from: information that was given as hard intelligence, like the number of Soviet missiles, or the numbers of tanks the Soviets had, or the number of divisions. And as I penetrated into the raw material I discovered that it often wasn't based on solid basic information. In fact, we caused the intelligence people to modify their estimates extensively by making them throw out the raw data they couldn't justify.

KISTIAKOWSKY. That goes even farther back. I recall that in 1959 a well known columnist, Joseph Alsop, upon hearing that I was going to be the next science adviser, but while I was still a private person, invited me to have breakfast with him. He told me that he had hard intelligence information that the Soviets had deployed about 150 ICBM's. He had pretty good intelligence that they were going to attack the United States about July 1, 1959. It so happens that I was then in possession of relevant intelligence data because I was a member of the Ballistic Missile Advisory Committee to the Secretary of Defense. But of course, listening to Mr. Alsop, I had to act as if I was innocent. And Alsop didn't keep this information to himself. You will find articles that he wrote in which he made dire predictions. And this sort of thing happens incredibly frequently in Washington.

LANGER. He's got quite a record for predictions, I think. Well, did you feel obligated for political reasons in the summer study to include something about a barrier, or was that McNamara's previous idea?

KISTIAKOWSKY. No.

LANGER. How did that proposal come about?

KISTIAKOWSKY. In our agenda proposal, one of the topics we wanted to look into was a way of minimizing or reducing the flow of supplies and manpower from the north in a way that would lead to de-escalation of the war rather than escalation and bombing.

WIESNER. You see the avowed purpose of the bombing effort was trying to stop . . .

LANGER. To stop infiltration.

WIESNER. To stop the flow of munitions. And we wanted to see whether there was an alternate way to achieve that end.

LANGER. Was there no possibility of arguing about that objective?

WIESNER. We did that too, but first of all we looked at the question of whether the bombing was an effective way of achieving that objective, and it became clear that it was not. In fact, that's one of the things we said. But we also then asked whether the materiel coming in was significant. I think the general impression was that there was a significant flow of munitions. Isn't that correct? As I recall it, the amount of munitions coming along the trail could sustain the VC, [Vietcong] although a good deal of munitions were coming in other ways too. So then the question was whether there were any technical means that we could see that might do a better job and be much less destructive. We wanted a more benign way of achieving the same end.

KISTIAKOWSKY. We were looking for ways of minimizing the casualties and minimizing . . .

WIESNER. The destruction.

KISTIAKOWSKY. The idea was to lay the so-called barrier—which had nothing to do with a fence—through the uninhabited jungles through which the Ho Chi Minh trails are cut. We were very uncertain of the feasibility of this scheme. There was a very heated internal debate in August whether we should even present the plan to Mr. McNamara.

LANGER. Because of its feasibility or because of its politics?

WIESNER. Because of its feasibility. I don't think we ever argued the politics.

LANGER. I didn't understand that the issue was breaking a law.

At this point, there ensued a brief discussion, largely excised by the interviewees, in which they explained the reasons for their reluctance to continue discussion of the barrier plan for publication. The conversation then turned to their subsequent discouragement and withdrawal from activity that was designed directly to affect the course of the Vietnam war. Wiesner, in particular, stressed that at that point his interest became focused primarily on the ABM.

WIESNER. The McNamara decision was announced in the fall of '67 and it was then that I began to oppose the ABM deployment publicly. I also stopped working within the government and started to work outside. After the so-called thin system decision, I gave up trying to convince anybody in the government to make sense on the ABM, for I regarded that as basically a political decision. There was no question in my mind that Mr. Johnson made the deployment decision for political reasons. He still expected to run for President, and he was protecting his flank by making that thin ABM decision. At least this is my view of what he did. There was no rationale to justify the ABM that I could see, and I decided to see if this waste for political reasons could be stopped.

LANGER. How do you feel about the ABM battle? What do you make of it?

WIESNER. My feelings are complicated. I'm sorry we didn't win it. I think, nonetheless, it was a vital fight. It showed that you could make a good fight against a foolish decision. I believe that it exposed the military issues in a public way for the first time. I think that personally I spent far too much time on it. But I never really felt we lost it, because we kept it down, we helped Congress be responsible, we helped the public become informed. I think much of what has happened since, in the way of public debate on many things like the environment and the SST, grew out of the ABM experience.

KISTIAKOWSKY. I very much agree with Jerry on that. In a personal sense, you might say, Jerry lost; I was a much more minor character in that one, though I lost also. So did York. But in a more fundamental sense we won, because we generated a completely new phenomenon.

WIESNER. I think in a real sense the nation won. Congress looks at everything seriously now. The public will not buy . . . new weapons without looking at their purposes. You can't scare them by telling them the Russians have three, as they used to do.

KISTIAKOWSKY. The proposals of these, I might call them "hot-rod military" types, are not sacrosanct anymore. They are challenged, and the ABM debate was the first of these public debates. You have to be aware that we thought of ourselves as what might be referred to as His Majesty's Loyal Opposition. We were working through the channels, within the organization, as yet. In my case it was a bitter experience, and it led me outside the channels. Our recommendation to Mr. McNamara, made about Labor Day, 1966, was to confirm our ideas by a detailed, larger study of professionals to be organized within the Department of Defense. You remember that?

WIESNER. Yes.

KISTIAKOWSKY. It was a very emphatic recommendation. We had even outlined a plan of what the study would involve in manpower and time and so on. Mr. McNamara's feeling was that time was of the essence. He wanted to develop details of the plan concurrently with the development of special devices, the so-called sensors, and so on, and also with plans for deployment. He felt if it were done in an orderly succession, it just would be much too slow. I think this is as far as I will go because I don't know how much of subsequent history of the fence has been revealed in the papers.

WIESNER. I don't either.

LANGER. Well, I was going to ask about that. The only thing I knew was that at a certain point you [Kistiakowsky] resigned from the committee. But I don't think it is generally known how far work proceeded.

WIESNER. I don't think we know or should talk about it.

KISTIAKOWSKY. Let's put it ths way: it's none of your business.

LANGER. It's not a question of what's my business. It's a question of what is public business.

WIESNER. Well, it's a question of what it is our right to talk about.

KISTIAKOWSKY. All I can say is that I was in one way or another connected on a part-time basis with this project. And at the end of '67, particularly after seeing that Mr. McNamara was essentially fired from his job, I reached the conclusion that it was completely futile to continue. At that point, I resigned, and resigned in what might be called a tactless way. In other words, I didn't claim illness or family business or fatigue. I just wrote that I vehemently opposed the present Vietnam policy and could not be even a minor party to it anymore. That's all I think I can say about it.

LANGER. I'd like to say that I think the question of what is public business is sort of up for grabs at this point, and the more that is public, it seems to me, the healthier things can be.

WIESNER. I think that's right, and I believe that we ought to get rid of all secrecy on such matters, I feel strongly about this. But I think that, until there is a change in the security laws, violations of security represent a form of civil disobedience, and when one undertakes to do that, he should do it for a reason. I don't think that there's an issue on this point that justifies either of us doing it.

The ABM has been held to a modest waste of money, you know, a couple of billion dollars instead of 40 or 50 billion. So even on that score I think there was substantial gain.

KISTIAKOWSKY. You see, in the first years of the existence of the President's Science Advisory Committee, when we were really very involved in military technology, there were similar battles about proposals of the military, but they were held completely *in camera*, they were on a highly classified level between the White House office and the Pentagon. The new phase is the public debate.

WIESNER. When Johnson became President, he already had a history of differences with the scientists on issues that had nothing to do with Vietnam. We had differed on the space effort. Most of us were against the crash manned space program, and we had, of course, argued about that. I had been opposed to the Mach 3 SST and he was for it. There were a whole variety of issues that had caused tensions between the Science Advisory Committee and Johnson. So when [Donald F.] Hornig became science adviser, he had to carry the burden of Johnson's alienation from the scientists. The tension was greatest on the Vietnam issue. The result was that Johnson's Science Advisory Committee didn't have as much influence on military technology as it had under Eisenhower and Kennedy. Kennedy once told a reporter that the Science Advisory Committee and the science adviser kept the government from going all one way. He appreciated what it did and President Eisenhower appreciated it too. I don't think that Johnson felt a need for such help. Once that estrangement happened, it became necessary to take the battle elsewhere.

KISTIAKOWSKY. Some of these quarrels that you are referring to, Jerry, took place long before he became President.

WIESNER. Right; when he was vice-president and chairman of the space council and space was the only real problem on which he had initiative.

KISTIAKOWSKY. And I think he thought of the scientific community as being against him.

WIESNER. Because we were. We didn't really believe that the large manned space program made any sense scientifically and we kept saying so. In the end, we were willing to accept the President's judgment that it was necessary politically, but we fought against it being started, on technical grounds.

KISTIAKOWSKY. Of course you know Johnson pushed for it before he was vice-president, while he was in the Senate.

WIESNER. Then, in the case of the SST, I wanted the United States to join the British-French consortium and build the Mach 2 aircraft. There were many reasons why, in my office, we didn't believe a Mach 3 SST made sense, but it ultimately went that route because the vice-president wanted it.

KISTIAKOWSKY. And I contributed earlier than that, in the Eisenhower administration, to rejecting an SST project that was pushed about '59 or '60.

WIESNER. So there were many issues of this kind that we disagreed on.

LANGER. When you refer to "going outside the system," you mean going outside the administrative channels in government and going to congressional channels in government.

WIESNER. Congressional and public. I made my first attempt to do something about the ABM in a public speech for the Center [for the Study of Democratic Institutions] in Santa Barbara.

LANGER. It's interesting because that distinction, which looms very large in your mind, doesn't necessarily loom so large to an outsider.

WIESNER. But it does to anyone who's worked in the government. It makes a tremendous difference for a variety of reasons. First of all, one is privy to large amounts of privileged or classified information, and so one has the problem of how to carry out an intelligent, useful discussion about something like the ABM without violating security. It was a serious problem. And, in fact, there were times when all of us were accused of violating security and threatened with prosecution for having done so.

KISTIAKOWSKY. If you go back to, say the late 50's and early 60's, you will find that there was hardly a scientist who was privy to classified information because of his active part in government operations who ever made any public—either written or oral—statements on these matters involving security. The first change in that came about when the partial test ban treaty was signed and came up for Senate ratification. At that time, I was asked by the Administration to testify along with a number of others, like York, who had been in the government but were not in it full time anymore. I had vague qualms as to whether I should testify or not.

WIESNER. But of course, you were talking in support of the Administration.

KISTIAKOWSKY. I was supporting the Administration and so I decided I would testify.

WIESNER. It was regarded as gauche.

LANGER. I remember there was a lot of criticism of you [Wiesner] and your office at that time, for not testifying in public, being secretive about the people on your staff, and so on.

WIESNER. I remember an article to that effect in *The Reporter*, but I think—I thought at the time—it was a total misreading of the role of science adviser. When I became

science adviser, it was to be an assistant to the President, not as the representative of the scientific community or anyone else. At least this was my view of the situation. So in that role, I obviously couldn't, and didn't intend to, oppose the President. But there are obviously many different roles. In some you have much less obligation, such as when you become a member of the President's Science Advisory Committee or a Defense Department advisory committee, but are not a full-time participant. Even for such people, it's still regarded as bad taste to engage in public debate.

Some of the younger people do testify before Congress, and they've been criticized for doing so. Dick Garwin [adjunct professor of physics, Columbia University] was critized for his SST testimony because it opposed the Administration's position. There is a general view that, if you're going to be part of the Administration, you shouldn't simultaneously attack its posture. I believe that, if you join an Administration as a full-time employee, that is a reasonable position. If you become so disaffected with its programs that you want to fight, the proper thing to do is quit. But I don't think advisers should be throttled, that is, silenced on all issues, or the country is handicapped in making decisions. I've personally concluded—and I've thought about this since the Pentagon Papers were published—that the nation has paid a much higher price for its secrecy than it would have paid through a policy of complete openness. We've done many things on the basis of inadequate information, not only in the Vietnam war: I question whether the arms race would have taken the extreme form it did if the intelligence fellows had been required to say what the bases of their estimates were and to defend them. If they had been exposed to serious questioning and hammered at by skeptics and asked for example, "What makes you think the Russians are going to have a thousand bombers?" If they had been required to show their evidence, we would never have had that "bomber gap."

And there are many other examples. You mentioned, for instance, the U–2, and the extensive border penetration by U.S. electromagnetic intelligence in the 60's. When I first told Kennedy about it, he said, "My God, if the Russians did that to us, we'd go to war." And it was top secret, so secret that I, as science adviser, had a hard fight to learn about it. And after I finally had a briefing on it, I asked a colleague, "Who the hell are they keeping it from? The Russians know about it." And we concluded it was being kept from the American people so they would not know what was being done in their name. The Pentagon Papers show that there are many things of this kind. Not only should people who are government consultants not be in this embarrassing position, but the people of the nation should know what their government is doing in their name to a much greater extent than they do. I think democracy cannot function properly with so much secrecy.

The discussion ended with a brief exploration of Wiesner and Kistiakowsky's future political plans. Wiesner was asked to explain a comment he made when he assumed the presidency of M.I.T.—in effect, that he anticipated an end to his political involvements. He replied that he intended to avoid partisan politics, but not to withdraw from battle on them to be important. Kistiakowsky added that he was concerned with restoring the dignity of science in the public mind. I indicated that, if I had had their experiences in Washington, I would feel particularly discouraged about continuing to believe, as they appeared to do, that individual men, and not the system, were responsible for the country's present difficulties. "What's the choice?" Wiesner asked. And the interview came to a stop.

EXEMPTION OF NEWS MEDIA FROM WAGE-PRICE GUIDELINES

Mr. BROCK. Mr. President, I was appalled by the course of events surrounding last week's deliberations on the Cranston amendment to exempt the news media from wage-price guidelines established for all Americans.

This body was led to believe that this amendment would eliminate the possibility of subtle Government control of the public media and would strengthen and protect rights guaranteed by the first amendment. The leaders of this movement offered it under the mistaken assumption that wage-price controls over the news media would be an infringement on the freedom of the press. The subsequent progression of events followed a peculiar course of non sequitur whose end result was the passage of an amendment exempting an industry which really does not need it.

The media have no greater claim to receive exemption than any other. All indications are that in fact if there were any efforts to obtain such an exemption, it was conducted by a small minority. A frequent response from officials representing the media is that in affairs relating to their commercial operations, they should be treated equally with other members of the business community.

Many have publicly stated that should such an exemption become law, they will voluntarily submit to the guidelines which will be applied to other industries.

This reaction is admirable and refreshing. It indicates that many members of public media do not view the controls of phase II to be a threat to their freedom to broadcast, print, or publish. Further, there are adequate safeguards in phase II to allow exemptions in specific situations where they are obviously warranted.

I wish the proponents of the Cranston amendment had as much faith in this system as the people they claim to be protecting. To think that wage-price regulations applied equally could be used overtly to muffle the press is a sham. To support the exemption of this industry on the basis that phase II regulations represent a threat to our constitutional system is unjustified.

No one likes freezes or economic controls, but once instituted they should apply to all. Everyone must make sacrifices in their daily operations. Exemption should be granted solely on the basis of need. Such need has not been documented by representatives of the news media. As a part of our free enterprise system, the public media has as great a responsibility to aid in the present program to restore our economic well-being as any other industry in the Nation.

Let there be no misunderstanding; my position clearly stated is based not upon fear for the Constitution, but upon faith in it. The first amendment will be respected. Yet, I believe this exemption is patently unfair. If there is a valid constitutional question, it lies against a law which affects some and not others.

When the House begins the consideration of the economic stabilization program, I hope that Senators will honestly analyze all arguments and oppose any attempts to include such an exemption in the bill.

THE BARRINGTON SCHOOL PROJECT IMPROVES QUALITY OF EDUCATION

Mr. McINTYRE. Mr. President, I would like to share with Senators one of the most exciting projects in education that I have seen in recent years. A group of individuals in New Hampshire took it upon themselves to improve greatly the quality of education in our State by the use of a successful project in the town of Barrington.

Perhaps the most encouraging aspect of the entire project is the fact that this success story was written by the tireless efforts of private citizens, without Federal funds or even private grants. This is an example of people helping people. I am especially proud that it took place in the Granite State.

The program began with a new teaching technique introduced to the Barrington school system by Miss Catherine Harmon. Miss Harmon recognized that the technique known as individual instruction, normally used for the teaching of exceptional children could be utilized in the regular classroom as well.

This system, using a system of individual microfilm and tape devices, was then instituted by Miss Harmon into her third-grade class with the cooperation of the school principal and the superintendent of schools. Miss Harmon's father, George H. Harmon, organized interest in the project and contacted many companies which offered materials that were vital for the success of the project.

These companies, and the men who run them, deserve our special thanks for their willingness to cooperate with this pilot project in education. They are listed for recognition in the statement which I shall place in the RECORD.

The use of individualized microfilm learning may well be the course of the future education in this Nation. That the Barrington school played an important role in the development of knowledge and expertise in this area cannot be denied.

Mr. President, I ask unanimous consent to have excerpts of the Barrington school project's final report printed in the RECORD. I am confident that every Senator will be pleased by the exceptional initiative shown in this most important educational effort.

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

THE BARRINGTON SCHOOL PROJECT

The report to follow is about an educational experiment carried out in Barrington, New Hampshire. Although, not the usual method of presenting a report, we would like to begin with the ending.

The Barrington School Project was a success. The children who participated have experienced a better relationship with the educational process and, if one can believe test results, are farther advanced than they would have been had it not been for the Project.

It is not known exactly what factors contributed to the successful educational experience of these third grade children in Barrington. The success may have been due to the teacher, the individualized instruction technique, the use of microfilm, the expanded resource that microfilm provided, the novelty of the Project, the excitement of the atten-

tion given, or some factor not even considered.

Since there has been apparent educational growth beyond normal expectations, there should be effort expended to determine what factors induced this growth and whether it is possible to induce such growth under controlled conditions.

BACKGROUND

While a student at Gorham State College, a division of the University of Maine, Catherine Harmon became interested in the educational technique known as individualized instruction. One specific method intrigued her. This is the situation where two children with vastly different capabilities study together. The system had been used with "exceptional" children with good results. The theory is that the advanced child becomes a teacher with the additional challenge while the slower child progresses at a faster rate because of the closer affinity for the child teacher than for the adult teacher. Thus, for both there is better education. Miss Harmon felt the procedure could easily be applied in a regular elementary classroom.

When Miss Harmon was interviewed for a job as a third grade teacher in Barrington, New Hampshire, she and the school principal, Mr. Barry Clough, discussed the use of individualized instruction the classroom. She then talked with her father about the subject, wondering whether microfilm and microfilm readers, rather than the book or a pair of books, could be used in the classroom for the dual studying technique. It seemed to offer great possibilities, and perhaps, should be tried. Thus began what is now known as the "Barrington School Project."

The School District was contacted to assure cooperation. Mr. Charles Morgan, the School Superintendent, approved and also received approval from the Barrington School Board. Mr. Clough was pleased to have the Project take place in his school.

It was next necessary to obtain permission from the individual publishers to microfilm those books scheduled for use in the third grade classroom. The primary publishers all gave permission to copy that material which they controlled. Total cooperation was received from American Book Company, Science Research Associates, Scott Foresman & Co., Harcourt Brace Jovanovich, and Follett Educational Corporation. The individual copyright owners were then contacted. All publishers and authors with one exception gave permission to microfilm for the Project.

Microfilming then began. Microfilming Corporation of America, Graphic Microfilm of New England and Arcata Microfilm copied the books in various microforms. Eastman Kodak produced color microfiche copies of the science book. National Cash Register produced ultrafiche copies and the Keuffel and Esser Company made some special reduction microfilm copies.

The wide variety of microforms included 16mm and 35mm roll film, 16mm in containers, and microfiche. Both negative and positive images were produced and various sizes of imagery. It was intended to check which type of microform was most appropriate for use in an elementary classroom.

Many in the microfilm industry, upon learning of the Project, offered readers, projectors and reader printers. Other equipment, such as duplicators, was offered but had to be refused for this first year of the study. Readers were received from Realist, Micro-Scan, Eastman Kodak, Arcata, University Microfilms-Xerox, Bell & Howell, Ednalite, Reproduction Systems, Viewonics, Dasa, Taylor-Merchant, Dioptrix, Information Handling Services, Washington Scientific, National Cash Register, Dietzgen, Stromberg Datagraphix and Micro Design. A reader-printer was loaned for a short period of time by SEMCO Business Products.

It was learned that a variety of other programs were being conducted. A few of these programs had generated materials for the elementary grades although most programs had been directed toward high school, junior college, and college situations. Materials on microfilm from these Projects were contributed to the Barrington School. A large number of books on film were provided by University Microfilms-Xerox and by Arcata Microfilm. Other materials were provided by Bell & Howell, Instant Information, Arbutus Publishing, Dasa, and Information Handling Services.

To judge the effectiveness of this new approach to education in the elementary school, a formal test program was devised. The use of the other third grade class at the Barrington School was not considered to be a suitable control group. It was believed that a drastic difference within the school would impose an adverse learning pattern on those students deprived of equipment and special attention. Therefore, a special program was instituted for the other third graders, and the national averages were considered the base to compare relative educational growth. Some comparisons were also to be made between the two classes.

Nancy Fletcher, the other third grade teacher brought to her class several years of teaching experience as well as background as a librarian. In the judgment of most, including the principal and other teachers, Mrs. Fletcher is an outstanding educator. (She will not be returning to the school because of winning a much sought Ford Fellowship.) The program instituted by Mrs. Fletcher involved using two readers in her classroom as a library supplement and additional educational resource. The units were placed in the rear of the room and were available for special assignments and for children who had completed their regular assignments.

The parents were kept informed about the new program. A well attended PTA meeting acquainted them with the Project. Notes to the parents advised them of the progress being made.

BLUE CROSS RATE INCREASES—CHALLENGE TO PUBLIC CONFIDENCE IN PHASE II

Mr. MOSS. Mr. President, in recent weeks I have joined a number of Senators in demanding some kind of predictability in this administration's response to our country's economical difficulties. We have stressed on numerous occasions that new guidelines must be understood widely and applied consistently if they are to inspire the broad public confidence so vital to a vigorous economic recovery.

Wage and price decisions by the administration's phase II stabilization boards, however, continue to leave most Americans entirely in the dark as to how the administration hopes to control inflation. My office has been flooded with thousands of letters and petitions expressing dismay at the gap between the declared goals and the actual performance of the President's anti-inflation machinery.

I invite attention specifically to the Civil Service Commission's announcement that Federal employees will be required to pay an additional 47.5 percent for Blue Cross protection this coming January. No single price action in memory has produced such a massive outpouring of public dismay.

Even under normal circumstances such an astounding 1-year jump in the cost of medical insurance would have created a justified public reaction. Coming as it did, at the very outset of the administration's phase II program, it led many to wonder just how serious the President could be about fighting inflation if such increases are to be permitted. To the Federal employee, who has had to bear the full brunt of wage controls during the 90-day freeze and during phase II, the Blue Cross premium hike appears as just one more example of the inequity they have felt throughout the entire stabilization program.

Mr. President, the administration has got to recognize the public's right to be informed on this matter. The Federal employee must be told the basis for wage and price decisionmaking. Political expediency alone should dictate that the President insure a nationwide recognition of the purposes and procedures of the newly instituted Pay Board and Price Commission in implementing national policy. It has been a disgrace how people have been led to expect one kind of performance by these boards and have had to witness something else altogether.

President Nixon has declared his intention to keep nationwide 1972 price increases below the 3-percent level. Quite justifiably my constituents ask me, "How can this be if Blue Cross is allowed to raise its premiums a full 47.5 percent?"

The administration informs us that such a simplistic interpretation of national guidelines is misleading. While the across-the-board national goal is to keep inflation in the 2- to 3-percent range, individual price increases will be allowed to exceed this level when they are based upon increases in the firm's costs.

Mr. President, I do not question that the implementation of a vast new economic policy requires a period of broad public education. We cannot expect everyone in the country to grasp the President's intentions overnight. What disturbs me about the administration's response to the Blue Cross rate hike has been its demonstration of an almost total breakdown of communication here in Washington.

When we see how this case was handled, at the apparent failure of both the Civil Service Commission and the Blue Cross Association to recognize their responsibilities to the Price Commission with regard to the 1972 premium increase, it is not hard to appreciate why the general public is so confused as to just what is going on in phase II.

Let us review for a moment the events surrounding the rate increase. On November 10, the Civil Service Commission made its first public announcement of the Blue Cross rate hike. Five days later the Federal Employees' News Digest carried the following lead:

Health Premiums Up—Government employees under the Blue Cross-Blue Shield high-option coverage of the Federal employee health insurance program will pay 47.5 percent more in premiums starting January 1, the Civil Service Commission has announced.

During the weeks after the announcement was made, thousands of justifiably irate Government employees wrote to me

to express their concern that such an increase could be allowed during a period of national wage and price restraint. These letters contained a general assumption that the Civil Service Commission had the last word on the premium increases.

My constituents' view was apparently shared by Blue Cross Association and the Civil Service Commission itself. Called before a House subcommittee to explain the reasons for the 47.5 percent increase, the witnesses stated that the rate hikes were based entirely on cost increases and they did not have to give prior notification to the Price Commission. They maintained that increased medical costs, in general, and a higher rate of utilization of outpatient diagnostic services, in particular, resulted in a Blue Cross loss of $8 million in 1970 and projected loss of $60 million in 1971. The company needed the rate increases to remain solvent.

During the course of testimony, an interesting fact came to light. Blue Cross had actually negotiated only a 34.1 percent premium increase. The employee will have to pay 47.5 percent more next year because the Government could not legally increase its own contribution to the high-option premium. The Blue Cross Association submitted a cost-analysis to demonstrate their need of the 34.1 percent rate hike. I ask unanimous consent that it be printed at this point in the RECORD.

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

	Amount	Percent
1972 income based on 1971 rates	$677, 166, 700	100.0
1971 anticipated claims	755, 011, 800	111.5
Enrollment decrease	(30, 672, 700)	(4.5)
Utilization increase	65, 202, 700	9.6
Inflation increase	14, 872, 100	2.2
1972 anticipated claims	804, 413, 900	118.8
Reducation of December 31, 1971 deficit	68, 536, 500	10.1
Establishment of Dec. 31, 1972 reserve	0	0
Expenses and other retention	48, 390, 800	7.1
Less:		
Investment income	(5, 000, 000)	(.7)
Payment from contingency reserve	(24, 696, 400)	(3.6)
Required 1972 subscription income	891, 644, 800	131.7
High option only		134.1

Mr. MOSS. Mr. President, the real value of the December 1 hearings was to point out the role of the Price Commission in the whole episode. A spokesman for the Commission declared that Blue Cross was, in fact, required to give prior notification before going through with the rate increase. The Association had to allow 30 days for the Commission to rule on the hike.

The following day, another Price Commission official appeared to restate that Blue Cross, as a "category No. 1" firm—one whose annual revenues are greater than $100 million—risked criminal prosecution and a $5,000 fine if it failed to make the necessary formal request for the increase.

Since the time of the hearings, counsel for the Blue Cross Association has continued to assert that they received no communication, public or private, from the Price Commission to the effect that they had to gain prior approval for the premium increase.

Moreover, Blue Cross cites Office of Emergency Preparedness regulations which they claim back up their contention. Their counsel maintains that economic stabilization regulations explicitly exempt Blue Cross from seeking approval since the premium increases resulted entirely from increased payment of benefits and not in a change in the formula used to determine the size of the premium.

Mr. President, I believe that this situation indicates a distressing breakdown in communication with regard to implementation of the administration's phase II policy. Here we have the Civil Service Commission—a Federal agency—and the Blue Cross Association, a firm which works closely with the Federal Establishment, holding an interpretation of price control guidelines totally at odds with the interpretation presented by the Price Commission. Is it any wonder that the general public finds it hard to appreciate the administration's intentions?

Today there is an obvious need for the Senate to conduct studies into ways of cutting down on the cost of medical insurance programs to the Federal employee. Such reductions could perhaps best be achieved through the institution of coverage plans designed to allow benefits for clinical and medical services which reduce utilization of hospital facilities.

I also believe that the Government should increase its contribution to the Federal employee insurance premium. I have, in fact, introduced legislation to do just that.

There is an even more urgent need, however, for administration anti-inflation programs to avoid the general turmoil we have experienced with respect to the Blue Cross-Blue Shield rate increases. Until the administration takes responsibility for creating orderly and well-advertised procedures for regulating price increases, we are all doomed to more confusion and recurring crises.

THE SOVIET MILITARY BUILDUP—WHY?

Mr. THURMOND. Mr. President, a recent editorial published in one of South Carolina's leading newspapers placed priorities in what I consider to be their proper order.

During recent months, it has become a matter of increasing concern to note the continuing rise in the Soviet military buildup. One must ask himself, "Why?"

If our national security is a subject to be taken seriously, we must consider the motivation of any nation which strives so determinedly to surpass us in offensive weaponry.

When the priorities of another nation, whose good will toward us is, at best, questionable, and so obviously involves military superiority, it behooves us to give great consideration to our own priorities.

I believe, as the editorial so eloquently states, that our national survival must take precedence over all other considerations. It would be good for all of us to read the editorial and heed its advice.

I ask unanimous consent that the editorial entitled "Our Top Priority Must Be The Nation's Survival," published in The State of Columbia, S.C., on November 26, 1971, be printed in the RECORD.

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

OUR TOP PRIORITY MUST BE THE NATION'S SURVIVAL

In speeches, magazine articles, and other means of communications, the same tune—or rather dirge—is being played: the Soviet Union has overtaken or is overtaking the United States in various critical categories of military preparedness.

There are charges that this theme is being orchestrated in the Pentagon, and therefore is self-serving. But self-serving to whom? The generals?

Perhaps. Military careers are indeed enhanced when America becomes concerned about its military strength in relation to its potential enemies. However, there are those who are prepared to argue that it is self-serving to all Americans of every ethnic and political hue.

Most of the articles and speeches that have come to our attention are heavily documented with intelligence data on the extent of the Soviet military build-up in qualitative and quantitative terms.

In a recent speech, Gen. George S. Brown said, "Admittedly, such weapons capabilities do not reveal intentions—but intentions are meaningless except in the context of capabilities. If someone has a loaded and cocked pistol pointed at your head, there are very few valid conclusions you can draw. Either he proposes to blow your head off—or, more likely, he is going to force you to do something you wouldn't otherwise plan to do."

The question of Soviet intent is one for the political leaders, the diplomats, and the high-level military strategists to figure out. But the most universal intelligence estimate is that the Russians have significantly increased and are continuing to increase their *offensive* capabilities.

For what purpose? Maybe it is out of a fear of Red China or out of a desire to do something about Red China. Maybe it is out of a desire to flex larger muscles in Europe or to undertake adventures in other parts of the world.

Maybe the Russians just like to waste money and resources on excessive armaments. (They have, for example, now achieved a numerical superiority over the United States in intercontinental ballistic missiles—ICBMs—and theirs are monsters with warheads of up to 25 megatons. There's obviously a lot of wasteful overkill here.)

Whatever, the Soviet Union since 1963 has been pouring a sizable segment of its budget into the military, leaving even Nikita Khrushchev to complain in his memoirs, "I can't help noticing that the economizing trend we started seems to have been reversed, that now money is being wasted on unnecessary items and categories and that this new trend in military overspending is putting a pinch on some of the more important but still underfinanced areas of our country's life."

It is useful to ask, with General Brown, if the Soviet people would be required to make such sacrifices "without a clear and powerful purpose."

The most charitable thought that comes to mind is that the Soviets sought to achieve parity (or something better) with the United States before agreeing to any arms limitations in the SALT talks. Unfortunately, charitable thoughts about Soviet intentions are not often healthy.

The United States can't take for granted that the Soviet buildup is for any other purpose than a continuation of its anti-American, anti-democratic policies.

As the Vietnam war grinds down, this country must guard against severe military cutbacks of the kind that followed World Wars I and II. We don't have to be wasteful and try to match the Soviets bomb for bomb. But we must maintain a defensive capability sufficient to counter the threat.

This is what patriots—in and out of the Pentagon—are trying to tell America. It's a hard proposition to sell to a nation that is suffering from a growing shortage of will power and a growing dislike for the military.

Yet the first duty of our government is to "provide for the common defense." That task, like it or not, is or should be, still priority one.

WHITE HOUSE CONFERENCE ON AGING

Mr. CHURCH. Mr. President, during the past week, approximately 3,400 concerned Americans met in Washington to participate in the second White House Conference on Aging.

Following 5 days of intensive deliberations, the participants issued a comprehensive 176-page report to establish a national policy on aging.

These recommendations—ranging from the income problems of the elderly to training deficiencies—merit the very serious attention of every Member of Congress.

Equally important, the conference provided helpful momentum for far-reaching Senate action on two fronts for 20 million older Americans. First, on Tuesday the Senate unanimously approved the Nutrition Program for the Elderly Act, a bill which I have sponsored with the Senator from Massachusetts (Mr. KENNEDY). This legislation establishes a national hot meals program for aged persons in conveniently located centers, such as senior citizen centers, schools, and other nonprofit institutions. And on Friday, the Senate approved an amendment to the supplemental appropriations bill to raise the funding level for the Older Americans Act from $44.75 to $100 million. Because I was away on official business, my remarks in support of this provision did not appear in the RECORD.

Mr. President, I ask unanimous consent that my statement, urging the adoption of this proposal, be printed at the close of my remarks.

Additionally, two recent articles, published in the New York Times and the Evening Star, raise crucial issues which should receive serious and thoughtful consideration after the White House Conference.

Mr. President, I commend these items to the Senate and 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:

MORE FUNDS FOR AoA

(Statement of Senator CHURCH)

Mr. President, I urge favorable action on the amendment to provide more adequate funding for the Administration on Aging by raising appropriations from $44.75 million to $100 million.

My reasons for supporting the amendment are these:

Congress has already authorized $105 million for the Older Americans Act. The Administration, however, did not call for appropriations equal to authorizations. In fact, the first Administration budget request was only $29.5 million. Only strenuous bipartisan efforts resulted in an appropriation of $44.75 million.

Knowledgeable witnesses have told the Senate Special Committee on Aging, of which I am chairman, again and again, that service systems for the elderly fall dismally short of need. The Gerontological Society has declared that no community in the United States has yet developed a comprehensive network of services for the aging and aged.

Delegates at this week's White House Conference on Aging declared:

"In addition to adequate income, an effective network of facilities, programs and services must be readily available and accessible to permit them to exercise a wide range of options, regardless of their individual circumstances or where they happen to live."

Until President Nixon spoke before the White House Conference—and announced for the first time that he would support a $100 million funding level for the Administration on Aging—Congress had no real assurance that the administration would support an appropriation anywhere near the amount authorized. Now that he has reversed administration policy, the way should be clear for immediate action.

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

WILL CONFERENCE ON AGING PRODUCE RESULTS?

(By Carl T. Rowan)

When a nice guy like Arthur Flemming works so hard to organize something like the White House Conference on Aging, you want it to be a success.

When the outcome involves the health, well-being and dignity of more than 20 million people, most of whom sacrificed to project their children and grandchildren into happy affluence, you hope that the fruits of the conference will be many—and immediate.

That is why I have struggled to fight off the skeptics who insist that Flemming and those 3,500 delegates were just props in a political ploy to woo 1972 votes from the aged (who make up 10 percent of the population but cast 17 percent of the vote).

But when you look at the ideology of the Nixon administration and its track record over 34 months, you find it hard to believe that our senior citizens will be much better off in 1973 than they are in 1971.

As Flemming pointed out forcefully, the great need of our aged is money. One-fourth of them live below the poverty line in hunger, sickness, squalor and lonely isolation. Most of those above the poverty line still know an abundance of misery, with inadequate fixed incomes eroded away by incessantly rising prices and soaring taxes.

When all the rhetoric has faded it remains clear that Social Security is woefully inadequate. The private pension plans in too many cases have been unfulfilled promises. There simply will never be sufficient income available to our aged until the government adopts a policy of a guaranteed minimum income.

Leon H. Keyserling says the country must have a universal minimum income program, administered by the federal government and "financed entirely out of progressive taxation on a pay-as-you-go basis."

In other words, those middle aged Americans who now live lives of luxury would be taxed—heavily—so that aged people who opened the doors to their affluence might know something more than shameful neglect.

Some will tell you that the Nixon administration's proposed Family Assistance Plan (with an income floor of roughly $2,400) would be a step in this direction. The trouble is, the President has personally led a campaign to build up anti-welfare emotions in this country, with the result that his "welfare reform" bill faces a future almost as bleak as that of the very young and the very old who need a humane welfare program so desperately.

Then there is housing. Six million of the 20 million aged live in sub-standard housing. Yet in 10 years only 350,000 apartment units have been built specifically for the aged.

Why can't we have tax exemptions for the aged who own less than a decent level of possessions? Our tax laws offer myriad bonanzas (fast depreciation, investment credits, depletion allowances) for the well-heeled. Isn't it about time we lifted the burden off 70-year-olds who have sweated and strained to get most of us where we are?

Then there is health. People over 65 are shelling out an average outlay by those 19 to 64. Medicare covers only 43 percent of this and, even counting other help, it means an annual out-of-pocket health expense of $225 for a person over 65. That is a stupendous outlay for a person with what the Census Bureau says is a median annual income of $1,951.

Even as the aged were meeting here, agonizing over their health problems, Vice President * * * on the basis of his speaking before the American Medical Association in New Orleans, attacking Sen. Edward M. Kennedy's national health insurance plan.

If you think this society's failure to serve aged people in general is a crime—and that is the word Flemming used to describe it—have a look at even-more-shameful plight of nonwhites over 65.

A special Senate committee reports that while 23 percent of white older Americans live in poverty, 48 percent of non-whites live in the degradation of human want.

Under intense pressure, Flemming tried to assure blacks a meaningful voice in the conference by inviting 390 as delegates.

But when it all was over every black delegate still faced the fact that the poverty of almost one of every two aged blacks is just an extension of the poverty of black people at every age level.

If this society cannot find a way to deliver food, decent housing, adequate health care and a sense of belonging—of dignity—to nonwhites in the prime of their lives, how much dare we hope that all these things will be available in the twilight years?

Most White House conferences tend to be political exercises that cost a lot of money, produce a mountain of promises and yield a molehill of results.

Our aged have known enough cruelty. Let us hope that the conference that has just ended becomes the source of some joy for them and not just another bitter pool of political gamesmanship.

[From the New York Times, Dec. 1, 1971]

ELDERS' LIB . . .

The elderly now represent 10 per cent of the population of the United States, cast more than 15 per cent of the vote and are growing fast enough to command major political attention. No doubt these facts account for the emphasis on action instead of rhetoric at the current White House Conference on Aging, the second of its kind. Arthur S. Flemming, its chairman, wants the emphasis to fall on the older citizen's "inadequacy of income"—a mild phrase, considering that one-fourth of all Americans over 65 are forced to live on a poverty-level income as defined by the Department of Labor. Many more must make do on fixed incomes little above that level while wrestling with inflationary prices, rising property taxes, wretched transportation systems and even nursing homes that would take a Dickens to excoriate adequately.

The five-day conference is expected to deal with these issues, but little can be hoped for unless it comes to grips with Mr. Flemming's salient point. It is nothing short of scandal-

ous that the recent boost in Social Security payments has meant for many elderly not more income, but less. Increased payments from this source have, under varying state regulations, automatically cut thousands from Medicaid, hospitalization insurance, welfare assistance and even food stamps. Yet they are forced to take this "raise" which leaves them substantially worse off than they were.

An injustice of far longer standing is the penalty of reduced Social Security payments for those who exceed the low annual limit of $1,680 in earned income, while no such penalty is invoked against those well off enough to collect dividends from investments. Perhaps most urgent of all, education and possibly legislation are needed to end arbitrary discrimination based on a fixed age—for employment and various types of license—rather than on a person's physical and mental state.

In this age of self-liberators, the aging should certainly not let themselves be forgotten.

NEW RAIL ROUTE PROPOSAL BY NASHVILLE CHAPTER, NATIONAL RAILWAY HISTORICAL SOCIETY

Mr. BROCK. Mr. President, the Nashville chapter of the National Railway Historical Society has prepared a report that my colleague from Tennessee (Mr. BAKER) and I will soon be presenting to Amtrak, which proposes a new route between Nashville and Atlanta via Chattanooga, Tenn.

We hope that Amtrak officials will give this excellent report every consideration and see its way clear to establish rail passenger service along this vital route in the not-too-distant future.

I ask unanimous consent that the report be printed in the RECORD so that we may share its valuable information with all Senators and other readers of the RECORD.

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

A CASE FOR THE "GEORGIAN"

(By the Committee on Passenger Service)

Atlanta, Georgia, metropolitan population 1,390,164, is now the largest city in the United States not served by the Amtrak system.

Though connected to the East by Southern Railway's "Southern Crescent" and to New Orleans three days a week by the same train, Atlanta, the center and hub city of the South, has no direct service to the nation's transportation center, Chicago, or to the Mid-West in general.

In addition, Tennessee's industrial corridor, East Tennessee, including two of the state's largest cities, is left with no rail passenger service at all. The need for service to these populous areas is undeniable. The question is how to provide this service most efficiently, effectively, and economically. A careful examination of possible routes, schedules, and needed equipment will indicate unequivocally that the best solution is the establishment of a new section of the existing Chicago-Miami train, the "Floridian" (formerly the "Southwind"). This new section, called in this report, the "Georgian," would provide through service between Chicago and Nashville, breaking off from the "Floridian" in Nashville, and traveling as a separate train between Nashville and Atlanta via Chattanooga.

As a result, Atlanta would have its connection to the Mid-West, and East Tennessee, i.e. Chattanooga, would once again be a part of the nation's rail passenger system. The advantages of this route are not limited to the cities served, however, for Amtrak could anticipate increased patronage of the Nashville-Chicago portion of the "Floridian" because of its connection to Chattanooga and Atlanta, as well as Birmingham and Montgomery. In addition, patronage of the proposed "Georgian" would be enhanced by its ability to connect with the "Southern Crescent" to the East, thus providing such cities as Nashville and Chattanooga with east-west service, which they do not presently have.*

A careful examination of the following proposed schedule, connections, equipment, and terminals will indicate that the establishment of the "Georgian" as a section of the "Floridian" will undoubtedly provide the best north-south service for East Tennessee and Atlanta, most economically and practically.

PROPOSED SCHEDULE

As stated earlier, the "Georgian" would operate as a section of the "Floridian," with the two trains dividing in Nashville. This schedule would facilitate a mid-afternoon arrival in Chattanooga and an early evening arrival in Atlanta. Return scheduling would call for the "Georgian" to leave Atlanta in early afternoon, arriving in Chattanooga in mid-afternoon, and connecting with the "Floridian" in Nashville in early evening. The attached schedule (based on the November 4, 1971, schedule of the "Floridian") indicates the convenience and feasibility of operating this train.

PROPOSED SCHEDULE

Read down		Miles from Chicago		Chicago to Florida / Chicago to Georgia			Read up	
Georgian	No. 52 Floridian						No. 53 Floridian	Georgian
	11:30 PM	0	Dp	Chicago, Ill.	CST	Ar	7:00 AM	
	11:59 PM	22		Homewood	CST		6:30 AM	
	12:35 AM	55		Kankakee	CST		5:50 AM	
	3:10 AM	129		Lafayette, Ind	EST		4:40 AM	
	4:40 AM	193		Indianapolis	EST		3:10 AM	
	7:40 AM	304	Ar	Louisville, Ky	EST	Dp	12:10 AM	
	7:50 AM	304	Dp	Louisville, Ky	EST	Ar	11:40 PM	
	8:50 AM	418		Bowling Green	CST		8:20 PM	
	10:35 AM	491	Ar	Nashville, Tenn	CST	Dp	6:50 PM	
11:00 AM		491	Dp	Nashville, Tenn	CST	Ar		6:20 PM
11:45 AM		522		Murfreesboro	CST			5:40 PM
12:24 PM		560		Tullahoma	CST			4:44 PM
3:30 PM		642	Ar	Chattanooga	EST	Dp		3:45 PM
3:40 PM		642	Dp	Chattanooga	EST	Ar		3:30 PM
4:35 PM		680		Dalton, Ga	EST			2:23 PM
5:36 PM		731		Cartersville	EST			1:25 PM
6:15 PM		756		Marietta	EST			12:51 PM
7:00 PM		776	Ar	Atlanta	EST	Dp		12:15 PM
	10:45 AM	491	Dp	Nashville, Tenn	CST	Ar	6:40 PM	
	3:15 PM	696		Birmingham, Ala	CST		2:20 PM	
	5:40 PM	794		Montgomery	CST		12:10 PM	
	2:55 AM	1,184		Jacksonville	EST		4:30 AM	
	6:00 AM			Orlando	EST		12:45 AM	
8:45 AM		1,422		Tampa	EST			10:10 PM
10:15 AM		1,478	Ar	St. Petersburg	EST	Dp		8:30 PM
	9:50 AM	1,456	Dp	West Palm Beach	EST		9:05 PM	
	10:45 AM	1,499		Fort Lauderdale	EST		8:15 PM	
	11:40 AM	1,696	Ar	Miami	EST	Dp	7:30 PM	

CONNECTIONS

The prime connection of the "Georgian" is, of course, with the "Floridian" in Nashville so that through service is provided between Chicago, Indianapolis, Louisville, Nashville, Chattanooga, and Atlanta. However, an additional connection in Atlanta with Southern Railway's "Southern Crescent" would provide service to Charlotte, Washington, and other cities in the East.

Coming from New York, Washington, and Charlotte, the "Southern Crescent" arrives in Atlanta at 8:30 a.m., in more than sufficient time to connect with the northbound "Georgian" leaving Atlanta at 12:15 p.m. for Chattanooga, Nashville, Louisville and Chicago. In addition, with a little juggling of schedules (one hour earlier arrival in Nashville), the southbound "Georgian" could arrive in Atlanta in time to easily connect with the eastbound "Southern Crescent." With the existing schedule, the "Georgian" would arrive in Atlanta at 7:00 p.m., the same time that the "Southern Crescent" is scheduled to leave Atlanta.

The Georgia Railroad operates a mixed train daily between Atlanta and Augusta, Georgia. The present westbound schedule of this train calls for Atlanta arrival at 11:00 a.m., enabling it to connect with the northbound "Georgian," also.

Thus, with one minor alteration of scheduling, the addition of the "Georgian" route would not only provide direct service north from Atlanta, but it would also provide excellent connecting service between Nashville and Chattanooga and Charlotte, Washington, and other eastern cities.

EQUIPMENT

Service between Atlanta and Chicago offers such potential that through cars should be provided. Thus, the initial operation should include one through coach and one through sleeper. In addition, a snack bar/coach, providing sandwiches, light meals, and complete beverage service, and a baggage/coach should be added to run between Nashville and Atlanta. (Since the proposed run between Nashville and Atlanta would start a little before noon and end in the early evening, full dining car service would not be necessary for this section of the train.) Also, because the "Georgian" would cross the scenic Cumberland Mountains during the day, a dome coach would be a worthwhile addition to the proposed run.

*NOTE.—Although not discussed in this report, the "Georgian" could continue through Atlanta to Savannah over the tracks of Amtrak member Central of Georgia Railway, where it could connect with Amtrak's New York-Miami "Silver Star." Taking into account a six-hour running time between Atlanta and Savannah, this train, with a slight alteration of schedules, could connect with the southbound "Silver Star" operating on its winter schedule, effective December 17, 1971. Likewise, the northbound "Silver Star" could connect with the proposed "Georgian" in Savannah for Atlanta, Chattanooga, and the Mid-West. This Atlanta-Savannah run would operate on a schedule similar to the former "Nancy Hanks."

The following equipment would be needed under this proposal:

Equipment	Use	Cars per train	Total cars
Coach	Chicago to Atlanta	1	3
Sleeper	do	1	3
Snack bar/coach	Nashville to Atlanta	1	2
Dome coach	do	1	2
Baggage/coach	do	1	2

TERMINAL FACILITIES

Nashville's Union Station, already in Amtrak service, would serve as the junction point of the train, with switching crews from the adjoining Kayne Avenue yard handling the switching needed to make up the proposed section.

The next major stop, Chattanooga, is the only one that would require a new terminal facility. For economy, a mobile home or prefabricated structure could be used for a ticket office and passenger waiting room. With the change L & N will soon make in its lines through Chattanooga, the new station could be conveniently located in the downtown area between Market and South Broad. This new location would eliminate the need to back into the old Union Station in Chattanooga, while at the same time providing a new, clean, inexpensive facility.

In Atlanta, the "Georgian" should use Southern Railway's Peachtree Street Station to facilitate connection with the "Southern Crescent." Located on Southern's main line, the station also sits at the intersection of two major midtown expressways. Although use of this station would require approximately two miles of backing, the availability of a facility already in use, coupled with the convenience of connections for passengers, far outweighs this minor drawback. Amtrak should be responsible only for its proportionate share of the expenses at this facility.

Flag stops or other scheduled stops could be handled in existing station facilities in selected small towns, incurring no additional expense for facility construction.

Because of the availability of existing facilities in Nashville, Atlanta, and various small towns, and because of the minimum expense required for a facility in Chattanooga, terminal costs will be both minimal and feasible, especially when compared to such cities as Cleveland and Toledo.

COST

A provision of the legislation establishing Amtrak states that trains may be added to the system in either of two ways:

(1) Local and state governments can demand service by agreeing to pay two-thirds of any losses incurred in providing the service.

(2) Amtrak's Board of Directors, on their own, can decide to provide service on a trial basis on any route they select.

For three pertinent reasons, Amtrak is urged to initiate the "Georgian" under the second method. The first reason is that because of the short distance of the route (285 miles) and the relatively few pieces of equipment needed to service the route, start-up and operating costs would be relatively low. Anticipated local patronge should cover most of these costs, keeping direct losses to a minimum.

The second reason is that establishment of this route would stimulate patronage and increase revenues on the "Floridian." It would certainly be unfair, then, for Amtrak to require local and state governments to bear the direct losses (if any) incurred, when, in fact, the overall Amtrak system stands to gain revenue-wise with the establishment of this route.

Finally, Amtrak, through the establishment of several less attractive routes at its own expense, has established a precedent that must surely apply to this potentially prosperous route.

For the reasons stated in this report, this committee urges Amtrak at its expense to implement the proposed section of the "Floridian" between Nashville and Atlanta on a daily basis for a trial period of one year.

WILLIAM B. STRONG,
Chairman.
ROBERT W. THURMAN,
Co-Chairman.

ELDERLY POOR HARD HIT BY SOCIAL SECURITY-OLD AGE ASSISTANCE OFFSET

Mr. CHURCH. Mr. President, passage of the urgently needed 10-percent social security increase last March brought some relief for millions of older Americans living on limited, fixed incomes.

However, for others—especially those who also receive old age assistance—this increase has been neutralized, to a large degree, because their assistance payments have frequently been cut back by the amount of their social security raise. The net impact is that they continue on an economic treadmill. And in some cases, these low-income individuals are actually in a worse economic situation because the reduction or loss of other valuable assistance—such as reimbursement for their payments for medicare insurance, medicaid, and old age assistance—has outstripped the limited dollar gains from the stopgap 10-percent raise.

One of the major pieces of pending legislation before this Congress is the social security-welfare reform amendments, H.R. 1. And one of the key issues which merits serious congressional consideration is the problem of the "offset" for persons who receive both social security benefits and old age assistance payments.

In order to provide more information about this problem, the Senate Committee on Aging, of which I am chairman, asked the Congressional Research Service to prepare a memorandum on the effect of the 1971 social security increase on welfare payments. Mr. President, I commend this statement to the Senate and ask unanimous consent that it be printed in the RECORD.

Additionally, a recent article in the Wall Street Journal describes in very human terms the impact of this "offset" on the lives of old age assistance recipients. Mr. President, I also ask unanimous consent that this item be printed in the RECORD.

Finally, an article by Richard Critchfield, published in the Washington Evening Star of November 30, deals with the problem as it affects individuals in the District of Columbia. This excellent article is also worthy of note, and I ask unanimous consent that it be printed in the RECORD.

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

THE LIBRARY OF CONGRESS,
CONGRESSIONAL RESEARCH SERVICE,
Washington, D.C., July 26, 1971.

To: Special Committee on Aging.
From: Education and Public Welfare Division.
Subject: Effect of March 1971 social security increase on welfare payments.

This is in response to your request for information as to the general effects of the social security benefit increase enacted in March of this year on the public assistance payments for which social security beneficiaries may be eligible. The March 1971 social security amendments provided benefit increases retroactively to January 1971. The first month for which the increased benefits were payable as a part of the regular social security check was the month of May 1971, the checks for which were issued in June. The increased benefit for the months of January–April 1971 was paid in a separate check also issued in June. The March 1971 act which effected these social security increases included a special provision under which the single check for the retroactive January–April increase could, at the option of each State, be disregarded in determining the amount of public assistance payable to an individual. No such special provision was, however, included with respect to the increased benefits which are regularly payable starting with June. Thus, these increased benefits would be treated the same as any other income available to recipients and, as such, would serve to reduce the amount of assistance payable.

In general, States are required under the public assistance titles of the social security act to take into consideration all the income and resources of an individual in determining his need and, consequently, the extent of his eligibility. Ordinarily, this would mean that if an individual's income goes up (as through a social security benefit increase) the amount of his assistance would go down. States are permitted (in the programs for the aged, blind, and disabled) to disregard up to $7.50 of monthly income from any sources in determining an individual's assistance. (There are also special exclusions for earnings from employment.) Even if a State were already making use of the provision under which it is permitted to disregard up to $7.50 per month of any kind of income prior to the adoption of the recent social security benefit increases, it could, if it wished, prevent those increases in social security from being offset by decreases in public assistance payments by raising the standards of need under which it determines the amount of public assistance an individual will receive. In general, however, an increase in the needs standard would also have the effect of raising assistance payments for persons not getting social security benefits and making newly eligible for assistance persons whose incomes are above the old standard but below the new standard.

[From the Wall Street Journal, Nov. 26, 1971]

"THANKS A LOT": DISMAYED AGED LEARN SOCIAL SECURITY RAISE MEANS CUT IN BENEFITS—IN MANY STATES, A $10 BOOST MAKES ELDERLY INELIGIBLE FOR FREE MEDICAL CARE; WILL BUREAUCRATS EVER AGE?

(By Tom Herman, Staff Reporter of The Wall Street Journal)

MIAMI BEACH, FLA.—Leah Miller is a diminutive, white-haired lady who lives alone in a small, $100-a-month hotel room here. For the past several years, Mrs. Miller has lived solely on the proceeds of her Social Security check, welfare benefits and the occasional gifts of a few close friends. Mrs. Miller is a diabetic, and after she buys her prescribed drugs and pays her rent, there's not much left over each month.

Mrs. Miller is probably just the kind of person Congress had in mind when it decided to increase Social Security payments 10%. Well, the 10% increase is in effect now, and Mrs. Miller says it has changed her life. all right.

For the worse.

"I begged the government not to make me take it," she says, "but they said I had to. I told them that's not fair. But they said regulations won't allow them to take it back."

Mrs. Miller has not lost her mind. Because of some quirks in federal and state

laws, she and thousands of other old folks in 25 states have discovered that their Social Security raises are costing them far more than they benefit them. Specifically, Mrs. Miller now gets at least $20 a month less than she did before the "increase." She also has less hospitalization insurance. And she isn't insured at all for many things she was once covered for.

NEW GARBAGE BILLS

The problem arises when elderly poor people receive just enough of a Social Security increase to make them ineligible for valuable other benefits they had been receiving, such as old-age assistance, Medicaid and free Medicare insurance. In some communities, the Social Security raise even disqualified recipients from receiving free garbage collection and forced them to pay more for their food stamps.

To some people in government, the unfairness of that ironic situation is plain, and legislation now is pending in Congress that would largely eliminate the problem. However, the proposal is a part of the controversial welfare-reform bill, which is bogged down in the Senate Finance Committee, so there's no telling when or if relief will come. In the meantime, the problem is likely to be aired at the White House Conference on Aging, scheduled for Sunday through Thursday of next week.

Mrs. Miller hasn't been invited to that conference, but if she were she would have plenty to gripe about. Before the increase, Mrs. Miller's only income was $113 each month from Social Security and $6 from the state welfare department—or $1,428 a year. The state welfare department also furnished her with a little blue card that paid up to $20 a month for prescribed medicines, and it picked up her monthly Medicare insurance premiums of about $5.60.

MRS. MILLER'S SCISSORS

Then came the "raise." Now, Mrs. Miller gets $124 a month from Social Security—$11 more. But she no longer gets the $6 welfare check, or her $20 in medicines, or $5.60 in insurance premiums. (Medicaid in Florida and 24 other states is available only to welfare recipients.) The Medicaid Mrs. Miller lost covered free X-ray treatment and skilled nursing home services—which, if the need should ever arise, she will now have to pay for herself. Medicaid also pays a patient's entire hospital bill for up to 60 days. Without Medicaid, Mrs. Miller must pay the first $60 of hospitalization costs, and that figure will go up to $68 in January.

To make ends meet, Mrs. Miller has started cutting her most expensive pills in half with a scissors. "That way, I use them up only half as fast," she says. She also spends less on food now. She also worries.

"What would I do if I should have to go to the hospital?" she asks. "I don't know where I would get that $60. And the chances of my needing to go to the hospital get better every day. I'm 83, and I'm not getting any younger."

Mrs. Miller is confused, and she is bitter. "I still can't understand how anyone could let this happen," she says. "I told the welfare people. 'Thanks a lot for nothing.' They said they were sorry, but that their hands were tied by regulations. But what are we supposed to do, those of us who are much too old to do any work?"

Government officials don't have an answer to that question, but they say it isn't a new one. Thousands of cases like Mrs. Miller's pop up every time there's a Social Security increase, they say. "It's a real tragedy," says Virginia M. Smyth, a federal welfare official in Atlanta. "It's especially ironic because it runs completely counter to the intention of the law."

TOO OLD TO FIGHT

Although the problem may have been around for years, many government officials seem unaware of it, or assume it's not around any more. One official with the Social Security Administration in Miami recently insisted for several minutes that "the whole problem was cleared up last spring in some new legislation that you should know about." Later, after thumbing through several thick reference books, he confessed: "Well, I suppose you're right. The problem is still with us."

One reason few people seem aware of the situation is the extreme reluctance of many poor people to protest. In interviews, some people express fears that any protest would mean sharp cuts in their Social Security checks. Others simply shrug their shoulders and say they are too old to fight.

Some have reacted by pleading with Social Security officials to take back the "raise." Sam Salit, a short, stocky, 77-year-old man, lives with his wife, Julia, age 66, in a small, one-room apartment in South Miami Beach, an area of the elderly and the poor. Sitting in his "living room" (the front half of the apartment) on a hot afternoon, Mr. Salit mops his brow and recalls a conversation he had with a state official after he discovered that the "increase" was going to cost him at least $43 a month.

"First, I say to the man, look, I make you a deal: You take back my little increase and I won't tell a soul. In fact, I say to the man that I give back the increase gladly. The man smiles and says he's sorry. I say that sorry won't help. He says he knows. I say to myself, so what can I do? At my age, I'm going to fight the law?"

One answer, of course, would be for each state to give Medicaid to people whose incomes are too small to pay for the medical care they need. At the moment, 23 states and the District of Columbia do just that. But in the others, only those on welfare are eligible for Medicaid. And it doesn't seem likely things will change. If anything, the trend is moving in the opposite direction; many states have begun or are considering cutbacks in medical care for the indigent.

Another answer would be to disregard Social Security altogether when computing welfare eligibility. That is the approach of a bill that will be introduced this winter by several Florida state senators; it is also an approach that has been proposed several times before and defeated, mainly because of cost.

SIX HUNDRED DOLLARS IN THE HOLE

Meanwhile, there is no help for people who lose money by getting money. That's especially tough on those with heavy medical expenses, such as Mary B. Powell, who lives near Miami. Back in the good old days before the Social Security increase. Mrs. Powell was technically on welfare and entitled to $45 a month in free prescription medicine. Now, she's off welfare, and the $45 a month comes from her own pocket—as does her $5.60 Medicare insurance premium.

That's not all. Mrs. Powell and her husband, James, live in an unincorporated area of Dade County, which means that, as welfare recipients, they were entitled to free garbage collection. Now that they're off welfare, they have to pay the $52 a year themselves. Like his wife, Mr. Powell lost his free medicines—$20 month in his case. Both the Powells lost their welfare checks, of $1 each per month. The Powells figure their Social Security increase amounts to $206.40 and will cost them $814.40 a year, which means they must somehow find another $604.40—assuming they will need no X-rays, hospital care or nursing home services.

That's an unlikely assumption. Mrs. Powell is either 73 or 75—"I can't remember if I was born in 1896 or 1898, but when you're my age, what's a year or two?"—and uses a wheelchair and suffers from ulcers and arthritis. Mr. Powell, who is 76, had "a complete mental breakdown in 1965 or so" and since has had a stroke, Mrs. Powell says. So the Powells are not exactly top candidates for the labor pool.

Nor are many others. "What worries me isn't losing the welfare check," says William Lucas, age 68, of Atlanta, who is mostly paralyzed on his right side and suffers from hardening of the arteries and an arthritic left leg and wrist. "Hell, they can keep the welfare check. What I need is that $20 drug card and the Medicaid hospital coverage."

GROCERIES OR MEDICINE

Lelia Comer, a 75-year-old St. Petersburg widow, can sympathize. Mrs. Comer's Social Security increase amounted to $12 a month and robbed her of $35.60 in welfare medical money as well as of the wide variety of hospital benefits paid by Medicaid.

Sitting on her porch with her shoes off, Mrs. Comer says: "I tell you what I think: Us old folks that worked hard, that can't work no longer, that need the money just to stay alive and buy medicine, they is the ones that can't get no money. But those young mothers that have all them babies, they get all the money they need. This raise ain't a raise none at all. It's just what they do to get us old folks off of welfare, that's all. You see what they done, they just put on to one check and took off from the other. So I'm worse off from where I was. It hurt me a heap. God knows, they think the old folks ain't got nothing to spend money on. Nothing to spend money on."

To save money for herself and her 51-year-old asthmatic daughter who lives with her, Mrs. Comer says she borrows "from my neighbor on food. And I leave off (buying) some of the groceries. My daughter, she say she don't care none about leaving off some of the groceries. She say that medicine is the most important thing."

Some observers think cases like Mrs. Comer's reflect the government's—and the whole society's—lack of sensitivity to problems of the aged. Max Friedson, a 72-year-old activist for improved old age legislation, thinks he knows why no one cares: "You know why problems like this exist?" he asks. "You know why? Because some people in government today think they'll never grow old. Of course, I don't think that's too unusual, because I never thought I'd grow old either."

[From the Evening Star, Nov. 30, 1971]

THE RAISE SPELLS HARDSHIPS

(By Richard Critchfield)

Daniel Styles is a gentle, soft-spoken, nearly blind old man who pays $35 a week for his meals and a single room in an Arlington apartment house, on South Wise Street. Since his vision turned so poor that he had to stop working as a janitor at Arlington's Colonial Village two years ago, he has lived entirely on the proceeds of a $107.45 monthly Social Security check and $20 in old-age assistance.

He is probably the kind of elderly person beset by rising living costs that Congress had in mind to help when it voted to increase Social Security payments 10 percent.

Yet as soon as the increase went into effect in July and his Social Security went up to $122.10 a month, Wise was notified he was no longer eligible for welfare. This left him $5 poorer than before.

Or take the case of a retired 65-year-old Washington business executive—call him John Martin—who lives with his wife in a public-housing project in Montgomery County. Martin had to retire prematurely because of his health. He has been hospitalized six times in the past two years with two prostate operations, cancer surgery, a heart attack and intestinal ulcer.

While he was sick recovering from his latest ailment, Martin received notice that because his Social Security had been increased, he was now $16 over the eligibility limit and would no longer receive medicaid. He was also told he would have to pay his own $5.60 medicare monthly insurance premiums. Between Sept. 30 and Oct. 1, Martin had to pay $57.48 in medical bills.

He has since appealed the decision.

These are only two examples of how a Social Security raise really cuts benefits to the elderly.

Because Social Security is a national program and medicaid, old-age assistance and food stamps are District or county-administered state programs, hundreds in the Washington area have discovered that Social Security raises are costing them in benefits more than their dollar gain.

The problem arises when a poor person receives just enough of a Social Security increase to make ineligible for valuable benefits such as old-age assistance, medicaid, $5.60 monthly free medicaid insurance or food stamps. Eligibility for the federally funded medicaid program are set locally.

This cutoff point varies from community to community. In Maryland, where anywhere up to 10 percent of the low-income group may have lost medicaid as a result of the Social Security increase in some counties in Montgomery and Prince Georges, the income eligibility ceiling is low, $1,800 for a single person, figured on a gross total income basis.

In the District, to be eligible for medicaid, a single person's net income after taxes and certain deductible expenses can be as high as $2,100 a year. In the Virginia suburbs, it can be up to $1,900 net income.

As a result, the situation is much more serious in Maryland suburbs than elsewhere in the Washigton area, where comparatively fewer people were "bumped" from benefits because of the Social Security rise. At present, maximum welfare benefits in Maryland meet only 61 percent of what a state commission has determined as a reasonable minimum living standard.

The Maryland legislature has asked counties to report on the effect of the increases but so far has taken no remedial action.

The full extent of the problem is hard to measure. Few suburban counties outside Arlington have kept records on who lost benefits solely because of the raise.

Robert C. Logan, who heads certification for the District's medicaid program, said in an interview "no one has been bumped off" since July for this reason. Yet a majority of appeals made during the last six months for restoration of canceled medicaid have been on the basis that Social Security increases made people ineligible.

A spokesman for the District's Human Resources Department declined to give out figures on medicaid appeals involving the Social Security increases, on the grounds that Health, Education and Welfare Department regulations made such statistics confidential.

One reason there is so little awareness of the problem is the reluctance of many elderly poor people to protest. Most of what has come to the surface has come from social workers who deal with the elderly in public housing. The workers often carry appeals on their behalf to the county social services departments.

The problem also has political overtones.

For instance, President Nixon's proposal for another 5 percent increase in Social Security could eliminate significant numbers of elderly people in the District from medicaid, medicare payments and food stamps, since the rise puts them above the income eligibility ceiling.

The administration's proposals and other legislation before Congress contain features to help alleviate the problem. But as long as Social Security is national and most benefits to the aged are locally regulated and administered, it cannot be eliminated entirely, especially if the states do not have the money. William C. Hudelson, the director of Prince Georges County's programs for the aging, pointed out that while Maryland law stipulates that the rise in Social Security can be disregarded for anyone receiving old-age assitance "the case workers are so poorly informed and the flow of information so slow in Maryland," that some people lost their benefits anyway.

In Virginia, the rise in Social Security was canceled out by a drop in old-age assistance for the most desperately poor, as in the case of Daniel Styles. For many others, the only real gain from the Social Security raise was a new $11.50 "disregard" payment and from $40 to $50 in back payments since the raise was made retroactive to Jan. 1.

FINANCING OF THE AMERICAN PUBLIC EDUCATIONAL SYSTEM—A GROWING DILEMMA

Mr. SAXBE. Mr. President, the time to analyze our present system of financing education is at hand.

Today, more than ever before, the education of our children is one of the most important functions of our society. We strive to teach our children well. We seek to offer them an educational foundation that will enable them not only to understand our national, state, and local problems but to solve them. We desire that they learn to improve our society and eliminate much of man's inhumanity to man. But because of the gross inequities created by our method of financing education it seems as if we are giving with one hand and taking away with the other.

We have traditionally considered education important enough to require compulsory school attendance for our children. And when it comes to raising funds for public schools the Constitution requires a system that gives a child with poor parents and neighbors the same qualified instructors and physical facilities that are given to the more wealthy. The rights and privileges held by a child cannot be increased or decreased because of the financial situation of his parents and neighbors.

We have come to the point however, where the difference between structural facilities and teachers among even neighboring school districts is so great that it is akin to sending children in high income areas to spacious "country clubs" while casting upon the financially disabled child the complexion of a prisoner; complete a 12-year sentence. The child cannot help but reflect this attitude in later life—an attitude which we have struggled to eliminate. Obviously, even with expenditures equalized, the children of the affluent will still have vast advantages. But we must now be cognizant of the fact that if public schools do not make a zealous effort to offer equality of opportunity, there will be little hope for the poor breaking out of the vicious circle of poverty, poor education, involuntary oppression, and more poverty.

Our present system, in all but two States, relies heavily upon local property taxes which causes substantial discrepancies among individual school districts in the amount of revenue available per pupil for that district's educational program. As a result, districts with a smaller tax base are not able to spend as much money per child as a district with a higher assessed valuation. At this moment in Ohio, one district may be able to afford to spend more than $1,300 per year per pupil while a contiguous, poorer district may only be able to afford $300.

Although the amount of money raised locally is often a reflection of the rate at which residents of a particular district are willing to tax themselves, as a practical matter districts with small tax bases simply cannot levy at a rate sufficient to produce the revenue that more affluent areas reap with minimal tax efforts. Thus, to a lot more educational dollars to the children of one district than another merely because of the fortuitous presence of highly valued property, is to make the quality of the child's education depend upon the existence of private, commercial and industrial complexes in his particular area.

The most significant and recent stride toward educational finance reform was taken by the California Supreme Court in Serrano against Priest, August 30, 1971. The Court held that California's present system which applies local property taxes to support individual school districts was in violation of the equal protection clause and the 14th amendment and therefore unconstitutional.

There should be no class distinctions in public education. I have long believed that Federal funds should only be used when absolutely necessary and immediate direction and control should come from State and local governments. No, I have not the solution to this imminent and perplexing problem. However, I have suggested in the past that a uniform millage tax rate may be a partial answer to this ever growing problem. Under a uniform millage system all citizens would continue to pay property tax at a uniform rate. But instead of returning the collected tax to the same districts from which it was taken it would go into a State fund and be distributed on an equal basis to all districts in the particular State. This taxing process could be supplemented by State and Federal funds until such a time when all public schools within the State can offer basically equal opportunities to all the children.

While a uniform millage may not be the total answer, it at least presents a more equitable system than presently exists. After taking the first step toward giving our young Americans the equal protection in education which they deserve we will be on our way to a better, more efficient, more equitable and more effective educational system. We must develop a method by which funds would be distributed in a manner that will enable all children regardless of the relative wealth or poverty of the school district in which they live to receive equal educational opportunities. A change will not be easy, but it must be made. We cannot continue to raise our children in an educational system that discriminates against them.

MILITARY COST OVERRUNS—A CASE OF MISPLACED MILLIONS

Mr. CHURCH. Mr. President, cost overruns and military procurements have become synonymous in recent years. These inflated expenditures stand in stark contrast to the legislative battles waged here in the Senate Chamber each year in order to add an extra dollar or two to our domestic services budgets.

The belief held by defenders of Defense Department practices that the more we spend on the military the more security we buy was recently demolished by a

former Pentagon official in testimony before the Senate Armed Services Committee.

The witness, Pierre Sprey, formerly a weapons analyst in the Office of Systems Analysis, is quoted in the Washington Post of December 9, 1971, as saying that—

The weapons cost explosion has reached the stage where national defense is being severely impaired.

This is not the only published account of DOD waste in respect to military weaponry development. The inattention of the Pentagon to unnecessary expenditures is perhaps best illustrated by William Evans, an Air Force general, as quoted in an article in the Boston Globe on December 5, 1971. General Evans, according to the dispatch, was asked about the whereabouts of $95.1 million for weapons. In reply to the question at a meeting of the Senate Armed Services Committee, General Evans is quoted as saying:

That amount of money loses its identity when it goes back into the Air Force budget . . . I cannot tell you how the money was spent.

Our cost-conscious colleague, the Senator from Wisconsin (Mr. PROXMIRE), has focused on military mismanagement and lists several spectacular examples in a highly readable article entitled "The U.S. Navy Jet That Shot Itself Down, and Other Pentagon Lemons," published in the Washington Post of December 5, 1971.

Senator PROXMIRE describes one episode in which a Navy fighter jet, the F11F1 Grumman, was disabled in flight by shells fired from its own cannon. He goes on to relate a second episode in which a Lockheed Cheyenne attack helicopter fell apart during a test flight and a third episode in which a mammoth overland supply "train" was built for $3.7 million, but never used after testing.

The article concludes with four constructive recommendations as to how to avoid wasteful expenditures of taxpayers' funds by the Defense Department.

I ask unanimous consent that the three articles referred to in my remarks be printed in the RECORD.

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

[From the Washington Post, Dec. 9, 1971]

PENTAGON REWARDS COSTLY WEAPONS AT EXPENSE OF SIMPLICITY, HILL TOLD

(By Michael Getler)

Claiming that "the really brilliant advances in weapons come from simplification" and not from making military hardware ever more complex, a former Pentagon official warned a Senate committee yesterday that the "weapons cost explosion has reached the stage where national defense is being severely impaired."

At the same session, the Senate Armed Services Committee heard the man responsible for developing one of the simplest, cheapest and best weapons ever built—the Navy's Sidewinder missile—say that the current system for developing new weapons "rewards the design of complex and expensive systems and penalizes work on simpler and therefore less expensive ones."

The military budget process, said the Navy's Dr. William B. McLean, now "ends up being a problem of guessing what will sell rather than what is really needed or can be produced."

The former official, Pierre Sprey, who spent four years as a weapons analyst in the Office of Systems Analysis, said the fascination with sophisticated weapons technology since World War II has greatly increased the "career possibilities and influence of both civilian and military technology advocates." That influence remains relatively unchecked by "counter-advocacy and by critical and realistic testing," he added.

Sprey, who left the Pentagon in 1970, is a strong advocate of more austere weapons of all types so the United States would not be outnumbered in future battles.

But he, along with a small group of Air Force fighter experts, has pressed hard for the United States to build a lightweight, low-cost fighter stripped of everything not essential for its primary role of knocking down enemy planes under the most likely combat conditions during daylight and at speeds normally well below the top speed of new fighters.

Pressing his case in 1968 while still in the Pentagon, Sprey wrote studies which irritated some higher-ups by showing, according to his calculations, that such a plane could out fight not only Soviet Migs, but the U.S. F–4 Phantom as well, and would be a lot cheaper than the Air Force's new F–15 and Navy F–14.

Although the Senate committee's special hearings are intended to help solve the problem of ballooning weapons cost and complexity, Sprey's testimony yesterday appeared to ruffle at least two committee members.

Sen. Stuart Symington (D-Mo.), who has been sharply critical of Pentagon buying policies and has praised most of the critics who have come before the committee, said he disagreed with some of Sprey's comments and questioned Sprey mostly about his background. Both the F–15 and the Phantom are built in St. Louis.

Sen. Howard Cannon (D-Nev.), a strong advocate of tactical air power, said he disagreed with "a lot" of what Sprey said, and read aloud memoranda written by civilian Navy officials working on the new F–14 fighter which criticized Sprey's earlier studies.

Sprey said he knew about those memos but the actual technical critiques had never been shown to him for rebuttal.

Since the F–14 and F–15 programs have begun, the Pentagon has decided to undertake an experimental lightweight fighter project, with strong support by Deputy Defense Secretary David Packard.

Sprey drew support from Sen. Barry Goldwater (R-Ariz.) who said "part of our trouble lies in some of our career civilian and military who can't see anything good in a new idea."

Sprey said that the best "Mig-killer" today is the French Mirage III, which has virtually none of the sophisticated electronics going into new U.S. fighters. Nor does the Mig carry such equipment, he said.

Sprey charged that the price the military is paying for radars, radios and navigational equipment was hundreds of time higher than the price commercial airliners pay and that the commercial equipment was far more reliable, another point on which he received strong backing from Goldwater.

[From the Boston Sunday Globe, Dec. 5, 1971]

SENATE PROBING HOW THE MILITARY MISPLACED MILLIONS

WASHINGTON.—The Pentagon's solution to the Vietnam conflict—electronic warfare in which computerized air and ground weapons systems replace GI's—has spawned a financial muddle in which $460 million has been spent on other projects, some of them unspecified.

The case of the misplaced millions was first uncovered by the Electronic Battlefield Subcommittee of the Senate Armed Services Committee under Sen. John C. Stennis (D-Miss.) a year ago.

On Friday the full committee began a formal investigation into the whole question of how the United States does its military shopping.

Announcing the start of this new inquiry, Senator Stennis said: "individuals with widely varying views of defense issues are united in their concern about the serious implications of cost and effectiveness of weapons systems."

At last year's hearings—which excited little public interest—Air Force Gen. William Evans was asked about a figure of $95.1 million which had vanished into other channels. He said: "That amount of money loses its identity when it goes back into the Air Force budget. . . . I cannot tell you how the money was spent."

His colleague Gen. Carlos Talbott, added: "I don't think we're providing a very good answer."

A later documented reply suggested the $20 million of the $95 million may have been used for bombs and ammunition, but it admitted: "The funds . . . do not retain their identities . . . to enable us to specify where that money was applied."

The Navy, which uses the new electronic techniques in river warfare, has been content to redirect a mere $8.1 million to other plans.

But Army funds have been diverted on a massive scale: A total of $356.6 million has been "reprogrammed."

The funds fall into two categories, both related to a night targeting system known as "STANO."

One is the Procurement of Equipment and Missiles, Army Fund (PEMA). The other is the Operation and Maintenance Army Fund (OMA).

PEMA was meant to buy such things as weapons sites cost $1,180 each and Mohawk surveillance aircraft at $2.2 million apiece. In fact, much of the money was devoted to "border sites," military helicopters and items which have not been specified.

Army Gen. William B. Fulton told the subcommittee that in 1967, $7.5 million was "reprogrammed" from the PEMA fund. In 1968, the sum was $68.2 million; in 1969, $172.8 million and in 1970, $94.1 million; a total of $342.6 million or almost 18 percent of the $1,700,000,000 diverted to the entire army's night targeting system.

Similarly, in 1969, $5.3 million was withdrawn from the OMA budget and in 1970, $7.7 million, a total of $13 million. Of this money, $3.7 million was "reprogrammed" for "southeast Asia supplies and spare parts" and the rest devoted to a scheme enigmatically described as "Project 703".

General Fulton's statement, implied that of the Army's reprogrammed $356.6 million, a sum of $111.9 million was not accounted for by details which were later supplied by the Army at the subcommittee's request.

This "deficit" however, was virtually eliminated in the revised estimate.

The later figures—which were now described as "net amounts"—suggested that no PEMA funds were redirected in 1967 or 1968; but that $156.8 million was in 1969 (against the earlier estimate of $172.8 million for that year) and that $77.9 million was redirected in 1970 (compared wih Fulton's figure of $94.1 million).

Thus, the general's earlier total of "reprogrammed" money had now shrunk from $356.6 million to $234.7 million.

When he was asked why the surplus PEMA funds were carried over to finance the following year's electronic warfare budget, Gen. Fulton said: The way the Army has handled

this funding has been to apply it to future years."

The Army's later explanation was: "There is no provision for using these funds in subsequent years for new requirements without reprogramming and congressional approval. Funds provided from program reductions are therefore reprogrammed for unforseen requirements and program changes. . . ."

This commentary went on to claim that "the major proportion of the excess (PEMA) funds were applied as offsets to urgent unprogrammed PEMA requirements . . ."

In other words, after being "reprogrammed" out of PEMA, a major but unspecified amount was "reprogrammed" back again.

Yet even the considered reply conceded that in 1969 and 1970, a total of $234.7 million of PEMA funds was spent on M16 rifles, forklift trucks, and other items which had nothing to do with the electronic warfare project for which the money was intended in the first place.

It is hardly surprising that when he opened the latest inquiry into military spending on Friday, Sen. Stennis should complain that "we reduce and even endanger our national security by developing and procuring costly and ineffective weapons systems."

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

THE U.S. NAVY JET THAT SHOT ITSELF DOWN, AND OTHER PENTAGON LEMONS

(By Senator WILLIAM PROXMIRE)

Back in 1956 there was a news story about a new Navy fighter jet, the F11F1 Grumman. It seems the jet managed to shoot itself down while flying over the Atlantic Ocean. A test pilot fired two bursts of shells from the plane's four cannon while flying along at 880 m.p.h. The jet was apparently going faster than the cannon shells, which pierced the windshield and knocked out the jet engine.

In the middle of 1969 a Lockheed Cheyenne attack helicopter was on a test flight over the Pacific Ocean. During testing for vibration, the main rotor split the body in half, killing two test pilots.

While such happenings may not be everyday events in the military, the Defense Department is plagued by waste, duplication of effort, and inter-service rivalry to the point that the security of the United States is endangered. Military procurement, the method by which jets and helicopters and a host of other expensive weapons are acquired, is in such a sad state that one can look in vain for a major weapons system which has been delivered on time, costs what the military estimated it would cost, and works according to specifications.

One need not go back to 1956 or 1969 for examples of costly projects that ended up in Uncle Sam's trash heap. Last spring, for example, a giant overland train built for the Army was sold by the government at a loss of over $3.6 million. The 500-foot lemon built nine years ago for $3.7 million was sold for $50,000. The giant vehicle, with tires 10 feet in diameter, was tested on an Arizona desert for possible use in moving equipment across roadless areas. The train's drivers' compartment is capable of housing a small family for weeks. It was never used after testing.

The C–5A cargo plane scandal is a classic example of waste and coverup. Originally the Air Force estimated it needed 40 of these planes to carry one outsized equipment of an armored division during the first two weeks of a military crisis. The Air Force argued that it should buy 120 instead of 40, because at the estimated price of $28 million per copy, the additional planes would be made cost-effective by carrying general cargo as well.

Now the costs of the plane have risen by $2 billion. The price per copy has gone up from $28 million to over $60 million, and may go even higher. But the Air Force repeatedly denied before congressional committees that any overrun existed. Finally, A. E. Fitzgerald, an Air Force industrial efficiency expert, truthfully testified before my Joint Economic Committee that the costs had gone up from $3.3 billion to $5.3 billion for the 120 planes.

Instead of giving him a medal for protecting the interests of the taxpayer and the government, the Air Force fired Fitzgerald. Instead of acting to correct the problem by holding the contractor's feet to the fire, the Air Force figuratively shot the messenger who bore the bad news.

Fitzgerald's revelations have been proved correct—in spades. Not only has the cost gone up but the performance qualifies of the plane fall so far below the original requirements that the time has come when not one more C–5A should be built.

Landing gears have collapsed. The recent Air Force grounding of the plane after a motor fell off during a takeoff run is only the latest in a series of defects and deficiencies which have come to public attention. Wing cracks, lost wheels, malfunctioning detection analysis and recording systems, lack of an operational automatic throttle-control system, malfunctioning electronic circuits, defects in the radar altimeter, and unreliable navigation equipment are all deficiencies of the C–5A which were detailed in the General Accounting Office staff study as early as March 1971.

In addition there is now a vast, unused cargo-carrying capacity in the Air Force. New planes will largely remain idle. While commercial cargo planes such as the 707 and DC–8 are used 10 to 12 hours a day, and some commercial airlines use their cargo planes as much as 14 hours a day the year round, present Air Force plans call for using the C–5A's on the average of only four hours a day

Some 60 planes are on the C–5A assembly line, or 20 more than needed for any military purpose. There is, therefore, no military or economic justification for building even one more C–5A. The program should be stopped now.

At my committee's instigation, the General Accounting Office (GAO) now makes routine reports on the difference between original Pentagon estimates of the cost of weapons and their actual cost. In their latest effort, the GAO reported that 45 major military weapons systems will cost the government $35.2 billion more than original estimates.

Cargo planes are not the only lemons in the military hardware business. The F–14 Navy fighter jet is now costing over $16 million a copy. And I predict it will go over $20 million if the program continues. This figure is three to four times the cost per copy of the F–4 fighter plane it will replace. Unfortunately, the performance of the F–14 is no better than an improved model of the F–4, and the successor to the Russian MIG–21 will no doubt exceed the F–14's performance. (Even the premise on which it is all based appears ridiculous: the F–14's basic mission is to protect an aircraft carrier against Russian-launched missiles in a non-nuclear war. The chances of ever having a non-nuclear war with Russia are slim, to say the least.)

The carriers the F–14's are supposed to protect are costly—about $2 billion per carrier, its planes, and supporting ships—and they are sitting ducks for modern missiles, especially in confined areas. As one senator said: "It is as easy to knock them out as it is to hit a bull in the butt with a bass fiddle." Yet the Navy is pressing to build new carriers, even though much of their weaponry, supporting fleet, and planes are for the defense of the carrier itself rather than for any effective military purpose.

The Main Battle Tank (MBT–70) also ranks in the category of trying to meet a need with the wrong weapon. At $1 million a copy it functions less well than the M–60. The West Germans, who were our partners in this endeavor, have gotten out. It's too bad we haven't.

Even traditional defenders of the Pentagon are beginning to get worried. "We have a real mess on our hands," said Deputy Secretary of Defense David Packard last year. "We don't need more people in the act—we need fewer people. We overorganize, overman, overspend and underaccomplish."

Packard is not alone in his condemnation of military procurement procedures. Commented Gilbert Fitzhugh, the chairman of the Blue Ribbon Defense Panel (a panel loaded with sympathetic supporters of Pentagon practices): "Defense Department policies have contributed to serious cost overruns, schedule slippage and performance weakness."

And while all this is going on, the Pentagon repeats its old chants that the Russians are threatening our military superiority and only an overblown defense budget can save America.

Tied in with the procurement of weapons is interservice rivalry which has sometimes spurred the Army, Navy, Air Force, and Marines to produce duplicate weapons systems. Such duplication obviously increases costs. For example, the Air Force is building the AX to serve as a close-support aircraft to hover over the battlefield and support the infantry at their call. The Army is producing the Cheyenne helicopter for the same purpose; so is the Marine Corps (the Harrier, built by the British). The bill for all three has thus far totaled $600 million. If the United States continues to fund production of all three, we will spend $12 billion.

Of the three, the AX is the superior plane in almost every respect. It also costs less than half of either of the other two planes. The Pentagon should back the AX and assign the close-support mission to the Air Force where it belongs. The Cheyenne, which is both a lemon and expensive, should be scrapped. And purchase of Harriers should end with the 60 planes scheduled for this year. The potential savings: $6 billion.

The military's anti-submarine warfare program is also plagued with duplication and gross overspending. At a total estimated cost of $23.3 billion, the military is producing no fewer than six major anti-submarine warfare programs. One of these, the Navy's anti-sub torpedo, the Mark 48, has one of the biggest cost overruns (on a percentage basis) of any single weapon. The original estimated cost was $720.5 million. Two years later, even with a reduction in the number of models to be purchased, the estimated cost is $2.239 billion. And it still doesn't work as well as it should.

Another drain on American dollars are the more than 400 major and nearly 3,000 minor military bases the United States has, scattered in 30 countries throughout the world. This, especially, applies to the 300,000 troops and $14 billion a year the United States provides for the NATO alliance. Although economically the Europeans are as strong as the U. S. (and stronger than the Russians), we still supply the brunt of NATO's manpower. We should, in my opinion, continue to provide the nuclear umbrella and the sea protection for NATO, but the time has come to Europeanize the defense of Europe as we are now Vietnamizing the defense of Vietnam.

The military-procurement mess, the duplication of money and effort as a result of inter-service rivalry and our disproportionate share of supporting the NATO alliance all mean one thing: the domestic needs of this country are being shortchanged. Essentially security is based on a balance between our military and our domestic needs, and between the strength of our weapons and the strength of our economy. Because of the excesses of the military, that balance now is not being maintained.

In a careful study, a group of former high-level Pentagon experts writing in the National Urban Coalition's *Counterbudget*, detailed how the military budget could be cut from $75 billion in fiscal year 1971 to $60 billion in fiscal year 1972 without endanger-

ing our military security in the slightest degree. I agree with their conclusions and support several changes that will help bring some realism and frugality back to military spending.

An independent procurement agency. The British have a Ministry of Technology, a civilian agency which purchases military planes after needs have been determined. Their interest is the best value for the money spent, unlike our Pentagon buyers who are determined to buy specific weapons at any price. We should establish a similar independent, civilian agency for Pentagon weapons buying.

Expand the Bureau of the Budget. Its present small staff of military experts is hardly a match for the Pentagon's rows of computers and offices of planners. The Bureau of the Budget should expand its staff in order to challenge Pentagon requests on a detailed, exacting, scientific basis. While the bureau examines small requests for model cities or poverty programs with minute care, billions of dollars in Pentagon requests are approved with only nominal analysis and critque.

Broader representation on existing congressional Armed Forces Committees. These committees now consist primarily of members whose home districts house huge defense establishments. Their biases toward military spending are built-in. Also, congressional research and technical staffs are overwhelmed by the volume of the Pentagon's presentations. Just as the Budget Bureau's research staff is ill-equipped to deal carefully with the military budget, so also are the supporting staffs or congressional committees incapable of the close inspection and argument which must be given the Pentagon's requests.

Better, more balanced testimony. Almost all the testimony during congressional budget hearings is presented by the Pentagon. Instead of hearings that provide a solution based on the clash of ideas, the hearings are often secret, *ex-parte* gatherings.

The results of these changes should help avoid the building of 500-foot trains and planes that shoot themselves down. By more careful equipment procurement and expenditure of military funds, we can be assured of a more adequate defense while saving billions that can be applied to other national priorities.

CREDIBILITY IN CONTEMPORARY POLITICS

Mr. BROCK. Mr. President, credibility is a highly potent word in a time when many suggest there is a great lack of it in the realm of contemporary politics. Again and again I hear the complaint that we live in a time when there is truely a lack of "statesmen," men who can grasp valuable issues and intelligently and honestly convey their feelings to the public.

Many politicians too often speak of Utopia, of the next unsurmountable mountain, as a height that is attainable or surely within reach.

Too many politicians speak words that people want to hear instead of the truth. We must as a Nation begin to deal with situations as they exist if we are going to, in the end, alter or change their complexion. Hollow banalities and unfullfilled promises can only destroy faith in a system that has unexplored, titan possibilities.

I ask unanimous consent to have printed in the RECORD an article by Mr. Irving Kristol, which appeared in the New York Times Magazine. In his candid article Mr. Irving Kristol states that "highflown utopian double-talk has driven statesman-like reasonableness out of the American forum."

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

A FOOLISH AMERICAN ISM—UTOPIANISM

(By Irving Kristol)

Let us suppose that we have provided the President of the United States with two imaginary speeches, both of which he is dutifully prepared to deliver. They deal, in a highly general way, with the goals of American foreign policy. The first speech goes somewhat as follows.

"Our American nation, ever since its foundation, has pursued the ideal of a world without war. This ideal—the abolition of war—has been the ultimate foundation of our foreign policy, despite all circumstantial changes of strategy and tactics. The ideal is as alive today, in our hearts and minds, as it ever was. This Administration is dedicated to pursuing it with the utmost vigor, and with all the patience and skill that is necessary. We seek, by our policies, to create a world in which man's inhumanity to man will become but a horrible memory, in which men will, under the conditions of a just and secure peace, live harmoniously and creatively together. We seek a world without war, without bloodshed, without poverty, without oppression or discrimination. Such a world, I am convinced, is within our reach if only the statesmen of all nations are sufficiently farsighted to seize the opportunity. I am confident, moreover, that they will display such farsightedness, and will not let the opportunity for a universal and enduring peace slip from their grasp. The people of the world—the people of all nations—demand such a peace. We shall betray their aspirations, and shall certainly be held to account, if we fail to resolve our quarrels and conflicts so as to make man's dream of permanent peace a reality in our own time."

What would happen if the President gave this speech (in a considerably lengthier version, of course). It is fair to predict—it is indeed absolutely certain—that nothing would happen. It is a perfectly conventional speech, of a kind that many Presidents have given many times. The press corps would yawn over the familiar clichés; the citizenry would scan the headline ("President Reaffirms Goal of World Peace") and then turn to the sports or financial pages; the heads of all nations would formally indicate their approval of these noble sentiments; and "informed sources" in Washington would explain that it is too early to tell what significance, if any, the speech had for any particular area of American foreign policy. As I said: nothing would happen.

Now, let us have the President deliver a rather different speech—our second version. And let it proceed somewhat as follows:

"This American nation, ever since its foundation has for the most part pursued its national interests in a moderate and prudent way. This Administration is determined to continue on this path of moderation and prudence. However, we are well aware that there is no guaranteed path to peace with justice. True, men have always dreamed of perpetual peace, and presumably always will. This dream is a noble one, and a man must be deficient in humanity not to have felt its appeal. But let us remember: It is a dream, whereas we live out our lives in a real and material world that is governed, not by dreams, but by limited possibilities. In this real and material world, conflict between men and war between nations appear to be permanent features of the human condition. It has always been so; we must, if we are responsible statesmen, assume that it always will be so. I shall minimize our chances of experiencing war; if war is unavoidable, I shall do my best to limit its extent and the mischief it is bound to create; and whether I am able to limit it or not, I shall always do my utmost to ensure that the war we shall be engaged in will be a just war, and will be justly conducted. I cannot promise you a world without war, but such a promise is is inherently fraudulent. But I can promise that we shall conduct our foreign affairs in a responsible and honorable fashion, that we shall make every effort to achieve a reasonable compromise of our differences with other nations, and that whatever calamities befall us will be as little as possible of our own making."

What would happen if the President gave this speech? One's imagination is inadequate to the prospect. It is fair to predict, however, that after a shorter or longer period of stunned silence, a storm of censure would gather round the President's head. The press corps would explode with moral indignation, and the headlines this time would be eye-catching ("President Denounces Peace as Impossible Dream"); the citizenry would be alarmed; the heads of all nations would express concern at "the new American belligerency"; only the "informed sources" in Washington would remain steady, explaining that it is too early to tell what significance, if any, the speech had for any particular area of American foreign policy.

And yet—what is wrong with the second speech? I submit that there is nothing wrong with it. It is, in every respect, superior to the meaningless banalities of the first speech. It reads 5,000 years of human experience truthfully and sagaciously, and it announces the results of this reading with a pleasing directness and candor. It is a statesman's speech—whereas the first version was nothing more than a politician's speech. True, it is an American statesman's speech; not everyone would agree that this nation's foreign policy has always displayed such moderation and prudence. But that sort of bias is comprehensible, easily discountable and even justifiable—after all, Presidents of the United States are not supposed to be objective and neutral political philosophers.

So the question arises: If the second speech is so much superior to the first, why is it that no President would ever dare to make it? Why is it that, if the President were to say that no reasonable man can expect enduring peace on earth until the day that our Redeemer cometh, this would be regarded as a terrible, cynical blasphemy—even though it is recognizably one of the most venerable platitudes of the Judaeo-Christian tradition? What is it about our political condition that constrains our leaders to define politics as the pursuit of impossible dreams? Are we the most high-minded people who ever lived, or the most hypocritical?

* * * * *

For more than a century, these two traditions coexisted amiably if uneasily in American life. The exultant prophetic-utopian tradition was always the more popular, it represented, as it were, the vernacular of American political discourse. It was, and is, the natural rhetoric of the journalist and the political candidate, both of whom instinctively seek to touch the deepest springs of American sentiment. In contrast, the constitutional-legal tradition supplied the rhetoric for official occasions and for the official business of government—for Presidential messages, debates in Congress, Supreme Court decisions and the like.

Andrew Jackson, for example, was a radical populist in his time, and when he vetoed the bank bill in 1832, his followers celebrated this as "driving the money changers from the temple." He himself, however, in sending his message to the Senate, began it as follows:

"The bill 'to modify and continue' the act entitled 'An Act to incorporate the Subscribers to the Bank' was presented to me on the 4th July instant. Having considered it with that solemn regard to the principles of the Constitution which the day was calculated to inspire, and come to the conclusion that it ought not to become a law, I

herewith return it to the Senate, in which it originated, with my objections.

"A bank of the United States is in many respects convenient for the Government and useful to the people. Entertaining this opinion, and deeply impressed with the belief that some of the powers and privileges possessed by the existing bank are unauthorized by the Constitution, subversive of the rights of the states, and dangerous to the liberties of the people, I felt it my duty at an early period of my Administration to call the attention of Congress to the practicability of organizing an institution continuing all its advantages and obviating these objections. I sincerely regret that in the act before me I can perceive none of those modifications of the bank charter which are necessary, in my opinion, to make it compatible with justice, with sound policy, or with the Constitution of our country."

This "high" mode of discourse—without cant, without demagogy, without bombast—was then thought to be the normal way in which the American Government should engage in public conversation with its own people or with the world at large. Concurrently, the political vernacular was infused with a declamatory passion. John L. O'Sullivan, a Jacksonian Democrat journalist who subsequently became a leading popular exponent of the United States' "Manifest Destiny" to expand over the entire continent, composed an endless stream of demagogic-prophetic editorials. They are perfect specimens of their type. Thus he wrote in 1839:

"The far-reaching, the boundless future, will be the era of American greatness. In its magnificent domain of space and time, the nation of many nations is destined to manifest to mankind the excellence of divine principles, to establish on earth the noblest temple ever dedicated to the worship of the Most High—the Sacred and the True. Its floor shall be a hemisphere. . . ."

And so on and so forth. The public lapped it up, and the Fourth of July orations continued to serve it up. But if one turns to the official statements of American foreign policy—statements by Presidents and Secretaries of State—one finds almost nothing of this sort. From George Washington to William McKinley, practically all such statements are sober and measured formulations of "sound policy," composed by constitutional lawyers who felt the need to argue the merits of their cases before the bar of rational and informed opinion. It is rare for any kind of breathless utopian or shrill prophetic notes to be sounded. Even at the outbreak of the Spanish-American War, when jingoistic rhetoric was deafening in its persistence and intensity, President McKinley's War Message to Congress was a lawyer's brief, arguing the legality of American actions, emphasizing their moderate and prudent qualities, outlining the material issues involved, and offering only a minimum of that "high idealism" that has since become obligatory in Presidential prose.

Sometime around the turn of the century, the impact of the Populist and Progressive movements combined to establish the vernacular utopian-prophetic rhetoric as the official rhetoric of American statesmen. It happened gradually, and it was not until the nineteen-thirties that the victory of the vernacular was complete and unchallengeable. But it also happened with a kind of irresistible momentum, as the egalitarian, "democratic" temper of the American people remorselessly destroyed the last vestiges of the neo-Whiggish, "republican" cast of mind. By now, we no longer find it in any way odd that American Presidents should sound like demagogic journalists of yester-year. Indeed, we would take alarm and regard them as eccentric if they sounded like anything else.

The effects of this transformation have been momentous, though not much noticed or commented upon. High-flown double-talk has become the normal jargon of American Government. This flatters and soothes the citizenry, but at the same time engenders a permanent credibility gap; instead of paying attention to what the Government literally says—a waste of anyone's time—we expend much energy trying to figure out what the Government really means. Official or quasi-official state documents, for the historian of today, have become trivial, superficial and unreliable sources of information. No historian of Abraham Lincoln's period would dare minimize the importance of what he said during his debates with Douglas or in his two inaugural addresses; no historian of the nineteen-sixties would bother paying nearly as close attention to the public words of John F. Kennedy, Lyndon B. Johnson or Richard M. Nixon. Our public rhetoric has become largely ritualistic—resounding utopian clichés that obfuscate a presumed "inside story" our reporters are always snuffling after.

The kinds of dangers this situation creates in the area of American foreign policy have been noted by some critics. Hans J. Morgenthau has pointed out that the closer we get to the Founding Fathers, the more sensible, the more forthright, the more realistic are our official statements of foreign policy. Conversely, the more we approach the present, the windier and more meaningless they become. Even our vocabularly becomes corrupted. The countries of Asia and Africa and South America used to be "poor"; in the course of the past 20 years they became first "underdeveloped," and now "less-developed." Plain language that accords with reality has become positively offensive to our sensibilities.

The corruption of plain language has been accompanied by—one might even say it has resulted in—the corruption of plain speaking. No Secretary of State can today describe the Governments of Greece or Peru or Bolivia or Spain or Argentina or Egypt as what they obivously are: military dictatorships. It would cause a diplomatic row; these nations have become so accustomed to our hypocritical double-talk they would sense some sinister intentions in any deviation from it. Similarly, no Secretary of State could ever say that a particular regime—for example, the Communist Government of China—is abhorrent to our own political values but that we are nevertheless prepared to have diplomatic relations with it and do business with it, since it suits our national interests at this time to do so. No, he has to announce the dawn of a new diplomatic era, a giant step to world peace, and all the rest of that nonsense. It is nonsense because he has no grounds whatever for believing this, and it is altogether possible that a United States-China *rapprochement* could heighten the possibility of war in some parts of the world—on the Russian-Chinese border, for instance, or the India-Pakistan frontier.

A particularly striking instance of how impossible it is for simple and incontestable truths to be uttered in high places is provided by the rhetoric in which our foreign aid programs are cocooned. Never mind, for the moment, whether these programs are good or bad, overly generous or terribly niggardly. The one certain fact about these programs is that they cannot even begin to do what they promise: Namely, in our life-time to bring the standard of living of the "less-developed" countries closer to the American-West European standard. Nothing can do that. If we allow that India's economy might grow at an uninterruptedly rapid rate (say, 10 per cent) for the next 29 years, and assume that the American growth rate will sustain itself at the modest level of 5 per cent during that period, then—because of the initial huge disparity—by the magic year 2000 the gap between the Indian and American per capita income will, in absolute terms, be greater than it is today. The notion, therefore, that any significant portion of the "third world" can even begin to "catch up" to the West in the next generation is an absurdity. Indeed, given the fact that the "less-developed" countries are dependent on fairly high growth rates in the United States and Europe for their own economic growth, the probability is that they will not "catch up" anytime in the next several generations, and there is a good chance they may never "catch up" at all.

Yet, who can say this? No United States Government official can—he would be denounced as a sour pessimist and driven from office. No official or political leader in a "less-developed" county can—he would be denounced as a traitor and driven from office. So, no one says it. Instead we talk grandly about "economic development" in a deceitful and misleading way. The inevitable result is that the economic growth which does take place in poorer lands—and many of them are doing quite well, by historical standards—is universally denounced as "inadequate." A more perfect recipe for permanent political instability in these nations cannot be imagined.

Worst of all, the corruption of language and speech results in the corruption of thought. One has only to observe the hearings before the Senate or House Foreign Relations Committees to realize that, once you surrender the liberty to speak plainly, you lose the capacity to think clearly. Sustained hypocrisy is one of the most intolerable regimens for the mind: In the end, you find yourself believing yourself and taking your own empty rhetoric seriously.

Thus, it is one of the oldest and truest proverbs in international relations that, under certain circumstances, the enemy of your enemy becomes your friend—even if, had you a freer choice, you would never want such a friend at all. All nation's operate on this essential principle, and the United States is no exception. Yet one can read the testimony of Government officials and "expert witnesses" for years on end without coming across a clear enunciation of it as the rationale for some aspect of American policy. We have a terrible time explaining to ourselves that, while we have an instinctive, democratic (and healthy) dislike for dictatorships, we have precious little control over the way other peoples govern or misgovern themselves. Our relations with other nations, and theirs with us, are determined for the most part by calculations of mutual advantage. One gets the distinct impression that our Government is not only ashamed to admit it engages in such calculations—it actually is reluctant to engage in them, except under the random pressure of necessity which it then perceives as an "emergency." We have been telling ourselves for so long that our foreign policy proceeds on quite other principles that we have lost the art and skill of coping with the principles that do, in fact, prevail. Our statesmen are always reacting to reality as an "emergency," in an *ad hoc* fashion, and having at the same time to invent a fancy, "idealistic" motive for the most prosaic and practical actions.

Witness the typically American fuss and furor in recent months over whether the elections in South Vietnam were truly democratic—and if they were not, what we should then be doing about it. The assumption seems to be that the original purpose of our intervention in Vietnam was to establish parliamentary government there, and that the absence of such government presents us with a crisis. But this is a childish assumption. We did not intervene for any such purpose. (At least I hope we didn't—I can't bring myself to believe that the men who make our foreign policy were quite that idiotic.) Our intervention was to help establish a friendly, relatively stable regime which could coexist peacefully with the other nations of Southeast Asia.

If such a regime prefers corrupt elections to the kind of overt military dictatorship that more usually prevails in that part of the world, this is its own affair. It constitutes

no problem for us—any more than does the fact that Communist China prefers to manage with no elections at all. Our relations with both of these Asian nations are based mainly on considerations of international stability and world peace, not on how they go about governing themselves.

To be sure, being an American I am keenly aware of the merits of representative government, and I do hope that the Vietnamese (South and North) will at some time recognize these merits. But I am also aware that these merits do not automatically commend themselves to all nations, at all times, everywhere. Our foreign relations, therefore, must of necessity be more concerned with the external policies of any particular nation than with its internal form of government. This is as true for South Vietnam as it is for China or Russia or Cuba. We are perfectly free, as Americans, to be critical of, or even to have contempt for, their systems of government. But, as Americans, we are also free not to live there, and we are therefore bound to be more interested in their behavior to others than in their behavior to themselves. I think most Americans would subscribe to this common-sense proposition. But it is not a proposition we would permit our spokesman at the United Nations to enunciate. And there do seem to be many eminent Americans—notably, an entire class of liberal journalists—who have been utterly bewitched by our official platitudes. These men and women, after traveling freely throughout South Vietnam, heap scorn upon its "corrupt" democracy. They then make a strictly guided tour of China to return aglow with admiration! One can only assume that such men and women think it natural to judge our allies by quite utopian standards, but are ready to give unfriendly nations the benefit of every possible doubt.

But it is not only in foreign affairs that our Government proceeds by utopian promises of future benefits and hypocritical explanations of actual performance. Our entire domestic policy is suffused with this same self-defeating duality. Thus, as a domestic counterpart to a "war to end all wars," we have in the past decade launched a "war to end poverty." The very title of that crusade reveals a mindless enthusiasm which could only lead to bitter disillusionment.

There are two ways of defining poverty: in absolute terms or relative terms. The absolute definition, involving estimates by Government agencies of an adequate diet, adequate shelter, adequate clothing for an average family, is relatively easy to make. It is also largely meaningless in a context of "the abolition of poverty." To see just how meaningless it is, one has only to report that the majority of welfare families in New York City are now above the officially determined "poverty line." Have we ceased regarding them—have they ceased regarding themselves—as poor? Of course not, if you take a family with an annual income of $3,800 and, one way or another, increase this income to $4,500, you have helped them somewhat—but you certainly have not abolished their poverty, as grandly promised. The consequence is that the modest but real improvement is obliterated by an exacerbated sense of "relative deprivation."

Most people, when they hear talk of "abolishing poverty," inevitably and immediately have in mind a substantial relative improvement, not merely a modest absolute one. They think in terms of elevating all those below the United States median family income—approximately $9,500 a year—to the vicinity of this level. That does not look like such an unreasonable goal. After all, families that make $9,500 a year have to watch their nickels and dimes if they are to make ends meet. (Ask them, and they'll tell you—and they'll be telling the truth.) But this is one of those cases where appearances are deceptive, and what looks like a reasonable goal is in fact utopian. To achieve it would require either the creation of new income or the redistribution of existing income to the tune of perhaps $200-billion a year.* This is simply impossible; there is no policy, however "radical," that could come close to accomplishing this. We may be an "affluent" society by historical standards, but we are not nearly that affluent. (Total corporate profits last year, after taxes, were a little less than $50-billion). Yet who dares to say so? Instead, our politicians (and our journalists and professors, too) persist in holding up this impossible ideal, with the quite predictable effect of making people intensely dissatisfied with social policies that achieve (though never easily) smaller increments to their income or smaller improvements of their condition.

The upshot of this state of affairs is that any American who, today, passes his working life in moving from $4,000 a year to an ultimate $9,500 is regarded as a pathetic victim of circumstances, a prisoner in a "dead-end job." Yet just about half of all Americans pass their working lives in this way, and are going to do so regardless of anything said or done in Washington. All that our utopian rhetoric can do is to convince them that the normal working-class experience—the *inevitable* working-class experience, which would be as common in a socialist United States as in a capitalist United States—is a fate akin to degradation.

Or take "welfare problem." Welfare policy in the United States is based on a very simple—and enormously flattering—thesis about American human nature. The thesis consists of the following propositions: (1) all Americans are highly motivated to work as a means of improving their material condition; (2) those Americans who seem not to be so motivated are suffering from temporary "psychological deprivation" as a result of poverty, bad housing, bad health and so on; (3) improve their material environment and the "normal" impulse to self-betterment will automatically assert itself. It is a plausible thesis to our American ears. Moreover, there is enough historical experience behind it to suggest it is not entirely false. Only, when applied indiscriminately, it turns out to be more false than true. Some people, whether in the United States or elsewhere, respond according to this formula. A great many others, however, do not. It turns out there are lots of people in this world, including a great many Americans, who do not fill the American prescription for "human nature."

Once you think about it, this is not really surprising. For what our high expectations and our high-flown rhetoric overlook—are bound to overlook, because they are so high-flying—is that we are for the most part talking about motivation directed toward *small* improvements. You can motivate almost anyone to become a millionaire, if the possibility is offered; but that possibility rarely is. And it is another thing entirely to motivate people to move from a badly paying situation (say, casual laborer) to a slightly better-paying but also more arduous one (say, laundry worker or drill-press operator). That is the kind of grim motivation you need to get "self-sustained" economic growth, whether among nations or among individuals. Not all human beings are born with this kind of grim motivation—which is just as well, I'd say, since the earth would then be a pretty dreary, if industrious, place.

In the absence of such ingrained motivation, the usual way we motivate people—even in America—has been by adding the spur of necessity to the offer of modest opportunity. That small improvement has to make a real difference: the difference between squalor and poverty, or between poverty and minimum comfort. These "little" differences—almost invisible to the middle-class eye, and never taken seriously by middle-class reformers—are absolutely crucial to the self-discipline and self-respect of ordinary working people. They need to be very much aware of the costs of not achieving them, if the achievement is to have any merit or meaning in their eyes.

I suspect that all of this sounds petty, and sordid, and mean-spirited. We are accustomed to thinking about poor people, and about ways of helping poor people, in more elevated terms than these. And so we introduce something like our present welfare policies. The policies, at one swoop, abolish all those important little differences in achievement. They generously offer all poor people more in the way of welfare than they can get for their unskilled labor on the open market—more, often, than they would earn at the legal minimum wage. Naturally, these people, not being fanatics about work, move onto the welfare rolls in very large numbers. To be precise, the wives and children are pushed onto welfare. The men themselves drift away from their homes, demoralized by the knowledge that their function as breadwinner has been pre-empted by welfare. These men then merge into the shadows of street-corner society-superfluous men, subsisting by casual labor or casual crime, men whose families are materially no worse off for their absence and would be no better off for their presence. Has there ever been a more ingenious formula for the destruction of poor families? Indeed, one can fairly speculate how many middle-class families would hang together if the family suffered no financial inconvenience as a result of the husband's vanishing.

Welfare is wreaking devastation on the American poor—making the child fatherless, the wife husbandless, the husband useless. We see this "welfare explosion" happening and, disconcerted, turn this calamity of our own creation into an indictment of our social order.

Once you have put people on welfare, it is a nasty business getting them off. You can either (1) cut welfare rates so as to make it distinctly worth their while to go to work, or (2) keep welfare rates high for those truly unable to work—the aged, the sick, the disabled, the unemployed—but have a severe suspicious welfare bureaucracy that defines its mission as getting as many of the rest off the rolls as is possible. Neither alternative is attractive, though the latter seems to me considerably more humane. (Its social consequences are also likely to be beneficial, since we know that families on welfare tend to develop social pathologies: they produce relatively more criminals, drug addicts, alcoholics, illegitimate children, etc.) But the second option does involve our taking a more realistic view of human nature and human motivation—and this we are most unlikely to do. So we shall either veer toward the first course, indiscriminately penalizing all welfare recipients in the name of "economy," or, more probably, we shall simply stagger on until some kind of social explosion takes place.

It really is a curious phenomenon we are witnessing: a nation preferring to live under a perpetual, self-inflicted indictment of "social injustice," and amidst an ever-swelling and ever-more-demoralized population on the dole, rather than revise its utterly fanciful and utopian idea of human nature. There cannot have been many instances in

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* One must remember: If you establish a guaranteed minimum family income of, say $8,000 a year, you are then faced with the problems of those who work to earn $9,000 or $10,000. Are they to labor for a measly $1,000 or $2,000 a year? You cannot ask that, and they would not tolerate it if you did. So you have to make some kind of supplementary payments to these families, too. And *then* you are faced with the problem of those who work to earn $12,000 a year—and so on, and on. It is this "ripple effect" that makes the guaranteed income, at any level above a ludicrously low one, such a fantastically expensive proposition.

history of such high-minded masochism. We may even be the first.

What is true of welfare is even more blatantly true of our other social problems. Our utopian illusions always are preferred to realistic assessments of human beings, and to the world in which real human beings live.

In no area are the ravages of American utopianism more visible than in education. Here intellectual fads and fashions reign supreme, all of them exultant in promise, all of them negligible in accomplishment. Our professional educators today are perpetually and enthusiastically engaged in deception and self-deception, in part out of necessity, in part because they actually feel this is their "responsibility." We know a great deal about the relationship between schools and academic achievement. But it is the rare educator who dares to say what we know, to challenge the sovereign platitudes as to what a school can do to the young people who enter it.

We know from the Coleman Report and other studies, for instance, that there is practically no correlation between the physical plant of our schools and the academic achievement of our students. We may desire new, well-equipped schools for all sorts of reasons. They may be good reasons; they may even, in some vague sense, qualify as "educational" reasons; but they are not academic reasons. Students learn as well in old, decrepit school buildings as in new, shiny ones; or they learn as little in the latter as in the former. Middle-class parents who think they are improving their children's academic potential by sending them to a brand-new school with a fine library, a sumptuous gymnasium, a lovely lunchroom are kidding themselves. So are slum parents who think that their children's academic potential is weakened by old buildings, cramped gymnasiums (or no gymnasium), shabby lunchrooms, paltry libraries (or no library). What determines a child's academic achievement is his genetic endowment plus the values and motivation he acquires at home. All the rest may have significant consequences for a child's life-style, his appearance, perhaps (and I myself regard this as the most important function of schools) what we call his character." But it will have little to do with his academic achievement.

Even class size turns out to have nothing to do with academic achievement. There are, in my view, good reasons—having to do with the role of the teacher as an "adult model" in the process of "character formation"—for preferring smaller classes to larger ones. But they are not academic reasons. Whether a class has 20 pupils or 30 or even 40 simply doesn't matter. Students who do well in small classes will do well in large ones. Students who do poorly in large classes will do no better in small ones. This subject has been studied to death by generations of educational researchers, and the results are conclusive.

Nevertheless, the educator who dares to utter these truths publicly is instantly classified as, best, an eccentric. His opinions are marked as "controversial"—though they are not—whereas an educator who stresses the academic importance of new schools and small classes is simply seen as tediously "sound." Every year, in New York City, a furious debate breaks out when the statistics on the reading levels in the city schools are made available. These statistics always show that the average reading levels in New York's schools are lower than the national average—and they usually show that, with each year, they are steadily falling further below the national average. The publication of these figures always shocks, always provokes front-page news stories. But far from being shocking, these statistics aren't even newsworthy, since they are perfectly predictable. The reason that reading scores in New York's schools are falling away from the national average is that an ever-icreasing percentage of our students come from very low-income families that are also broken, transient and generally problem-ridden families. The children in these families show low academic motivation and low academic aptitude. We insist that our schools "do something" about increasing the academic ability of these youngsters, and our educational leaders furiously institute every gimmick they can think of with the assurance that this time they will turn the trick.

Our insistence is as unreasonable as their assurances are worthless. The schools cannot perform this sociological miracle—which if it is to take place at all, will happen in the family, at home, over a period of time that is rarely shorter than a couple of generations. As such poor families move up the economic and social ladder, as their home life becomes more stable and the family concern for education becomes more emphatic, the student's academic performance improves. In individual cases, "miracles" do certainly occur. But in the mass, statistical probability reigns supreme—and the schools play no role in the calculations. If you want to estimate the chances of a student doing well or badly in school, give him a physical examination, look at his home, and give him an intelligence test. But don't bother him with questions about his school—it is of no importance for this purpose.

And how do we react to this fact? With furious indignation, usually. So, as the schools' importance to satisfy our realistic demands becomes ever more clear, we shall—it is already beginning to happen—abolish reading scores and reading tests on the grounds that they are irrelevant to eventual academic achievement. This monumental act of self-deception will, of course, fool nobody and change nothing. But it will certainly be hailed by professional educators as a marvelous innovation.

Of late, many educators have waxed enthusiastic over the educational possibilities of small mixed classes, with the older students helping to instruct the younger, and with every student proceeding "at his own pace." This is, of course, exactly what used to happen in the "little red schoolhouse." I have always been fond of the little red schoolhouse and was unhappy that, after a determined campaign over many decades, our professional educators succeeded in outlawing it. If they now wish to reinstitute it, I certainly have no objections. But I find it more than a little nauseating that they should now present it as a brilliant educational innovation which will solve all our educational problems. And I find it unconscionable that these educators can be so easy in mind and spirit about their newest fad when the huge educational parks which—only yesterday—they insisted were absolutely necessary, are just now coming into existence.

A good principal can always make a *small* difference in the academic power of a school—and a small difference is surely better than none at all. A dedicated teacher may make a big difference to a *few* students—and this difference is to be treasured. But none of this satisfies us. We insist that our schools fulfill impossible dreams—and so they pretend to be able to do this (given a larger budget, of course). As a result, the world of American education is at the moment suffused with charlatanism, and anyone with a sober word to say is encouraged to go elsewhere.

The consequence of this public insistence on a utopian vision of man, history and society is that our public life is shot through with a permanent streak of hysteria. We are constantly indicting ourselves, denouncing our nation, lamenting our fate. Indeed, an entire profession has emerged—we call it "the media"—which has taken upon itself the responsibility for leading this chorus. Just imagine what our TV commentators and "news analysts" would do with a man who sought elected office with the promise that, during his tenure, he hoped to effect some small improvements in our condition. They would ridicule him into oblivion. In contrast, they are very fond of someone like John Lindsay, who will settle for only the finest and most glowing goals. Public figures in our society get credit for their utopian rhetoric—for their "charisma," as we now say—and only demerits if they emphasize their (necessarily modest) achievements.

Every society needs ideals and self-criticism and some prophetic admonition. It needs faction. But when the countertendency toward insistent self-dissatisfaction becomes overwhelming, then such a society is in grave insistent self-dissatisfaction becomes overwhelming, then such a society is in grave trouble. The capacity for contentment is atrophied. So is the willingness to see things as they really are, and then to improve them in a matter-of-fact way. We certainly do have it in our power to make improvements in the human estate. But to think we have it in our power to change people so as to make the human estate radically better than it is, radically different from what it is, and in very short order, is to assume that this generation of Americans can do what no other generation in all of human history could accomplish. American though I be, I cannot bring myself to accept this arrogant assumption. I think, rather, that by acting upon this assumption we shall surely end up making our world worse than it need have been.

DEFENSE RESEARCH AND DEVELOPMENT—SOME OBSERVATIONS

Mr. McINTYRE. Mr. President, it was my privilege recently to have been invited to address a meeting of the Defense Science Board of the Department of Defense. The Defense Science Board is an organization comprised of a number of highly qualified scientists and engineers who serve as advisers to the Secretary of Defense and the Director of Defense Research and Engineering on overall research and engineering matters and provide long range guidance to the Department of Defense.

I used that opportunity to expound on some major concerns which have occurred to me as chairman of the Armed Services Committee's Ad Hoc Subcommittee on Research and Development. As a matter of fact, I consider these matters to be of sufficient importance to be brought to the attention of the entire Senate.

Before addressing these subjects, Mr. President, let me mention that the Defense research and development program consumes some $7 to $7.5 billion annually which is a staggering amount of money by any measure. This of itself does not mean that too much is being spent on defense research and development. What it does mean is that we cannot afford the erosive and wasteful practices that have dissipated and undermined this important program in the past. Mr. President, as I have stated in the past, I am convinced that there is much room for improvement in the management of the research and development program of the Department of Defense, as there is for other programs of that Department.

I am reminded, Mr. President, about the country preacher who came across an old farmer who was standing in the

road and cussing out his stubborn mule because it would not move. The preacher was shocked and reprimanded the farmer for using abusive language. The preacher then picked up a heavy stick and hit the animal with all his might. The surprised farmer asked the preacher why, and the preacher promptly responded, "Oh, that was just to get the mule's attention."

Mr. President, although this treatment was rather extreme, I feel that there is a continuing need to get the attention of the Department of Defense.

At the same time that we recite the frequent criticisms of parochialism, unwarranted duplication, nonproductive perpetuation of efforts, unnecessary paperwork, gold plating, mutual backscratching, excessive concurrency, and over-selling, it is only fair that we give due credit for some of the improvements which are becoming visible in the management of the Department of Defense. To cite a few examples, the innovative management approach adopted in the B–1 development program promises to produce significant savings in time, paperwork, and cost. However, this has yet to be demonstrated. The increased emphasis placed on the use of prototypes as a means for determining the suitability of hardware and weaponry before a major commitment to production promises to minimize cost overruns and provide effective weapon systems in a more timely manner than heretofore. Closely related is the emphasis being given to the operational test and evaluation function to insure the usefulness of weapon systems during the various stages of the weapons acquisition process. The importance of this function was recognized by the Armed Services Committee by including a new provision in the fiscal year 1972 Procurement bill, section 506, requiring the Secretary of Defense to submit periodic reports on operational test and evaluation beginning with calendar year 1973.

Now, Mr. President, I would like to turn to the specific points which I addressed at the Defense Science Board meeting. I have updated some of my remarks to reflect later events.

ADVANCEMENT PROTOTYPE PROGRAM

Several months ago Secretary Packard briefed the committee on a proposed program to increase the use of prototypes in the development and procurement of weapon systems. This is not really a new idea since it is really a throwback to an old way of doing business. I believe that it holds out much promise if properly pursued. The objective of this approach as he stated it is "to place more reliance on the performance of hardware and less reliance on paper analysis." It would also discourage precipitous production decisions by delaying production until sufficient progress had been completed in development to provide the confidence needed to progress to the next phase. The program which he outlined involves $67.5 million in fiscal 1972 and covers 12 separate programs or systems for the entire Department of Defense. It is unfortunate that the proposal was not included in the original budget request since the likelihood of having the Congress add it was even then in doubt.

Subsequently the military procurement authorization bill, as enacted by the Congress, provided only half of the funds requested. More recently, in acting on the Defense Appropriations bill, the House disapproved all but $12 million of the original amount requested and directed that these funds be used by the Air Force to support prototype development programs involving a new lightweight fighter and a medium STOL transport aircraft.

In retrospect, the most convincing method for expressing the importance that the Department attaches to this new approach would have been to propose reprograming from programs of lower priority. The next step would be to propose a logical follow-on effort in the fiscal year 1973 budget.

The key point in my view is to keep a balanced perspective in the increased use of prototyping and to avoid becoming unduly enamored of this approach as a cure-all. Instead, I believe that selectivity of programs, the assurance of competition, and top-level management attention are the basic ingredients to make this work. I believe also that multimission capability, high degree of complexity and sophistication, and unnecessary redundancy should be great deemphasized if the lessons of the past are to be taken seriously.

OPERATIONAL TEST AND EVALUATION

The Department is to be complimented on its efforts to establish an organization and a program to perform the important task of operational test and evaluation. This recommendation of the blue ribbon defense panel has great merit and offers great promise in the acquisition of weapon systems. It is less important where this function and organization is placed in the Department of Defense than that it be made directly responsible to the Secretary of Defense, at least for the major weapon systems programs. The head of that organization, General Starbird, has a reputation which speaks for itself. Some of my colleagues, as you are aware, are concerned that the organization should be directly under the Secretary rather than under D.D.R. & E., but that may be rather an academic concern. The most convincing manner in which to make this program work, both to the satisfaction of the Department and to the Congress, is to insure that there is compete objectivity and realism in establishing the requirements which must be met by a weapon system. The field tests which are conducted against real hardware where possible, or in a simulated environment if absolutely necessary, can only have meaning if biases are prevented from creeping in, and if foregone conclusions are prevented from overriding the objectivity of the tests. Even if these influences are subtle and not apparent, they must be resisted. Otherwise the whole concept could fall flat on its face. I am aware that the situation will vary by system, and that new ground must be broken, but the promise which this offers is of such potential significance that the challenge must be met. This program will be watched very closely and I would hope that some results of significance could be made known when the Department appears before the Committee next year.

UNITED STATES VERSUS SOVIET TECHNOLOGY

Let us now consider the problem of United States versus Soviet technology. This subject has been widely covered in numerous statements made by the Department of Defense to the Congress and in the press. Although there is general agreement that the Soviets have made significant gains both in the quality and the quantity of the weapons which are in their inventory today, there is some question concerning the ability of the Department of Defense to measure the relative efforts of the two countries as it concerns technology. The same doubt was expressed by the General Accounting Office, who undertook to examine into the details of the Department of Defense study. I am inclined to look at what I consider to be a more basic question. I find it hard to believe that with our tremendous intelligence capabilities, with the benefit of participation in international scientific symposia, that our own scientists are unable to lift the cloud of secrecy that covers much of the Soviet research and development work and detect what important technology the Soviets in fact are emphasizing. I find it hard to believe that we have to wait for the Paris Air Show to learn for the first time that the Soviets have produced a prototype of a new swept wing strategic bomber. It just does not add up. From a layman's point of view, I would have thought that the competence of our scientists applied to whatever information can be gleaned as to Soviet developmental work would enable us to extrapolate or project the logical progression of their work to the point that we could, with some degree of competence, determine what weapons systems were being developed or were planned for development.

In my view, the hard questions which should be addressed are: What is the threat? What specific weapons systems and other specific capabilities do we realistically anticipate the Soviets will have 5 to 10 years from now? And finally, what specific weapons systems and other capabilities should we be developing so that we can counter those of the Soviets during that time period?

These, to me, are reasonable questions which should evoke reasonable answers which can be translated into specific items to be included in the budget submitted to the Congress. I realize that there must be a degree of judgment in these determinations, but I am prepared to accept such a degree of judgment if it is tough-minded, unprejudiced and reasonable. The days of the "grab-bag" and "wish list" are long gone. We must make hard decisions, and they must be the right decisions. What we need is not a super selling job but just the plain unadulterated facts.

NATIONAL ATTITUDE TOWARD THE MILITARY

I found it interesting that in the letter of invitation to address the Defense Science Board there was mention that the agenda reveals concern about the problem of maintaining a strong research and development base for our national defense program in the face of a de-

teriorating climate for defense spending.

What has happened to the image of the military in recent years is very obvious to us all. I can not recall any time in my experience when the military has fallen into such general disfavor. Of course, the strain of a very unpopular and prolonged war has much to do with it. Historically, after our country has come through a major conflict, the tendency has been to retrench to a marked degree in the size and activity of our military organization. We saw this happen after World War II and again after Korea.

Now, how does research and development fit into this picture? It appears always to have been somewhat paradoxical. We, as a Nation have been wise enough in the past to have maintained a virile research and development program during those same years when all other military programs have been reduced. I think that the importance of this is generally recognized and supported by most of my colleagues in the Senate.

There is a general acceptance of the fact that we can protect our future military capability in a qualitative sense only by maintaining an adequate research and development program today. There is a danger, however, in the attitude of some people that gross dollars alone are a reasonable measure of adequacy. And, of course, one must take into account the erosive effect of inflation. But we are today faced with perhaps the most adverse climate for the Department of Defense. We could not depend alone on the general recognition of the need to maintain a relatively high level of research and development spending. The pressures to keep the levels down exist and will grow. The hard question we must ask ourselves is "What can be done to get more for the research and development dollar than in the past?" A number of possibilities comes to mind when we examine this question. Recognizing the likelihood of a ceiling on research and development in the total defense budget to be submitted for fiscal 1973, what can be done? Can we make the hard decisions to eliminate marginal research and development programs? Is there room for improvement and economy in tightening up the operations of our defense laboratories? Are there some laboratory facilities which can be closed down or consolidated with other similar laboratories?

Are we aggressively pursuing the lead laboratory concept? Is satisfactory progress being made in pursuing the increased emphasis that the Department of Defense has placed on making greater use of laboratory personnel as part of the Defense teams which manage the development of major weapons systems? This last thought promises to reduce the dependence upon and save the costs involved in continuing to employ the services of the Federal Contract Research Centers. Do we have to maintain all of the test facilities in Defense, NASA, and in industry? That's a mouthful of questions, but these and other similar questions deserve serious attention and constructive action however painful it might be.

CONTRACTOR INCENTIVES IN THE SYSTEMS ACQUISITION PROCESS

Another broad area which I would like to talk about briefly involves the practice of the use of incentives in the acquisition process for the three elements—cost, performance, and schedule. As some of you may know, the General Accounting Office has been rather critical of the use of incentives by the Department of Defense. The problem narrows down to incentives for performance and schedule. The General Accounting Office, in its investigations, has found instances where performance and schedule requirements agreed upon in negotiation appeared to have been artificially established in such a manner as to permit contractors to be rewarded where a prudent man could argue that the reward was not earned. I will not cite specific examples, but I might state a hypothetical case. A contractor may bid on a program, knowing that he can exceed the performance requirement which is established by the Government. However, he is also aware that he will win the award because of his unique competence in a particular field. When the contract is awarded, it includes incentives which will accrue to the contractor if he is able to exceed the performance requirements specified. He then proceeds to exceed the specification requirements and thereby is entitled to additional payments by the Government. This situation reflects as much on the Defense program manager and the procurement officer as it does on the contractor. In another case, a schedule is established which, under the contract, rewards the contractor if he beats certain dates which has been specified. In many cases there is nothing magic about these dates, and if the dates were met as specified, the Government would be in as good a position as if the contractor had achieved them earlier. These are just two oversimplified illustrations of what has been found. It raises the serious question as to whether or not incentives for performance and schedule should be completely eliminated, or used only infrequently when a specific justification can be made. This whole issue may be debated but, based on what little I have heard to date, it looks like an area which deserves increasing attention.

FEDERAL CONTRACT RESEARCH CENTERS

Mr. President, the history of this problem is a matter of record. Those of you who have read the Senate committee report on the fiscal year 1972 procurement bill know that a dollar ceiling again has been established on the Federal contract research centers. However, in doing so the Secretary of Defense was provided with a 5-percent increase above fiscal year 1971 for inflation and was granted a large flexibility in shifting dollars among the various contractors as the need requires.

Both appropriations bills now in conference have a somewhat different approach to the question of the Federal contract research centers. However, these differences are resolved in conference. The continuing scrutiny of this issue by Congress shows our concern that the Department of Defense is not doing much of a job of coming to grips with the question of the role that the Federal contract research centers should play in the future defense programs. I understand that D.D.R. & E. has had this matter under study recently, but I am not aware of what, if any, conclusions have been reached. This action is a subject that I expect the Department will address specifically, and I would hope to have the benefit of the knowledge gained as a result of this study.

On a related matter, let me discuss the B–1 and subsonic cruise armed decoy programs as they are presently being pursued, and the role that the Cornell Aeronautical Laboratory is playing in these programs. I have not had an opportunity yet to get into this subject in complete detail, but just on the face of it, it raises a question. On a broader basis, is there a need to continue to draw upon outside contractor assistance to provide the program manager with a degree of expertise in running a major weapon system development that he is unable to find within the Department of Defense military and civilian community? In past years, a major reason given for the difficulty encountered in attracting higher caliber civilian scientists and engineers into government service was the relatively low-salary structure of the Government. This is no longer true today. As a matter of fact, with the very sharp layoffs in defense industry, the security of government employment for such people has become highly attractive. If the Department is on its toes, it is taking full advantage of this situation.

If not, it is missing a solid bet. In effect, what I am saying is that to the extent you need people such as these, hire them and use them instead of continuing to rely upon outside contractors.

HIRING OF UNEMPLOYED SCIENTISTS AND ENGINEERS

Although I did not address the subject of unemployed scientists and engineers before the Defense Science Board, I would like to use this opportunity to express my views since this subject is so closely related to the Defense research and development program. Today, Mr. President, we are confronted with an extremely difficult situation which at the same time offers a rather unique opportunity. The very high percentage of unemployed scientists and engineers throughout the country who have lost their jobs largely because of the sharp cutback in defense contracts poses a serious problem for the entire country. It is generally accepted that the unemployment rates of these people in the aerospace industries and in the defense-related industries is higher than any other group of workers throughout the country. There are few major cities in the United States which have not felt the serious impact of this situation. Legislation has been introduced to provide a means for diverting some of these people to nondefense industries when their skills may be applied to other problems such as those of environment.

To solve the critical problem we face as a nation at home we must use to the fullest the rich reservoir of scientific and technical talent we have.

But we must also minimize the dislocations in employment of this talent by responsible action on the part of the Department of Defense. Right now, Mr. President, the Department of Defense is embarked on a program of entrenchment. Not only is the Department reducing the number of military personnel on its rolls but also civilian personnel. This can only serve to aggravate the overall situation.

As I have mentioned previously in my discussion of Federal contract research centers, the environment of government employment is highly conducive to the attraction of highly skilled scientists and engineers into government service. Salary levels in government today are comparable with those in industry and the security of government employment is particularly attractive in a period of high unemployment. Now what does this mean to our defense research and development organization?

Defense laboratories today are staffed with many senior scientists and engineers who are holdovers from World War II. This is not a criticism. However, many of these people are approaching, or have achieved, the age of retirement. Inducements may be offered to encourage their retirement as a means for making room for the younger generations of unemployed but highly trained and experienced workers from industry. In addition, the Department of Defense should also consider providing increased manpower authorizations on a selective basis in its laboratories, test facilities, and engineering organizations to permit the talents of these unemployed industry workers to be profitably used. This can be done either at the expense of other defense organizations or by obtaining executive branch approval to allow for these additions.

I am convinced, Mr. President, that our most important national asset is our trained and educated manpower. To remain passive in today's situation and permit the dissipation or misapplication of this vital national resource borders on being derelict. I am afraid that if we do not face up to this problem immediately it will be too late.

Mr. President, I appreciate having this opportunity to expose my colleagues to some of the concerns which have occupied my mind. These are some of the broader considerations, and they are by no means all inclusive. In closing, I would like to assure Senators that within the time available I will continue to direct my energies toward the objective of a Department of Defense research and development program which will insure our technological lead and our most efficient use of the American taxpayers' defense dollar.

THE FIGHT AGAINST SICKLE CELL

Mr. BAYH. Mr. President, the Senate voted 81 to 0 in its passage of the National Sickle Cell Anemia Control Act, which I cosponsored.

The unanimous vote of my colleagues reflects recognition of the serious effects that sickle cell anemia has had on a great number of our citizens. The introduction and passage of this legislation by the Senate has brought to the attention of the Congress and the American people a disease which is selective in its victims and deadly to those among us who suffer from its effects.

I was very much interested to learn that the sickle cell trait is found most often among black citizens of our country. Its cause is traceable to past generations of persons living in areas of the world where exposure to malarial infection is commonplace.

The National Sickle Cell Anemia Act is a modest beginning in what must become an all-out attack on this killer. The bill authorizes appropriations for operational programs totaling $100 million over a 3-year period—$25 million in fiscal year 1973; $35 million in fiscal year 1974; and $40 million in fiscal year 1975. In addition, research and training grants are authorized for the same period—$5 million in fiscal year 1973; $10 million in fiscal year 1974; and $15 million in fiscal year 1975.

The program will be administered by the National Institutes of Health in cooperation with the Defense Department and Veterans' Administration. Public Health Service programs of screening, counseling, and treament are also authorized.

A recent article concerning sickle cell anemia appeared in the October issue of The Black Child Advocate, a publication of the Washington-based Black Child Development Institute. The article presents a quick look at several developments at the community and university level in the fight against sickle cell. I commend this article to the Senate and ask unanimous consent that it be printed in the RECORD with a view toward broadening our understanding of this disease.

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

SICKLE CELL: KILLER OF OUR CHILDREN

Sickle cell anemia is a blood disease which has tormented Black people almost exclusively. But until recently little or nothing has been done about it.

According to Lawrence D. Robinson, M.D.'s article "Sickle Cell Anemia—Danger to Our Children" in the September issue of *Essence* magazine, the disease usually begins in infancy and ends with death in the third or fourth decade of life.

"The infant with sickle cell anemia is usually pale, lethargic, irritable and subject to sudden attacks of excruciating hand or leg pain called 'pain crises,' " says the doctor.

"The chronic nature of sickle cell anemia is responsible for the lack of physical activity on the part of the child so afflicted and their inability to adopt to sudden environment changes, such as those experienced when flying," he says.

The National Sickle Cell Disease Research Foundation located at Howard University, and the Foundation for Research and Education in Sickle Cell Disease are the main groups working towards wiping out the disease. But they are small and not well funded.

In addition, Howard University and Meharry Medical College are doing research in the area.

About one out of every 500 Black people may have the disease and about 5 percent of the Puerto Rican population is also affected, statistics show. It is treated by massive blood transfusions.

Sickle Cell Anemia is inherited. If two persons possessing the trait should have children, the chances are strong that one or more of their offspring will be born with the disease. However, persons with only the sickle cell trait (carriers) can live relatively normal lives. See Dr. Robinson's article for more detailed information.

OTHER DEVELOPMENTS

The first annual Sickle Cell Anemia T.V. telethon broadcasted last month in New York and Los Angeles collected some $600,000 in donations raised on behalf of the National Sickle Cell Anemia Foundation. The six-hour New York show, hosted by Nipsey Russel, featured such noted personalities as Lena Horne, Nancy Wilson, Melvin Van Peebles, all of New York's Black Congressmen and Rev. Jesse Jackson who is a victim of the disease.

The Los Angeles Telethon, broadcast over KHJ–TV collected close to $100,000. Original plans called for the airing of the New York telethon with limited local involvement. This plan was abandoned and a local show was put together in four days. Stu Gilliam hosted the show which included Stevie Wonder and Kim Weston.

School-age children must now be tested for sickle cell anemia in New York State according to a new law. Black doctors have been urging this for years.

Some $6 million stated for sickle cell treatment and research has been delayed by HEW. The money "would have put a clinic in every city where there is a substantial Black population," according to a national Sickle Cell Disease Research Foundation spokesman.

The Black Athlete Foundation for Sickle Cell Research was formed last May to raise money to help find a cure for the disease. Thirty-two Black athletes, including Muhammed Ali, Dock Ellis and Connie Hawkins donated $1,000 a piece to start the drive. Ellis has a sickle trait. Five thousand children were tested at a carnival type fair held in Pittsburgh last month. Similar fairs are planned for other cities.

The Cook County Physicians Association, a Chicago Black group headed by Dr. Andrew Thomas, is operating a Mobile Unit for mass testing for sickle cell. Since June, the unit has tested some 15,000 persons, ten per cent of whom were found to have had the trait, throughout Chicago and in surrounding communities. The unit soon plans to move to Malcolm X College to test an estimated 3,000 students.

Chicago is also the site of a Black Panther Party Medical Clinic opened in 1969 and conducting free sickle cell tests since May. Operating on a skimpy budget from private donations and proceeds from benefits, the Panthers have managed to keep open despite threats from the Board of Health to close it and a lack of enough volunteers.

Since last May, the Panthers have conducted tests at five Chicago elementary schools, five in Maywood and at eight neighborhood sites on the north, south and west sides. Out of 4,718 persons tested, 371 were found to have a trait and seven with the full disease, according to Ronald Satchel, one of the Clinic's three directors.

HOUSE APPROVES GRAIN PRICE SUPPORT INCREASE; THE SENATE MUST ACT

Mr. METCALF. Mr. President, I invite the attention to the action of the House of Representatives late last night in passing H.R. 1136, the strategic storable grain reserve bill after amending it to include Congressman JOHN MELCHER's bill to raise wheat and feed grain price

supports, on the 1971 and 1972 crops, by 25 percent.

The House voted 182 to 170 for the bill as amended, a rather close vote but, for a farm bill in that predominantly urban body, a better than average margin.

The House of Representatives is impressed that grain farmers face an extremely critical economic situation as a result of this year's abnormally large crops under the new set-aside farm program.

The corn crop, at 5.5 billion bushels, is at least a billion bushels in excess of requirements. A big crop was encouraged as a result of fear of another year of corn blight. But that is not the only big crop resulting from relaxed acreage restrictions. The wheat crop is up more than 250 million bushels from last year. Grain sorghum is up 195 million bushels and barley is up 65 million bushels.

Totally, the grain crop this year has run 1,800 million bushels more than in 1970, with a prospect that wheat carryover will be pushed close to a billion bushels next July 1 and our feed grain surplus will reach a serious surplus level—57 million tons instead of the comfortable 24 million tons as this year started.

As a result of this surplus, wheat and feed grain prices have dropped disastrously. Corn, worth $1.45 and more at times last summer, is selling under $1 in some Corn Belt States. Wheat has dropped to about $1.30 national average farm price, and it is well below that in my State of Montana.

Farmers write me daily that they are losing money on every bushel of grain they have to sell and will be unable to renew their operating loans next spring unless they get some relief.

Senator MIKE MANSFIELD, the distinguished majority leader, and I have pending before the Agriculture Committee the companion measure to the 25 percent price support increase approved by the House yesterday. Senators McGOVERN, HUMPHREY, and others have strategic reserve bills pending. Hearings have been held.

Mr. President, action on this farm measure is imperative before we adjourn. We need to raise the price support loan level before any more of the 1971 crops move out of the hands of farmer producers, and before they have to sacrifice their grain at substantially less than cost of production.

The Department of Agriculture has estimated the cost of the increase in loan rates at $39 million in subsidies to keep wheat exports moving, and $242 million in additional loans. Much of this will be recovered, of course, when the wheat is sold. The $281 million total is after a credit of $160 million savings on wheat certificates because the farmers would get higher prices in the market. The loan increase is advantageous because it will mean higher returns on 100 percent of the cooperators' crop, not just the 40 percent protected by certificates.

The House bill was not only supported by the major national farm organizations, except Farm Bureau, but by the AFL–CIO who advised that it would have negligible effect on consumer prices.

What the proposed increase in price support rates will do is lift wheat and feed grain prices back to about their level before harvest, when price ceilings were imposed by the President.

It is estimated that the higher price supports will increase farm income $1.5 to $2 billion, at small cost to either Government or consumers, by readjusting market prices for grain toward the levels prior to the retail price ceilings.

Mr. President, the Senate should be able to handle this bill speedily. We must find time.

ADMINISTRATION PUBLIC WORKS PROGRAM IS PLANNED—PRESIDENTIAL VETO OF SUCH PROJECTS IS RECALLED

Mr. RANDOLPH. Mr. President, I was surprised by a story which appeared on the front page of the Friday, December 3, New York Times. The headline announced that a $50 million plan for jobs has been set up and a program of public works is to start in February 1972, in high unemployment areas.

The article, by Jack Rosenthal, was based on an announcement by the administration that it is activating a program to create public works jobs in communities with high unemployment. It was noted that funds would be committed to "projects that can be started quickly and whose costs are made up largely of labor costs."

This Senator and other Members of the Congress worked diligently for the passage of legislation earlier this year to create a national public works program to alleviate severe unemployment. We feel the administration's announcement is ironic.

My colleagues recall that on June 29, the President vetoed S. 575, which reached the White House as a combination of three bills—Appalachian regional development, economic development, and accelerated public works—because of President Nixon's stated opposition to the construction of public works projects as a means of relieving unemployment.

It is noted that the program said to be nearing implementation is really authorized in the language developed by the Congress as S. 2317—Public Works and Economic Development Act of 1971—and passed after S. 575 had been vetoed.

The new administration program is, in effect, a cut down version of the accelerated public works program disapproved by the President.

In his S. 575 veto message, the President bluntly stated it to be his view that a public works program would not assist the unemployed because of the long leadtime which he alleged to be required to initiate construction. And he cited inflation in the construction industry.

The President, in vetoing S. 575, the bill I sponsored, also spoke of "fear of inefficiency in a crash program," and, finally, gave this unique rationale:

> False hopes would be created in many communities and this administration does not wish to be a party to these misleading impressions. The previous accelerated public works program resulted in applications for nearly double the amounts. On the basis of these expectations communities deferred locally funded projects. Therefore, the net economic impact in many communities was, actually, delayed public works projects.

Advocates of a public works program to cope with the needs of many communities, while placing unemployed people at work on useful projects, flatly rejected the President's view. Following last Friday's announcement, I do not know whether to be amazed by a complete reversal by the President or gratified by his switch of positions. Because I am a believer in the validity of well-planned public works—and in their job-providing potential—I am gratified that the administration is activating the $50 million program in high unemployment areas, even though the amount seems to me to be much too small.

The story in the Times indicated that the administration will seek a supplemental appropriation in the range of $30 to $40 million to carry the public works program beyond the limits of current appropriations for the Economic Development Administration. Coupled with existing funds, the amount is not large when gaged by the public facility needs of the country and the large number of unemployed people who could be assisted by a substantial public works effort. It is particularly ironic that the President would suggest this relatively small amount in view of the fact that his veto of S. 575 was allegedly to prevent "false hopes" and "misleading impressions" in many communities about the availability of an adequate supply of Federal funds for public works projects. There are going to be more "false hopes" and "misleading impressions" as a result of the $50 million program than we would have had with the $2 billion program which this Congress passed by overwhelming margins in both Houses and which was killed by the President's veto.

Perhaps the administration now indicates a trend toward more concern for the unemployed people of this country. Such concern is long overdue. It is my hope that the Senate will review this matter carefully when it receives the indicated request by the administration for a supplemental appropriation. And I hope Congress will provide a more adequate amount of money.

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

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

FIFTY MILLION DOLLAR PLAN FOR JOBS SET UP—PROGRAM OF PUBLIC WORKS TO START IN FEBRUARY IN HIGH UNEMPLOYMENT AREAS

(By Jack Rosenthal)

WASHINGTON, December 2.—The Nixon Administration announced today an immediate $50-million program to create public work jobs in communities with high unemployment.

The first phase will involve 7,000 jobs and cost $27-million, officials said. The first paychecks, they estimated, will be issued before the end of February.

Jobs created by the program will be in construction of roads, community centers and other projects that can be started quickly and whose costs are made up largely of labor costs.

Small communities are more likely than urban centers to benefit from the program, it appeared. But, officials said, projects will be undertaken across the country.

The new program was ordered by Congress in legislation passed Aug. 5. That measure followed a far more massive bill, calling for $2-billion and 175,000 jobs, that the President vetoed in June.

The program was announced today by the Department of Commerce, which said it had been ordered by the President to proceed immediately.

The Economic Development Administration, a Commerce agency, will administer the program. The agency's general responsibility is to promote long-term economic gains in depressed areas.

The emphasis in the new program on speed will dictate short-term projects, officials said. These will involve a mix of full-time and part-time and full-year and part-year jobs.

Thus, they cautioned, the figure of 7,000 jobs should not be taken literally, since the program could bring short-term benefits to a larger number of workers.

The initial $27-million will come out of long-term program funds. But, the Commerce announcement said, the President will ask Congress for additional funds to replace at least some of this amount and to fund the new program.

Of the $50-million cost of the new program, from $30-million to $40-million will be in new funds.

The Economic Development Administration now spends about $730-million a year for long-term programs in Appalachia, parts of New England, among Indians, and in other depressed areas.

Officials said today that the new emergency program funds would be apportioned among communities with a high concentration of unemployment or poverty, whether temporary or not.

It is probable, they added, that smaller communities will benefit most. The impact of the new public works jobs will be greater in them, they said.

Communities to receive the funds, officials said, will be chosen both on the basis of assessments of need by the development agency and from among those who apply.

IMPACT OF DOCK STRIKES ON AGRICULTURE

Mr. PACKWOOD. Mr. President, Senators are well aware that the disastrous impact of recent longshore strikes, particularly the Northwest strike, has been of critical concern to me. Not only must we face growing losses in the Northwest, the east coast, and the gulf area resulting from the inability of longshoremen and shippers to resolve their current disputes, but we must also face, whether we like it or not, repetition of similar crises at unforeseeable times and places in the future. This is our destiny, Mr. President, until this body agrees to explicitly assess the problem, evaluate the alternative solutions, and make some firm decisions on new procedures for settling emergency labor disputes in the transportation industry.

In an effort to shed some light on the nature of the problem we face, I would like today to address myself to the impact of the recent dock strikes on agriculture, and particularly on agricultural exports.

Any disruption of normal marketing of agricultural products will reduce farm prices and be reflected in lower farm income and higher government costs. Therefore the dock strikes which have occurred in the past and which are occurring now constitute a major threat to our farm marketing system and consequently to farm income and farm prices.

The dock strikes seriously limit our ability to compete in the international agricultural market, and the international market is essential to our well-being. Last year agricultural exports reached a new high of $7.8 billion, and these exports contributed heavily to our Nation's trade balance. Without these farm exports our balance-of-payments problem would have reached a crisis stage long ago.

During 1970, production from 1 out of every 4 acres was exported. These markets accounted for over one-half of our wheat, soybeans and rice, nearly two-fifths of our cattle hides, and one-third of the tallow, tobacco, and cotton produced, and about one-fifth of our feed grain sales.

Our farmers are aware that their competitive position in the international market is in jeopardy, because of the transportation tieup caused by the dock strikes. The international market is a tough one to compete in and prices weigh heavily in the decision by importers as to where they will buy their products. Our one big plus in this competition has been that of the dependable supplier. But how dependable are we when we have strikes every 3 years?

The Japanese are beginning to question us regarding our dependability as a supplier. In recent bilateral discussions with the Japanese we learned that they are sending missions to other supplying countries to urge that they increase their output, especially of grains, in order to reduce Japan's dependence on the United States.

If the Japanese turn to other sources for supplies of grains, especially wheat, this would be a tragic loss to our farmers. In the Northwest wheat is produced largely for export to Japan. During the July–September period last year our sales of wheat and flour off the west coast were 58 million bushels, and during the same period this year they were less than 1 million bushels.

Our share of the Japanese wheat market for the April–October period declined from 58 percent last year to 42 percent this year. This is a decline of approximately 15 million bushels worth roughly $25 million. All of this business went to our competitors. At this time the Japanese are buying wheat for delivery next year, but because of the threat of a continuance of the west coast dock strike at Christmas, they are not buying from the United States.

During the 100-day strike on the west coast this summer and fall we suffered export losses in many commodities besides wheat. Rice exports were down from 157,000 metric tons to 35,000 metric tons. Cotton exports were down by 85 percent; fruits and vegetables were down 55 percent. Certain industries suffered severely. California alfalfa producers are a good example. Exports of alfalfa meal usually account for about two-thirds of the California output, but during the west coast strike 10 alfalfa meal dehydration plants in California had to close down. Our market was flooded with alfalfa that would normally be dehydrated for export. Furthermore, alfalfa pellets and cubes destined for export and held by the strike were exposed to the sun which reduces carotene content to no more than that of ordinary hay. As a result, their value dropped to $30 per ton compared with the prestrike price of about $50 per ton. In total, our agricultural exports off the west coast during the 100-day strike declined by $200 million over the same period a year earlier.

What happened on the west coast was repeated on the east coast, gulf coast, and in Chicago. Corn and soybeans have been backed up throughout the Midwest, and farm prices have been discounted by 5 cents per bushel for these commodities. At one time there were 60 million bushels of corn and soybeans stranded in the approaches to New Orleans.

Because so many commodities are involved, I ask unanimous consent to have printed in the RECORD a listing of several northwest export crops and the dollar volume in the summer of 1970 as compared with the volume in summer, 1971.

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

PACIFIC COAST EXPORTS—JULY-SEPTEMBER, 1970 AND 1971

[Dollars in millions]

Commodity	1970	1971	Percent 1971 of 1970
Grain and feed	$141.8	$13.8	10.0
Wheat and flour	88.7	1.4	2.0
Rice	25.7	5.6	22.0
Prepared feed/alfalfa meal	8.8	.7	8.0
Fats and oils	12.3	7.4	60.0
Tobacco	0	0	
Cotton	17.4	2.5	14.0
Dairy	7.0	1.5	21.0
Poultry	2.8	1.1	39.0
Livestock and meat	32.4	13.7	42.0
Tallow and greases	10.9	4.3	39.0
Hides and skins	12.0	5.3	44.0
Fruits and vegetables	69.3	30.9	45.0
Citrus fruits	11.0	8.5	77.0
Fruit cocktail	2.7	.3	11.0
Fruit juices	3.3	1.1	33.0
Other fruits and nuts	37.6	14.8	39.0
Vegetables	13.0	6.2	48.0
Sugar and tropical products	5.3	2.1	40.0
Total—all agricultural commodities	288.3	73.0	25.3

Mr. PACKWOOD. Mr. President, these figures speak for themselves. Magnify them severalfold and you can gage the effect of the longshore strikes around the Nation on our agricultural economy. Anyone who cares about equity for this Nation's farmers cannot close his eyes to this situation for much longer.

THE STIMULUS TO READ

Mr. EAGLETON. Mr. President, Daniel Fader, an English professor at the University of Michigan, conducted a reading experiment in a Washington, D.C. school several years ago. He has recently published a book entitled, "The Naked Children," based on his experiences with the children in Garnet-Patterson Junior High School. It is Dr. Fader's belief that children are failed by the schools. It is

not that they cannot read; it is that they would not read unless given the proper stimulus.

To test his theory, Dr. Fader used newspapers, current issue magazines and paperback books to stimulate the children's interest, rather than traditional textbooks. "The Naked Children" describes the success of the experiment in terms of stimulating interest in reading and thereby improving the reading level of many of the children. Although Garnet-Patterson still reflects his new approach to the teaching of reading, the school no longer has the benefit of Dr. Fader's leadership, nor his resources.

The Washington Post recently carried excerpts from the book along with critical comments of the teachers involved. I ask unanimous consent that this article be inserted in the RECORD at the end of my remarks.

This experimental reading program is particularly important in light of the administration's right to read program. You may recall that this program was first announced in October 1969, by the late Dr. James Allen, then U.S. Commissioner of Education. Dr. Allen spoke of the 10 million American children and teenagers with serious reading difficulties. He committed the administration to a far-reaching program of educational support for these youngsters to enable them to enjoy their right to read.

Not long thereafter, President Nixon added his endorsement in a message to Congress on education reform. The President said:

> I propose new steps to help States and communities to achieve the Right to Read for every young American. I will shortly request that funds totalling $200 million be devoted to this objective during Fiscal 1971. The basic ability to read is a right that should be denied to no one, and the pleasures found in books and libraries should be available to all.

Two full years have now passed since this ambitious and comprehensive program was announced and still there are no funds earmarked for such a program. Funds siphoned from other education appropriations, totaling $10 million this year, are the sole means of carrying out the administration's most worthy proposal. Isolated grants are being awarded, but their scope is extremely limited and they affect relatively few children. This is a beginning but it is not enough. The President must back up his promise to establish a comprehensive right-to-read program with the necessary funds.

Mr. President, I ask unanimous consent that an article from the Washington Post Potomac magazine of December 5, 1971, describing Professor Fadler's reading experiment be printed in the RECORD.

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

WHITE TEACHER, BLACK STUDENTS AT A DISTRICT OF COLUMBIA SCHOOL: AN EXPERIMENT IN READING AND LOVE

(By Aileen Jacobson)

(NOTE.—During the school year of 1965–66, Daniel Fader commuted weekly from the University of Michigan in Ann Arbor, where he teaches Shakespeare, to Garnet-Patterson Junior High at 10th and U Streets NW, to try to teach reading.

Fader had a federal grant to test a theory he had evolved and used once before. It was a simple, almost common-sensical theory: If children are having problems learning to read, perhaps one of the reasons is that they do not like what they are given to read. Perhaps "Silas Marner" and the works of Shakespeare are written in language that is impenetrable to them. And perhaps the very books themselves, as objects, are alien and forbidding. On the other hand, what becomes familiar to these same children, and what they naturally respond to are newspapers, magazines, and paperback books on subjects they are personally interested in. So, why not give them newspapers, magazines and paperbacks? If they can learn to read from those printed pages, rather than the traditional texts, what does it matter? They still have learned to read. And maybe they even have the sensation of pleasure associated with learning. Very rare for a young student. And, perhaps, since he has found pleasure in reading one kind of publication, he will, of his own free choice, go on to read other kinds of publications. Maybe even "Silas Marner" and Shakespeare.

For his basic reading materials, Fader used 450 copies daily of The Washington Post—the "capital" or first edition, which the students especially liked because it was so full of errors. (Theoretically, errors are caught and corrected for subsequent editions.) He also used magazines and paperbacks, which he got from Joseph Ottenstein, owner of The District News Company. Ottenstein liked Fader's theory, gave him the magazines for nothing, the books at his own wholesale price.

As with any new theory and experiment, Fader encountered a certain amount of opposition at Garnet-Patterson from both teachers and students. Yet, during the year, he was able to convert many, and most important, to get students reading. Not only did they read The Post and Ottenstein's magazines, but by the Spring of that year, there was a run on the school's library.

In ways direct and subtle, whatever Fader taught and learned at Garnet-Patterson evolved from an association, a rare and special friendship he developed with five students—Cleo, Wentworth, Snapper, Rubbergut and Uncle Wiggly. Cleo, 14, was the leader of this small gang, and she maintained her leadership by her extraordinary clarity of vision, wit and toughness, and by offering her body to the four boys, ages 13 to 14, on a planned and regular basis.

Fader has written about himself and Cleo and Wentworth and the others at Garnet-Patterson in a recently published book, "Naked Children." It is an intriguing, affecting story, and privileged look at life in Washington's inner city. Excerpts from the book follow. And also, since there is still opposition to Fader and his theory at Garnet-Patterson, included after the excerpt are some comments from teachers who were at the school when Fader's narrative was being lived.)

For two days I had hounded him. It began on Thursday morning when I sat in his English classroom during the first period of the day. Charles Dickens would have recognized the teacher. Invented and educated in another age, she was uncomfortable and unhappy in the seventh decade of the 20th century. If silence is golden, her classroom was the Fort Knox of the neighborhood. Thirty-eight children in her room that morning, breathing not apparent in 35. They had long since gotten the message: Keep quiet. Keep your mouth shut and nothing can happen to you. Say something, anything, and you've said too much. Thirty-five children sat stifled in silence.

Wentworth sat second seat from the front, second row from the wall, I sat in the last seat of the row next to the wall, the teacher's desk was diagonally, across the room from me and at right angles to Wentworth. She had a view of his left side and front while I could see his right side and back. What she saw from the left-front was one more of the silent creatures who inhabited the room like fish displaced from voiceless depths. What I saw from the right-rear was a boy slowly turning the pages of a hot-rod magazine.

For all that remained of Thursday and again on Friday I followed him from class to class. By Friday noon I had seen enough; we spoke in the cafeteria.

"She says you can't read. I don't believe it."

"Maybe she jus' puttin' you on."

"Maybe you're just putting her on." We had a talking acquaintance, no more. I knew I might be presuming too much, might be invading the place where the boy kept himself hidden, but the week was nearly done and I knew I was close to the truth I had begun to suspect. When he said, in a flat voice, "I ain't doin' nothin' to nobody," my impatience and irritation must have shown in my face, for suddenly he turned away from me—we had been standing together in the cafeteria line—and took a place farther back, his face averted.

I ate quickly at a table with several teachers and waited for Wentworth to finish. I knew I wouldn't get anything from him that he didn't want to give, and I thought he would be least likely to feel like giving when he was in the company of friends. As in so many of my estimates of children, I was wrong about the effect of his friends upon Wentworth. But I erred even more than habitual underestimation can explain. I was so wrong because Cleo was completely beyond my experience.

After I had eaten quickly, wanting to be ready whenever Wentworth decided to leave, I found myself feeling like a fool as both teachers and children, who had eaten at a more sensible rate, finished their meals and their conversations and left the cafeteria. No one had left Wentworth's table by the time the last teacher departed from mine. As the only adult remaining in the room, I suddenly felt conspicuous and alone.

When the last teacher left the cafeteria, five expressionless children got up together and walked toward me across the room. As they slowly made their way through the tables, I realized that I was not only conspicuous and alone, I was also uneasy and apprehensive. Had I harassed Wentworth to the point that he had enlisted his friends to help him handle me? I pushed my chair back from the table and stood up to meet them. The cafeteria was empty but for the six of us. They formed a semicircle in the aisle while I faced them from between the tables.

"Why you messin' on Wentworth?" The only girl in the group was speaking to me. No preliminaries. Just the question.

"I'm not messing on anybody," I said.

With a word, Wentworth commented on the truth of my answer. The girl ignored him and watched me.

"He don't wanna talk to you," she said.

"But I want to talk to him. He could help me a lot if he wanted to."

"He don't want to."

"He should."

"Why he *should?*" She was surprised and turned to look at Wentworth to see if there was something he hadn't told her. A gesture of his shoulders was enough. She turned her attention to me.

"What were you looking at during your English class yesterday and today?" I asked Wentworth.

"Nothin'."

I imitated his response to my earlier untruthful answer. The girl laughed loudly. The others grinned, their attention on Wentworth and not on me.

"Lookin' at a hogbook," he said slowly, a

smile lighting his face as he realized what I had said and who I was imitating.

"Which one?"

"Don't you know the name."

"Hot Rod?"

"'At the one."

"You like it?"

"Some."

"Where'd you get it from?"

"Teacher had a pile of 'em onna table."

"You know where *she* got it from?" An eloquent movement of his shoulders and eyes. "I gave it to her," I said.

"You the one brung all them newspapers and magazines?" The girl was interested. So were the others.

"Yes. Friends give them to me and I bring them to you." It was hard to find the right tone. Whom was I speaking to? Children? Adults who looked like children? I needed them for what they could tell me, especially Wentworth. But I didn't seem to be getting any closer to the information I wanted.

"So Wentworth oughta talk to you on accoun' of he was lookin' at a magazine you brung?" Skepticism was in her voice.

"No," I said, realizing that was exactly what I had meant. "He ought to talk to me because he knows a lot of things I need to know."

"Like what?" she asked, disbelief spreading from her voice to her face. Like what?" she said again, more sadly, as the bell rang for change of class.

I was helpless. The whole thing was in her hands now, this girl with her retinue of grinning, disbelieving boys. Mine may not be the oldest profession, I thought, but it has to be the worst. Who else has to depend on the whims of children? I had already given up hope when I answered her: "Like why his teachers say he can't read and I see him reading a hog-book for two days in his English class?"

I was waiting on the corner across from school. It was Cleo who brought them to see me. She was in front, with Wentworth, Snapper, and Rubbergut walking together in the rear. Because I was sitting, she sat too. Snapper squatted behind me, Wentworth and Rubbergut leaned against the telephone pole, while Uncle Wiggly continued to shadowbox in the street.

"You still wanna know?" she asked.

I told her that I did.

"All right," she said. "Go on, Wentworth. Tell him."

Wentworth told me. "Sure I can read," he said. "I been able to read ever since I can remember. But I ain't never gonna let *them* know, on accoun' of iff'n I do I'm gonna have to read all that crap they got."

I knew what he said was true. I knew it was true because I had seen him reading; I knew it was true because I'd seen the brightness in his eyes and heard the deft quickness of his responses. I had assumed such children existed when I first conceived the approach to teaching literacy that was slowly making its way from Michigan to the District of Columbia. But though I knew it was true with every sense and instinct I had. I could barely believe what I had heard. A theory is a disembodied thing. To watch a theory take arms and legs and tongue . . . I realized that they were all waiting for me to speak.

"You know who Albert Einstein is?" I asked.

"Sure," said Cleo. "He was a dumbhead when he was a kid. Then he done all kind a smart things. I read 'bout him in a magazine."

My question had been pure rhetoric. They must get mighty tired of being underestimated, I thought. Tired enough to pretend they're too stupid to read. "You know what," I said, "I didn't think you'd know who he was. I'm sorry."

"Don't matter. How come you wanna know?"

"Because when Wentworth told me he really can read even though everybody thinks he can't, I guess I felt like Einstein after astronomers proved he was right when he said there had to be a planet like Neptune. He must have felt pretty good, and so do I."

"Just 'cause Wentworth can read?"

"Just because I've always been sure there must be a lot of people like Wentworth but I never met one before. It's worth a lot to me to know I'm right."

"How much?"

"How much what?"

"How much it worth to know you right?"

"I'll have to think about it some. You got a suggestion?"

"Anyway a dollar."

"Anyway," I said. "How about a dollar and a quarter? That comes out to. . . ."

"I know what it come to. A dollar and 25 is a quarter for ever' one of us. You can give it to us now if you wants to."

I counted the money out and she put it in the pocket of her coat. Thinking the interview was done, I got up from the curb to go to my car parked across the street.

"Don't you wanna hear Wentworth read somethin'?"

"Should I?" I was too surprised to find the right response.

"He could fool his teachers, he could fool you."

She was right. He could, and so could she if she wanted to. Maybe they all could. I sat down again while Wentworth opened the paperbound book that Snapper was carrying. It was Joy Adamson's "Born Free," the story of Elsa the lioness who grows up as a member of the Adamson family. Wentworth chose to read the passage that describes Elsa's first meeting with an elephant:

It was an exciting moment when the cub met her first elephant, an anxious one too, for poor Elsa had no mother to warn her against those animals who regard lions as the only enemies of their young and therefore sometimes kill them. . . .

As he read, I managed to look at their faces. Rubbergut's mouth was open; Uncle Wiggly was momentarily in repose. He had their rapt attention. I was sure that all I had to do was close my eyes and I'd find myself walking through the looking glass or down the yellowbrick road—nothing I could imagine would be less likely than sitting on a street corner in northwest Washington while an illiterate boy read "Born Free" to me and the other members of his gang.

"O.K.?" It was Cleo, and she was speaking to me.

"Sure. Fine. I'm satisfied."

"You bring the books, too?"

"Yes. From a friend of mine." "He some friend." It was Snapper, breaking his silence for the first time.

"He is. Would you like to meet him sometime and see all the books he has?"

"Sometime." The meeting was finished. Cleo had spoken the last word with a finality that none of us could miss. I watched them walk down the street in a close group. Again, none looked back.

One of the few times I saw Cleo angry—so angry that she almost lost control of herself—was when Snapper provoked a teacher into name-calling. None of us witnessed the event; all we knew of it was Snapper's report, obliquely delivered, that afternoon. We were sitting in my car, parked on 10th Street in front of school, when a teacher left the building and crossed the street in front of us.

"She ain't worth nothin'," Snapper said flatly.

"Who?"

"Her. Big Butt."

"What she do on you?"

"Lay a name on me."

"Will-*yum*?" Rubbergut said it with emphasis and with a smile. But Snapper didn't respond.

"What she call you?" Cleo's question required an answer. I was surprised at its sharpness; was there something I had missed? Why did she care what the name was? I thought Snapper felt as I did when he answered mildly—

"It don't matter none."

"You tell me what she say, I tell you iff'n it don't matter none." I had never heard her use that tone before. She was obviously prepared to be angry, but I was unable to understand why. Did a day pass that some vengeful adult didn't call them a name? It hardly seemed worth the pain to live through one of those incidents again. I was already turning the key in the ignition, hoping that noise and motion would distract them, when Snapper responded to his leader's command:

"She call me a jungle nigger."

We sat in the nearest thing to absolute silence that six people, five of them adolescents, can attain. Drops from a brief rain shower ran soundlessly down the windshield while schoolchildren hurried across the street in front of us. Sitting in the outside front seat, Cleo suddenly brought her fist down hard on the dashboard and her lips moved, though she said nothing I could hear. Then, after a brief pause—the car still soundless—she reached across Wentworth and patted my arm. They couldn't go for a ride, she explained, apology and regret in her voice. They were mighty sorry, but maybe we could all go to that place next week. And she knew it was two times that word had been laid on my ears. It wasn't no way to talk in front of a friend. The three from the back seat were already waiting on the sidewalk when Cleo and Wentworth left me alone in the car.

It showed me how thin the skin is that protects constantly abused children from their own violence. I knew perfectly well I had witnessed a prelude to vengeance. I knew the teacher, and I knew how well she deserved her reputation for a vicious mouth. I knew the children, and I had seen rage and determination in Cleo's face. Only one product was possible from those volatile elements in combination. Knowing, I was powerless to prevent it.

I was a fool to think I had witnessed a prelude to immediate violence. At least Cleo and Wentworth were too smart for that, if not the others. Which is probably to do the others an injustice, for I believe now that Snapper's reluctance to repeat the teacher's epithet grew out of his foreknowledge of Cleo's response. Whatever the reason, he had not been anxious to provoke immediate retaliation and I should have known better than to fear it. The children were as cautious and circumspect in their vengeance as they were in their friendship.

A month passed before they retaliated. Had the event occurred early in the week, I might not have known of it. Since they acted on a Wednesday, however, it was the teachers' prime topic for conversation on Thursday. What they had done was simple and devastating: they had slashed all four tires on the woman's car, and they had added sand to her gas tank, radiator, and oil system. When I heard about it, I felt only relief. I had been afraid they would act against her person instead of her possession.

Only then did I realize how certain I had been of their intent, and how much a party—though passive—I had been to their act. In spite of my bad conscience, I do not think I would have said or done anything about their vandalism had they not thrust the opportunity upon me.

The opportunity arose from another brief clash between Cleo and Wentworth. An increasing number of these confrontations marked the passage of our year together; what was happening, I think, is that the relationship between them was about to reverse itself and both were searching for new ground on which to stand. As I came to understand this, both became more ad-

mirable in my eyes for the genuine kindness with which they treated each other. Especially Cleo, who understood that Wentworth needed help in shedding his outgrown skin.

Occasion for the clash was Wentworth's admiration of Dick Gregory and Cleo's supersensitivity about the word "nigger". When we went to visit Joe Ottenstein and his District News Company, Wentworth acquired copies of "From the Back of the Bus" and "Nigger." At the time I thought Cleo had them too, but I was mistaken. She was shocked by the title of "Nigger" and had refused to take any of Gregory's books. I discovered this when Wentworth took "Nigger" out of his pocket one day and passed it to Uncle Wiggly.

" I brung it for you," he said. "Give it back when you done."

"My ma kin read it?" Uncle Wiggly's mother read everything he brought home. He had told us about her when he met us one Friday after school with three women's magazines rolled up in his hand.

"Sure," Wentworth said, and added expansively, "you gramma, too, iff'n she wants."

"Ain't fit for nobody," Cleo pronounced emphatically. She made a pushing motion with her hand, as though shoving the book away from her.

"How you know?" asked Wentworth. "You ain't never read it."

"Ain't never gonna read it neither!"

"Then how you know so much?"

"I know."

"Just 'cause he call it 'Nigger,' you ain't even gonna find out what he say?"

"Man use that word, he don't say nothin' I wanna hear."

"Ain't it a good book?" Wentworth was appealing to me. I was in, whether I wanted to be or not.

"You remember what he writes to his mother?" I asked Wentworth. He didn't, so I repeated as accurately as I could the dedication which I now quote from the book: "Dear Momma—Wherever you are, if ever you hear the word *nigger* again, remember they are advertising my book."

"Yeah," Wentworth said. "That's good."

"I like it, too," I said. "He puts that word right where it belongs."

"It don't belong on no book." Cleo shook her finger at the book in Uncle Wiggly's hand.

"You're right," I said. "It doesn't belong on a book and it doesn't belong in anybody's mouth or mind. But it's there. And it won't disappear because you want it to. It won't disappear unless you do something about it. Like Dick Gregory's doing by bringing it out in the open and laughing at it. That's one way of getting rid of it."

I knew I was walking on thin cover but I was tired of unnameable and unmentionable things: "You can laugh at it and it'll disappear. Or you can talk it away. But you can't turn your back on it. It's got to be dealt with. And when you mess up somebody's car after she calls you a jungle nigger, you aren't dealing with it because you aren't teaching her anything. Messing up her car isn't going to cost her anything but money."

"Cost her plenty a that."

"You handle it right, you could cost her her job. Insurance takes care of her car. Nothing takes care of her job. When it's gone, it's gone."

"Now how *we* gonna get *her* job?" Cleo, with interest and disbelief.

"You're not. You got sore and lost your chance. You're not the only ones who know how bad she is. But you and the rest of her students are the only ones who can prove it. When she called Snapper a jungle nigger you could all have gone to see the principal. He's a good man and you know it. He'd do something about it."

"You could tell him."

"No, I can't. I can't because I'm white and she's black and I'm a stranger here. She or somebody would swear race was the problem and the whole thing would get lost in black and white. No, not me. It had to be you." I hadn't meant my words to be so final, but they were. A depressed silence wrapped us like a winding sheet. I thought I'd buried the subject, which I hadn't wanted to do, until Snapper revived it with a sad, quiet observation:

"We could have got her *good.*"

"We done it. That car ain't goin' nowhere." Uncle Wiggly, hopefully.

"Naw," Cleo, speaking slowly. "We didn't do *nothin.*' She still here, mean as ever. Messin' on her car didn't keep her from comin.' She still here, niggerin' everybody to death." Then a longer silence before she turned to me and said. "You tell us. You tell us what we kin do."

I soon discovered that they were far less interested in what I had done than where I had been when I had done it. The discovery may have been hard on my ego but it was easy on our relationship, for it freed me of identity and allowed me to become a conveyor of picture and place.

Their favorite place was San Francisco, their favorite picture the view of that pastel city from Twin Peaks. Each time they asked about it I tried to describe another aspect of the city or its peninsula. Casting about in my memory for something different on a comfortable afternoon, I remembered Chinese New Year celebrations held in San Francisco's Chinatown and told them about the great dragon that danced through the streets. The picture brought them pleasure and desire. They decided that if the Chinese New Year were celebrated in February, as I thought perhaps it was, then next month they would just have to leave their nothing school and their nowhere neighborhood (no mention of their city; they never thought of it as theirs) to go out to San Francisco and never come back.

Remembering who they were and where they were momentarily dimmed the brightness of the day. "Ever' year the Year of the Dog 'round here,' said Cleo flatly when I told her about the Chinese practice of naming each new year.

"You don't bark loud," Snapper said, to no one in particular, "You don't never get heard."

The Year of the Dog. The boys liked the image. Rubbergut picked it up and stretched it slowly in the afternoon sun. "Wouldn't be so bad to be a big old tick hound with nothin' to do but eat and sleep and run."

"What you hunt wouldn't scare you weak?" asked Snapper disdainfully. Rubbergut was a notorious coward. The rest of the boys tolerated him because he was Cleo's choice and Snapper's half brother, but his cowardice was like a rat which they threw stones at whenever it showed its head. Rubbergut retreated as Cleo turned the subject to business.

"Ever' year the Year of the Dog here," she repeated. "This school don't teach us nothin' 'cept to bark."

Spontaneously, almost in unison, the boys began to bark. I looked around, suddenly self-conscious, aware that I was a grown man sitting on steps of an unused school entrance with four barking boys and one grinning girl. A man came to the second floor window of a house across the street. I saw a dog farther down the block stop in confusion. I couldn't blame him. We must have been something to see and hear.

"I'd hunt me a teacher," Rubbergut said unexpectedly when the barking had quieted. "I'd hunt me a teacher rabbit and have me a stew."

"What else you put in?" asked Cleo, not unkindly. "Sure be a mighty thin stew iff'n you only got you a teacher rabbit."

The limits expanded that afternoon as daylight waned. For the first time the children asked me about myself, about where and how I had grown up, about my childhood family in Baltimore and my present family in Ann Arbor. The questions grew out of sudden embarrassment and tenderness of feeling when the conversation turned to teachers, and the children realized that one example of that thin and stringy stew meat was sitting beside them on the school steps.

"Wouldn't need nothin' else in no stew with you," Cleo said to me. Except for the few times when she was blinded by prejudice, she was always first to perceive and mollify hurt feelings.

"How come you a teacher?" Uncle Wiggly, oblivious to Cleo's glare. His question was kindly meant.

"Woke up one morning with a terrible itch. Turned out to be the teaching itch, so I've been scratching and teaching ever since." What I had meant to be light had turned out to be heavy and dull, but Uncle Wiggly was not put off. He was used to forgiving dullness in adults.

"You like going' to school?"

"Sometimes."

"You like goin' to our school?"

"No." Their silence invited me to say more, but I wanted a sign before taking the wrong direction.

"Then why you keep comin' back?"

"Keep hopin' it'll change, I guess."

"Hoping' never changed nothin'," Wentworth said. He had been quieter than usual, but now he was so emphatic that we all turned to look at him. *"Hope* this school gonna fall down but it don't. It stand right here, ever' mornin', ugly and mean."

"Too *gross* to fall down." Uncle Wiggly had used their favorite word. Wherever they had found it, they found a treasure; for them it summed all that was stupid, mean, and ugly into a single syllable.

"Gross," echoed Wentworth. "Grossest place in the whole world."

I meant to distract them with my question: "You want to do something about changing it?"

"Do Wentworth want a Cadillac?" Cleo, a quicker mind at 14 than most of us at any age. It was the question she had been waiting for. She had been leaning forward, resting her chin in her hands; I watched her sit up and fold her hands in her lap. She was prepared to do business.

"Let me tell you why I come down here every week. Then we can talk about changing the school."

"Tell us iff'n you wants," replied Cleo. "We done already read that little blue book."

I have never been so disconcerted by a child's direct response. "That little blue book," a pamphlet written by me and published by the University of Michigan, described the penal school program called "English In Every Classroom" which I was struggling to transfer into public school practice. That little blue book had been imported into Garnet-Patterson in August of 1965 when I first distributed a copy to each teacher. If the faculty agreed upon anything, it was that those booklets should be kept from their students. As one teacher informed me, children resent learning things that are taught in reform school. She neglected to add that they could not possibly resent it as much as some of their teachers resent teaching things that are taught in reform school.

"All of you?" I asked, foolishly. I was astounded. Later I would realize that my astonishment grew from disbelief in their literacy. I did not believe they could have read that pamphlet.

"Sure. *Ever*body want to know what you doin' here."

It was so reasonable if you were willing to credit them with normal sensibilities. You have a friend, you naturally want to know what he does with himself. If he doesn't

know about Neptune, you find out for him. If he writes a little blue book, you read it.

"But how did you get the book? I mean. . . ." It was a stupid question. Did I want them to admit they had pilfered it? In one copy or five? I tried to retrieve my error. "I mean, I'm glad you read it."

"Anyway, we read it. You gonna tell us what we kin do?"

And that's how it began. In one way it started with Wentworth's magazine, with the Cadillac and trip to the airport, our visit to District News, a mounted policeman in front of the National Gallery. We made a number of beginnings in the last four months of 1965, but we did not begin our campaign until a Thursday in January when we sat together on the school steps in an unseasonably warm and weakening light.

We talked until the street was dark and cars were turning on their headlights as they passed. I explained the theory and operation of the program; they in turn told me where it was working in their classes and where it wasn't. In writing now about that first exchange of confidence and act of mutual recruitment, I realize how much their previous discretion made the conversation possible. Except for Snapper's reluctant revelation about the teacher who called names, and Wentworth's explicit feeling about his English teacher, none of the children had revealed to me their opinions of individual teachers and I had never asked. They had said much in general and invitation to talk about individuals, they preferred first to talk about ideas:

"If *ever'* teacher teach readin' and writin', some a them dumbheads still ain't gonna learn."

"He ain't worried none about them. He aimin' to get all the ones just *sits* there."

"Can't make a smarthead out of a dumbhead no way."

"Throw away them books, you see who's a dumbhead."

"Iff'n I could put my magazine on 'at desk, it sure be easier on my eyes." That was Wentworth's way of cooling the conversation. Any reference to the way I'd gotten to know him was usually good for a laugh.

I couldn't repeat all of that conversation even if I had full notes instead of a few words and memories in front of me. Four children actively argued the merits and deficiencies of a plan for teaching literacy, while a fifth echoed whoever was most vociferous and made occasional contributions of his own. My sense of reality, already diminished by Cleo's matter-of-fact statement that all five of them had read the booklet called "Teaching English At Boys Training School," was further weakened by evidence that they had not only read it but understood.

AT GARNET-PATTERSON THE MEMORIES ARE NOT SO FOND—"IF I COULD IDENTIFY ONE OF THE KIDS, I WOULD TELL THE PARENTS TO SUE HIM"

Teachers at Garnet-Patterson Junior High feel that Fader's book is unfair and inaccurate, and some are quite bitter about it, according to the principal of the school, Margaret Labat. Most of them, however, have not read the book, including the principal. "Dan didn't bother to send us any complementary copies," she said.

The teachers have seen articles and a review of the book, though, and the general reaction of some, expressed at a recent meeting of the Reading Mobilization Team, is that Fader has capitalized on—even exploited—his visits to the school for fame and fortune. The teachers expressed disbelief that he had spent enough time to establish a sustained relationship with any children. "Is this book fact or fiction?" one teacher asked. Another implied that he might have lifted his case histories from the teachers' weekly reports on the program.

"If he had any contact sufficient to come up with a full description for a book, then it was most unusual," Mrs. Labat said. "Contact was not approved as part of 'English in Every Classroom.' It was never intended that he should be involved with the youngsters. He was supposed to explain the intent of the program, to introduce it to us. How he could have had contact with the children is beyond me. If I could identify one of the kids, I would tell the parents to sue him." She added, "People who write are usually very creative, and it would have been easy for Dan to be creative when no one can document his facts."

Mrs. Labat said she felt "pretty excited" about the program when it first came. "The concept is not new, but it was innovative for this particular school situation. Paperbacks were just beginning to be popular then." She has read "Hooked on Books," Fader's first description of the program he brought to Garnet-Patterson, published in 1966, and felt that book was "pretty accurate."

Like the teachers, she regrets that today there are no more funds for the program, but tried to clear up one error which she thinks (from reports of teachers and newspaper accounts) the book might be perpetrating: "It's not true that teachers have gone back to their old methods of teaching. There has been a change, and the teaching here is different from that in other classrooms in the city. The English teachers say that because of Fader's experiment they have changed their teaching styles."

The teachers, meeting without Mrs. Labat, differed from her. They felt that if indeed Fader had close relationships with some of the children, that would have been fine. They just didn't believe it. In fact, they complained that he never entered the classrooms. Like their principal, thought, they had praise for the program.

Midway throught the meeting, as they were discussing their lack of knowledge of what was actually in the book, one teacher suggested, "Hey, why don't we get the library to order a copy?" Other teachers thought it a good idea, and one suggested they might even order several.

"Fader was very impatient. He couldn't understand why we couldn't pull the program out of a hat, even though the materials weren't here the first semester. He didn't give us enough information about the program. He gave us one booklet, and it was not very clear, so we had to ask him questions. And then he left the meetings displeased because of the questions we had asked.

"My criticism of the program is that there was no way of evaluating it. We asked for a diagnostic test at the beginning and at the end, but he didn't want it.

"We didn't find that much resistance to the program, though there was some resentment that it had been used in a prison before it came here. But it was the beginning of our teaching in teams, which I thought was pretty effective. It provided for a carry-over, because the English teacher would see the papers written in other classes and could correct them for grammar and for the structure of a composition. The children kept journals, though we had to censor them, because they were writing obscenities in them, and the parents objected. But the children are better-read now, and they have become accustomed to handling books. They began to write better, too, in some instances—not in all.

"We found that boys who supposedly couldn't read would keep the sports pages, and read them later. We found that if we wanted to get across to the child, we had to use the sports section.

"We feel overworked now because we have to teach these skills that should be taught, but we no longer have any hardback textbooks. Though the paperbacks are excellent, it's hard to get enough material for nine months out of them. There's no anthology, and that's what we need—if there is a good one available. That's another thing. Someone should let us know if there is."

"Most of us haven't read the book because it costs $7. If it were here, I would read it. But there aren't even any bookstores in this neighborhood.

"There's no doubt that the program is a good one. But we got no preconditoning for it. It was handed to us prefabricated, copyrighted downtown, and then laid on our desks. It's as though one morning someone came and said, 'No more books.' The teachers were in a state of shock. Since then, we've become more sophisticated. We get the community, the parents, and the teachers involved when we start a new program.

"He gave us an outline with no meat, and left us to figure it out. He had so many irons in the fire, he was hardly here at all, and he never visited the classrooms. He was no more competent to teach in junior high than I would be to take over his college Shakespeare course.

"The first semester we were very frustrated because there was only the newspaper to teach with. The rest of the materials didn't arrive until the second semester. But by the second year, when the redtape was out of the way, we were pleased.

"There were many successes, though Fader wouldn't know who they were. I think the reading level has improved. But now we are running a modified version of the program, with the paperbacks we have left and with the little money we can get in the name of 'English in Every Classroom.' I don't have the connections that Mr. Fader had. We don't have *The Post* this year because we don't have the money for it. We have adapted the program.

"There was an initial resistance to the program, but this was no more than the usual resistance you get to any new program."

FADER'S "FRIEND" REMEMBERS FONDLY: "MY GRANDCHILDREN ARE ALWAYS HAPPY WHEN I BRING THEM A NEW BOOK . . . CHILDREN ARE CHILDREN AND THEY ALL WANT THE SAME THING"

Fader's "friend" was Joseph Ottenstein, founder and president of District News, and distributor of all magazines and paperbacks for the area.

In the first of several trips they were to take, to venture together, Fader took the children to Cottage City, Md., to visit Ottenstein and his warehouse.

The visit was memorable, as Fader relates it, for a couple of reasons. First, because Ottenstein was the first Jew Cleo and her gang had ever met, outside of fleeting ghetto contacts, and the meeting affected a basic notion, or prejudice, or two.

Then, the day was lasting because Ottenstein gave them the run of his stacks, told them they could take as many books as they could carry and gave them cartons to help in the carrying.

Today, Ottenstein is "going on 76" and semi-retired, his son running most of the business. To Potomac, recently, he recalled that he began selling papers when he was nine, a year after he emigrated here from Russia, and has been selling—and giving away—papers, magazines and books ever since.

"Mr. Fader did a good job on the book, and he did a good job in person, on the program. He wanted to get the kids 'hooked on books,' that's what he said. I gave away thousands of paperbacks, in other programs, too. The kids ate it up. Kids do learn to read if they have access to books. They enjoy reading about something they know, in the sports field primarily, and if they can choose the book. We had a bookmobile once, and the kids were supposed to buy the books, but many of them stole them. But I don't care if they get away with a few under their shirt, if they want to read them. I would have

liked to have given books to every child in town.

"I have 11 grandchildren, and so naturally I'm interested in the welfare of children. My grandchildren are always happy when I bring them a new book, and they always want me to read to them. Well, children are children, and they all want the same thing, and they all have the same tastes. Business is so hard and cold and cruel, and the bigger you get, the harder it is to make human contact. Before, you could encourage a young man by taking him to the ball game and buying him a hot dog and a soda. Now you buy the tickets and distribute them. It's not the same thing."

CURRENT ECONOMIC DIFFICULTIES

Mr. PACKWOOD. Mr. President, the attached editorial comment was sent to me by a very good friend who asked that it be submitted for the RECORD so that Senators might have the opportunity to review it. While some of us may differ with this analysis of the basis of our current economic difficulties, it is certainly worth reading as it represents the thinking of a successful small businessman—one who represents the backbone of the American economy.

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

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

ON SHAPING UP—OR SHIPPING OUT

By the time this appears in print the President will have revealed what measures will be taken to replace the temporary wage-price freeze due to end this month. Regardless of the details, however, and regardless of the obvious necessity to exert some sort of stabilizing influence on the economy in order to halt or at least slow down the destructive inflation/unemployment spiral, more needs to be said on the subject.

What we are looking at here are measures designed to deal with the symptoms of the problem and not the sickness that is causing it. And that sickness is, of course, the fact that we are—and have been for many years—spending more money than we have been taking in. The deficit in trade payments is part of it, but only part. What the government is handing out to support other governments, many if not most of which are of questionable viability and morality, makes our import-export imbalance pale by comparison. But add both to our deficit spending here at home and the sickness begins to look terminal.

The truth of the matter is that, despite the roseate glow cast by our still ascending gross national product, we are facing national bankruptcy somewhere down the road. Before this point is reached we will all have to bite the bullet and shape up financially or ship out to a new status as a declining world power, dependent upon other nations for survival. Perhaps a good place to start would be with the public payroll, which is growing faster than the private payroll which supports it.

Sincerely yours,

KENNETH W. FORD,
President.

THE NATIONAL ENVIRONMENTAL CENTER ACT

Mr. EAGLETON. Mr. President, no nation in the world is as richly endowed with scientific expertise and capabilities in the environmental field as the United States. Literally thousands of American engineers and scientists connected with hundreds of organizations are engaged in research on our environmental ills.

It is probably correct to say that few environmental problems are receiving too much attention from the scientific community at the present time. However, it is equally true that some environmental problems have been overlooked in the past and have not received the scientific attention they deserved, and that other environmental problems have been studied from too narrow a perspective.

These shortcomings result from the fact that environmental science in the United States is so heavily dispersed among literally hundreds of organizations, and because too little attention has been devoted to coordinating the use of our environmental scientific resources to insure that they are applied in the most effective and efficient manner. S. 1113 passed by the Senate earlier this week establishes an independent environmental research agency to focus and coordinate environmental research. It should insure that priority problems receive priority attention, that significant environmental problems will not be allowed to fall between the cracks, and that environmental research will be conducted from a broad enough viewpoint to make the results of that research pertinent and useful to decisionmakers and the public.

It should be pointed out, though, that the National Environmental Center—though independent—will not be an irresponsible or unresponsive body. A full-time Board of Trustees comprised of seven nongovernment members will be responsible to the Congress and the President for the operation of the center and its work.

Responsiveness of the National Environmental Center to the needs of the Government agencies engaged in environmental protection efforts will be insured through a Federal Agency Liaison Committee comprised of the heads of the Federal agencies concerned with, or involved in, environmental protection efforts. This committee will serve as a two-way channel of communication between the center and the several environmental agencies, and should serve a valuable mechanism in the center's efforts to provide focus and direction for Government and Government-assisted environmental research.

S. 1113 also provides for another important channel of communication from the general public to the National Environmental Center through a General Public Advisory Committee comprised of nine public members who will represent the public in advising the Board of Trustees on the conduct of the center's business.

Mr. President, the point is often made that we have enough—or nearly enough—organizations and individuals engaged in environmental research, and that our most urgent need is for better utilization of these existing resources. S. 1113 responds to that point. It authorizes the Board of Trustees of the National Environmental Center to designate or establish not more than six national environmental laboratories to carry out the work of the Center on environmental problems. Thus it permits, but does not require, the establishment of new scientific organizations manned by new scientists. Where national needs would be served better by such action, it permits designation of existing organizations and the scientific talent that goes with them as environmental laboratories.

In addition to its important authority to establish or designate national environmental laboratories, the Board of Trustees has a broad array of other organizational and managerial tools to enable it to call upon a wide variety of scientific resources in the performance of its responsibilities. I want to call particular attention to one of these tools. It is the authority conferred upon the Board to contract with State, local, and private agencies and with organizations, institutions, and individuals for the performance of scientific research. Thus, in addition to the power to conduct in-house research, the National Environmental Center clearly is authorized to engage the services of an almost infinite array of organizations and individuals to perform research for the Center when and where it is appropriate.

Mr. President, I hope—and I expect—that the Board will make a special effort to use this authority and the other authorities available to it in structuring imaginative, productive, working relationships with scientists and engineers in the private sector of our economy. These men and women, and the organizations with which they are affiliated, bring to bear exciting knowledge and analytical skills in their research on environmental and other problems. Far too frequently, this environmental scientific resource is overlooked by those responsible for Government research efforts and very substantial public benefits are denied the American public as a result.

Another vital responsibility of the Center and its Board to which I would call the Members' attention is its responsibility to insure that the public is informed about its work of the Center and the scientific findings it produces. The explicit requirement that the National Environmental Center provide support for an appropriate mechanism to insure public understanding of environmental issues is of great importance generally, and is of particular importance since our system of government depends, in the ultimate analysis, upon the involvement of a public that is well informed about the problems the Government faces.

Mr. President, the State Environmental Center Act amendment is truly a beneficial and worthwhile addition to S. 1113. That amendment will fill an important gap in many State environmental programs by insuring that each State is provided with scientific research capabilities to attack the problems that affect it most directly. Additionally, the State centers authorized by the amendment will, as one of their principal responsibilities, conduct a uniquely valuable education extension program to provide a full range of educational and communications services. Those services will be directed toward the general public, all units of government in the State, the private sector, and to civic, fraternal, and other public interest groups. Included among

the educational and communications services to be provided by State environmental centers is the critically important function of providing reference services to facilitate rapid identification, acquisition, retrieval and use of environmental information.

Mr. President, I think S. 1113 is a sound, constructive, and much-needed piece of legislation and I am pleased that Senators have given it their support.

ANTIOCH'S NEW APPROACH TO LAW STUDY

Mr. HART. Mr. President, over the weekend, I was pleased to note that the Board of Trustees of Antioch College, in Yellow Springs, Ohio, unanimously decided to establish the Antioch School of Law in Washington, D.C., to open in September 1972. My understanding is that the school will utilize the "learning by doing" approach for which Antioch is nationally known. The Urban Law Institute, a federally funded public law firm, will be at the core of the teaching institution.

It will not be just another law school. Rather, it will be the first to incorporate a wholly "clinical" approach to the teaching of law, much as an intern's affiliation with a teaching hospital. The school will be both a public law firm, involved in class action litigation on behalf of the poor, as well as an educational institution where students will be active participants throughout their schooling in advocacy procedures. I am told that there will be a heavy emphasis on course work in Federal programs, housing for the poor, consumer protection, and other areas of urban law.

It is a significant achievement for the Urban Law Institute, Antioch College, and for the designated co-deans, Jean Camper Cahn, director of the Urban Law Institute, and Edgar S. Cahn, director of the Citizens Advocate Center, both eminent attorneys who have made bold breakthroughs in many areas of civil rights and public interest law. The Cahns are credited with developing the basic blueprint for the national legal services program, which now employs over 2,000 attorneys representing the poor. Four years ago the Urban Law Institute began as a small pilot project, funded by the Office of Economic Opportunity, in reforming legal education. Over a period of 3 years it has won national recognition and acclaim for pioneering the concept of the teaching law firm as an instrument for training law students and young lawyers in what has been termed the "medical school approach."

Chief Justice Burger in earlier speeches has declared that:

> One could hardly conceive a system of legal education further removed from the realities of life than the case method," and further criticized that, "Today, in many courtrooms, cases are being inadequately tried by poorly trained lawyers, and people suffer because lawyers are licensed, with very few exceptions, without slightest inquiry into their capacity to perform the intensely practical functions of a counselor or advocate.

The Antioch School of Law plans to expose students first hand to the problems of the poor by having them spend a night in jail, ride in police cars, and make applications for public housing, welfare, and food stamps.

This new concept seems an attractive and exciting way to enhance the practice of law as an instrument for securing justice for all people.

JUSTICE BRANDEIS—ADDRESS BY SENATOR MUSKIE

Mr. RIBICOFF. Mr. President, last month, the distinguished Senator from Maine (Mr. MUSKIE) addressed the annual Brandeis University dinner. His eloquent remarks were more than a testimonial to a great jurist—but a tribute to the ideals for which Louis Brandeis lived.

Senator MUSKIE reminded his audience that Brandeis not only represented judicial excellence, but as a Jew was devoted to what was in his lifetime only a dream—the creation of a Jewish state.

Commenting on the reality of Israel today, Senator MUSKIE reasserted his support for greater American diplomatic and military assistance to Israel and called for a reversal of the administration's "senseless decision to put more pressure on Israel and less pressure on Cairo which moves us further from peace, not closer."

In his address, Senator MUSKIE called attention to Brandeis' pursuit of social justice and individual freedom for all Americans, worthy goals for all of us.

I am pleased to call my colleagues' attention to the Senator from Maine's speech and I ask unanimous consent that the full text be inserted in the RECORD.

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

TO STAND IN THE BRANDEIS TRADITION

I am proud to join you tonight at the Twenty-Second Annual Brandeis Dinner—to speak with you about a remarkable past and to work with you in building the future of a great American university.

Since the hopeful spring of 1948, when the Jewish people founded a college in the countryside of Massachusetts and a homeland in the desert half a world away, Brandeis University has stood for all that is new and good in higher education . . .

For the breakdown of barriers which deny poor and minority students a decent change.

For the freedom to teach and to learn in an atmosphere untrammeled by political or ideological doctrine . . .

And for the creation of a just society . . . worthy of the young men and women who will inherit it.

But Brandeis is more than a distinguished university. It is also the namesake and the symbol of one of those very few, very special men who define the history and the heritage of America.

Louis Brandeis died before most of the students in Waltham were born. They read his words only when an occasional assignment requires reference to a Court decision. They speak his name only when others ask what school they attend. They see his image only in the bronze statue on the hill in front of Sherman Hall—and they see him, if at all, as nothing more than a figure from the fading past.

But Louis Brandeis is very much a part of our future. His parents escaped the oppression of central Europe in 1848 to seek the refuge of freedom in America. Like my own father and mother fifty years later, they taught their son to catch the spirit that moved our country and to care for the people who found hope and decency in this land.

Brandeis devoted his public life to those people—to their human rights and their personal dignity. He fought for the same fundamental equality that we must fight for today. And his efforts were inspired by the same faith and vision that later gave birth to Brandeis University.

So tonight, as we look ahead to the next twenty-three years in Waltham and in the country, we should pause for a few minutes and look back to the Brandeis tradition.

The talents and ideals of Louis Brandeis took him into countless areas of social importance . . . more than I could mention here. But three of his many lives bear a special relevance to the kind of world we hope to shape in the 1970's—his life as a Jew . . . his life as a Justice . . . and his life as a public servant.

For many years, as a leader of the Zionist movement in America, Brandeis worked for a Jewish homeland in Palestine. He was always aware of his heritage—of the four thousand years of joy and pain which had combined to make him a Jew. And he saw that only the protection of nationhood could ultimately preserve the ageless traditions of the Hebrew people.

Brandeis did not live to witness the birth of the state he helped to create. But he was always more concerned about today's challenge than yesterday's triumph. And so he left us with the challenge of safeguarding the life and strength of Israel . . .

Not just because Israel's independence serves our interests, but because it serves the interests of every nation . . .

Not for Jews alone, but for all humanity . . .

And not with mere words and promises, but in our actions and our deeds.

That is why we must help to sustain the prosperity of Israel and ease the burdens which threaten to undermine one of history's most stunning economic miracles.

That is why we must provide the tools to do the work of survival and send the Phantom jets to Israel now.

And that is why the Nixon Administration must stop undermining Israel's bargaining position. The President must reverse the senseless decision to put more pressure on Israel and less pressure on Cairo, which moves us further from peace, not closer. And Israel must become as certain of our support as she is of her own resolution.

Brandeis joined in the effort to end two thousand years of homelessness. Now we must stand in the Brandeis tradition—to guarantee that the children of Israel have and hold their promised land forever.

Brandeis knew that the Jewish people could find freedom and peace in the Middle East. But he also believed that people from all religions and all races could build a decent nation here in America. And his life was an eloquent witness to that belief. On June 5, 1916, Louis Brandeis took his place in his country's destiny, when he became the first Jew to sit on the United States Supreme Court.

He served the Court as he served his faith, with absolute respect for its traditions and its heritage. He thought of the Supreme Court as the one institution in our society insulated from the passions and tides of politics and the caprice of personal ideology. "I have no rigid social philohophy," he explained. "I have been too intent on the concrete problems of practical social justice."

Brandeis had no tolerance for anyone who showed less than his own respect for the Court. He spoke out against what he called "the subtle encroachments of men of great

zeal" who aimed to bend the Court's integrity to their own purposes.

We could use his voice today. He would have been appalled by the exploitation of the Supreme Court in the last three years . . .

By the selection of some nominees who lacked the depth and objectivity to reach conclusions which serve the country and no one else . . .

By the attempt to make a seat on the Supreme Court a gift to a political region or a hostage to hardened judicial ideology.

By the willingness to surrender constitutional principles and human rights to domestic political concerns.

Last month, the President named two men to the Court . . . one an outstanding leader in legal affairs—the other a lawyer with at least the intellectual talents Brandeis would have demanded. Though I have other doubts about William Rehnquist, I have no questions about his competence. But we must all question the leadership of the President who appointed these men because public opinion forced him to—not because he shared Louis Brandeis' reverence for the Constitution and the Court. President Nixon has yet to stand in the Brandeis tradition—to recognize that he has an obligation to the Court he is sworn to protect, as well as to the voters he wishes to influence.

But Louis Brandeis stood for more than judicial excellence and the promise of Israel. He was also deeply concerned with the quality of life in America.

By the time he was twenty, after compiling the highest grade average in the history of the Harvard Law School, Brandeis had established one of the most successful law practices in Boston. In the years that followed, he amassed a fortune representing corporate clients. But at the age of forty—in the midst of social turmoil, of strikes and violence and the pains of growth—he abandoned his private practice and took the American people as his only client. He had incredible vision—Franklin Roosevelt called him Isaiah, the Prophet—and he perceived fifty years ago the dangers which still surround us.

Brandeis was a prophet in the struggle for individual liberty. With his law partner, he defined and created a new legal concept—the right to privacy. He argued that every citizen should be safe from unwarranted surveillance and prying. And he convinced the Courts.

And now, more than ever, we must stand in the Brandeis tradition—and fight for every American's right to be left alone. When a CBS reporter named Daniel Schorr is subjected to a full field security check because he reports facts which upset the White House—when a Harvard Law Professor named Laurence Tribe becomes the object of federal harassment because he exposes the mediocrity of a Supreme Court nominee—when credit bureaus and employers and government agencies keep personal files on countless citizens—then the Brandeis plea for privacy must be heard and heeded again. We must speak up—and we must stand in the Brandeis tradition.

Brandeis was also a prophet for the people who are now demanding more power over their own lives.

He fought to protect the rights of individuals against the exploitation of large and powerful interests. "Some men buy yachts," he once said, "others collect fine paintings and precious works of art, but I consider my hobby or pleasure the pursuit of the public interest."

And we must make the cause of Brandeis the cause of every American. Together, we must wage his fight—

To redistribute wealth and power in this society . . .

To develop a tax system which no longer lets some millionaires pay less than their secretaries . . .

To develop a welfare system which will never again permit another year like last year, when the number of people in poverty actually increased . . .

To use our economic greatness to help the many who are in need instead of the few who are already well-off.

Louis Brandeis dreamed of a fair and good America . . . of at least one place on this planet where there could be full justice for the least member of our society. He never defined his country by the wrong that it did—only by the right that it could do. And he devoted his energy and his genius to improving the lives of other human beings. He sought justice through the law and on the Supreme Court. He sought peace and hope in the Middle East. And he sought compassion and equality at home.

By the time of his death, Brandeis had moved America in the right direction. Now all of us must work to make a nation's plan from the Brandeis dream.

You have started in Waltham, Massachusetts at the school which bears his name. Brandeis University has always been a symbol of change and progress. The students have sometimes expressed their hopes and frustrations in disruptive and even violent ways. But most of them have sought to reform their country in peace and with respect. For twenty-three years, the students at Brandeis have stood in the Brandeis tradition. You have built well—for them—and for America. And in the years to come, that may make all the difference.

ST. MARY'S CITY: MARYLAND'S ORIGINAL SETTLEMENT AND FIRST CAPITAL

Mr. MATHIAS. Mr. President, in these uncertain times, it is often useful to recall our past and the courageous men and women who established and developed this Nation. One site that is particularly conducive to such contemplation is historic St. Mary's City, Md. St. Mary's City, near the point at which the Potomac River flows into Chesapeake Bay, was the first white settlement in Maryland and the first capital of Maryland.

This lovely site is now undergoing important archeological and restoration work, under the aegis of the St. Mary's City Commission which was established by the State in 1966.

Visitors may inspect the reconstructed statehouse of 1676 and view the site where the first colonists landed, establishing on this continent the principle of religious freedom.

Mr. President, one of the local newspapers in St. Mary's County, the Enterprise, recently published a special supplement on St. Mary's City which outlines in detail the beauty and significance of this community. I ask unanimous consent that articles from this supplement be printed in the RECORD; and on behalf of the St. Mary's City Commission, I extend a cordial invitation to all Senators to visit St. Mary's City.

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

WELCOME FROM THE ST. MARY'S CITY COMMISSION

(By Robert E. Hogaboom)

As Chairman of the St. Mary's City Commission I am happy to assure the people of Maryland, and particularly those of Southern Maryland and St. Mary's County, of their continuing welcome to ancient St. Mary's City, Maryland's original settlement and for 61 years its capital. We are in the process of designing and developing a historic park of statewide and even national significance. We hope you will not only visit this inspiring and beautiful site at an early date but will return from time to time to witness its progressive development.

In the current state of development of the historic park, visitors are greeted at the Reconstructed State House. This replica of the State House of 1676 is the central point of interest today as it was three centuries ago. Additionally, it presently serves as a visitor reception center and museum. The visitor to St. Mary's City should begin his tour by going first to the old State House where a guide is prepared to provide informational material and guide services. A visitors' parking area is provided adjacent to the State House.

From the State House the visitor can explore on foot portions of the Governor's Field, the waterfront at Brome's Wharf, Trinity Church and churchyard and Church Point. By car the visitor can inspect and enjoy such sites as the Father White Memorial Garden, the Anne Pope Washington Garden at Pope's Freehold, the St. John's Palace site, John Hicks site and the natural history trail at Chancellor's Point.

Visitors to St. Mary's City who arrive by sail or power boat will find convenient docking at the newly restored Brome's Wharf in front of the old State House.

Whether your interest be historic, scenic, natural history study, simple relaxation or some combination of these, you will find a visit to St. Mary's City an experience well worth the time.

MARYLAND'S STATE HOUSE OF 1676

Maryland's first formal State House, designed specifically for that purpose was constructed in 1676 at the period of greatest development of St. Mary's City. Even so, the town at that time was hardly larger than a good sized English village. The town was essentially a transplanted English settlement.

The brick State House of 1676 fitted quite naturally into that riverside village. Its brick and tile roofing were locally manufactured from the native clay. The timbers were of native white oak and the upper flooring of "Pine of this Country sawmen while the Turpentine is in them."

For many years following the initial landing and prior to 1676, there was no regularly appointed place of meeting for the Maryland Assembly. It met in such places as St. Mary's Fort, St. Inigoes' Fort, St. John's Palace, West St. Mary's Manor, and on occasion, at Patuxent. In 1662 the Province acquired an inn and tavern where the Assembly, when in session, ate, slept, drank and legislated.

Not until 1674 did the Assembly pass an act providing for the construction of a proper State House. The appropriation for construction was the "sum of three hundred and thirty thousand pounds of Tobacco." The structure was completed in 1676 and served as Maryland's State House until the seat of government was moved to Anne Arundel (now Annapolis) in 1695.

Thereafter the old State House was used as a Court House for St. Mary's County until the county seat was moved to Seymour Town (now Leonardtown). It then was used as a chapel and in 1720 the Assembly in Annapolis deeded it to the Church of England. After being used as a church for over 100 years it was dismantled in 1829 and its brick used to construct Trinity Church close by. Twelve stones in Trinity churchyard mark the location of the original State House.

The old State House you now visit at St. Mary's City is a replica of the original. It was reconstructed in 1934 by the State to

commemorate the 300th anniversary of the founding of the colony. It is essentially authentic, rebuilt to its original dimensions and structural features with brick and lime prepared as they were originally. It was reconstructed on land given to the State by the Howard and Brome families.

The old state House is an interesting place to visit and revisit. In the past few years it has been greatly improved for visitors. Heating has been added, the woodwork treated and preserved and the interior cleaned and repainted. Informative and educational exhibits, a model of the ancient city and a model of the planned development have been placed on the second floor.

The grounds have been extended to include the waterfront, Brome's Wharf and a portion of the Governor's Field. From this beautiful naturally landscaped area a magnificent view can be had of St. Mary's River, of Chancellor's and Church Points and of West St. Mary's and Porto Bello on the far shore.

The State House today serves additionally as a Visitor's Center. Here well trained guides can provide informational and guide services as well as historical material and maps. For your visit to St. Mary's City, the State House should be your starting point. Adjacent parking is provided.

ST. MARY'S CITY—A PLACE TO VISIT

Indians standing on Chancellor's Point might have looked down the river in late March of 1634 and been surprised at the approach of Lord Baltimore's two ships, the Ark and the Dove, coming to safe harbor and beginning the history of Maryland. The scene remains now, as it was then, essentially untouched and under-developed; the entire St. Mary's River not so changed as to be unrecognizable to the first colonists. Chancellor's Point, once again a property of the state, as were all the lands of Maryland during the 150 years of proprietary government, and about 1000 adjoining acres, are planned for permanent preservation by the state as a great historic park.

The place chosen for settlement, and named St. Mary's, was an Indian village. A voyager on the Ark says that young Governor Leonard Calvert spent the night in the house of the Indian leader, and they went the next day to look at the country and "that day being spent in viewing the places about that towne, and the fresh waters which there are very plentifull and excellent good (but the maine rivers are salt) the Governor determined to make his first Colony there and so gave order for the ship and pinnacles to come hither." The fresh cold water still runs into the river from the hillsides around St. Mary's City.

Apparently the Maryland colonists came well prepared. Perhaps they had learned not only from the already established settlements in Virginia and Massachusetts but also from the many unsuccessful, half-planned, half-hearted tries at placing the English flag permanently on the landmass that blocked the way to Cathay. And also the hard-won rights of Englishmen were transported to Maryland via the charter that was read by the Governor to the settlers upon landing.

So the colony was off to a good start; the grant of land to Lord Baltimore contained millions of acres from the ocean to the headwaters of the Potomac, and settlement moved north and west up both the rivers Potomac and Patuxent and the Chesapeake Bay. St. Mary's City became inconvenient, out-of-the-way. The English religious wars and revolution and suppression were used against the tolerance established at St. Mary's and eventually Annapolis was selected for the place to be the seat of government.

St. Mary's gradually was forgotten, "the ancient city was stripped of her privileges, of everything that gave her life, and she was left to waste and perish from the earth." An occasional eloquent 19th century author recalled her significance as the beginning place and as a place where a unique experiment in the relationship between man and the state had once worked well.

Now in our time, the state once again concerns itself with St. Mary's. In 1966 a Commission was established consisting of seven members appointed by the Governor to make plans for its preservation. From this Commission has evolved the concept of a great historic park. Entering the park via a wooded parkway incorporating the 17th century Mattapony Street, and on a hill overlooking the site, the visitor will learn at the orientation center and museum what he will see when he descends to the plain below. When he strolls on the patios or verandahs of the visitor center, he will see lying before him the last great dormant 17th century town site in English-settled America.

All the buildings are gone, but the ground is to be mined for the treasure of information and artifacts it contains. Here at St. Mary's City, amazingly still undisturbed, are 335 years of occupation representing an early successful English colonizing experiment, and then the gradual modification of the Englishness of the colony into the new country and culture that the modern United States has become. To be discovered under the English settlement is the village of the Indians who had occupied the lands as early as 5,000 years before the advent of Lord Baltimore's people.

The visitor, sensing the excitement of the developing park, might return over the years, watch the phasing out of much of the imprint of the 20th century on the land—and it was within the 20th century only—except for the intrusion of the college in the 19th century—that any notable change occurred in the area after the first structures of the 1600's. He will be able to note the location and redevelopment of the early roads—almost paths. There will be little reconstruction or restoration since this type of interpretation requires large expenditures on buildings whose original appearance is largely conjectural. Over around Clocker's Fancy, one of only two early structures remaining, he will see a colonial farm developing and will discover animals and plants bred back to the scruffy, runty ancestors of today's pure bred cow and horse, and hybrid corn and tobacco.

Perhaps illustrated will be the farming methods which wore out the land, forced abandonment of fields to broomsedge, scrub pine and erosion, and ultimately contributed to the westward search for new land. Coastal vessels will be moored in the river, a boat trip available to St. Clements Island or to St. Andrews Creek to watch the small boat building and seasonal crabbing and oystering activities going on there.

The returning visitor will also be pleased to see good motels being built, recreational facilities and inns and activities that will invite his longer stay.

Along walking trails to sites and reconstructions will be presented the natural history of the park—its flower, tree and bird and animal life. The visitor will sense the close relationship man has always had to a nature that has, until these times, controlled him almost completely. And by presenting to the visitor the natural history and great beauty of the St. Mary's area, through the medium of trails and nature center, the historic park will enhance the story being told and will utilize fully the ample meadows and woods of the town-land.

There exists at St. Mary's City, here in St. Mary's County, the unparalleled opportunity to probe deeply the beginnings, growth and maturity of America itself, and in the years of historical, archaeological and social research that lie ahead, perhaps to find in the buried past here some answers to show us the way to a more secure and happy future. Our country today seems to be reconsidering its present course; perhaps clues can be supplied for guidance from the tenacious, sometimes tragic, yet enduring 17th century colony of Englishmen at St. Mary's City.

ANNE POPE WASHINGTON GARDEN

Just east of Route 5 as you enter St. Mary's City from the north is an attractively landscaped garden area separated from the road by a rustic two-rail post and rail fence. The entrance sign reads "Pope's Freehold Scenic Overlook." Many visitors find this quiet garden spot an interesting place to visit. Anne Pope Washington, George Washington's great grandmother lived here and most probably was born here.

Anne's father, Nathaniel Pope, a friend of Leonard Calvert, came to Maryland prior to 1637; by 1642 he was a member of the Assembly and had patented a 100 acre freehold which now lies largely in the north campus of St. Mary's College. Here Nathaniel erected a house and lived there until he moved across the Potomac and up river from St. Clements Island into Virginia where he patented land on Pope's Creek near an area now known as Wakefield.

It was here at Pope's Creek, in 1657, that John Washington arrived as mate and part owner of the ketch, Sea Horse of London. John was the first Washington to come to America and here at Pope's Creek in Virginia he met Miss Anne Pope, formerly of St. Mary's City. John Washington's ship, laden with tobacco, suffered damage in a storm and ran aground near Pope's Creek, whereupon he decided to quit the sea, marry Anne Pope and become a planter in America. John Washington and his wife Anne thus became the great-grandparents of George, our great Revolutionary War leader and first president.

A visit to the Pope's Freehold site at St. Mary's is historically informative and here at the present time a very interesting archeological project is being dug. Additionally, this site provides a beautiful view of St. Mary's Bay and Pagan Point and West St. Mary's on the far shore.

FATHER WHITE MEMORIAL

The Father Andrew White Memorial site is well worth a visit from those with an historical interest or who can enjoy and appreciate a quiet secluded garden with an impressive view of St. Mary's Bay and the long stretch of the St. Mary's River toward St. George's Island and the Potomac. To reach this inviting spot the visitor should turn off Route 5 on the Father White Memorial Road just north of St. Mary's City and proceed about three-tenths of a mile and turn left into the small wooded parking lot.

This small park is a memorial to Father Andrew White who accompanied Leonard Calvert and the first settlers in the two small ships, the Ark and the Dove. The park contains a brick and stone structure in the form of a segment of a circle, shaped like an altar. On either side a few dark-colored bricks are inserted crosswise, taken from the original St. Mary's Chapel at St. Mary's City. The altar was erected in 1934 by the Society of the Pilgrims of St. Mary's to commemorate the landing of the settlers of Maryland and to honor the principal chronicler of the voyage from England to America and of the early years of the colony.

The altar was designed by Christopher La Farge, a noted architect, nephew of Father La Farge who served in St. Mary's County for many years and is fondly remembered by many older persons in the County. The site overlooks St. Mary's Bay. The visitor standing on the altar steps commands a sweeping view of St. Mary's City, Pagan Point, Chancellor's Point and the channel up which the Ark and the Dove sailed in March of 1634.

This two and one-half acre garden was deeded to the State of Maryland in 1969 by the Pilgrims of St. Mary's and is being maintained and developed by the St. Mary's City

Commission. When you visit St. Mary's City this quiet and beautiful spot should be included in your itinerary.

Research for a Better Museum

From the beginning the Commission recognized the importance of research in building an outstanding museum and in providing a creative educational experience for visitors to St. Mary's City. Today nearly half of its yearly appropriation of operating funds goes to support the work of a professional staff that includes a historian, an archaeologist, and an architectural historian.

Their research is most visible to the public during the summer, although it continues year around. In June and July, for example, our archaeologist, Mr. Gary Stone, excavated an area in front of the Reconstructed State House to test the location of one of two main streets that ran through the old town. In August he and his crew of ten students opened another excavation on the site of Pope's Freehold, traditionally the residence of George Washington's great-great grandfather and home of his great grandmother. Visitors are always welcome to come and see what the archaeologists are finding.

Two other current projects will be of special interest to southern Marylanders. Dr. Lois Carr, the Commission's historian, has recently compiled a series of four detailed 17th-century maps of St. Mary's County on which she has identified and located nearly every patent and land grant made prior to 1705. Some of these three hundred year old tracts still have colonial dwellings standing on them. Too many, unfortunately, are neglected and in poor repair. Those that are most dilapidated will be photographed and recorded by a team of architectural historians headed by Mr. Cary Carson, the Co-ordinator of Research for the Commission. This project, sponsored jointly by the Commission and the Maryland Historical Trust, is made possible by generous grants from the United States Department of the Interior and the Smithsonian Institution.

Each of these research activities is designed to add a fresh dimension to our understanding of the planting society that flourished in tidewater Maryland during the colonial period. Over the years archaeologists will lay bare more and more of the vanished capital. The architectural historians' studies of surviving colonial buildings will provide information about the appearance of the public buildings, the inns, the houses, and the outbuildings that once made St. Mary's City look like an English village. Finally, it is the historians' job to stand back and view St. Mary's City in the wider, more meaningful context of the Chesapeake region and indeed, as part of a far flung Atlantic community. Together these separate specialities contribute to the Commission's central work of building a rich and varied historical park. Increasingly, the results of its research will be seen in better exhibits, films, reconstructions of typical buildings, and innovative artifact displays.

Still, many people ask if all this research is really necessary. It may dot i's and cross t's, but will it bring more visitors and more money to the county? Our practical answer to a practical question is "yes." The St. Mary's City Commission is trying to make its way in a tough league. The competition for visitors is keen. The Williamsburgs and the Sturbridge Villages already sustain large research establishments. St. Mary's City must make up in quality and imagination what it now lacks in size and experience.

Good research is also vital in obtaining government and private grants-in-aid which increasingly are the major source of outside funding. Agencies such as the National Endowment for the Humanities are ready to give liberal financial support to museums that take seriously their educational responsibilities. Funds are not available to mere amusement parks and tourist traps. So far the Commission has done well in earning a share of the grant monies. Since January its research division has received over $10,000 from public and private institutional donors. Most of the money is spent here in the county employing local students in the excavations, the architectural surveys, the archaeological laboratory, and as guides at the State House.

Good research makes good sense in the process of making a good museum and historical park at ancient St. Mary's City.

Chancellor's Point

One of the most serene and beautiful spots in all of the serene and beautiful extent of ancient St. Mary's town-land is Chancellor's Point. This site is the traditional landing point of the Ark and Dove upon their arrival in March of 1634. Though recent historical research casts doubt upon this tradition the site is still a scenic and historic place to visit.

A house was built here shortly after the colony was founded. We know Henry Wiseman, one of the "gentlemen adventurers" who came to Maryland on the Ark, lived here as early as 1642. The foundations of his house and nearby buildings will one day be excavated by the archaeologist.

The name, Chancellor's Point, is derived from its 17th century owner, Philip Calvert, who served as Chancellor of the Province and later as its Governor. Philip was a brother of Cecil, the second Lord Baltimore. It is now a beautifully wooded river-side site with several hundreds of yards of waterfront and with a scheduled lagoon at its northern limits.

Mrs. Dudley Chase, former owner of Chancellor's Point, wished this site to be preserved for the people of Maryland and generously granted a portion of the value of the property and sold it to the state well below its fair market value.

The visitor to Chancellor's Point will find a parking space provided from which point natural history trails lead through the woods to the lagoon and along the beach to the point. A spectacular view is offered of St. Mary's River and the stretch leading down stream to St. George's Island and a vista across the Potomac into Virginia. Upstream Church Point and the State House can be viewed and across the river Porto Bello and West St. Mary's Manor.

Eventually the results of archaeological investigation will be on display here and a Natural History Center located in the vicinity to tell the story of the flora and fauna of early Maryland.

John Hicks's Wine Bottles

The visitor to St. Mary's City may note a small wooded park in front of Caroline Hall, the newer of the two women's dormitories at St. Mary's College. This park is identified by a marker that reads "John Hicks Site." Its nicely landscaped garden embraces the site and remains of the house of one of St. Mary's City's early citizens.

John Hicks probably came to Maryland sometimes between 1683 and the end of the century, lived and prospered in St. Mary's City and finally returned to England in 1749. There he died about 1753 and his name and deeds passed into the mist of the past only to reappear last year when the Commission through its archaeologist and historian brought them back to light.

Learning of the plans for a new college dormitory the research staff, by probes and hasty trenching of the site, discovered a foundation and began an orderly archaeological dig. Gradually uncovered by the shovels, trowels, root cutters, brushes and other tools of the diggers was evidence of a frame dwelling some 16' x 40' with large brick chimneys at each end. The chimney foundations have been newly capped with brick above ground level, and the extent of the dwelling and cellar are now outlined on the ground.

In the cellar and in trash pits scattered about the dwelling was uncovered a great variety of artifacts embracing the whole range of household utensils and equipment and farm and craftsmen tools and products. Outstanding in the dig, however, was an array of wine bottles, mostly broken but several choice samples were found intact or with only minor chips. And the most positive clues of the dwelling's occupant were the dated wine bottle seals, stamped in the glass; seals that read "John Hicks" together with the vintage date, some as early as 1723.

Of interest to the visitor to the John Hicks site are facts that have been uncovered by the Commission's Historian. John Hicks came from an English family of substance, and perhaps of gentility. He was appointed a commissioner to divide St. Mary's County into parishes, he attained the title of "Captain," was a justice of the peace, and of the Provincial Court and for three years served as sheriff of St. Mary's County.

John Hicks's will listed 3½ pounds of silver, a great deal of pewter, a decanter (a fitting accessory to his many wine bottles), a clock, slaves to the value of 465 English pounds sterling and 3,050 acres of land.

On the second floor of the old State House is an interesting display of artifacts uncovered at the Hicks House site together with a couple of his wine bottles and wine bottle seals.

St. Mary's City Visitor and School Children History Program

The purposes of the St. Mary's City preservation and development project are declared by its enabling law to be educational in nature. To put this educational obligation into effect the Commission provides the widest possible scope of historical and cultural information relating to early Maryland for the visitor to St. Mary's City. Additionally, the Commission has now for a number of years been involved in a program of bringing to St. Mary's City the school children of Maryland to give them a practical and vivid lesson in their state's history.

In the schools of Maryland the state's history is generally covered at the elementary level in the 4th grade and at high school level in the 11th grade. The Commission therefore, has a program of inviting annually the 4th and 11th grade pupils of the public and parochial schools to visit St. Mary's City for a combined walk and bus study-field trip of the historic town-land under the guidance of specially trained guides.

The program initially started with the school children of St. Mary's County but has been extended to the counties of Southern Maryland and is gradually being broadened to embrace the schools of the whole state. Letters are addressed to county superintendents of education, to school principals and to individual grade teachers inviting them to schedule history field trips to their state's original settlement and first capital. Increasingly large numbers of classes are scheduling trips each year.

The field trip is normally preceded by class room instruction and preparation with lecture and reading assignments relating to the founding of Maryland as a province of the Lords Baltimore dedicated to the concepts of peace and tolerance. The actual field trip begins at the old State House where the bus loads of pupils, with their teachers, are grouped into small sections of 10 to 20 pupils each with a trained guide designated to conduct the tour. Both visually through prepared exhibits and by oral description the students are given a brief but accurate and inspiring story of the Lords Baltimore and the Calvert family, of the voyage of the Ark and the Dove, of the founding of the colony, of the Indians who were here when

the settlers arrived, of the concept of peace and tolerance and of the life and customs of the early settlers.

The tour takes the pupil groups through the State House and grounds, the church yard and grounds of Trinity Church and if their schedule so permits they tour by bus such points as the Father White Memorial, Pope's Freehold, St. John's, Chancellor's Point and St. Ignatius Church at St. Inigoes. Usually a picnic luncheon is scheduled for the Governor's Field or on Church Point. During the past spring session 1,441 pupils visited St. Mary's City for this program.

GUIDE PROGRAM

To provide adequate well trained guides for this Program the Commission recruits and trains volunteers from history students of St. Mary's College. Each fall St. Mary's College students receive questionnaires to determine their interest in the program. Those well motivated and best qualified are selected and given a course of reading, lecture and demonstration to qualify them for this guide service. The response and results have been very successful. For this portion of the program the college student receives academic credit.

The student participating in this program has an opportunity to learn much of Maryland's early history and at the same time profits from the practical experience of teaching, guiding and leading a group of young future citizens of Maryland. Additionally, the guide is aided in meeting his tuition and college expenses by receiving a compensation for each hour spent in this program.

SELF-GUIDED TOUR OF ST. MARY'S CITY

For those who wish to make a self-guided tour of St. Mary's City in its present state of preservation and development, and many do, the following is suggested, though the sequence of sites visited may be varied to meet individual taste. The numbers refer to the map to the left. (Map not printed in RECORD.)

1. The tour should begin at the Reconstructed State House of 1676. Visitor parking lot available. Here, a trained information guide can provide maps, pamphlets and information for specific interests. Tour the State House including the historic exhibits and models on the second floor.

A walking tour of The Governor's Field and Trinity Churchyard should follow and should include:

2. Leonard Calvert Monument, erected by the state in 1890 on site of historic mulberry tree.

3. Lord Copley's Tomb, first royal governor of Maryland, erected 1922 by Colonial Dames.

4. The twelve stones marking the outline of foundations of original State House of 1676.

5. Margaret Brent Stone, erected 1955 by Daughters of Founders and Patriots of America.

6. Ark and Dove Monument, erected 1934 by Daughters of the Revolution.

7. Trinity Church, constructed 1829 of brick of original State House. Communion rail made from historic mulberry tree.

8. Church Point, Commemorative Cross, picnic tables.

9. Reconstructed Broome's Wharf. Beautiful view of the river and far shore.

From the State House the remainder of the tour should be by car. Visitors parking is available at exact site:

10. Freedom of Conscience Monument, by the noted sculptor Hans Schuler; erected 1934.

11. Father White Memorial Park. Brick and stone altar designed by Christopher La Farge, 1934.

12. Pope's Freehold. Garden dedicated to Anne Pope Washington, great-grandmother of George Washington.

13. St. John's Palace Site. Dwelling site of Charles Calvert, the Third Lord Baltimore. Here on June 24, 1648, Margaret Brent made her plea for the right to vote.

14. John Hicks Site; late 17th and early 18th century resident of St. Mary's City.

15. Chancellor's Point. Natural History Trail. Traditional landing site of the Ark and Dove.

16. St. Ignatius Church; located near Webster Field.

17. Should you wish to visit the offices of St. Mary's City Commission they are presently located on the first floor of Calvert Hall.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Is there further morning business? If not, morning business is concluded.

EXECUTIVE SESSION—NOMINATION OF WILLIAM H. REHNQUIST

The ACTING PRESIDENT pro tempore. In accordance with the previous order, the Senate will now go into executive session to continue the consideration of the nomination of William H. Rehnquist to be an Associate Justice of the Supreme Court of the United States.

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

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

The second assistant legislative clerk proceeded to call the roll.

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

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

LEGISLATIVE SESSION

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Senate return to legislative session for not to exceed 10 minutes and that the distinguished Senator from Nevada (Mr. BIBLE) be recognized.

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

CAPITOL REEF NATIONAL PARK, UTAH—CONFERENCE REPORT

Mr. BIBLE. Mr. President, I submit a 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.

I ask unanimous consent for the present consideration of the report.

The ACTING PRESIDENT pro tempore. 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 November 30, 1971, at p. 43360–43361.)

Mr. BIBLE. Mr. President, I move the adoption of the conference report.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the motion of the Senator from Nevada.

The motion was agreed to.

CONNECTICUT HISTORIC RIVERWAY

Mr. BIBLE. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of S. 36.

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

The legislative clerk read as follows:

A bill (S. 36) to preserve and promote the resources of the Connecticut River Valley, and for other purposes.

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

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Interior and Insular Affairs with amendments on page 3, line 1, after the word "the", strike out "advisory committee" and insert "Gateway Committee"; in line 12, after the word "he", strike out "determines are" and insert "shall designate as being"; in line 17, after the word "this", strike out "Act." and insert "Act, or whenever in his judgment the estimated cost of acquiring the lesser interest would be a substantial percentage of the estimated cost of acquiring the fee simple title."; in line 21, after the word "property", strike out "within such unit" and insert "not so designated"; on page 7, line 23, after the word "thereof", strike out "or permanently preserved for conservation purposes under the ownership of a nonprofit, nonstock organization"; on page 10, line 3, strike out "Advisory" and insert "Gateway"; in line 5, after the word "Riverway", strike out "Advisory" and insert "Gateway"; and, on page 14, at the beginning of line 19, strike out "not to exceed $23,000,000 to carry out the provisions of this Act" and insert "such sums as may be necessary to carry cut the provisions of this Act, not to exceed, however, $17,450,000 for the acquisition of land and interests therein, and not to exceed $4,569,000 (August 1971 prices) for development, plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indexes applicable to the types of construction involved herein"; 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

STATEMENT OF POLICY

SECTION 1. The Congress finds that the Connecticut River and the first tier of towns bordering the river in the States of Connecticut, Vermont, and New Hampshire, and the Commonwealth of Massachusetts, as generally depicted on the map entitled "Connecticut River Valley corridor", numbered NSR–CON–91,000 and dated August 1970, which is on file and available for public inspection in the offices of the National Park Service, Department of the Interior, possess unusual scenic, ecological, scientific, historic, recreational, and other values contributing to public enjoyment, inspiration, and scientific study. The Congress further finds that it is in the best interests of the citizens of the United States for the United States to take action to preserve and promote such values for the enjoyment of present and future generations, to preserve the natural ecological environment and develop the recreational potential of the area, and to encourage

maximum complementary action by State and local governments and private individuals, groups, and associations.

CONNECTICUT HISTORIC RIVERWAY

SEC. 2. In order to provide for conservation of the scenic, scientific, historic, ecological, and other values contributing to public enjoyment, as well as the public outdoor recreation use and enjoyment of the Connecticut River Valley corridor, consistent with the well-being of present and future residents of the area, there is hereby established the Connecticut Historic Riverway (hereinafter referred to as the "riverway"). The boundaries of such riverway shall be as generally delineated on the map numbered NR–CON–40,000, and dated July 1970. The Secretary of the Interior (hereinafter referred to as the "Secretary") may revise the boundaries of the riverway from time to time with a view to carrying out the purposes of this Act, with the approval of a majority of the Gateway Committee for such unit, as established and described in section 6 of this Act and hereinafter referred to as the "committee", but the total acreage within the revised boundaries of the unit shall not exceed twenty-three thousand and five hundred acres.

ACQUISITION OF PROPERTY FOR THE CONNECTICUT HISTORIC RIVERWAY

SEC. 3. (a) Within the boundaries of the riverway, the Secretary may acquire without the consent of the owner not to exceed five thousand acres of privately owned lands, waters, and interests therein which he *shall designate as being* presently needed to carry out the purposes of this Act: *Provided,* That the Secretary may acquire a fee title only in cases where, in his judgment, the acquisition of scenic easements or other less-than-fee interests would not be adequate to carry out the purposes of this *Act, or whenever in his judgment the estimated cost of acquiring the lesser interest would be a substantial percentage of the estimated cost of acquiring the fee simple title.* The remaining privately owned property *not so designated* may not be acquired by the Secretary without the consent of the owner or owners (hereinafter referred to as "owner") for one year following the date of enactment of this Act, and thereafter so long as an appropriate local zoning agency shall have in force and applicable to such a property a duly adopted, valid zoning ordinance approved by the Secretary. In order to carry out the provisions of this section, and following public hearings, the Secretary shall issue regulations, specifying standards that are consistent with the purposes of this Act. Such regulations and amendments thereto must receive the approval of a majority of the committee before issuance.

(b) The standards specified in such regulations shall have the object of (i) regulating new commercial or industrial uses of such property consistent with the purposes of this Act, and (ii) promoting the protection and development for purposes of this Act of such property by means of acreage, frontage, setback design, and subdivision controls and by prohibiting the cutting of timber, burning of undergrowth, removing soil or other landfill, and dumping or storing refuse in such a manner that would detract from the natural or traditional riverway scene: *Provided,* That such standards shall not discourage the constructive development and use of land for industrial and commercial purposes which are consistent with the purposes of this Act.

(c) Following issuance of such regulations the Secretary shall approve any zoning ordinance or any amendment to any approved zoning ordinance submitted to him that conforms to the standards contained in the regulations in effect at the time of adoption of the ordinance or amendment. Such approval shall remain effective for so long as such ordinance or amendment remains in effect as approved.

(d) No zoning ordinance or amendment thereof shall be approved by the Secretary which (i) contains any provisions that he considers adverse to the protection and development of such property in accordance with the purposes of this Act, or (ii) fails to have the effect of providing that the Secretary shall receive notice of any variance granted under, or any exception made to, the application of such ordinance or amendment.

(e) If any property, with respect to which the Secretary's authority to acquire by condemnation has been suspended according to the provisions of this section, is made the subject of a variance under, or becomes for any reason an exception to, such zoning ordinance, or is subject to any variance, exception, or use that fails to conform to any applicable standard contained in regulations of the Secretary issued pursuant to this section and in effect at the time of passage of such ordinance, the Secretary may terminate the suspension of his authority to acquire such property by condemnation: *Provided,* That the owner of any such property shall have ninety days after written notification from the Secretary to discontinue the variance, exception, or use referred to in such notification.

(f) The Secretary shall furnish to any party in interest, upon request, a certificate indicating the property with respect to which the Secretary's authority to acquire by condemnation is suspended.

ADDITIONAL PROPERTY ACQUISITION PROVISIONS

SEC. 4. (a) The Secretary is authorized to acquire the lands, waters, and interests therein (including scenic easements) within the riverway by donation, negotiated purchase with donated or appropriated funds, transfer, exchange, or condemnation except that such authority to acquire by condemnation shall be exercised only in the manner and to the extent specifically provided in section 3 of this Act.

(b) With the exception of any lands which the Secretary determines are presently needed for public use facilities to carry out the purposes of this Act, any owner of improved property within the unit on the date of its acquisition by the Secretary may elect, as a condition to such acquisition to retain a right of use and occupancy of the improved property for noncommercial residential and agricultural purposes for a period ending at the death of the owner or his spouse, whichever occurs later, or for a fixed term not to exceed twenty-five years. The Secretary shall pay to the owner the fair market value of the property on the date of its acquisition less the fair market value on such date of any right retained by the owner. Any retained right of use and occupancy may be transferred or assigned. Whenever the Secretary finds that the property or any portion thereof has ceased to be used for noncommercial residential purposes, he may terminate the right of use and occupancy upon tendering to the holder thereof an amount equal to the fair market value of the portion of said right which remains unexpired on the date of termination.

(c) As used in this section, the term "improved property" shall mean a one-family dwelling the construction of which was begun before July 1, 1970, together with so much of the land on which the dwelling is situated, the said land being in the same ownership as the dwelling, as the Secretary shall designate to be reasonably necessary for the enjoyment of the dwelling and land for noncommercial residential or agricultural purposes, together with any structures accessory to the dwelling which are situated on the land so designated: *Provided,* That the Secretary may exclude from the land so designated any water bodies together with so much of the adjacent land as he deems necessary for public access thereto.

(d) Any property or interests therein within the riverway which are owned by a State or by any political subdivision thereof may be acquired only by donation. Notwithstanding any other provision of law, any Federal property located within the riverway may, with the concurrence of the agency having custody thereof, be transferred to the administrative jurisdiction of the Secretary, without transfer of funds, for administration by him as part of the recreation area.

ADMINISTRATIVE PROVISIONS

SEC. 5. (a) The Secretary shall administer and protect the riverway with the primary aim of conserving the natural resources located within it and preserving the area in as nearly its natural state and condition as possible. No development or plan for the convenience of visitors shall be undertaken in the riverway which would be incompatible with the overall lifestyle of residents of the area, accepted ecological principles, the preservation of the physiographic conditions now prevailing, or with the preservation of such historic sites and structures as the Secretary may designate.

(b) The riverway shall be administered, protected, and developed by the Secretary in accordance with the provisions of this Act and the Act of August 25, 1916 (39 Stat. 535), as amended and supplemented (16 U.S.C. 1 et seq.), except that the Secretary may utilize any other statutory authority available to him for the conservation and management of natural resources to the extent he finds such authority will further the purposes of this Act.

(c) The Secretary shall permit hunting, fishing, and trapping on lands and waters under his jurisdiction within the riverway in accordance with the applicable laws of the States concerned and of the United States, except that the Secretary may designate zones where, and establish periods when, no hunting, no fishing, or trapping shall be permitted for reasons of public safety, fish or wildlife management, administration, or public use and enjoyment. Except in emergencies, any regulations of the Secretary prescribing any such restrictions shall be issued only after consultation with the appropriate agency of the State concerned.

(d) The Federal Power Commission shall not authorize the construction, operation, or maintenance within the riverway of any dam, water conduit, reservoir, transmission line, or other project works under the Federal Power Act (41 Stat. 1063), as amended (16 U.S.C. 791a et seq.): *Provided,* That the provisions of that Act shall continue to apply to any project, as defined in that Act, already licensed.

(e) Designated National Park Service employees of the riverway may make arrests for violations of any Federal laws or regulations applicable to the area, and they may bring the accused person before the nearest magistrate, judge, or court of the United States having jurisdiction in the premises.

GATEWAY COMMITTEE

SEC. 6. (a) There is hereby established the Connecticut Historic Riverway Gateway Committee.

(b) Such committee shall be composed of members appointed for a term of two years by the Secretary as follows:

(1) a member appointed to represent the State of Connecticut. Such appointments shall be made from recommendations of the Governor of the State of Connecticut;

(2) a member appointed to represent the appropriate regional planning commissions or agencies of Connecticut. Such appointments shall be made from recommendations of the heads of such commissions or agencies;

(3) a member appointed to represent each town referred to in section 1 of this Act that

is directly affected by the establishment of the riverway and such appointments shall be made from recommendations of the governing body of such towns; and

(4) a member to be designated by the Secretary; and

(5) a member to be designated by the Administrator of the Environmental Protection Agency or other such Federal agency which assumes the responsibility for the protection of the environment by change of law or by Executive order, unless that agency is under the administrative jurisdiction of the Secretary of the Interior.

(c) The chairman of the committee shall be elected by the membership thereafter for a term of not to exceed two years. Any vacancy in the committee shall be filled in the same manner in which the original appointment was made.

(d) All members of the committee shall serve without compensation as such. The Secretary is authorized to pay the expenses reasonably incurred by the committee in carrying out their responsibilities under this Act on the presentation of vouchers signed by the chairman.

(e) The Secretary or his delegate shall consult regularly with the committee with respect to all matters relating to the development and administration of the riverway, and with respect to carrying out the provisions of this Act, including but not limited to matters relating to the acquisition of lands, the issuance of regulations specifying standards for zoning ordinances, and the administration of the riverway.

(f) The committee shall make available to the Secretary an annual report reviewing matters relating to the development of the riverway, including land acquisition and the zoning standards policies, and shall make recommendations thereto.

CONNECTICUT RIVER VALLEY CORRIDOR

SEC. 7. (a) The Secretary, in accordance with authority contained in the Act of May 28, 1963 (77 Stat. 49), and in consultation with the New England River Basin Commission and the advisory committee established by section 6 of this Act, shall encourage coordinated planning for the conservation and development of the scenic, ecological, scientific, historic, and recreational resources of the Connecticut River Valley corridor which is defined for the purpose of this section as that part of the Connecticut River Valley corridor depicted on the map referred to in section 1 of this Act which is located within the State of Connecticut. The Secretary shall give particular attention to encouraging and coordinating the conservation and development of the outdoor recreation resources of the corridor that are outside the boundaries of the riverway, and he is authorized to provide technical assistance to State and local governments and private individuals, groups, and associations with respect to the conservation and development of such resources. The Secretary is authorized to establish a regional office of the Bureau of Outdoor Recreation within the boundaries of the Connecticut River Valley corridor in order to facilitate the planning and coordination under this section.

(b) The Secretary shall encourage State, regional, county, and municipal bodies to adopt and enforce adequate master plans and zoning ordinances which will promote the use and development of private owned lands within the corridor in a manner consistent with the purposes of this section, and he is authorized to provide technical assistance to such bodies in the development of such plans and ordinances.

(c) The Secretary shall cooperate with the appropriate State and local agencies to provide safeguards against pollution of the Connecticut River and unnecessary impairment to the scenery thereof.

(d) In order to avoid, insofar as possible, decisions or actions by any department, agency, or instrumentality of the United States which could have a direct or adverse effect on the outdoor recreation resources of the corridor, all departments, agencies, and instrumentalities of the United States shall consult with the Secretary concerning any plans, programs, projects, and grants under their jurisdiction within the corridor. Any Federal department, agency, or instrumentality before which there is pending an application for a license for any activity which could have such effect on the outdoor recreation resources of the corridor shall notify the Secretary, and, before taking final action on such application, shall allow the Secretary ninety days to present his views on the matter.

(e) The Secretary of Agriculture shall study means of preserving the agricultural, forest, and rural open space character of the corridor, and shall submit a report of his findings and recommendations to the President and Congress within one year after the date of this Act.

SHORELINE EROSION CONTROL

SEC. 8. The Secretary of the Interior and the Secretary of the Army shall cooperate in the study and formulation of plans for shoreline erosion control of the Connecticut River; and any protective works for such control undertaken by the Chief of Engineers, Department of the Army, shall be carried out in accordance with a plan that is acceptable to the Secretary of the Interior and is consistent with the purposes of this Act.

APPROPRIATIONS

SEC. 9. There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act, not to exceed, however, $17,450,000 for the acquisition of land and interests therein, and not to exceed $4,569,000 (August 1971 prices) for development, plus or minus such amounts if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indexes applicable to the types of construction involved herein.

Mr. BIBLE. Mr. President, I ask unanimous consent that the committee amendments be considered and agreed to en bloc and that the bill as thus amended be considered as original text for the purpose of further amendment.

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

Mr. BIBLE. Mr. President, I send amendments to the desk and ask unanimous consent that they be considered en bloc.

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

The amendments will be stated.

The legislative clerk read as follows:

On page 3, line 1, insert "Connecticut Historic Riverway" prior to the word "Gateway."

On page 3, line 17, add a period after the word "Act" and strike all thereafter through the period on line 20.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendments.

The amendments were agreed to.

Mr. BIBLE. Mr. President, the Committee on Interior and Insular Affairs has approved S. 36 with amendments, to authorize the establishment of a Connecticut historic riverway.

The riverway would be composed of 23,500 acres of land and water extending for 11 miles along the Connecticut River from Old Saybrook to East Haddam in the State of Connecticut. The bill authorizes the Federal Government to purchase, by eminent domain proceedings if necessary, up to 5,000 acres of land. The remaining portions of the riverway would remain in private ownership under a "conservation zone" arrangement. The total cost of land and development would be $22,019,000.

The Connecticut River flows for 400 miles through the very heart of New England. Fifty million Americans live within 250 miles of its banks. The proposed riverway area itself is within 90 miles of New York City and 120 miles of Boston. Yet, despite its proximity to major metropolitan areas, many parts of the river retain a scenic and historic charm.

The Committee on Interior and Insular Affairs has been deeply concerned with the need to provide open space, recreational and park areas for the people of the northeast sections of the United States. It is also aware of the growing need to protect the quality of the national environment by preserving those areas of especial beauty and tranquillity which remain in the most crowded parts of our country.

The committee believes that authorization of the Connecticut historic riverway is another urgently needed step toward these goals.

Three years ago, the Secretary of the Interior, Stewart Udall, presented a comprehensive report recommending the establishment of a Connecticut national recreation area. A short time ago, Secretary Morton voiced his strong support of this proposal.

The Interior Department report, entitled "New England Heritage," proposed three Federal enclaves along the Connecticut River to be complemented by other State and local conservation efforts. The Connecticut historic riverway encompasses the first of these Federal areas.

The area is one of quiet beauty and historical interest. The Connecticut River at this point is a major estuary flowing freely toward Long Island Sound. It is the only major river remaining on the eastern seaboard without an urban or industrial center at its mouth. The riverbank is alternately low-lying marshes and steep forest-covered slopes. Small islands are scattered here and there. Picturesque Yankee towns such as East Haddam, Chester, Deep River, and Essex are settled amidst the slopes and flatlands. The area remains one where commercial and industrial development has been slow.

The bill would permit Federal acquisition of land and waters up to 5,000 acres. Of the land 93 percent so acquired is completely undeveloped. The cost of land acquisition is estimated to be $17,450,000.

The remainder of the area—17,500 acres—would remain in private ownership under a "conservation zone" arrangement. In such a zone privately owned land would be exempt from Federal acquisition as long as prevailing zone regulations met standards developed

by the Secretary of the Interior with the assistance of a local advisory committee. These standards, while not designed to inhibit normal growth patterns, would protect the area from developments which would detract from the natural or traditional riverway scene.

The committee expects development costs of the National Park Service within the Connecticut Historic Riverway to be limited. The nature of the countryside and environment will not sustain new road systems or massive development. Much of the Yankee heritage and scenic tranquillity of the area would be lost. It is expected that group camping, hiking, boating, fishing, and cycling will be major activities. In addition, the Federal land acquisition will protect most of the valuable estuarine marsh areas along the riverbanks.

Mr. President, many sections of the Connecticut River are polluted. But, a comprehensive State and Federal program of abatement is now underway to clean the river. A Connecticut River free of pollution will attract a higher intensity of uncontrolled commercial development. Already, the signs of such development are present.

As a result, much of what we seek to preserve will be threatened. The committee believes action is needed now to have the Connecticut River.

Mr. RIBICOFF. Mr. President, S. 36, the bill now before the Senate, will be the first step toward preserving the few remaining unspoiled sections of the 400-mile-long Connecticut River Valley.

Before commenting on the particulars of this bill, I would like to express my thanks and pay tribute to the distinguished chairman of the Interior Committee's Subcommittee on Parks and Recreation (Mr. BIBLE) for the significant role he has played in the development of this legislation.

Ever since the idea for preserving the Connecticut River Valley area was proposed, Senator BIBLE has worked closely with me, representatives of the National Park Service, and local residents in an attempt to develop the best possible legislation. He fully understands the many problems which arise in such an undertaking and has shown great patience as we have worked to create a park in an area which has been settled for over 300 years and has deeply ingrained traditions.

Situated in the center of historic New England, and in part surrounded by the great urban sprawl in industrial America, the Connecticut River provides an unmatched array of the vital natural resources which are fast disappearing in our modern society. The preservation and renewal of these assets is of both regional and national concern.

We in New England have been the fortunate beneficiaries of a river which has remained largely unspoiled even to the present day. By a quirk of fate, the sand bars along the Connecticut shore have limited the flow of commercial river traffic. As a result, the Connecticut stands alone as the single major American river without an industrial or urban center at its mouth. Thus, despite some pollution and normal commercial growth, much of the river valley retains its original unique charm.

But how long this situation will continue is a question of great importance. More than 6 million people live within 50 miles of the river. The clean salt marshes at its mouth lie less than 100 miles from the center of Manhattan. Seven interstate or limited access highways serve the Connecticut River corridor. Now the trout filled headwaters on the Canadian border are only a few hours drive for New Yorkers and Bostonians.

While, with few exceptions, the river's shoreline and surrounding countryside have not been marred by commercial developments, the river itself is seriously polluted in many sections and has been for several years. This pollution has discouraged developers and other businessmen from seeking to tamper with the beauty of the river valley.

But the pollution problem, thanks to Federal and State programs, is being solved and hopefully the river will be clean again in a few years. Once the purity of the waters of the Connecticut is restored, careless, uncontrolled developments projects may begin.

In an attempt to prevent this, I introduced in 1966, with the support of the entire New England senatorial delegation, legislation authorizing a comprehensive study of the Connecticut River Valley in order to formulate the necessary steps to preserve this great river.

In 1968, the Department of the Interior issued its report, "New England Heritage," which gave us, for the first time, a regional format within which we could work to restore and preserve the beauty of the Connecticut River Valley.

"New England Heritage" recommended a three-unit Connecticut River National Recreation Area in Connecticut, Massachusetts, Vermont, and New Hampshire.

Following an inspection trip of the entire river valley with Senator BIBLE, I introduced in July 1970, a bill to create the Connecticut historic riverway in the estuary region of southern Connecticut. This bill, which was almost identical to the legislation we are now considering, passed the Senate on October 7, 1970. Unfortunately, the House of Representatives was not able to act on the matter before the end of the 91st Congress.

Because of the importance I place on the riverway, the first piece of legislation I introduced in the 92d Congress was another bill to create the Connecticut historic riverway.

This bill, which is now before us, would cover 23,500 acres along an 11-mile stretch of the river from Old Saybrook to Haddam, Conn. Within the riverway, the Secretary of the Interior would be authorized to acquire up to 5,000 acres. The preliminary studies reveal that only 4,100 acres need be bought and that almost all of it is still undeveloped. In fact, 870 acres will be tidal marshland which, while of limited economic value, is essential to the survival of aquatic and marine wildlife.

The remaining acreage would constitute a conservation zone similar to the one in Cape Cod and Fire Island National Seashore. Property in this zone would remain in private ownership exempt from condemnation as long as zoning standards approved by the Secretary are effectively administered.

Because the riverway encompasses a relatively heavily settled area, the bill establishes a local committee to assist in the administration of the riverway. This committee would consist of representatives from the several towns adjacent to the area as well as representatives from the State and regional planning commissions. Consultation with the Secretary of the Interior on matters relating to the development and administration of the area would be on a regular basis.

Mr. President, the basic principle around which this legislation has been developed is that the nature of the resource should dictate its best use. As every person familiar with the area knows, the lower Connecticut Valley cannot sustain intensive development. The small coves, the marshlands, the forested hills, and valley are locations of rare solitude and beauty. The Connecticut towns and countryside are of continuing historic interest. The protection and maintenance of the serene character of this part of the river is the best overall use of this resource. That is exactly what this bill will do.

I hope that after the Senate acts today, my colleagues in the House of Representatives will support prompt approval of this legislation. Time is crucial to the success of our efforts. If further delays occur, there may be little left in the estuary region to preserve.

The ACTING PRESIDENT pro tempore. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill (S. 36) was ordered to be engrossed for a third reading, was read the third time, and was passed, as follows:

S. 36

An act to preserve and promote the resources of the Connecticut River Valley, and for other purposes

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

STATEMENT OF POLICY

SECTION 1. The Congress finds that the Connecticut River and the first tier of towns bordering the river in the States of Connecticut, Vermont, and New Hampshire, and the Commonwealth of Massachusetts, as generally depicted on the map entitled "Connecticut River Valley corridor", numbered NSR–CON–91,000 and dated August 1970, which is on file and available for public inspection in the offices of the National Park Service, Department of the Interior, possess unusual scenic, ecological, scientific, historic, recreational, and other values contributing to public enjoyment, inspiration, and scientific study. The Congress further finds that it is in the best interests of the citizens of the United States for the United States to take action to preserve and promote such values for the enjoyment of present and future generations, to preserve the natural ecological environment and develop the recreational potential of the area, and to encourage maximum complementary action by State and local governments and private individuals, groups, and associations.

CONNECTICUT HISTORIC RIVERWAY

SEC. 2. In order to provide for conservation of the scenic, scientific, historic, ecological, and other values contributing to public enjoyment, as well as the public outdoor recreation use and enjoyment of the Connecticut River Valley corridor, consistent with the well-being of present and future residents of the area, there is hereby established the Connecticut Historic Riverway (hereinafter referred to as the "riverway"). The boundaries of such riverway shall be as generally delineated on the map numbered NR–CON–40,000, and dated July 1970. The Secretary of the Interior (hereinafter referred to as the "Secretary") may revise the boundaries of the riverway from time to time with a view to carrying out the purposes of this Act, with the approval of a majority of the Connecticut Historic Riverway Gateway Committee for such unit, as established and described in section 6 of this Act and hereinafter referred to as the "committee", but the total acreage within the revised boundaries of the unit shall not exceed twenty-three thousand and five hundred acres.

ACQUISITION OF PROPERTY FOR THE CONNECTICUT HISTORIC RIVERWAY

SEC. 3. (a) Within the boundaries of the riverway, the Secretary may acquire without the consent of the owner not to exceed five thousand acres of privately owned lands, waters, and interests therein which he shall designate as being presently needed to carry out the purposes of this Act: *Provided,* That the Secretary may acquire a fee title only in cases where, in his judgment, the acquisition of scenic easements or other less-than-fee interests would not be adequate to carry out the purposes of this Act. The remaining privately owned property not so designated may not be acquired by the Secretary without the consent of the owner or owners (hereinafter referred to as "owner") for one year following the date of enactment of this Act, and thereafter so long as an appropriate local zoning agency shall have in force and applicable to such a property a duly adopted, valid zoning ordinance approved by the Secretary. In order to carry out the provisions of this section, and following public hearings, the Secretary shall issue regulations, specifying standards that are consistent with the purposes of this Act. Such regulations and amendments thereto must receive the approval of a majority of the committee before issuance.

(b) The standards specified in such regulations shall have the object of (i) regulating new commercial or industrial uses of such property consistent with the purposes of this Act, and (ii) promoting the protection and development for purposes of this Act of such property by means of acreage, frontage, setback design, and subdivision controls and by prohibiting the cutting of timber, burning of undergrowth, removing soil or other landfill, and dumping or storing refuse in such a manner that would detract from the natural or traditional riverway scene: *Provided,* That such standards shall not discourage the constructive development and use of land for industrial and commercial purposes which are consistent with the purposes of this Act.

(c) Following issuance of such regulations the Secretary shall approve any zoning ordinance or any amendment to any approved zoning ordinance submitted to him that conforms to the standards contained in the regulations in effect at the time of adoption of the ordinance or amendment. Such approval shall remain effective for so long as such ordinance or amendment remains in effect as approved.

(d) No zoning ordinance or amendment thereof shall be approved by the Secretary which (i) contains any provisions that he considers adverse to the protection and development of such property in accordance with the purposes of this Act, or (ii) fails to have the effect of providing that the Secretary shall receive notice of any variance granted under, or any exception made to, the application of such ordinance or amendment.

(e) If any property, with respect to which the Secretary's authority to acquire by condemnation has been suspended according to the provisions of this section, is made the subject of a variance under, or becomes for any reason an exception to, such zoning ordinance, or is subject to any variance, exception, or use that fails to conform to any applicable standard contained in regulations of the Secretary issued pursuant to this section and in effect at the time of passage of such ordinance, the Secretary may terminate the suspension of his authority to acquire such property by condemnation: *Provided,* That the owner of any such property shall have ninety days after written notification from the Secretary to discontinue the variance, exception, or use referred to in such notification.

(f) The Secretary shall furnish to any party in interest, upon request, a certificate indicating the property with respect to which the Secretary's authority to acquire by condemnation is suspended.

ADDITIONAL PROPERTY ACQUISITION PROVISIONS

SEC. 4. (a) The Secretary is authorized to acquire the lands, waters, and interests therein (including scenic easements) within the riverway by donation, negotiated purchase with donated or appropriated funds, transfer, exchange, or condemnation except that such authority to acquire by condemnation shall be exercised only in the manner and to the extent specifically provided in section 3 of this Act.

(b) With the exception of any lands which the Secretary determines are presently needed for public use facilities to carry out the purposes of this Act, any owner of improved property within the unit on the date of its acquisition by the Secretary may elect, as a condition to such acquisition to retain a right of use and occupancy of the improved property for noncommercial residential and agricultural purposes for a period ending at the death of the owner or his spouse, whichever occurs later, or for a fixed term not to exceed twenty-five years. The Secretary shall pay to the owner the fair market value of the property on the date of its acquisition less the fair market value on such date of any right retained by the owner. Any retained right of use and occupancy may be transferred or assigned. Whenever the Secretary finds that the property or any portion thereof has ceased to be used for noncommercial residential purposes, he may terminate the right of use and occupancy upon tendering to the holder thereof an amount equal to the fair market value of the portion of said right which remains unexpired on the date of termination.

(c) As used in this section, the term "improved property" shall mean a one-family dwelling the construction of which was begun before July 1, 1970, together with so much of the land on which the dwelling is situated, the said land being in the same ownership as the dwelling, as the Secretary shall designate to be reasonably necessary for the enjoyment of the dwelling and land for noncommercial residential or agricultural purposes, together with any structures accessory to the dwelling which are situated on the land so designated: *Provided,* That the Secretary may exclude from the land so designated any water bodies together with so much of the adjacent land as he deems necessary for public access thereto.

(d) Any property or interests therein within the riverway which are owned by a State or by any political subdivision thereof may be acquired only by donation. Notwithstanding any other provision of law, any Federal property located within the riverway may, with the concurrence of the agency having custody thereof, be transferred to the administrative jurisdiction of the Secretary, without transfer of funds, for administration by him as part of the recreation area.

ADMINISTRATIVE PROVISIONS

SEC. 5. (a) The Secretary shall administer and protect the riverway with the primary aim of conserving the natural resources located within it and preserving the area in as nearly its natural state and condition as possible. No development or plan for the convenience of visitors shall be undertaken in the riverway which would be incompatible with the overall lifestyle of residents of the area, accepted ecological principles, the preservation of the physiographic conditions now prevailing, or with the preservation of such historic sites and structures as the Secretary may designate.

(b) The riverway shall be administered, protected, and developed by the Secretary in accordance with the provisions of this Act and the Act of August 25, 1916 (39 Stat. 535), as amended and supplemented (16 U.S.C. 1 et seq.), except that the Secretary may utilize any other statutory authority available to him for the conservation and management of natural resources to the extent he finds such authority will further the purposes of this Act.

(c) The Secretary shall permit hunting, fishing, and trapping on lands and waters under his jurisdiction within the riverway in accordance with the applicable laws of the States concerned and of the United States, except that the Secretary may designate zones where, and establish periods when, no hunting, no fishing, or trapping shall be permitted for reasons of public safety, fish or wildlife management, administration, or public use and enjoyment. Except in emergencies, any regulations of the Secretary prescribing any such restrictions shall be issued only after consultation with the appropriate agency of the State concerned.

(d) The Federal Power Commission shall not authorize the construction, operation, or maintenance within the riverway of any dam, water conduit, reservoir, transmission line, or other project works under the Federal Power Act (41 Stat. 1063), as amended (16 U.S.C. 791a et seq.): *Provided,* That the provision of that Act shall continue to apply to any project, as defined in that Act, already licensed.

(e) Designated National Park Service employees of the riverway may make arrests for violations of any Federal laws or regulations applicable to the area, and they may bring the accused person before the nearest magistrate, judge, or court of the United States having jurisdiction in the premises.

GATEWAY COMMITTEE

SEC. 6. (a) There is hereby established the Connecticut Historic Riverway Gateway Committee.

(b) Such committee shall be composed of members appointed for a term of two years by the Secretary as follows:

(1) a member appointed to represent the State of Connecticut. Such appointments shall be made from recommendations of the Governor of the State of Connecticut;

(2) a member appointed to represent the appropriate regional planning commissions or agencies of Connecticut. Such appointments shall be made from recommendations of the heads of such commission or agencies;

(3) a member appointed to represent each town referred to in section 1 of this Act that is directly affected by the establishment of the riverway and such appointments shall be made from recommendations of the governing body of such towns; and

(4) a member to be designated by the Secretary; and

(5) a member to be designated by the Administrator of the Environmental Protection

Agency or other such Federal agency which assumes the responsibility for the protection of the environment by change of law or by Executive order, unless that agency is under the administrative jurisdiction of the Secretary of the Interior.

(c) The Chairman of the committee shall be elected by the membership thereafter for a term of not to exceed two years. Any vacancy in the committee shall be filled in the same manner in which the original appointment was made.

(d) All members of the committee shall serve without compensation as such. The Secretary is authorized to pay the expenses reasonably incurred by the committee in carrying out their responsibilities under this Act on the presentation of vouchers signed by the chairman.

(e) The Secretary or his delegate shall consult regularly with the committee with respect to all matters relating to the development and administration of the riverway, and with respect to carrying out the provisions of this Act, including but not limited to matters relating to the acquisition of lands, the issuance of regulations specifying standards for zoning ordinances, and the administration of the riverway.

(f) The committee shall make available to the Secretary an annual report reviewing matters relating to the development of the riverway, including land acquisition and zoning standards policies, and shall make recommendations thereto.

CONNECTICUT RIVER VALLEY CORRIDOR

SEC. 7. (a) The Secretary, in accordance with authority contained in the Act of May 28, 1963 (77 Stat. 49), and in consultation with the New England River Basin Commission and the advisory committee established by section 6 of this Act, shall encourage coordinated planning for the conservation and development of the scenic, ecological, scientific, historic, and recreational resources of the Connecticut River Valley corridor which is defined for the purpose of this section as that part of the Connecticut River Valley corridor depicted on the map referred to in section 1 of this Act which is located within the State of Connecticut. The Secretary shall give particular attention to encouraging and coordinating the conservation and development of the outdoor recreation resources of the corridor that are outside the boundaries of the riverway, and he is authorized to provide technical assistance to State and local governments and private individuals, groups, and associations with respect to the conservation and development of such resources. The Secretary is authorized to establish a regional office of the Bureau of Outdoor Recreation within the boundaries of the Connecticut River Valley corridor in order to facilitate the planning and coordination under this section.

(b) The Secretary shall encourage State, regional, county, and municipal bodies to adopt and enforce adequate master plans and zoning ordinances which will promote the use and development of private owned lands within the corridor in a manner consistent with the purposes of this section, and he is authorized to provide technical assistance to such bodies in the development of such plans and ordinances.

(c) The Secretary shall cooperate with the appropriate State and local agencies to provide safeguards against pollution of the Connecticut River and unnecessary impairment to the scenery thereof.

(d) In order to avoid, insofar as possible, decisions or actions by any department, agency, or instrumentality of the United States which could have a direct or adverse effect on the outdoor recreation resources of the corridor, all departments, agencies, and instrumentalities of the United States shall consult with the Secretary concerning any plans, programs, projects, and grants under their jurisdiction within the corridor. Any Federal department, agency, or instrumentality before which there is pending an application for a license for any activity which could have such effect on the outdoor recreation resources of the corridor shall notify the Secretary, and, before taking final action on such application, shall allow the Secretary ninety days to present his views on the matter.

(e) The Secretary of Agriculture shall study means of preserving the agricultural, forest, and rural open space character of the corridor, and shall submit a report of his findings and recommendations to the President and Congress within one year after the date of this Act.

SHORELINE EROSION CONTROL

SEC. 8. The Secretary of the Interior and the Secretary of the Army shall cooperate in the study and formulation of plans for shoreline erosion control of the Connecticut River; and any protective works for such control undertaken by the Chief of Engineers, Department of the Army, shall be carried out in accordance with a plan that is acceptable to the Secretary of the Interior and is consistent with the purposes of this Act.

APPROPRIATIONS

SEC. 9. There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act, not to exceed, however, $17,450,000 for the acquisition of land and interests therein, and not to exceed $4,569,000. (August 1971 prices) for development, plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indexes applicable to the types of construction involved herein.

EXECUTIVE SESSION

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Senate return to the consideration of executive business.

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

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

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

The second assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. BYRD of West Virginia). Without objection, it is so ordered.

NOTICE OF VOTE ON CLOTURE MOTION ON FRIDAY, DECEMBER 10, 1971

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the hour to be set aside, after the first legislative day, for consideration prior to the vote on the cloture motion, begin at the hour of 11 a.m. and that the vote occur at 12 o'clock noon.

The PRESIDING OFFICER (Mr. BYRD of West Virginia). Is there objection to the request of the Senator from Montana? The Chair hears none, and it is so ordered.

QUORUM CALL

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

Mr. BAYH. Mr. President, we are at present as a body operating under the mandatory requirements and time limitations provided for under rule XXII designed to deal with how the Senate as an institution can terminate debate. In language which is perhaps more apropos and more widely understood by average citizens throughout the country, we are operating under those provisions which have been historically used as a vehicle to terminate a filibuster.

The Senate's history is filled with instances of filibustering—whether we call it that or prolonged debate. The Senate RECORD is filled with instances in which some Members of this body, as is their right, have resorted to all of the parliamentary shenanigans and tactics available. Every loophole has been utilized by various Senators in the past to keep issues from being put. All-night sessions, prolonged dissertations on subjects and substances totally irrelevant to the discussion, repetitive speeches revealing no new information, as well as being totally irrelevant, the business of reading poetry and prose and documents totally unrelated or only vaguely related to the question at issue have been utilized on many occasions.

It was to try to stem this type of tactic, the arbitrary use of parliamentary rights on the part of a minority—ofttimes a very small and scant minority—that the Senate enacted in its rules the cloture provision to terminate debate.

Mr. President, I hope that between now and noon tomorrow Senators will examine the RECORD, will examine what has been said on the floor of the Senate, will examine the tactics that have been used by those of us who have deep concern and reservations about the nominee, as well as the tactics and rhetoric used by those who are supporting the nominee, and then, and only then, be prepared for the vote to determine whether the Senate is indeed in the process of being filibustered or whether the Senate is going through the common legislative process of trying to decide a very controversial issue.

I have been in public life for 17 years. Many in this body have been in public life a good deal longer. Perhaps this confession or admission is not a good one, but I have not yet reached a place where criticism does not hurt. I have learned to accept it and tolerate it. I have not yet reached the place where I do not care about being readily accepted and being on friendly terms and likable terms with my colleagues. I think it is relevant to say that, because I am not totally unaware of the pressures which exist in this body today that have absolutely nothing to do with the issues before us.

There is great pressure to adjourn. There is great pressure on all of us to be with our families, our friends, and our constituents, and to have the chance to enjoy a well-deserved rest. It is a very difficult position for those of us who are concerned over the nomination of Mr. William Rehnquist to be in. The Christmas spirit exists outside this Chamber. For this reason it is hard sometimes to keep attention on the legislative process. And some interpret the process as far from the Christmas spirit.

Be that as it may, and at the risk of offending some of my colleagues whose friendship I value highly, nevertheless, I, as one Member of the Senate, do not intend to be as much concerned about waging a popularity contest as I am about seeing that all the issues about the Rehnquist nomination are properly put.

This body in its finest moment has not avoided controversy. It has not sought the easy way and the convenient way. I intend, as much as one Senator can accomplish his own desires, to see that this is one of those moments in which the Senate rises above its own personal convenience and deals with this issue only after it has been fully discussed and some of the critical questions that are yet unanswered are put to rest.

I do not believe several of the issues have been as clearly stated as I would like, and I must admit that it is extremely difficult to get individual Senators at this time, with their minds filled with the other problems that they have individually, with the other problems that confront our country and the world, and with the pressures that they all have to terminate their legislative business, to look at the merits, pro and con, of the Rehnquist nomination. The general attitude seems to be, "Well, let's give the President his way and go home."

In my judgment, this is a very dangerous attitude, one which needs to be changed.

In light of some of the dialog that we have had on the floor of the Senate and indeed in light of some of the comments I have heard some Senators make off the floor, I fear that the Senate does not yet properly understand its role in the advise-and-consent process.

I did not have the good fortune of hearing my distinguished friend and colleague, the Senator from Kentucky—who I notice is on the floor—respond to a WTOP letter to the editor, or an editorial, but I did have it relayed to me by a member of my staff who heard him. The Senator is a persuasive advocate, and he is an honest, tenacious man who pursues his thoughts in as dedicated a manner as any other Member of this body. On many issues we find ourselves comrades in arms. I do not want to put words in his mouth, nor do I want to bring him unnecessarily into the debate, but I do not believe that it is the feeling of those of us in the Senate, nor do I believe that the WTOP editorial that I now have before me can be accurately described as opposing Mr. Rehnquist because he is an ultraconservative. We are concerned not about the general judicial conservative philosophy attributed to him by the press, but we are concerned about how Mr. Rehnquist would vote, what he has said, and thus what he appears to believe in two general areas that go far beyond the general philosophy of liberal and conservative, or strict constructionist or judicial conservative.

The concerns that the WTOP editorial expresses, after talking in terms of Lewis Powell, Harry Blackmun, and Warren Burger, when it says, "In our judgment, all three of these men have what Mr. Rehnquist lacks, a sense of the unique and perishable character of the American experiment," over Mr. Rehnquist's views on civil liberties and on human rights, are concerns about matters which characteristically are not divided into little packages marked conservative and liberal. In fact, as was brought out during the debate yesterday, the main proponents of individual liberties, the main protectors of those liberties from incursions and encroachments by the Federal Government or the State governments, have been the stalwart conservative judges who have sat on the Supreme Court of the United States.

I suggest that it is fully within the role of the Senate to look at the legal qualifications, to look at the integrity, to look at the intellect, and to look at the views of any nominee, particularly the basic fundamental views in the area of human rights, civil rights, and civil liberties.

Mr. President, there is no stronger advocate for the rule that the basic philosophy of a nominee should be considered than the nominee himself. In the Harvard Law Record, he wrote persuasively that the Senate was not fulfilling its responsibility unless it looked at the general philosophy of a nominee.

But the general philosophy of the nominee does not concern the Senator from Indiana. I have said previously that that battle was lost in the 1968 election, and those who are now concerned about the Rehnquist nomination perhaps wish they had been a bit more concerned about the outcome of the 1968 election. But that is past history. When Richard Nixon was elected President, anyone with a nickel's worth of sense should have recognized that it was only reasonable to expect that nominees would be forthcoming whose views would be closer to the Richard Nixon philosophy than to the philosophies of some of the Members of this body.

But in the specific area of civil liberties, the great fundamental principles of the Bill of Rights, and in the area of basic human rights, civil rights, if the nominee is wrong there, then in my judgment he is wrong for the Court.

There have been several issues raised that I hope Senators will direct their attention to between now and the vote on cloture. It seems only reasonable to expect that until each Senator in his own mind has resolved the issues on the merits and has had the questions which have been raised laid to rest to his own satisfaction, he can hardly suggest that the Senate is involved in a filibuster.

Our distinguished minority leader yesterday talked about a lonely vigil, and I suppose by inference suggested that the Senator from Indiana alone was concerned about this nomination. It is rather ironic that shortly after that, for about a 2- or 3-hour period, we had the most vigorous debate of the entire period of time in which we have been going into the matter; and for the first time, those who supported the nomination attempted—I say attempted because I do not think they succeeded—to deal with the questions some of us have raised that have caused our concern about the qualifications of the nominee.

There are a number of Senators who wish to speak and will speak between now and the cloture vote tomorrow, and hopefully if the issue is not laid to rest then, will have the opportunity to continue speaking, and continue to articulate the issue. The questions that have been raised have not yet been sufficiently answered in the minds of several of our colleagues. In fact, I doubt if many of our colleagues have had the opportunity even to study some of these issues. I say this not as criticism, but out of recognition of the fact that there are many competing interests for the minds and concerns of each Senator right now. There could be no more disadvantageous time to have a critical, controversial, complicated issue before the Senate than at this particular moment.

I want to, for the sake of the RECORD—with the hope that now that this issue has been perhaps more clearly joined, because there are those who are suggesting that we should no longer have the chance to debate it—touch on some of these questions, and hopefully my colleagues will take the opportunity of looking at this RECORD before the rollcall vote tomorrow, and then they can decide in their own minds and their own consciences, as each Senator must do, whether these particular questions have been laid to rest in the mind of the individual Senator involved.

Do Senators realize the position of the nominee as far as the basic guarantees of the Bill of Rights are concerned?

Are they aware that both in his speeches and in his testimony before the Judiciary Committee at his nomination hearings, he said, in response to questioning, that he saw no constitutional issue involved in the right to privacy where surveillance was involved?

It is all well and good for us to say, "Well, now, this really does not mean anything"; but every Senator had better be prepared to know what it means. It does not mean that we are not going to make new law. It means we are going to change present law; because the Supreme Court, in the Griswold against Connecticut case, has held that there is a constitutional right to privacy, and if we put on that Court a man who says there is not a constitutional right to privacy, I suggest we are in the process of changing the law—not just staying where we are; not just preventing legislation on the Court, but increasing the chance of it; not just preventing positive movement ahead by the Court, but in danger of regressing and going backward.

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

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

The second assistant legislative clerk proceeded to call the roll.

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

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

Mr. CRANSTON. Mr. President, I rise to speak in opposition to Senate confirmation of the nomination of William H. Rehnquist to be an Associate Justice of the Supreme Court of the United States. Although the Senate has already voted 89 to 1 to advise and consent to the nomination of Lewis F. Powell, Jr., to be an Associate Justice of the Supreme Court, I will also in this statement explain my reasons for my vote for confirmation of Mr. Powell's nomination.

Mr. President, at the outset I think we can all agree that the overwhelming vote of confirmation of Mr. Powell's nomination, to borrow a phrase, "makes one thing perfectly clear"—that the Senate will indeed give its advice and consent to the Supreme Court nomination of a qualified southerner. This was my contention at the time that the Senate withheld confirmation of the Haynsworth and Carswell nominations, and I am delighted my prophesy has become reality in such an overwhelming way.

A DUAL NOMINATION PLAY

Before going further, Mr. President, I wish to comment on the way in which these nominations came to us in the Senate. I most strongly object to the attempt which has been made to compel the Senate to make a judgment on two such vital nominations concurrently. It may have seemed cagey strategy to the President to confront the Senate with a pair of nominations so as, seemingly, to dilute the focus of critical judgment with respect to each nomination. But, to me, presenting "an entry" of nominees is an attempt to manipulate the Senate in its exercise of the constitutional responsibility to advise and consent in Supreme Court nominations.

Mr. President, I understand from press reports that the President of the United States is an ardent football fan. Indeed, I share with him a keen interest, both as participant and spectator, in sports and physical fitness. But I do not believe it appropriate to make decisions of state by borrowing from a chalkboard diagram of a football play, and, thus, it seems to me particularly regrettable that the President has seen fit to devise and execute a dual nominee play, in which one nominee is assigned the role of running interference for the other. Which nominee is to be the running back and which the blocking back in this play is to be determined later based on whom the other team—the Senate—wishes most to tackle.

This kind of "tie in" has long been declared illegal under the antitrust laws and, in my judgment, serves to demean the nomination of each man by casting an inference that the nomination of neither is sufficiently secure to stand separate and independent scrutiny if the gordian knot binding them together should be severed.

It is, therefore, extremely fortunate that the distinguished majority leader (Mr. MANSFIELD) decided to put an end to this misbegotten strategy by scheduling Senate consideration of the noncontroversial nomination before we turned to consideration of the pending one.

I congratulate the leader for this excellent decision.

Mr. President, since the two nominations came before us during the same week, it is instructive, in evaluating Mr. Rehnquist's qualifications in certain respects, to indicate how Mr. Powell's differ, and I will do so during the course of this statement where appropriate.

STANDARDS GOVERNING SENATORIAL ADVICE AND CONSENT RESPONSIBILITY

In preface to discussion of the individual qualifications of the two nominees, it is first necessary to discuss both the standards for evaluation of Supreme Court nominations and the singular importance of such nominations under our Constitution.

First, I would like to suggest what standards should not be applied.

It has been suggested by some that perhaps it would be the better part of discretion for a Senator to swallow his concerns and principles and accept a nomination because it appears far less outrageous by comparison with a nomination that might have been made.

Similarly, some also suggest that if acquiescence is not secured by relief at being spared a worse fate, toleration of a questionable nomination should be prompted by fear of the kind of nominee which might be put forward if the present nomination should be rejected. This latter postulate draws both support and nonsupport from the parade of nominees for the last vacancy which was ultimately filled by Mr. Justice Blackmun. Many felt that the nomination of then Judge Carswell was considerably more intolerable than the nominee rejected before him for that position. But the Senate, despite expressions of concern as to who might be a third nominee should Mr. Carswell be defeated, performed its constitutional responsibility, regardless of such fears or concerns.

Mr. President, I find these two apologist standards totally unacceptable. The only end they serve is to encourage a President to follow a pattern of sending mediocre or worse nominations to the Senate and to adopt a strategy of compiling smokescreen lists of mythical nominations which might be seen as placing his actual nominations in a more favorable light by contrast.

Rather, in my view it is the responsibility of each Senator to judge each nomination on its own individual merits and to reach an independent decision without regard to the qualifications or lack thereof of any other nominee, past, present, or potential. That is what I have attempted to do with respect to the four Supreme Court nominations which I have been called upon to consider prior to these and what I have attempted to do with respect to the two present nominations.

SINGULAR IMPORTANCE OF SUPREME COURT NOMINATIONS

Mr. President, a nomination to the Supreme Court of the United States and the coordinate action of the Senate in giving or withholding its advice and consent is a more important appointment than any other within Presidential and senatorial prerogative. Whereas Presidential appointments of Cabinet or sub-Cabinet rank usually serve no longer than 4 years and would be most unlikely to serve more than 8 years, it is not uncommon for Supreme Court Justices to sit for two or sometimes three decades on the High Court. A Supreme Court Justice is in a virtually unparalleled position in our society of laws to have impact on the most pressing legal, social, ethical, and political questions facing several generations of Americans.

I should point out that this opportunity for decades of influence on the future course of Supreme Court decisions is singularly available to Mr. Rehnquist, who at 47 years old, promises to serve far longer, if confirmed, than Lewis Powell, Jr., who is 17 years his senior.

Unlike a Cabinet Secretary or a President, unlike a Senator or a Congressman, a Federal judge has lifetime tenure and can be removed from office only upon impeachment and conviction of the most severe of high crimes. Presidential appointees in the executive branch, by contrast, serve at the pleasure of the President, and we elected officials are directly accountable to the electorate every 2, 4, or 6 years.

Thus, once appointed after Senate confirmation, a Supreme Court Justice is accountable only to himself for the judgments which his high office calls upon him to make. For all practical purposes he is removed from control or sanction by the people. In contrast, these other appointed and elected officials are able to make their decisions on the merits at best only imperfectly, given the vicissitudes of public life and the various pressures and interests which permeate the political, democratic processes in our country.

It thus becomes startingly important, based upon the available information, for each individual Senator to make a sound judgment as to how a Supreme Court nominee would perform this enormous responsibility of decisionmaking free, virtually entirely, from any dictates other than those of his own sense of justice and conscience.

The framers of our Constitution, in the exercise of their characteristically extraordinary wisdom, refused to entrust the selection to fill such a mighty office to any one official. And they chose also not to entrust the appointment separately to either of the other two coequal branches of Government. Rather, the appointment of Federal judges with lifetime tenure was made a shared responsibility between the President and the Senate of the United States.

Thus, whereas the benefit of the doubt should, I believe, be afforded nominations by the President of appointees to serve him in the executive branch, where they are subject to the scope and continuation of his popular mandate—and I have tried to give the President's executive branch nominations such a presumption—no such presumption should properly govern the exercise of senatorial advice and

consent in the case of lifetime judicial appointments. This is particularly so in the case of the highest of all such appointments, nominations to the Supreme Court of the United States.

At the same time, however, I do not mean to suggest that it is the province of the Senate or an individual Senator to attempt to substitute his judgment for that of the President when deciding upon advice and consent to a Federal judicial nomination. Clearly, the question for a Senator is not whether or not this is a nominee whom he would have chosen had he been President, but whether the nominee meets minimum standards of qualification for the judicial position to which he has been nominated.

MINIMUM QUALIFICATIONS FOR SUPREME COURT NOMINATIONS

This brings me, then, to a description of the criteria I believe should govern a Senator's determination of the qualifications of a Supreme Court nominee.

As stated in the individual views of Messrs. BAYH, HART, KENNEDY, and TUNNEY (exec. rept. No. 92–16), the very minimum qualifications are intellectual and legal excellence and personal integrity. No nominee who does not possess at least these qualifications should even be submitted to Senate consideration. To be confirmed, a nominee should possess more.

Surely, a third qualification is judicial temperament. Judicial temperament, it seems to me, can comprehend more than merely the ability to present a dignified and dispassionate demeanor on the bench.

In the broadest sense, judicial temperament includes the capacity to perform the essential functions of a judge; that is, to be dispassionate—in the sense of being personally "disinterested," although not uninterested, in the result of a case, to be impartial, to be balanced in approaching a judicial question, and to be able to maintain the appearance, as well as the reality, of those qualities. Webster's new collegiate dictionary—1961—defines the word "temperament" as "internal constitution with respect to balance or mixture of qualities or parts."

To a considerable extent, this notion of the capacity for judicial balance may involve the question of "judicial philosophy" which, itself, can also be considered a fourth qualification for Supreme Court appointment.

Regarding the appropriateness of such a judicial philosophy qualification, I find no valid argument, in either senatorial practice or tradition, or in commonsense, for holding that a judicial nominee's prospective judicial philosophy is no business of the Senate.

In fact, the history of Senate action in advising and consenting to Supreme Court nominations presents a compelling brief that judicial philosophy is, and has always been, a legitimate matter for Senate scrutiny. According to the excellent memorandum prepared for the Senator from Indiana (Mr. BAYH) by Professors Brest, Grey, and Paul—which appears in the CONGRESSIONAL RECORD of November 5, page 34591, during the 19th century the Senate refused to confirm 21 nominees to the Supreme Court. And the grounds for Senate rejection were by and large based upon the political views of the nominees.

In the 20th century, prior to this administration, this memorandum indicates, there were at least seven instances in which significant concern was expressed by Senators and nominations were opposed, because of a nominee's prospective judicial philosophy. Of course, the nominees substantive views on the fundamental question of racial justice were deeply involved in the Carswell and Haynsworth confirmation battles.

Thus, it is clear that many, many Senators in the past, as well as very recently, have voted against Supreme Court nominations, because these Senators strongly objected to the judicial philosophy of a particular nominee. I might add that quite often those applying this qualification to a judicial nominee have been Senators who themselves have held a politically conservative philosophy.

Second, regarding evaluation of judicial philosophy, given all that has recently been said and written with regard to the Senate's coequal role in appointments to the Supreme Court, when the President himself in the most explicit way—in a clearly calculated attempt to arouse public opinion in support of his nominee—states publicly that probably the overriding qualification sought by him in making the nomination was consistency with his own judicial philosophy, how can it possibly be contended that a Senator should not concern himself with that same qualification when he makes his decision on confirmation?

In this particular instance, on October 21, 1971, the day before the President sent these two nominations to the Senate, he appeared on nationwide radio and television and stated:

> You will recall, I am sure, that during my campaign for the presidency, I pledged to nominate to the Supreme Court individuals who shared my judicial philosophy which is basically a conservative philosophy.

He said quite openly that he had this in mind when he nominated Mr. Rehnquist and Mr. Powell. It is pure sophistry to suggest that we should not employ the same criterion in evaluating these nominations.

THE REHNQUIST AND POWELL NOMINATIONS

Mr. President, since I do not serve on the Judiciary Committee, I have reserved judgment on these nominations until I have had a full opportunity to review the record of their nomination hearings, the committee reports and individual views on their respective nominations, and other respective nominations, and other materials relevant to their qualifications, as well as to discuss the nomination with fellow Senators who have had a similar opportunity to brief themselves. Yesterday, during debate on the nomination, I asked a number of questions of the Senator from Indiana (Mr. BAYH) and the Senator from North Carolina (Mr. ERVIN), both outstanding lawyers and members of the Judiciary Committee. Their answers were most helpful and I thank them.

INTELLECTUAL AND LEGAL EXCELLENCE AND PERSONAL INTEGRITY

There is no real question raised with respect to either nominee in terms of their satisfying standards of intellectual and legal excellence or personal integrity. All members of the Judiciary Committee were in agreement of this score as were the members of the American Bar Associations Standing Committee on Federal Judiciary. Nor have I seen any contrary indication on these accounts in what I have read regarding these two nominees.

JUDICIAL TEMPERAMENT

With regard to judicial temperament in terms of such matters as demeanor, there would seem no question that each nominee passes muster. But, regarding the broader and more significant characteristics also involved in judicial temperament, I find Mr. Rehnquist not qualified and Mr. Powell qualified. To explain the reasons for my conclusions requires some discussion of the judicial philosophy question as well.

I find nothing in what I have learned of Mr. Powell's activities, viewpoints and statements to lead me to conclude that he is not capable of making dispassionate, impartial and balanced judicial judgments. Indeed, the evidence is to the contrary. His balanced approach to highly sensitive and controversial problems is nowhere more critically evidenced than in his statements and actions as chairman of the Richmond City School Board following the historic Supreme Court decision in Brown against Board of Education. Whatever may have been Mr. Powell's personal views, predilections or preferences in that highly complex emotion-charged situation, his posture was at all times measured, judicious and firm in promoting clear movement toward compliance with the supreme law of the land as laid down in the Brown case. In addition to this clearly balanced behavior, Mr. Powell's actions were also most courageous in terms of the tide of opinion in his community.

The same temperament was evidenced in Mr. Powell's work as president of the American Bar Association in 1964–65 in pressing for and beginning a comprehensive and scholarly study to formulate minimum standards for the administration of criminal justice, and urging strong support from the organized bar for the legal services program.

The judicious way in which he dealt with these highly emotion-charged issues convinces me of his capacity for appropriate judicial temperament.

I might add, Mr. President, that the directions in which he was moving were also directions which accord with my personal policy views in these particular instances. But that is hardly the case with respect to some of his views on other matters particularly, questions of criminal law.

With respect to Mr. Rehnquist, on the other hand, I find his record almost totally lacking evidence of a balanced, dispassionate, impartial approach to legal and policy questions. From an extensive review of his writings and his testimony before the judiciary commit-

tee, I find him to be an extraordinarily committed idealog who first forms conclusions according to the dictates of his ideology and then afterwards reasons backwards to justify those conclusions. Mr. Rehnquist uses his considerable intellect to examine microscopically arguments opposed to his conclusion, but often applies this same intellect only superficially to probe the merits of the arguments supporting his position.

I am convinced that he uses this backward reasoning process with respect to his position regarding racial equality, civil disobedience, the 18-year-old vote, and equal rights for women amendments, the President's war powers, rights of arrested persons, privacy, political association, Government surveillance, and other first amendment issues.

The evidence supporting my conclusion in these areas has been clearly laid on the public record in the Judiciary Committee hearings, the individual views of Messrs. BAYH, HART, KENNEDY, and TUNNEY, and in the CONGRESSIONAL RECORD.

It has been argued that Mr. Rehnquist's expressions of views and legal analysis while he was Assistant Attorney General were often made in the posture of an advocate and do not necessarily represent his personal views. There is no way we can find out if that is the case. For Mr. Rehnquist refused to clarify this issue for the Judiciary Committee. The burden of proof is, therefore, on those who would conclude that his official statements as Attorney General do not represent his personal views.

On this question Mr. Rehnquist was uncooperative with the Judiciary Committee members who tried to determine and explore his personal viewpoints. His invocation of an attorney-client relationship with the Attorney General and the President is unique. Based on advice I have received, it is also insupportable. I might add, parenthetically, that Mr. Rehnquist's capacity in this instance for innovative theorization in the face of the doctrine of stare decisis is not without appeal, but, again, he uses this new theory only to support his end result. Moreover, on several occasions on which he might also have refused to answer based on this new found privilege, he chose not to invoke the privilege.

I am not suggesting that Mr. Rehnquist at his confirmation hearing should have engaged in discussions of specific fact situations that might later form the basis for actual cases that might come before him on the Supreme Court should he be confirmed. Nor did any member of the Judiciary Committee quarrel with his altogether commendable desire to avoid such prejudgments. But he carried this reluctance to a point where he was not forthcoming in many of his responses.

There are four more points that should be made regarding his failure to discuss his personal views.

First, his attitude on civil rights is expressed largely in statements and actions prior to his tenure as Assistant Attorney General.

Second, at no time during his confirmation hearing did he suggest that his official expressions of views were hostile to his own personal views. He did admit he would have resigned had he felt he was being called upon to defend indefensible or unconscionable Government policies.

Third, Mr. Rehnquist, himself, has stated in a 1970 Arizona Law Review article that he was chosen Assistant Attorney General on the basis of his intellectual compatibility with the views he subsequently advocated in that position. His selection for that position was recommended by Deputy Attorney General Kleindeinst whose views he knew well and shared during their political collaboration in Arizona. So he had every reason to know what he was undertaking as John Mitchell's advocate.

Fourth, even if one should disregard the ultimate positions he was called upon to defend as Assistant Attorney General, the thought processes and legal analysis underlying his defense are undeniably his own. And on that score, in my judgment, his work evidences a clear lack of balance and essential fairness in evaluating competing contentions. He displays none of the characteristics of judiciousness one would hope to find in an intellect of his stature.

Thus, I conclude that Mr. Rehnquist by refusing to answer specific questions at the Judiciary Committee hearings regarding which of the views he espoused were as an advocate and which were his own, left us no alternative but to judge his capacity for a balanced approach and his judicial philosophy on the basis of what he has said and done, including his activities as Assistant Attorney General for legal counsel.

Essentially, I find that Mr. Rehnquist consistently accords the most narrow interpretation to Supreme Court decisions and constitutional concepts that protect individual rights and liberties. At the same time, he accords the broadest possible interpretation to opinions and concepts that sanction Government restrictions on individual rights and liberties.

For example, he places great weight on the need to avoid constraints which might "dampen the ardor" of government investigators. But he generally gives no weight to the danger that such investigations can have a "chilling effect" on the exercise of free speech or association by those being investigated or placed under surveillance. For him there is no real effort to balance the scales of justice with the interests of the individual. His scales of justice are those of the horserace handicapper with the Government's interest already weighted before the ostensible balance is made.

His result-oriented approach is perhaps most clearly evidenced by his failing completely to recognize the very substantial societal and governmental interest in our democracy in the widest official sanctioning and encouraging of the exercise of freedom of speech, association, and belief. He seems to consider the first amendment as something designed only in the interests of particular individuals—a few "radicals," pornographers, or Communist sympathizers—and not in the interest of all of us and the Government that serves us all.

Another example of his lack of dispassionate approach is in his calculated use of McCarthyite innuendo to characterize the authors of Supreme Court first amendment cases with which he disagrees. I say "calculated" because Mr. Rehnquist is too able a lawyer and verbal stylist to use words carelessly.

In characterizing two decisions handed down by Mr. Justice Black in 1957 which dealt with the permissible scope of inquiry by State bar examiners about previous political beliefs, Mr. Rehnquist impugned the motives of Mr. Justice Black and the majority of the Court. In describing these decisions which happened to deal with an admitted former Communist and an alleged former Communist, he stated in a Bar Journal article that these decisions were "based on a combination of charity and ideological sympathy." This is a highly inflammatory piece of not very subtle rhetoric straight from the red-baiters school of politics.

Mr. Rehnquist began this same Bar Journal article with the lead sentence:

> Communists, former Communists, and others of like political philosophy scored significant victories during the October, 1956, term of the Supreme Court of the United States.

This hardly ranks as a piece of scholarly, measured legal analysis and judicious evaluation of the decisions of the highest judicial body in our Nation.

Mr. President, this is hardly the kind of reverence for the rule of law that is expected of an attorney—an officer of the court.

JUDICIAL PHILOSOPHY

With respect to the judicial philosophy of Mr. Powell, I am willing to accept the conclusion of Messrs. BAYH, HART, KENNEDY, and TUNNEY in their individual views—Executive report No. 92–17—that—

> He does, indeed, possess the strong dedication to preserving our basic civil liberties which we believe any nominee to the Supreme Court must have.
>
> We believe he is committed to guaranteeing for every citizen all of the protections of the Bill of Rights.

I have already cited Mr. Powell's record of work to bring peaceful desegregation of schools to Richmond, Va., and his devotion to the OEO legal services program I am also deeply impressed by the testimony in support of his nomination by a number of blacks. Including particularly that of Mrs. Jean Camper Cahn, a black attorney known for telling it straight from her shoulder.

She says, based upon her close working relationship with Mr. Powell in setting up the legal services program:

> My support is based upon the fact that I am drawn inescapably to the sense that Lewis Powell is, above all, humane, that he has a capacity to empathize, respond to the plight of a single human being to a degree that transcends ideologies of fixed position. And it is that ultimate capacity to respond with humanity to the individual instances of injustice and hurt that is the best and only guarantee I would take that his conscience and his very soul will wrestle with every case until he can live in peace with a decision that embodies a sense of decency and fair play and common sense.

Would that such a credible witness had attributed the same characteristics to Mr. Rehnquist.

My conclusion that Mr. Powell is qualified in terms of judicial philosophy does not mean that I am in accord with all of his views on public policy, but rather that I believe that in the crucial area of respect for individual rights and liberties he has the basic commitment which I believe is a minimum qualification for a Supreme Court Justice.

With respect to Mr. Rehnquist's judicial philosophy, first it should be noted that he, himself, in a 1959 Harvard Law Review article called on the Senate when considering Supreme Court nominations, to "restore its practice of thoroughly informing itself on the judicial philosophy of a Supreme Court nominee before voting to confirm him." He expanded on this by saying:

> The only way for the Senate to learn of these sympathies of nominees on great legal issues is to inquire of men on their way to the Supreme Court something of their views on these questions.

As I pointed out earlier, under questioning Mr. Rehnquist was extremely reluctant to discuss his personal views on the basic questions of human rights and individual liberties.

I find virtually no indication in his record of statements or actions which do other than raise the most significant doubts in my mind about his commitment to civil rights. His grudging statement at his confirmation hearing that he now no longer opposes a public accommodations law is too self-serving, and too lacking in an essential understanding of equal justice, to be accorded any weight.

At his confirmation hearing, he described his change of heart—to the view that it is now acceptable for the Government to insure that a black man can receive service at a lunch counter in public accommodations facility—as being motivated by his present greater realization in 1971 than he had in 1964 of "the strong concern that minorities have for the recognition of these rights." I am totally unimpressed with this new vision of light which on its stated justification misses the essential of fundamental justice and dignity involved in human rights matters.

The same callous insensitivity to human rights is displayed in Mr. Rehnquist's 1967 letter to the Arizona Republic in which he stated strong opposition to a series of prior articles discussing the need to take moderate steps to achieve integration of the Phoenix schools. Mr. Rehnquist first seemed to indicate that issues of minority group individual rights were somehow under our system appropriate for resolution by the majority based on their personal convenience. He put forth for serious consideration—13 years after the Supreme Court in Brown against Board of Education had held that separate educational facilities are "inherently unequal"—the proposition that—

> We are no more dedicated to an integrated society than we are to a segregated society. . . .

Mr. Rehnquist's nomination is a shattering blow to all minority Americans and all Americans aspiring for equal justice and opportunity in this country and who, in the last analysis, must look to and rely upon the Supreme Court to vindicate the human rights they are guaranteed under our Constitution.

With respect to civil liberties, I have already cited a number of areas in which Mr. Rehnquist comes down on the side of less liberty rather than more. This is no coincidence. I find his record devoid of evidence of any basic commitment to the individual liberties which are inherent in the fabric of the Bill of Rights and serve as the last bulwark between the overwhelming force of the Government and the individual citizens' privacy, person, and interests.

In the area of wiretap and government surveillance of persons, I find Mr. Rehnquist's statements to be so extreme as to raise grave questions about his fundamental grasp of the system of checks and balances under our Constitution. The distrust of the unfettered exercise of the power of the sovereign, particularly in the area of belief, association, and speech, led directly to the founding of our Nation and permeates the philosophy underlying and explicit in the Bill of Rights.

In a March 19, 1971, speech, Mr. Rehnquist stated:

> I do not believe, therefore, that there should be any judicially enforceable limitations on the gathering of this kind of public information—[through surveillance by government agents]—by the executive branch of the government.

Eight days before, he made this remarkable statement, Mr. Rehnquist explained this view in testimony before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary as follows:

> I think it quite likely that self-discipline on the part of the executive branch will provide an answer to virtually all of the legitimate complaints against excesses of information-gathering.

Could our individual freedoms and our constitutional democracy survive if this totalitarian doctrine became the doctrine of the Supreme Court? Why have a Constitution? Why have three branches of Government? Why have checks and balances?

Mr. Rehnquist's extraordinary trust in the good faith of the executive branch of the Federal establishment is frighteningly naive to me. He says there is no serious constitutional question in the Government placing people under surveillance for exercising their first amendment rights.

I say such a procedure arrogates to what should be a democratic government the tools of the dictator. In my view, Mr. Rehnquist is sadly and totally out of step with our basic constitutional protections against unwarranted invasions of personal privacy.

In the same way, Mr. Rehnquist contends that the Attorney General has power to authorize wiretaps when he concludes there is a domestic threat to national security even though the Supreme Court in Katz against United States in 1967 held that wiretapping falls within the protection against unreasonable searches and seizures under the fourth amendment. Mr. Rehnquist's position on this score manifests a basic insensitivity to the historic framework leading up to the adoption of the fourth amendment: The abusive searches and seizures directed against the colonists under the sovereign and inherent powers of King George III. He also ignores the reasons why three coordinate branches of Government were created to share governmental power under the Constitution.

Consistently, in the area of individual liberties, Mr. Rehnquist disregards the fact that the Government represents each of us and all of us collectively in keeping us secure in our persons, beliefs and associations and treating each of us with maximum recognition of and respect for our privacy. He thus disregards the most basic principle of our constitutional democracy—that the Government itself and all of us collectively have a fundamental stake in not invading or denying individual liberties.

I, unlike Mr. Rehnquist, do not believe that it is even a tenable position simply to rely upon the good faith of the executive branch to vindicate the privacy of each individual citizen.

Finally, a somewhat novel but to me, very signficant argument was made to me in a recent letter from assistant professor of law Loftis Becker, Jr., of the University of Minnesota Law School.

Professor Becker alluded to the current conflicts between the powers of the Congress and the powers of the President, for example, in the area for foreign and military affairs. He points out that the Senate must take into consideration a nominee's opinion of the balance between congressional and executive branch powers.

The Senate, Professor Becker said, would be "arranging in advance to lose its own battles" if it sent to the Court a man who has evidenced his belief that in virtually all conflicts between Congress and the President, the Court should strike the balance on the side of the executive branch.

Mr. Rehnquist has indicated on a number of occasions a very clear disregard for the prerogatives of the Congress when they come into conflict with those of the executive branch. Two notable examples are his enormously broad reading of the President's so-called war powers with respect to the Cambodian invasion—he says that the Government of Cambodia's protest at this violation of its sovereignty was only perfunctory and thus not deserving of respect—and his creation of an attorney-client privilege under which he refused to provide information to the Senate Judiciary Committee exercising its constitutional function of evaluating presidential Supreme Court nominations.

Mr. President, I ask unanimous consent that Professor Becker's November 22 letter to me be printed in the RECORD.

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

NOVEMBER 22, 1971.

Senator ALAN CRANSTON,
Washington, D.C.

DEAR SENATOR CRANSTON: May I presume upon a brief meeting for a few minutes of your time? It seems to me that discussion of the Senate's role in confirmation of William Rehnquist's nomination to the Supreme Court has ignored one important point. Even if it be assumed that as a general matter the Senate should not deny confirmation to a nominee because of his political and legal views, I question whether this proposition has any force when the views in question relate to the relative powers of Congress and the President. Such conflicts these days are coming increasingly to the fore. Some of them, doubtless, will not result in any justiciable questions; *but some of them will.* In these cases, the Supreme Court must be the ultimate arbiter of the relative powers of the two branches. Yet unless the Senate takes into consideration a nominee's opinions on congressional and executive power, these cases will finally be decided by judges chosen entirely by one of the two parties to the dispute. It seems to me nonsensical to suggest that the Constitution was intended to so bias decisions against the Congress.

With regard specifically to Mr. Rehnquist, it is apparent to me that he would give little weight indeed to the prerogatives of Congress when it comes into conflict with the executive branch. To give merely a single example, he has argued that to disclose his personal views with regard to matters about which he counselled the Justice Department would be to violate the attorney-client privilege. Of course, if he is serious in this claim it would of itself disqualify him from service on the Supreme Court, since the privilege protects against all forms of public disclosure, and disclosure in the form of judicial opinions is hardly less public than disclosure to the Senate. If Mr. Rehnquist's claim makes any sense at all, it must be simply a claim that the executive branch is entitled to withhold information from Congress whenever it desires to do so. Such a broad claim of executive privilege is startling, to say the least; it is frightening when made by one who, if confirmed, may be deciding precisely this question if the issue should ever come to litigation. If the Senate refuses to take such views into consideration in deciding whether it wants Mr. Rehnquist on the Supreme Court, it is arranging in advance to lose its own battles. If the Congress is ever to reasert its power vis-a-vis the executive branch, it cannot afford to allow the President to guarantee the outcome of a struggle.

Sincerely yours,

LOFTUS E. BECKER, Jr.,
Assistant Professor of Law.

Mr. CRANSTON. It is thus my conclusion that on a broad range of questions involving human rights, individual liberties, and the prerogatives of the Congress, Mr. Rehnquist's judicial philosophy is so extreme as to raise grave questions about his qualifications to serve on the Supreme Court.

CONCLUSION

Mr. President, because I find Mr. Rehnquist lacks requisite judicial temperament and because I find that he embraces an extreme and unbalanced judicial philosophy, I shall vote against the confirmation of his nomination as Associate Justice of the Supreme Court.

Because I find that Mr. Powell possesses not only intellectual and legal excellence and personal integrity, but also requisite judicial temperament and a judicial philosophy which is not extreme, I have already voted to confirm his nomination as Associate Justice of the Supreme Court.

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

The PRESIDING OFFICER (Mr. EAGLETON). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. EASTLAND. 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. EASTLAND. Mr. President, I ask unanimous consent to have printed in the RECORD an editorial broadcast on radio station WTOP against the nomination of William H. Rehnquist, and a very fine reply to the editorial by the distinguished junior Senator from Kentucky (Mr. COOK).

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

WTOP EDITORIAL REGARDING REHNQUIST

WTOP urges the Senate to vote no on the nomination to the Supreme Court of William Rehnquist. The Senate is confronted with the difficult and distinctive prospect of refusing to confirm a man on what amounts to ideological ground. But a seat on the Supreme Court is too powerful, the condition of individual freedom on this planet is too perilous and the nominee's record is too extreme for the Senate to do otherwise. The issue is not one of liberalism versus conservatism, nor is it one of being pro-Nixon or anti-Nixon. Lewis F. Powell, Jr., who was endorsed by the Senate almost unanimously this week for a seat on the Supreme Court is by common understanding a judicial conservative. The same can be said of Chief Justice Warren Burger and Justice Harry Blackmun, both of whom also were Nixon appointees. In our judgment all three of these men have what Mr. Rehnquist lacks—a sense of unique and inperishable character of the American experiment in government. The civil liberties of American citizens, those principles enshrined in the Bill of Rights distinguish this nation from every other nation which has ever existed in the history of the world. Yet they are the most fragile part of our contract with our government. The nub of the case against Mr. Rehnquist that he has consistently displayed in his writings and his speeches insensitivity toward our basic freedoms which approaches blindness. If he sits on the Court he can be counted on in our view to assist and promote the erosion of our liberties and the enhancement of the already chilling powers of the government. After very long and very careful deliberation we have concluded that William Rehnquist would be a distinct liability for the Supreme Court and for the nation. The Senate we hope will deny him the seat.

STATEMENT BY SENATOR MARLOW W. COOK

A WTOP editorial urged that William H. Rehnquist's nomination be denied. In essence, the editorial said that the nominee's ideology or political philosophy disqualified him for a position on the Supreme Court.

I do not believe this to be the proper criteria for either rejection or confirmation. The legislative branch is the correct arena for bloody battles in politics and ideology; the Supreme Court is not.

The High Court has often rejected legislative acts passed by an emotionally charged or overly politicized Congress. Would WTOP have our future Supreme Court act in a manner similar to these past Congresses? I think not.

I believe WTOP is opting for a political Court, not a judicial Court.

Tom Wicker of the New York Times, a writer of impeccable liberal credentials, said that to reject Rehnquist solely on his political views "would tend to politicize the court, would punish some people for their ideas, while frightening others out of having any, and would lead inevitably to political retaliation."

As Senator Kennedy so aptly stated during the Senate's consideration of Thurgood Marshall,

I believe it is recognized by most Senators that we are not charged with the responsibilities of approving a man to be associate justice of the Supreme Court only if his views always coincide with our own. We are not seeking a nominee for the Supreme Court who will express the majority view of the Senate on every given issue, or on a given issue of fundamental importance; we are interested really in knowing whether the nominee has the background, experience, qualifications, temperament and integrity to handle this most sensitive, important, responsible job.

Even taking into full account Mr. Rehnquist's alleged anti-libertarian views on the first ten amendments, I believe if conservative or even arch conservative views can disqualify a person, then what prevents future Senates from rejecting a nominee for his liberal or "new left" views?

WTOP should know that this is not a one-way street.

Supreme Court nominees should be considered on the basis of intellectual and legal ability, temperament and ethical and personal conduct. They should not be considered on the basis that they will stand in my stead and adjudicate as I would.

On these grounds there is little dispute; Mr. William Rehnquist should be confirmed.

Mr. FANNIN. Mr. President, a column in today's Washington Post carries the headline "Rehnquist: Top Mind."

Joseph Kraft is the writer who points out that William H. Rehnquist has the intellect that can in fact help expand the capacity of the Supreme Court to deal with the issues of today.

Let me make clear that I do not subscribe 100 percent to Mr. Kraft's column, but I do think that he makes some very worthwhile observations concerning the excellent qualifications of Mr. Rehnquist.

Mr. President, I ask unanimous consent to insert the Kraft column in the RECORD at this point.

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

[From the Washington Post, Dec. 9, 1971]

REHNQUIST: TOP MIND

(By Joseph Kraft)

Justice Holmes, on being asked what he thought of the intellectual abilities of another judge, once replied: "I never thought of him in that connection." And there lies the nub of the powerful, positive case that can be made for Senate confirmation of President Nixon's latest nominee for the Supreme Court, William Rehnquist.

For years now hardly anybody has thought of the Supreme Court as performing an intellectual function. Mr. Rehnquist, far more than any other recent nominee, has the calibre to restore intellectual distinction to the Court.

To understand why, it is necessary to say a word about the role of the Court in the country. The country is dominated by the million and one daily actions of an energetic population largely unconstrained in its capacity to buy and sell, move and dream, educate and obscure, build and tear down.

Given the nearly universal disposition toward almost constant action, it is ludicrous to think of tyranny being imposed on this country from above by some establishment eager to freeze the status quo or turn back the clock.

The central political problem of a populist country is to preserve some modicum of elite values—respect for achievement; toleration for difference of outlook; regularity of procedure. Partly by original design, but even more by the chance accretions of history, the Supreme Court has come to be the defender of those values—the elitist institution in a populist country.

Unfortunately for the Court, certain political decisions were thrust upon it by the deadlock that developed between Executive and Legislature during the post-war period. In the fields of civil rights and legislative reapportionment, the Court felt obliged—understandably considering that all other avenues seemed closed—to make rulings that might much more appropriately have been the work of the President and the Congress.

In the heady atmosphere engendered by those decisions, the Court headed by Chief Justice Earl Warren became result-oriented. In case after case, it was increasingly hard to discover the inner logic of decision-making. Blacks seemed to be favored because they were blacks, baseball because it was a good clean American sport, anti-trust plaintiffs because they were against economic monsters.

President Nixon's efforts to correct the imbalance have been fumbling to the point of casting doubt on the sincerity of his claim to want "strict constructionists." His preferred candidates have been right-wingers, so little distinguished that the Senate and the American Bar Association have constrained him to throw them back in the pond.

Mr. Rehnquist is something else. He has not shown sensitivity to the needs of people in trouble, and he has said some hardline—and to me silly-sounding—things about the influence of Supreme Court clerks and the softness of judges towards communism. Some of these comments may be what ambitious juniors are required to say in order to get ahead in the Republican Party of Barry Goldwater and the Justice Department of John Mitchell. Still, I suppose they represent a genuine right-wing conviction.

But Mr. Rehnquist also has a mind of the highest candle-power. His comments in the Judiciary Committee hearings have been unfailingly lucid and discriminating. He has been "hesitant"—a favorite word—when unsure of the fine details of a problem.

Even one of his staunchest opponents, Sen. Edward Kennedy, described him as "a man with a quick, sharp intellect, who quotes Byron, Burke, and Tennyson, who never splits an infinitive, who uses the subjunctive at least once in every speech, who cringes when he sees an English word created from a Greek prefix and a Latin suffix."

Only it happens that the qualities that Senator Kennedy is pleased to dismiss so crudely express a critical aspect of the Court's present work. The Court does not now need more liberals, more conservatives, or more middle-of-the-roaders. There are enough of those to assure that nothing drastic is going to happen in civil rights or criminal law.

What the Court needs is more brains. Mr. Rehnquist has them—more abundantly perhaps than any present member. And by uplifting the quality of the Court in general, he will do far more than any particular decision in any particular case can do to advance the values thoughtful men hold dear.

Mr. FANNIN. Mr. President, Mr. Rehnquist has a keen legal mind, a great ability to understand issues and the human qualities we all want to see in those concerned with justice in America.

It is significant that the opposition to Mr. Rehnquist comes exclusively from people who never have really known the man. Those who have worked with him, or against him, and have personal knowledge of his character, have come out strongly in favor of confirmation. These supporters include men who are quick to say that they have been in disagreement with Mr. Rehnquist concerning political philosophy in general or some issue in particular.

In this morning's Washington Post there was another example of this.

Mr. President, I ask unanimous consent to include in the RECORD a letter to the editor which appeared in the newspaper.

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

REHNQUIST'S APPROACH

Since the public discussion of the nomination of William Rehnquist to the Supreme Court has turned to a considerable extent on his civil rights record, I believe that some comments of mine may be pertinent.

I served as an attorney in the Office of Legal Counsel of the Department of Justice for eight years (1961–65, 1967–71). In the latter period, which included two years under Mr. Rehnquist, I worked on most of the civil rights problems handled by the Office, including the question of the legality of the Philadelphia Plan.

Mr. Rehnquist's approach to these problems, like his approach to all other matters on which we worked together, was objective and lawyerlike in the highest degree. He never expressed or showed, to my knowledge, any reluctance or disinclination to interpret or enforce the laws against discrimination in accordance with a sympathetic reading of their terms. Indeed, the legal opinions and memoranda on civil rights matters issued by the Office during Mr. Rehnquist's tenure differed little, if at all, in general philosophy from those issued by his predecessors.

It was suggested, however, in Professor Arthur Miller's article of some weeks ago that Mr. Rehnquist's legal conclusions as head of the Office of Legal Counsel were shaped by a desire to please his superiors. No lawyer can be oblivious to the needs of his client, and the President's lawyer's lawyer is no exception. For any head of the Office of Legal Counsel there is an obvious tension between his role as advisor to and advocate for the Executive Branch and his role as the foremost interpreter and expounder of the law to the Executive Branch. I served in the office under four assistant attorneys general, all lawyers of uncommon ability and integrity. Of the four, Mr. Rehnquist was, in my opinion, the most objective, and the most rigorous in excluding nonlegal considerations from the process of resolving a legal problem.

In his tenure as head of the Office of Legal Counsel Mr. Rehnquist has won the respect and high regard of his colleagues, including many, like myself, whose views on political and social issues differ considerably from his. I believe that Mr. Rehnquist is highly qualified for service on the Supreme Court and that the Senate should confirm his nomination.

RICHARD K. BERG.

ARLINGTON.

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

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

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the Senate by Mr. Leonard, one of his secretaries.

REPORTS OF THE SECRETARY OF DEFENSE AND THE SECRETARY OF TRANSPORTATION ON AWARDS FOR SUGGESTIONS

The ACTING PRESIDENT pro tempore (Mr. CHILES) laid before the Senate the following message from the President of the United States, which was referred to the Committee on Armed Services:

To the Congress of the United States:

In accordance with the provisions of 10 U.S.C. 1124, I am pleased to forward the reports of the Secretary of Defense and the Secretary of Transportation on awards made during fiscal year 1971 to members of the Armed Forces for suggestions, inventions and scientific achievements.

Participation by military personnel in the cash awards program was authorized by the Congress in September 1965. There could be no better demonstration of the program's success than the fact that tangible first-year benefits in excess of $555 million have been realized from the suggestions of military personnel since the program began.

The tangible first-year benefits resulting from adopted suggestions submitted by Department of Defense and Coast Guard military personnel during fiscal year 1971 totaled $117,676,188, the second highest annual amount in the history of the program. Cash awards presented to military personnel for their adopted suggestions during fiscal year 1971 totaled $1,919,121.

RICHARD NIXON.

THE WHITE HOUSE, *December 9, 1971.*

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. HARTKE. Mr. President, the Senate has been called upon to give advice and consent to the nomination of William Rehnquist to the Supreme Court of the United States. The role of the U.S. Senate in giving advice and consent on executive nominations is a serious matter. This is a function that can only be carried out after due deliberation and consideration. Although the President has and continues to show the highest disregard for the advice of the Senate, I hope my colleagues will remain strongly committed to their constitutional obligation to make a susbtantive analysis of the President's nominees for the Supreme Court. This penchant for failing to take cognizance of the sense of the Senate has been the subject of recent action I have taken. On Monday, July 26 of this year, I introduced a Senate resolution affirming the constitutional prerogatives of the Senate with respect to the foreign rela-

tions of the United States. It is my contention that consideration of Supreme Court nominees are similar to negotiation of treaties in that both of these functions are to be shared by the Senate and the President. The Senate resolution that I offered was designed to restore the Senate to its rightful constitutional place in the treatymaking process of the United States and thereby, facilitate a speedy end to our involvement in the Indochina war.

Writing in 1969 in a book entitled "You and Your Senator," I pointed out that:

The Senate—may—be posed against the President in dramatic confrontation because of the treaty-making power of the constitution—jealous of its responsibility as a partner in treaty-making the Senate has insisted on its right to deliberate a treaty with due regard for all the considerations attached to it, relying on the executives advice and information, but feeling free to accept or refute provisions as its independent authority deems wise. From the start, the Senate has made it clear that it prefers to deliberate freely—and without pressure presence of the President or his representatives.

Mr. President, today the Senate is facing a similar situation. The Senate is called upon to exercise its responsibility as a partner in the political process. Although it relies on the Executive's advice and information regarding nominees to the Supreme Court, the Senate must be able to deliberate freely and without pressure presence of the President or his representative.

The role of the Senate in considering nominations to the Supreme Court is an integral part of separations of power principle that has embodied the governmental development of this nation. This position has been well developed in a number of Federalist papers.

At this time, I feel it would be appropriate to reflect on selections of those documents central to this discussion. In Federalist No. 48, James Madison stated:

It will not be denied, that power is of an encroaching nature, and that it ought to be effectually restrained from passing the limits assigned to it. After discriminating, therefore, in theory, the several clasess of power, as they may in their nature be legislative, executive, or judiciary; the next, and most difficult task, is to provide some practical security for each, against the invasion of the others. What this security ought to be, is the great problem to be solved.

Madison realized that this was by no means an easy task. He continues:

Will it be sufficient to mark, with precision, the boundaries of these departments, in the Constitution of the Government, and to trust to these parchment barriers against the encroaching spirit of power? This is the security which appears to have been principally relied on by the composers of most of the American Constitution. But experience assures us, that the efficacy of the provision has been greatly overrated; and that some more adequate defense is indispensably necessary for the more feeble, against the more powerful members of the Government.

A most important point made in this section is that:

Power is of an encroaching nature, and that it ought to be effectually restrained from passing the limits assigned to it.

In No. 51, James Madison continues to discuss the need for limiting the encroachment of one branch of government over the other. He says:

To what expedient then shall we finally resort, for maintaining in practice the necessary partition of power among the several departments, as laid down in the Constitution? The only answer that can be given is that as all these exterior provisions are found to be inadequate, the defect must be supplied, by so contriving the interior structure of the Government, as that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places.

But the great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department, the necessary constitutional means, and personal motives to resist encroachments of the others.

Mr. President, Mr. Madison has stated a precept that has become part of the underlying theory of our constitutional framework which is being constantly eroded. I ask where have we seen the erosion of the role of the Senate? We have seen the erosion of the role of the Senate in numerous activities that I will discuss later.

Madison recognized that there must be vigilance to control the abuses of government. He stated:

If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government, which is to be administered by men over men, the great difficulty lies in this: You must first enable the government to control the governed; and in the next place, oblige it to control itself.

Therefore, to maintain the necessary control, the constant aim is to divide and arrange the several offices in such a manner as that each may be a check on the other; that the private interest of every individual may be a sentinel over the public rights. These inventions of prudence cannot be less requisite to the distribution of the supreme powers of the state.

Mr. President, a section of this fine work captures the essence of all attempts to develop workable and viable governments. I will repeat it:

But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government, which is to be administered by men over men, the great difficulty lies in this: You must first enable the government to control the governed; and in the next place, oblige it to control itself.

I ask: Have we seen self-imposed restraint on the part of this administration? I say we have seen example after example of attempts to aggrandize rather than to limit power.

One example with which I am very familiar is the attempt to aggrandize executive power in the area of treatymaking. The treatymaking power is a matter of great concern to the Senate, and has been the subject of considerable discussion in this body.

During the course of the debate on the Indochina war, the Senate questioned the extent of the President's power to make war. It has examined scholarly writings on the constitutional limitations of the war power and it has examined the history of the exercise of that power. The result of this study and this debate, caused the Senate to pass the national commitments resolution, which attempts to limit the warmaking powers to the proper constitutional boundaries. It was in the same spirit that I offered a resolution to attempt to restore the Senate to its proper role in treatymaking.

One of the arguments made against the resolution that I offered was that senatorial involvement in delicate and necessarily confidential international negotiations, can only be dangerously counterproductive. It asserted that had the authors of the Constitution been able to foresee the perilous world political conditions in which we are obliged to operate, they would surely have posed no obstacles to the exclusive conduct of foreign affairs by the Executive.

We have seen this argument offered time and again by this administration. They want to participate alone because they are afraid of a "leak." This is important because the nominee we are considering today has been the architect of much of the administration action. This attitude has been reflected on numerous occasions, and has been directed against the judicial branch as well as the Senate.

One example is in the area of wiretapping. Even though the case of *McDonald* v. *United States*, 335 U.S. 451, raised serious doubts as to the unilateral action by law enforcement authorities in conducting surveillance activities, the administration failed to perceive that grave constitutional questions are involved. The Government brief's basic inference was that by requiring court action prior to surveillance activities, there was too strong a possibility of a "leak."

We have seen this type of attitude in other administration activity; that is, the Pentagon papers, Cambodian invasion, and even secrecy shrouds the nomination process, most recent examples being the Supreme Court nominees, and the nomination of Mr. Butz as Secretary of Agriculture.

Surprisingly, the minority leader, who is attempting at this time to do everything he can to insure that Mr. Rehnquist's nomination is confirmed, has been a complainant against this procedure. After all, not only is he a Member of the Senate, entitled to be advising the President in that capacity; he is a member of the political party of the President, entitled, under courtesy, to be an adviser to the President. My distinguished colleague from Pennsylvania, Mr. SCOTT, has made public disclosure of the fact that, rather than being in a position of advice, he was merely notified of the nomination of Mr. Butz. The minority leader has stated that much difficulty can have been avoided, if the advice of the minority party is sought, or at least consulted on Executive nominations.

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

Mr. HARTKE. I am glad to yield.

Mr. BAYH. I think my colleague hit on a very important matter here on which I would like to get his further views, if

I may, before he goes on to the substance of his argument.

The way in which the President has consulted with his leaders in the Senate and the great speed with which we are now urged to rush through this nomination indicate almost a fear that the Senate might reject the nominee if it had adequate time to explore all the ramifications of the nomination. We were only in the second full day of debate—almost 48 hours to the moment when the debate had started—over the critical nomination to the Supreme Court, when the first cloture motion was filed.

Does the Senator from Indiana feel that it is the obligation of the Senate to jump when the Executive feels that a nomination such as this should be confirmed, or does the Senator from Indiana feel that the history of the Senate would show a number of instances in which long deliberation has resulted both in the turning down and the seating of nominees, but that the decision was not made until the questions had been fully discussed and laid to rest in the minds of the Senators?

Mr. HARTKE. I think the Senator is correct in his assumption which comes from the first part of his question, which is simply that there is haste here. Every attempt is being made to bring this nomination to a close quickly. Of course, I will have to say that there are Members of the Senate who are interested in having a termination of this debate for reasons other than merely pushing through the nomination of Mr. Rehnquist and putting him on the bench of the Supreme Court. The Christmas vacation is held up as a sort of carrot in front of everyone's eyes, and they are saying, very simply, "If you really want to adjourn, why don't you cut off the debate on Mr. Rehnquist and go home?"

If they are really interested in simply assuring a Christmas holiday, we can adjourn after making an agreement to return at a date certain and vote on the nomination. I think my colleague from Indiana has agreed to such a procedure, as long as the debate is permitted to be of the type and nature which would permit each Senator to fully discuss this nomination. This would also permit an opportunity for the public to analyze this appointment.

This takes time, and it cannot be done in 48 hours.

I agree with my distinguished colleague from Indiana that it is not in the best interests of the Nation to push this nomination through in a hurry.

The difference between this nomination and that of a Cabinet officer is substantial.

If the Supreme Court is to maintain its role as a coordinate body of our Government, we cannot limit the period of time for debate of the qualifications of the nominee.

Mr. BAYH. The Senator has expressed another good point in mentioning the time reference. The Senator from Massachusetts (Mr. KENNEDY) pointed out yesterday that a few years ago, when one of the truly great Justices of the Supreme Court in history, Justice Cardozo, was before the Senate for confirmation, there was a very heated, harried, and lengthy debate. In fact, the hearings were reopened a time or two. That was done not by a minority of the opposition that was dragging the Senate into it, but by the proponents of Cardozo who wanted to see that all the questions were appropriately laid to rest. After they had gone through the series of hearings, and had had extended and sufficient floor debate, Cardozo was put on the Court, but not until all the questions had been laid to rest.

I am not suggesting that we need the kind of time that was utilized by the Senate when it was discussing the Cardozo nomination. Nor do I believe that we need the same long time used by some of the opponents of Justice Fortas and the nominee Thornberry, but I do believe that it is premature to suggest that the debate should be cut off after only 2, 3, or 4 days of debate, particularly in light of the new information brought to the attention of the Senate, in the Brown against Board of Education memorandum and now the letter of yesterday afternoon. What are Jackson's views? I do not know. I have three staff members in the process now of trying to find out, so that it will be easy to see whether the memorandum comes close to what Justice Jackson said in the Koramatsu case, in the Jehovah Witnesses' flag case, the Pledge of Allegiance flag case.

I must say, from what I know of the cases, that Justice Jackson always defended the right of individuals, and did not suggest that property rights should take equal or greater priority precedence in the eyes of the law. We have to have some time to investigate these matters in order to make an intelligent decision. The Senator from Indiana intends to make such an investigation and such a decision.

I am very glad that my colleague from Indiana has brought out the strange shortness of in this case.

Mr. HARTKE. Mr. President, I notice the chairman of the National Republican Party (Mr. DOLE) the Senator from Kansas, is in the Chamber. He may wish to comment on the degree to which the administration has sought advice on executive nominations requiring Senate approval.

Under the rules, the cloture motion will have to be acted on. Nonetheless, I think that it is in order that this matter be temporarily laid aside, to permit Senate consultation with the President upon this nomination. The President has not done what the Constitution requires in that regard, which is that advice be transmitted to the President other than through debate on the floor of the Senate. This might be a question of procedure subject to a point of order, and I do not know that a point of order would be sustained, but the fact remains that the President has not sought the advice of the Senate.

There is an argument made, for example, that Senators should not be consulted. I think that argument has little reason and no precedent. In the case of this nomination it is evident that everyone was caught by surprise. That may be good politics for 1972 but I do not think it is a very good way to select a Supreme Court Justice. We are not talking about the politics of the future, we are talking about the people of the future. They are the ones ultimately who are going to have their rights and privileges adjudicated by the Supreme Court.

Mr. DOLE. Mr. President, will the Senator from Indiana yield for a unanimous-consent request which has nothing to do with the nominee?

Mr. HARTKE. Perhaps the Senator, who is chairman of the Republican National Party, would like to advise the Senate as to when he was notified of the choice of this nominee. I am glad to yield to the Senator from Kansas.

Mr. DOLE. That has been so long ago that I cannot remember when I first knew about it.

Mr. BAYH. Mr. President, let me make one last reference and then I will stop interrupting my distinguished colleague. He mentioned a moment ago that the Christmas vacation was being held as a carrot in front of our colleagues. That is accurate, but I must say that it is also being held as a stick over the backs of some of us who are desirous of getting full debate.

I want to say for the record now, and I will document it in further detail later on during the day, that the Senator from Indiana has not and will not refuse to accept a date certain after a reasonable amount of debate. I do not suggest the type of lengthy, protracted debate that some of the proponents of Mr. Rehnquist had in trying to keep Mr. Fortas off the Court or in keeping him from being the Chief Justice.

I have not totally resolved what that reasonable time length is. However, I am opposed, if we should be successful in voting down the cloture motion, to trying to defeat Mr. Rehnquist by a one-third vote. I want the Senate to work its will but only after there has been sufficient time for this body to do so under circumstances in which it can give some attention to the nominee and not just what has been before the Senate in the last few hours.

Mr. HARTKE. I hope that my colleague from Indiana would make that intention known to Senators immediately prior to the time of the vote on the cloture motion. I think it is very important for Senators to understand that there is no intention of any protracted debate being envisioned by my colleague from Indiana.

Now, Mr. President, I would like to return to my prepared remarks.

I have raised the issue of executive aggrandizement of power because Mr. Rehnquist has been inextricably intertwined in this activity of the administration. He has written the legal defense of the Cambodian invasion. He played an integral part in the preparation of activity to stop the publication of the Pentagon Papers and he has appeared before the Senate to justify the administration's policies on numerous occasions.

In March of this year, Mr. Rehnquist appeared before the Senate Judiciary Subcommittee on Constitutional Rights. At that time, he said:

I do not conceive it to be any part of the function of the Department of Justice or of any other governmental agency to survey or otherwise observe people who are simply exercising their first amendment rights.

When you go further as, say: "Isn't a serious constitutional question involved?" I am inclined to think not . . . this practice is undesirable and vigorously should be condemned, but I do not believe it violates the particular constitutional rights of the individuals who are surveyed.

He was then questioned by my distinguished colleague from North Carolina, Senator ERVIN:

Doesn't surveillance tend to stifle the exercise of first amendment rights?

And Mr. Rehnquist responded by saying:

No. When the Army did this—and it apparently was generally known that they were doing it—about 250,000 people came to Washington on two occasions to protest the President's war policies.

In effect what Mr. Rehnquist has done is to say that the Government is entitled not only to be a "Peeping Tom," but also to look over shoulders. It is certainly that type of activity which creates apprehension in the minds of everyone. I do not mind telling the Senate that I was the only one who spoke in Washington on April 24. It is hard to say how many people were there. All I do know is that there was a massive crowd. I do know there was apprehension by many citizens, citizens who were afraid to come for fear they might be incarcerated for exercising their constitutional rights.

Mr. Rehnquist has stated that surveillance does not raise a serious constitutional question. The point is made that if someone is under surveillance and is aware of the fact that he is under surveillance, this somehow justifies such surveillance. Nothing could be further from the truth.

This is the argument to be expected from one who is committed to the proposition that surveillance of any type is not only permissible, but desirable. The Senator from Arkansas (Mr. FULBRIGHT) has recognized the constitutional issues inherent in surveillance activities and has pondered the effect such conduct may have on the country. Surveillance activities can contribute to a gradual erosion of the democratic spirit of our Nation. Unfortunately in some quarters the feeling that this country is dependent on individual rights has little currency.

We have recently seen the erosion of individual rights in other nations of the world. That creates anguish for us all. For example, we have all witnessed the distortion of human rights in Greece.

I have heard defense of that Government from many quarters. Yet, I might point out that the Council of Europe, a great protector of human rights was ready to expel Greece because of the fact that country failed to respond to the necessary prerequisite of human dignity and human rights. Knowing that this action was going to occur, Greece withdrew from the Council of Europe.

I later had a conversation regarding that matter with the Prime Minister of Sweden. He pointed out that if democracy was going to be defended by the United States and its NATO allies, as was done in Greece, that Sweden could do without that type of defense.

Lady Flemming, the widow of the discoverer of penicillin came to the United States at my request, after her release from a Greek jail.

She told me that after her arrest in Greece, the Greek Government offered to make her the minister of education of Greece if she would endorse the dictatorship in Greece. She told them that she would not.

She told me that that offer was made to her three separate times and that on three separate times the alternative was explained to her. The alternative was that she would suffer physical punishment. I suppose perhaps some people would have yielded at that point. She did not.

This is just one example of the infringement of human rights. This type of activity is contrary to every precept of American constitutionalism. It is contrary to the reasons that brought our ancestors to this country.

In an earlier appearance before the Senate Judiciary Subcommittee on constitutional rights, Mr. Rehnquist conceded that some improper surveillance and investigation may occur—that is, in the absence of statutory authority, constitutional authority, or need. He stated:

I think it quite likely that self-discipline on the part of the executive branch will provide an answer to virtually all of the legitimate complaints against excesses of information gathering.

That is one of the statements which we frequently hear. It is a statement which is based on an assertion rather than fact. It is a statement used by those who have nothing else on which to rely.

Again, we see the attitude that the executive branch can carry on the function of Government quite well, alone. In his testimony, Mr. Rehnquist failed to recognize that the legislative and judicial branches are coequal with the executive branch in our governmental framework.

Unfortunately this attitude of executive supremacy is a malaise sweeping the entire administration.

Mr. President, the administration must realize that the Senate and judiciary are intended to help the President in a common enterprise: they are not hostile institutions. The President must realize that the Senate is his constitutional and only responsible counselor; that the Senate and the courts are jointly responsible for the function of Government.

Section 2 of article II of the Constitution provides that the President "shall nominate, and by and with the advice and consent of the Senate, shall appoint Judges of the Supreme Court and all other officers of the United States," including Federal judges. There can be no question from the language of the Constitution, or the history of article II, that the power of the President to nominate is absolute and unfettered. Nor can there be any question that the appointment is subject to the advice and consent of the Senate.

History shows that originally it was suggested that Supreme Court appointments be exclusively under the control of the Senate.

Subsequently, the decision was made that the nominations would be made by the President, with the advice and consent of the Senate.

Alexander Hamilton stated in the Federalist Papers—numbers 76 and 77:

It will be the Office of the President to *nominate*, and, with the advice and consent of the Senate, to *appoint*. There will, of course, be no exertion of choice on the part of the Senate. They may defeat one choice of the Executive, and oblige him to make another: But they cannot themselves *choose*—they can only ratify or reject the choice of the President.

But might not his nomination be overruled? I grant it might, yet this could only be to make place for another nomination by himself. The person ultimately appointed must be the object of his preference though perhaps not in the first degree. It is also not very probable that his nomination would often be overruled. The Senate could not be tempted, by the preference they might feel to another, to reject the one proposed: Because they could not assure themselves, that the person they might wish would be brought forward by a second or by any subsequent nomination. They could not even be certain, that a future nomination would present a candidate in any degree more acceptable to them; and as their dissent might cast a kind of stigma upon the individual rejected, and might have the appearance of a reflection upon the judgment of the chief magistrate, it is not likely that their sanction would often be refused, where there were not special and strong reasons for the refusal.

Hamilton then states, "To what purpose then require the cooperation of the Senate?" He answers, that the necessity of their concurrence would have a powerful, though, in general, a silent operation. It would be an excellent check upon a spirit of favoritism in the President, and would tend greatly to prevent the appointment of unfit characters from State prejudice, from family connection, from personal attachment, or from a view to popularity. In addition to this, it would be an efficacious source of stability in the administration.

It will readily be comprehended, that a man who had himself the sole disposition of offices, woud be governed much more by his private inclinations and interests, than when he was bound to submit the propriety of his choice to the discussion and determination of a different and independent body, and that body an entire branch of the legislature. The possibility of rejection would be a strong motive to care in proposing. The danger to his own reputation, and, in the case of an elective magistrate, to his political existence, from betraying a spirit of favoritism, or an unbecoming pursuit of popularity, to the observation of a body whose opinion would have great weight in forming that of the public, could not fail to operate as a barrier to the one and to the other. He would be both ashamed and afraid to bring forward, for the most distinguished or lucrative stations, candidates who had no other merit than that of coming from the same State, to which he particularly belonged, or of being in some way or other personally allied to him, or of possessing the necessary insignificance and pliancy to

render them the obsequious instruments of his pleasure.

Hamilton further stated:

"If it be said they might sometimes gratify him by an acquiescence in a favorite choice, when public motives might dictate a different conduct, I answer, that the instances in which the President could be personally interested in the result, would be too few to admit of his being materially affected by the compliances of the Senate. The *power* which can *originate* the disposition of honors and emoluments, is more likely to attract than to be attracted by the *power* which can merely obstruct their course. If by influencing the President be meant restraining him, this is precisely what must have been intended. And it has been shown that the restraint would be salutary. At the same time that it would not be such as to destroy a single advantage to be looked for from the uncontrolled agency of that magistrate. The right of nomination would produce all the good of that of appointment, and would in a great measure avoid its evils.

Mr. President, it is clear that Mr. Hamilton believed the confirmation process to be a serious one. I call upon my colleagues to reflect on the thoughts of Mr. Hamilton as we consider this nomination.

Mr. Rehnquist himself has recognized that the confirmation process is a serious constitutional function. Writing in 1959 he stated:

The Supreme Court of the United States is now in the midst of one of the storms of criticism which have periodically assailed it. Bills have been introduced in Congress to limit the jurisdiction of the High Court, to overrule some of its controversial non-constitutional decisions, and to declare the sentiment of the Senate as to the necessity of judicial background on the part of a nominee to the court. It has been urged that the "advice" of Senate be sought by the President before any nomination to the court is made.

Criticism of the Supreme Court can easily become frustrating to the critics, because the individual justices are not accountable in any formal sense to even the strongest current of public opinion. Nonetheless, it ill behooves the critics of the present Court to seek imposition of new curbs on it until such controls as now exist are fully tested and found wanting. Specifically, until the Senate restores its practice of thoroughly informing itself on the judicial philosophy of a Supreme Court nominee before voting to confirm him, it will have a hard time convincing doubters that it could make effective use of any additional part in the selection process.

The Supreme Court, in interpreting the Constitution, is the highest authority in the land. Nor is the law of the Constitution just "there," waiting to be applied in the same sense that an inferior court may match precedents. There are those who bemoan the absence of stare decisis in constitutional law, but of its absence there can be no doubt. And it is no accident that the provisions of the Constitution which have been most productive of judicial law-making—the "due process of law" and "equal protection of the laws" clauses—are about the vaguest and most general of any in the instrument. The Court in *Brown* v. *Board of Education*, supra, held in effect that the framers of the fourteenth amendment left it to the Court to decide what "due process" and "equal protection" meant. Whether or not the framers thought this, it is sufficient for this discussion that the present Court thinks the framers thought it.

Given this state of things in March, 1957, what could have been more important to the Senate than Mr. Justice Whittaker's views on equal protection and due process? It is high time that those critical of the present Court recognize with the late Charles Evans Hughes that for one hundred seventy-five years the Constitution has been what the judges say it is. If greater judicial self-restraint is desired, or a different interpretation of the phrases "due process of law" or "equal protection of the laws", then men sympathetic to such desires must sit upon the High Court. The only way for the Senate to learn of these sympathies is to "inquire of men on their way to the Supreme Court something of their views on these questions."

Although Mr. Rehnquist has recognized the need for inquiry by the Senate into the fitness of one to serve on the Supreme Court, it has been suggested by my colleagues that he has failed to candidly discuss his judicial philosophy with the Senate.

In essence he has failed to follow his own advice. This action would rebut his own admission that the Senate has not only the right but the obligation to obtain an incisive view into a nominee's views on constitutional issues.

I have heard that this action has been taken under the cloak of privileged communication. Unfortunately, Mr. Rehnquist has approached the Senate hearings as an adversary proceeding. He may have followed this role as the "President's lawyer" but a nominee to the Supreme Court of the United States has an obligation to more than the President. The Supreme Court nominee must be able to transcend his political affiliations and recognize that he may become part of an institution that owes an obligation to the Nation and not to one man. The country is not only entitled to know, but demands to know how William Rehnquist, the Supreme Court nominee, views the Constitution. So far we have seen only the view of William Rehnquist the "President's lawyer."

In considering this nomination, there are still many unanswered questions that must be considered.

First, will the Senate perform its proper constitutional function in giving advice and consent on the Supreme Court nominee? I have outlined how the President has been allowed to pre-empt the role of the Senate in foreign affairs. The question is, will the Senate stand up to its constitutional role in the confirmation process?

Secondly, this issue of Presidential aggrandizement of power is of particular importance in this nomination because William Rehnquist has played a significant role in the President's action to restrict the role of, not only the Senate, but the judicial branch as well. I am sure many of my colleagues can cite examples of this conduct.

Third, as a result of the failure of the nominee to develop his constitutional views before the judiciary committee, many questions have been raised that should be answered before the nominee is confirmed.

Some of these serious charges have appeared in a recent New York Times editorial and articles. One article states that Mr. Rehnquist:

Has repeatedly shown himself opposed to judicial or legislative efforts to eliminate racial discrimination. There was a time decades ago when a nominee with Mr. Rehnquist's opinions would have been confirmed for the court with hardly a ripple of controversy. But twenty-five years of Supreme Court rulings, congressional legislation and social upheaval have made him an anachronism. Commitment to equality of treatment and opportunity for all races has become one of the indisputable standards of modern constitutional democracy. Since Mr. Rehnquist is lacking in such a commitment, the Senate, if it confirmed him, would be voting to turn back the clock.

Mr. Rehnquist's evident lack of sympathy for individual liberties also disqualifies him. The Constitution is a libertarian document. The first ten amendments and many other provisions are prohibitions against the exercise of certain kinds of power by the Federal Government and against the arbitrary, excessive, or unreviewed exercise of other powers.

As a political activist and as an Assistant Attorney General, Mr. Rehnquist has relentlessly argued in favor of abridging and diminishing the liberties of the citizen and enhancing the powers of government—to tap the citizen's phone and "bug" his home and office, to enter his premises without knocking, to use tainted evidence against him, to arrest him in dragnet sweeps, to compel him to testify against himself, to deprive him of his right to practice his profession if he is a radical lawyer.

It is easy and comfortable for the ordinary, law-abiding citizen to assume that these intrusions of governmental authority will never touch his life, but the whole history of human liberty shows that the unpopular dissenter is the first—but rarely the only—victim of arbitrary power.

In voting for the first time in fifty years to oppose a nominee for public office, the national board of directors of the American Civil Liberties Union stated: "We know Mr. Rehnquist as a person committed to the notion that in every clash between civil liberty and state power, it is civil liberty that should be sacrificed."

Free societies are judged by how they treat their racial minorities and by the extent of the liberty they allow the individual citizen. On both counts, Mr. Rehnquist fails to qualify as one of the guardians of a Constitution of free men.

This article raises important questions of the nominees sensitivity to the crucial issues of our times. It may be that he has lived a sheltered life unexposed to the human side of the masses of people. When a man has failed to have that experience, or at least to have the time to understand that part of life, it is frequent that he takes a viewpoint that is similar to that which Mr. Rehnquist has followed.

Oftentimes this is the view of those who have never seen an unemployment line, or never visited a ghetto, or seen the anguish and deep suffering that is the daily fare of many of our citizens.

Mr. President, the Members of the Senate must bring these questions out into the open. This must be done to ensure that the public can continue to feel that the Supreme Court is truly an impartial body. Under our constitutional theory the Supreme Court is to be an umpire. The questions that have been raised about Mr. Rehnquist's actions, both as a lawyer and a public official, threaten the feeling of confidence the public has in the impartiality of the Supreme Court. We must determine whether we are confirming a man committed to the preservation of that institution as a viable force in our Government or

whether we are adding a member of the executive branch to the Supreme Court, and in essence "turning the blade inward."

I yield the floor.

Mr. FULBRIGHT. Mr. President, even though I agree with George Washington when he said:

As the President has a right to nominate without giving his reasons, so has the Senate a right to dissent without giving theirs.

Nevertheless, I wish to give some of my reasons for opposing the nomination of Mr. Rehnquist as a Justice of the Supreme Court.

In this age of Executive predominance in so many areas of our Nation's affairs, it is suggested that it is improper for the Senate to withhold confirmation on any but the most narrow grounds of personal dishonesty or intellectual deficiency. We in the Senate have no right, it is said, to take into account the nominee's constitutional philosophy in making our decision, although the right of the President to nominate an individual because of his political, or constitutional or judicial philosophy is unchallenged.

President Nixon himself asserted this viewpoint in a letter dated March 31, 1970, in support of an earlier nomination.

The President said:

What is centrally at issue in this nomination is the constitutional responsibility of the President to appoint members of the Court—and whether this responsibility can be frustrated by those who wish to substitute their own philosophy or their own subjective judgment for that of the one person entrusted by the Constitution with the power of appointment.

President Nixon went on to say that—

If the Senate attempts to substitute its judgment as to who should be appointed, the traditional constitutional balance is in jeopardy and the duty of the President under the Constitution impaired.

This letter, with its extraordinary claims of Executive supremacy, was reportedly drafted for President Nixon by the nominee now under consideration, Assistant Attorney General William Rehnquist. It demanded that the Senate voluntarily abstain from exercising a power explicitly vested in it by the Constitution in order to allow the President the privilege of absolute appointment power for which there is no constitutional sanction whatever.

As the individual views accompanying the Judiciary Committee's report on this nomination point out, the Constitution intended the Senate to play a positive role in determining whether to give its advice and consent to a judicial nomination. During the Constitutional Convention of 1787 it was at first anticipated that Congress or the Senate alone would have the power to appoint Supreme Court Justices. Only near the end of the Convention was the existing system adopted under which the President has the power to appoint judges but only with the advice and consent of the Senate.

The notion that the Senate is somehow acting illegitimately when it weighs the qualifications of a judicial nominee in more than a superficial and perfunctory way appears to me to be one more manifestation of the prevailing and undemocratic "cult of the Presidency." The President's insistence upon his exclusive right to appoint members of the Court, as expressed in his letter of March 1970, contains disturbing echoes of something like royal prerogative. Living as we do in a time in which independent legislative bodies are in decline all over the world, it seems to me imperative that we assert once again the right and indeed the responsibility of the Senate to make an independent judgment on a matter entrusted to it by the Constitution. I contend, therefore, that the social, and, above all, constitutional philosophy of William Rehnquist is of the greatest relevance and importance to the Senate's deliberations on whether to grant or withhold its consent to his nomination.

It should also be recalled that President Nixon, in his televised address of October 21, placed great emphasis on "philosophy" as a basis for his selection of his nominee.

By all available evidence—and there is a great deal of it—Mr. Rehnquist's constitutional philosophy is one of executive supremacy in virtually all areas of public policy. A great deal has been said and written in recent weeks on Mr. Rehnquist's views on the Bill of Rights and on past Supreme Court decisions in the area of civil rights. Relatively little, however, has been called to public attention regarding Mr. Rehnquist's advocacy of sweeping Presidential authority in relation to the Congress, particularly in the field of foreign relations. Far from adhering to the strict constitutional constructionism which many of us in the Senate support, and which Mr. Nixon says that he supports, the nominee has shown in his writings and public statements that he favors an exceedingly liberal construction of the Constitution, that indeed he is a judicial activist, at least to the extent of advocating an expansive view of the powers of the Executive as against the constitutional role of the Congress and the rights of individuals.

The nominee has demonstrated his lack of understanding of the proper role of the Congress in our constitutional system on at least two recent occasions. As the individual views accompanying the report of the Judiciary Committee pointed out, Mr. Rehnquist declined to express his opinions on such topical matters as national security, wire tapping, preventive detention, no-knock, the legality of the Executive order granting certain powers to the Subversive Activities Control Board, the scope and extent of executive privilege, Government surveillance practices, and other matters. Mr. Rehnquist invoked the "privilege" of an attorney in relation to his client as an excuse for withholding this information, although the "clients" in question were not individuals whose rights were at stake but the President and the Attorney General who had nothing at stake but the risk of political embarrassment. Mr. Rehnquist himself has on previous occasions acknowledged the right and duty of the Senate to inquire into a nominee's judicial philosophy in considering confirmation. Nonetheless, he invoked a dubious form of "privilege" to escape such accountability himself.

The other recent demonstration of Mr. Rehnquist's disdain for the authority of Congress occurred last July when he argued before Senator ERVIN's Subcommittee on Separation of Powers in support of a sweeping doctrine of executive privilege. He based his argument not on the Constitution but on an accumulation of historical precedents—and approach which is the classic resort of "loose" constructionists. The essence of the doctrine of executive privilege is the claim of executive branch officials to a freedom from accountablity to Congress. Both by argument and by example, Mr. Rehnquist has demonstrated his strong commitment to that claim.

There have been other noteworthy instances of the nominee's support of arbitrary Executive authority. During the May Day demonstrations last spring, Mr. Rehnquist espoused a doctrine of "qualified martial law," a doctrine totally inconsistent with the guarantees enumerated in the Bill of Rights, and one which fortunately was dismissed summarily in a recent decision by the U.S. Court of Appeals, which invalidated most of the mass arrests made at the time by the Washington police. Another striking instance of this attitude occurred during testimony before Senator ERVIN'S Subcommittee on Constitutional Rights when Mr. Rehnquist stated that even Senators ought to be put under surveillance if the Executive thought it necessary. Asked by the Senator from North Carolina whether he as a Senator could legitimately be spied upon, Mr. Rehnquist replied in part:

I don't think it raises a First Amendment violation.

Finally, to turn to a matter which has received less attention than it warrants, Mr. Rehnquist has been an active and articulate supporter of the Executive's claim to an unrestrained and unlimited power to make war. In a speech in New York in May 1970, subsequently reproduced in the New York Law Journal on June 8 and 9, 1970, Mr. Rehnquist defended President Nixon's invasion of neutral Cambodia. Raising the question whether the United States may lawfully engage in armed conflict with a foreign power in the absence of a congressional declaration of war, Mr. Rehnquist said:

I believe that the only supportable answer to this question is "yes".

Going on to consider the limits—if any—of the President's power as Commander in Chief, Mr. Rehnquist asserted that—

One need not approach anything like the outer limits of his power, as defined by judicial decision and historical practice, in order to conclude that it supports the action that he took in Cambodia.

In the manner of the loose constructionist, Mr. Rehnquist went on to cite previous instances of unauthorized Presidential action as if these precedents gave constitutional sanctity to patently unconstitutional actions. "Our history," said Mr. Rehnquist, "is replete with instances of 'undeclared wars.' It simply will not do, then," he asserted, "either

as a matter of constitutional law or as a matter of historical practice, to say that armed hostilities engaged in by the United States in the absence of a declaration of war by Congress are unlawful."

It is pertinent to contrast Mr. Rehnquist's claim of an unchecked Presidential power to make war with the view of the late Justice Jackson for whom Mr. Rehnquist once served as a law clerk. In this opinion in Youngstown against Sawyer in 1952, Mr. Justice Jackson stated:

> Nothing in our Constitution is plainer than that declaration of a war is entrusted only to Congress. Of course a state of war may in fact exist without a formal declaration. But no doctrine that the Court could promulgate would seem to me more sinister and alarming than that a President whose conduct of foreign affairs is so largely uncontrolled, and often even is unknown, can vastly enlarge his mastery over the internal affairs of the country by his own commitment of the Nation's armed forces to some foreign venture.

On December 7, the Foreign Relations Committee gave its unanimous support of a war powers bill which purports to implement the philosophy expressed by Mr. Justice Jackson, which is also a philosophy that has gained increasing support in the Congress in recent years, most notably with the adoption of the National Commitments Resolution in 1969.

Mr. Rehnquist has shown himself to hold a philosophy strikingly at variance with the strict constructionist view of the Constitution, not only in matters of individual liberties but also in matters relating to the constitutional authority of the Congress, particularly the authority to initiate war.

To summarize my views, during the past 30 years, three wars and a succession of major crises have caused serious domestic turmoil and disunity, and have induced an atmosphere of apprehension and insecurity which in turn has resulted in a serious distortion in our constitutional system.

The legislative branch, under these circumstances, has acquiesced in the usurpation of power by the Executive to such an extent that some spokesmen for the Executive have asserted that the Constitution is obsolete in such fundamental provisions as the power to initiate war against a foreign nation, the rights of individuals under the fourth amendment and the freedom of the press of the first amendment.

My opposition, therefore, is not based upon Mr. Rehnquist's views about current social or political issues about which there are legitimate differences of opinion among reasonable and honorable men.

My opposition is based upon his attitude toward the constitutional system of government under which our Nation grew and flourished for nearly 200 years. The essential virtue of that system is a balance among the three branches, the legislative, the executive, and the judicial.

From his record, it seems to me that Mr. Rehnquist is committed to the supremacy of the Executive power to such an extent that his influence on the Court would undermine that essential virtue of our Constitution, and, therefore, I shall vote against his confirmation.

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

Mr. FULBRIGHT. I yield.

Mr. BAYH. Mr. President, I listened with great care to the concern expressed by my colleague from Arkansas. As one who has not had the opportunity to study the foreign policy issues that have come before the Senate as thoroughly as the chairman of the Committee on Foreign Relations has, I was very impressed with the way in which the Senator from Arkansas brought into this debate the feelings of the nominee relative to the expansion that he feels is appropriate in Executive authority.

This has been a matter of grave concern to the Senator from Indiana, whether it is the invasion of our individual privacy—by stating that surveillance presents no constitutional question—or by suggesting that voluntary restraint would appropriately curb executive excesses in the domestic field, which are the matters stressed by the Senator from Arkansas.

I think the issue here is much broader than most of our colleagues have described it. It is not a conservative versus liberal situation. It is not a matter of how a person might believe philosophically. It is a matter of how a man believes and will vote on the court. It concerns some of the very basic assignments of power that will determine the direction this court will go in the future. I appreciate the comments of the Senator from Arkansas. I think this will make a great contribution to the RECORD.

Mr. FULBRIGHT. I appreciate the comments of the Senator from Indiana. I have read that the nominee has written a long letter to the Senator from Mississippi stating that he now affirms his commitment to the doctrine of the Brown decision. This is a matter on which men of good will can have legitimate differences.

I think people can differ on this, and I certainly would not vote against Mr. Rehnquist, because he and I did not agree upon the Brown decision.

My concern is that the press and those who have commented on this nominee have neglected this fundamental problem of our constitutional system itself. I do not think there is really anyone in this body who would say that he does not believe in our constitutional system. In fact, when Senators enter this body everyone of them takes the oath, just as the President does, to support the Constitution, and we thereby assert that we believe in it.

Here is a man who, it seems to me, on several occasions has evidenced a lack of acceptance of the Constitution, as I read it, especially in the field of foreign relations. This is the area that currently is causing most of our trouble. I firmly believe that much of our internal domestic turmoil and trouble flows from the disregard of the Constitution by previous Executives—particularly the preceding one.

I think that our major troubles—the worst troubles we have had since the Civil War—have arisen from the disregard of our constitutional system, and from the disregard of the provision that the Congress, including the Senate, should be consulted, and must exercise the war power granted to it by the Constitution.

From that disregard have come so many of the troubles that afflict us. They have given rise to circumstances which have caused these further usurpations by the Executive mentioned by the Senator from Indiana, such as the mass arrests, the invasion of privacy, and wiretapping.

The Executive felt, I think erroneously, the necessity of infringing upon other parts of the Constitution, because of these conditions arising out of this serious and fundamental disregard of our Constitution.

What bothers me in considering the nominee as a future Justice of the Supreme Court is that these issues will continue to plague us, because our country is in trouble. Everybody knows that. Matters of major importance—involving the constitutional rights of the Congress are dealt with by the Court—such as the declaration of war, which has already been before the Court, or such issues as the publication of the Pentagon papers, which relates to this question of declaration of war, and power of the Executive to conceal what they are doing from everybody, Congress as well as the public. This nominee's attitude would seem to me to be in the direction of saying "Anything the Executive says goes," and I think that would undermine our constitutional system.

Mr. BAYH. The Senator has been one of the leaders in this body who has tried to reverse the trend over the years in which the Senate has really forfeited some of its prerogatives. He is one who has said, "Let us turn it around. Let us restore this balance of power."

Is the Senator concerned, now that we have realized our role in foreign policy as well as national policy and that we have begun to move in that direction, and more and more Senators are aware of what has been happening, that if, indeed, we put a man on the Supreme Court who feels differently about it, that could reverse the process once again?

Mr. FULBRIGHT. It certainly would be an influence in that direction insofar as the Supreme Court might become involved. These issues have a way of getting to the Supreme Court. Therefore, I am concerned that, while the Senate has, since 1969, at least, begun moving in the direction of reestablishing a better balance between the executive and the legislative, there could be this possibility that the process would be reversed. The war powers bill that has just been reported on this subject has sponsorship from various elements in the Senate—the Senator from New York (Mr. JAVITS), the Senator from Missouri (Mr. EAGLETON), the Senator from Mississippi (Mr. STENNIS), and the Senator from Virginia (Mr. SPONG).

Mr. BAYH. I think the Senator from Indiana is on that bill. If not, I wish the Senator would make me a cosponsor.

Mr. FULBRIGHT. There were four original sponsors. I do not make it a practice of becoming a sponsor on a bill that is before the Committee on Foreign Relations, but this measure has been approved by the committee.

It is an important step on behalf of the committee, supported by other prominent Senators, in the restoration of the Senate's proper role. This, it seems to me, is quite contrary to the views of the nominee. He apparently does not think there is any necessity for this kind of action.

This is not new with the nominee. One of his predecessors, not precisely in the same position, but one of the preceding Attorneys General and Under Secretary of State, Mr. Katzenbach, absorbed this kind of philosophy in the executive branch and made statements in public sessions of the Committee on Foreign Relations very much in accord with some of the statements by Mr. Rehnquist. I took issue with him then. There were considerable objections, by Senators and others, Mr. Katzenbach's thesis that the war power provisions of the Constitution were obsolete, which was essentially what he said. That is an oversimplification, but the gist of it was that in this modern day it is no longer possible to have Congress participate in the declaration of war.

This is a tendency on the part of the executive branch, not just Mr. Rehnquist. However, he has been an outspoken and strong voice in expressing this attitude.

In today's Washington Post one of the columnists remarked upon Mr. Rehnquist's powerful intellect. However, this is no consolation at all if that intellect is going to be directed at the undermining of our constitutional system. We have seen other instances in our Government of great intellects, including some of the past and present members of the White House staff. These are very intellectual gentlemen, extremely well versed in history and literature, and, as the columnist said this morning, who never split an infinitive. But what was the result of their judgment? Was their judgment in the interest of this country? I do not mind if one splits an infinitive now and then if his judgment is correct and he does not help lead us to the destruction of this Government. That is what bothers me—the tendency to alter the basic constitutional system.

Through distortion of constitutional principles in the last 6 or 7 years, the system has not worked as it should. It has not worked, because the Executive departed from these principles. When we ignore fundamental constitutional principles, as we have in recent years, the system does not work. It is not because the system is at fault. In my opinion, it is because we have not adhered to sound constitutional doctrine. That is what bothers me about this nomination.

Mr. BAYH. The Senator is doubly concerned, as I understand his remarks this morning, that the system has not been working as the Constitution and as our forefathers intended to have it work, and the nominee has supported such a malfunction.

Mr. FULBRIGHT. He apparently does assert and support the supremacy of the executive, but I think the legislative has a proper role to play. I do not mean that the Senate is infallible. I have never thought that Members of Congress were infallible and that we do not make mistakes, but I believe in the collective judgment of the Congress. It is the best way to prevent mistakes that destroy a country. If we do not assert our prerogatives or are not allowed to function, if we are not allowed to participate in basic decisions, I think our country is in serious trouble. I think one of the reasons the Nation is in as serious trouble as it is today is because we have departed from our constitutional provisions. I make no apologies. I believe in the Constitution, and I believe the nominee is not a strict constructionist. I believe he is a loose constructionist, especially in the very important areas that we have been discussing.

Mr. BAYH. I appreciate the contribution of the distinguished Senator from Arkansas, who is uniquely qualified because of the experience he has had on this committee——

Mr. FULBRIGHT. I am uniquely qualified only because I have been here a long time and have observed the diminution of the influence of Congress. I do not believe the Executive alone is at fault. We have acquiesced in much of it. I would not claim I have not participated in it. Nevertheless, that is no reason why we should not recognize it when it becomes clear, and certainly a number of us have recognized it for years, but not for as long as we should have. No one of us here is endowed with as much foresight as we should have. That does not mean we should not move in the right direction. We ought to take whatever measures are necessary to reverse that trend and to reestablish the primacy of the constitutional provisions themselves. Among them is the importance of the legislative branch. I do not know why people make a cult of the Presidency. It is not just in this country; it is worldwide. We are not immune to it. Look all over the world. We played court just yesterday to the President of Brazil. Brazil is a great country, larger than we are in geography, although with not as many people, that formerly had a legislature and a parliamentary system. They became impatient with it and they abolished it, so that country now has a dictatorship.

I do not necessarily mean this as criticism of Brazil, but simply as an observation. They were unable to make a parliamentary system function, I assume. I do not want my remarks to be interpreted as meaning that I am trying to criticize Brazil or any other country. It is simply that I do not wish to promote a different form of government here or anywhere else. I do not wish to intervene or cause trouble to Brazil. However, I do not think we ought to give our substance to support them.

If they wish that kind of a system, that is their business. But this is true all around the world. Very few people are left in this world community who are governed by a system in which a legislature such as ours participates. I would doubt if it is a fourth of the human race today. I have not calculated it on that basis, but I would doubt whether a fourth are under systems comparable to ours.

So it is a trend. The complexity of modern life may make our system unworkable. I do not think it is unworkable. I think it will work if we abide by our fundamental constitutional principles. If Congress has a fair chance, even though it has acquiesced in the past in the erosion of its own powers, I think we can prevent some of the grave mistakes that threaten the future of our country and our world.

I do not necessarily take issue with the nominee's views about current events and current issues, with which, in some cases, my own views have been in accord. I accept the idea that just because one's views about current political issues are different, that is not a basis for rejection.

But on the question of whether or not our Constitution should be supported, I do not see much room for difference of opinion. Especially, it seems to me, when Senators have taken an oath to support the Constitution, it is odd that they would approve of a man whose views and actions seem to be contrary to the popular construction of what our Constitution means.

That is the sum and substance of my argument.

Mr. BAYH. I certainly thank the Senator.

WILLIAM H. REHNQUIST A JUDICIAL CONSERVATIVE

Mr. DOLE. Mr. President, in his television address to the Nation announcing the Supreme Court nominations of William H. Rehnquist and Lewis F. Powell, Jr., President Nixon described his nominees as judicial conservatives. The meaning of this term has since been the subject of some debate and considerable misunderstanding, particularly with regard to Mr. Rehnquist. Indeed, in some quarters there seems to have been an effort to put the nominee on the defensive about his philosophy, as if there were something sinister or at least out of date in being a judicial conservative.

As a lawyer and citizen who has looked with apprehension and concern on some of the Supreme Court's decisions over the past 10 to 20 years I have been hopeful that the Court's activist-interventionist phase would be ended some day by the seating of Justices who would swing the Court away from the role of a super-legislative, policymaking body and back to its proper function as an arbiter of cases and controversies in line with the intent of the Constitution's framers.

As a Senator who supports the President in his efforts to provide the Supreme Court with a new philosophical orientation and a shifted emphasis in the trend of its decisions, I have never felt the need to defend, excuse or apologize for a conservative judicial approach.

VALUABLE HEARINGS

Thus, I welcomed the nominations of Mr. Powell and Mr. Rehnquist, because these men promise to become important influences for change within the Court and because the hearings on their nominations offered an exceptional opportunity to explore and illuminate the meaning of the term judicial conservative.

To my view, those hearings demonstrate convincingly that the Senate, far from being defensive or reluctant about

confirming persons with this philosophy, should welcome their appointment and the opportunity to join in placing them on the Court. As I understand Mr. Rehnquist's views, confirmation of his nomination—like that of Mr. Powell earlier—will serve the best interests of all three branches of the Federal Government and thereby the best interests of the American people.

It will serve the interests of the Court by giving it another extremely able and vigorous Justice. It will benefit the executive branch by providing a Justice who will view the enforcement and execution of the laws fairly, impartially, and with an effective understanding of the executive branch's operation. The best interests of the legislative branch will be served by putting on the Court a Justice whose belief in the principle of judicial restraint and whose recognition of the Court's strictly adjudicative character will enhance the prestige and powers of the Congress as the proper source of the laws the Court is bound to interpret.

PRINCIPLES OF JUDICIAL CONSERVATISM

To call one person a judicial conservative and another a judicial activist or liberal in the context of Supreme Court decisions on constitutional law is to attempt a distinction between general attitudes or approaches that those who sit on the Court may take in deciding issues before them. Of course, these terms are not precise, and Justices can fall anywhere along the broad spectrum between extremes of conservative and liberal judicial behavior. Generally, however, a judicially conservative Justice observes two primary principles. First, he refuses to make decisions on the basis of his personal views of what he believes the law should be. Second, he believes the proper judicial function lies solely in interpreting the law and that public policy decisions on the formulation and execution of the law should be left entirely to the political branches of Government.

Mr. Rehnquist's testimony amply demonstrates that he subscribes to both of these principles. In response to a question from the Senator from Maryland (Mr. MATHIAS) concerning the liberal-conservative distinction, the nominee stated:

> It is so difficult to pin down the terms "Liberal" and "Conservative," and I suspect they may mean something different when one is talking about a political alignment as opposed to a judicial philosophy on the Supreme Court.
>
> I think to an extent, in discussion about the Court, there has been a tendency to equate conservatism of judicial philosophy not with a conservative bias, but with a tendency to want to assure one's self that the constitution does indeed require a particular result before saying so, and to equate liberalism with a feeling that, at least on the part of the person making the observation, that the person tends to read his own views into the constitution.

These views comport with those of a long line of judicially conservative judges, including, notably, Justices Holmes, Frankfurter and, in recent years, Mr. Justice Black. I think we might better understand judicial conservatism and its importance to the good functioning of our Government by looking at some decisions by those Justices.

NOT A POLITICAL CONSERVATIVE OR LOWER COURT JUDGE

At the outset, however, I think we need to understand what a judicial conservative is not. First of all, as Mr. Rehnquist indicated in his response to Senator MATHIAS, a judicial conservative is not the same thing as a political conservative. His political philosophy may be conservative or it may be liberal, experience showing a wide variation on this score, but there is no real correlation. The pre-Roosevelt Court of the nine old men, it will be recalled, was politically conservative, but from the standpoint of economic regulation it can fairly be termed judicially liberal and active. That Court sought to read its own notions of public policy into the Constitution with the result that freedom of contract was given constitutional sanctity to the detriment of executive and legislative views on economic policy.

On the other hand the liberal-activist Warren Court did demonstrate a fairly close relationship between political and judicial philosophies.

It also seems to me that judicial conservatism as observed in Supreme Court Justices does not relate to methods employed by lower court judges to interpret decisions of higher courts. Judges in trial and midlevel appellate courts are in the position of applying a decision of a higher court to a situation that is distinguishable from the one that gave rise to the original case. The judge must determine how to construe the earlier decision; he may do so either narrowly, to make it inapplicable to the case under consideration, or broadly, to cover the new situation. The role of the judge in this instance is not to state or define the law but to predict what the higher court would do in the situation at hand. Thus, a judge might be liberal in construing decisions of higher courts, yet, were he promoted to a higher bench, he might be conservative in his statements of legal principles to be followed by lower courts. On the Supreme Court, the Justices do not predict the law; rather, they determine what it is in an absolute sense. There is a significant difference in these judicial roles.

I would like to focus now on the sort of Supreme Court jurist I believe the President had in mind when he chose to term William Rehnquist a judicial conservative. As I indicated earlier we may be able to get a better understanding of what a judicial conservative is by examining the statements of past Justices who exemplified this philosophy. Several individuals fit this mold, although I suspect that Oliver Wendell Holmes, Felix Frankfurter, and Hugo Black are the best examples.

JUSTICE HOLMES REJECTED PERSONAL VIEWS

Mr. Justice Holmes sat on the Court at a time when its political conservatives had adopted a policy of judicial activism with respect to economic matters. A majority of the Court had used the doctrine of substantive due process to read into the Constitution its own notion of freedom of contract. Consequently, for many years, they prevented the States and the Federal Government from regulating property rights to any significant extent.

One of the more significant cases, in this area was *Lochner* v. *New York*, 198 U.S. 45 (1903), a case involving a New York State statute which provided that no bakery employee be required to work more than 60 hours a week or 10 hours a day. The Court held that the statute was an unreasonable, unnecessary, and arbitrary interference with the right and liberty of the individual to contract and thus void as a matter of constitutional law. Holmes viewed the case as an attempt by the Court to decide public policy and impose its desires on the political branches of Government under the guise of constitutional interpretation. His dissent is a classic statement of judicial conservatism:

> This case is decided upon an economic theory which a large part of the country does not entertain. If it were a question whether I agree with that theory, I should desire to study it further and long before making up my mind. But I do not conceive that to be my duty, because I strongly believe that my agreement or disagreement has nothing to do with the right of a majority to embody their opinion in law. It is settled by various decisions of this court that state constitutions and state laws may regulate life in many ways which we as legislators might think as injudicious, or if you like as tyrannical, as this, and which, equally with this, interfere with the liberty to contract . . . The fourteenth amendment does not enact Mr. Herbert Spencer's social statics . . . [A] Constitution is not intended to embody a particular economic theory, whether of paternalism and the organic relation of the citizen to the State or of *Laissez Faire*. It is made for people of fundamentally differing views, and the accident of our finding certain opinions natural and familiar or novel and even shocking ought not to conclude our judgment upon the question whether statutes embodying them conflict with the constitution of the United States.

It seems to me, that it is difficult for any student of government or the Constitution who sits in the Senate to quarrel with this position. In fact, we should be enthusiastic in our reception of nominees sent to us for confirmation who embrace it and, regardless of their personal feelings, believe that the Supreme Court ought not substitute its judgment on the formulation of the laws for that of the Congress.

JUSTICE FRANKFURTER ADVOCATED JUDICIAL RESTRAINT

Felix Frankfurter is a second outstanding example of a judicial conservative, and in the record of the hearings it can be seen that Mr. Rehnquist believes his philosophy to the Judiciary Committee as Frankfurter's.

The nominee described Frankfurter's philosophy to the judiciary committee as follows:

> [He] came on the Court at a time when I think it was clear to most observers that the old court of the nine old men of the twenties and thirties was indeed, on any objective analysis, reading its own views into the Constitution. and Justice Frankfurter. of course. prior to his ascent to the bench had been critical of this, and as a Justice he helped demolish the notion that there was some sort of freedom of contract written into the Constitution which protected businessmen from economic regulation. And yet, when other doctrines were tested later in the Court. it proved that he was not simply an exponent of the current politically liberal ideology and reading that into the Constitution. He was careful to try to read neither the

doctrine of the preceding court nor perhaps his own personal views at a later time into the Constitution, but to simply read it as he saw it.

As we all know, Frankfurter was one of the foremost advocates of judicial restraint as a principle of constitutional law. He was also by most accounts a political liberal. In speaking of Frankfurter during the hearings Mr. Rehnquist stated again and again that he approved of this philosophy. For example, he said:

I subscribe unreservedly to that philosophy, that when you put on the robe, you are not there to enforce your own notions as to what is desirable public policy. You are there to construe as objectively as you possibly can the Constitution of the United States, the statutes of Congress and whatever relevant legal materials there may be in the case before you.

JUSTICE BLACK SAW COURT'S LIMITS

In addition to the writings of Holmes and Frankfurter, I think the later opinions of Mr. Justice Black demonstrate that he too believed the proper role of the Court was defined by the tenets of judicial conservatism. In recent years, there have been several examples of divisions on the Court between judicial conservatives and judicial activists. One example, is found in the poll tax case, *Harper* v. *Virginia Board of Elections*, 383 U.S. 663 (1966). A split in this case developed between Justices Black and Douglas, two generally acknowledged political liberals, over the constitutionality of Virginia's poll tax. An earlier supreme court case had upheld the constitutionality of the poll tax as a prerequisite to voting, and on the strength of this earlier case a lower Federal court had refused to strike down Virginia's tax. Douglas, for a majority of the Court, said that notwithstanding the earlier precedent, the poll tax violated the equal protection clause. In the course of his opinion he sated:

Notions of what constitutes equal treatment for purposes of the equal protection clause *do* change (383 U.S. at 669).

This attempt by the majority to update the Constitution in accordance with its opinions as to the best public policy, prompted Black to write a strong dissent in which he stated:

I can only conclude that the primary controlling, predominate, if not the exclusive reason for declaring the Virginia law unconstitutional is the Court's deep-seated hostility and antagonism, which I share, to making payment of a tax a prerequisite to voting.

The Court's justification for consulting its own notions rather than following the original meaning of the Constitution, as I would, apparently is based on the belief of the majority of the Court that for this Court to be bound by the original meaning of the Constitution is an intolerable and debilitating evil; that our Constitution should not be "shackled to the political theory of a particular era," and that to save the country from the original Constitution the Court must have constant power to renew it and keep it abreast of this Court's more enlightened theories of what is best for our society. It seems to me that this is an attack not only on the great value of our Constitution itself but also on the concept of a written Constitution which is to survive through the years as originally written unless changed through the amendment process which the framers wisely provided. (383 U.S. at 6770678).

Black alternatively concluded that, since Congress had the constitutional authority to abolish the poll tax, the decision should be left to it and not be made by the Court. The important aspect of his dissent is that, although he clearly believed that as a matter of policy the poll tax should be abolished, he declined to require it on the basis of a twisted interpretation of the Constitution.

During the hearings, the Senator from Arkansas (Mr. MCCLELLAN) quoted several passages from opinions written by Black in two other cases, *Lee* v. *Florida* 392 U.S. 378 (1968) and *Katz* v. *United States* 389 U.S. 347 (1967). All were similar in import to the passage from the Harper case. One was as follows:

In interpreting the Bill of Rights, I willingly go as far as a liberal construction of the language takes me, but I simply cannot in good conscience give a meaning to words which they have never before been thought to have, and which they certainly do not have in common with ordinary usage. I will not distort the words of the [fourth] amendment in order "to keep the Constitution up to date or to bring it into harmony with the times. It was never meant that this court have such power, which in effect would make us a continuously functioning Constitutional convention.

When asked if he agreed with this statement, the nominee replied:

I subscribe to the statement read unequivocally.

CLEARLY STATED BELIEFS

I have cited only a few instances in the hearings when Mr. Rehnquist illuminated his judicial philosophy. There are many other examples in the record, and they all have the same thrust. First, he believes that personal views are irrelevant to the decisionmaking role of a Supreme Court Justice. Second, he believes the Court's proper role is constitutional interpretation and that decisions of policy must be reserved to the political branches of Government, the Congress and the executive.

THE VALUE OF JUDICIAL CONSERVATIVES

I said at the outset, I believe it is in the best interests of the Senate to confirm the nomination of William Rehnquist precisely because he has embraced this philosophy. Regardless of our political philosophies, we in the Senate should appreciate that the presence on the Supreme Court of the judicial conservatives in the tradition of Holmes, Frankfurter and Black, is a firm cement for the foundation of our governmental system.

Judicial conservatives respect the boundaries and lines of demarcation established by the Constitution between the separate branches of Government. They recognize the necessity of upholding the Constitution and requiring conformity with it of legislative acts and executive undertakings, but they also seek to avoid the temptation to translate their personal opinions and preferences into fundamental law. Judicial supremacy in constitutional interpretation is one thing; judicial lawmaking and policysetting is quite another. Judicial conservatives know the distinction and observe it in the fulfillment of their offices.

REHNQUIST SHOULD BE CONFIRMED

Because William Rehnquist is a judicial conservative and unquestionably possesses other qualifications which meet the Senate's necessarily high standards for professional competence and unimpeachable integrity, he should be speedily confirmed.

ORDER FOR STAR PRINT OF A BILL

Mr. DOLE. Mr. President, as in legislative session, I ask unanimous consent that a star print be made of my bill, S. 2800, dealing with assistance to rural areas, in order to include corrections in the text of the bill and for the purpose of adding the names of additional cosponsors.

The ACTING PRESIDENT pro tempore (Mr. CHILES). Without objection, it is so ordered.

THE DEATH OF RALPH BUNCHE

Mr. BROOKE. Mr. President, it was with great personal sadness that I have learned of the death of Ralph J. Bunche.

I have known Dr. Bunche for many years. He was my professor of political science at Howard University. As a teacher he had the extraordinary capacity to inform and inspire his students.

His passing is an irreplaceable loss to the Nation and the world he served. Few men have had so great an opportunity to dedicate their lives to the attainment of peace. And even fewer men have had so many accomplishments in pursuit of that good.

Ralph Bunche was a founder of the United Nations and served that organization as its Under Secretary for Special Political Affairs.

It was Ralph Bunche who brought about the armistice between Israel and the Arab states in 1949. For this accomplishment, he received the Nobel Peace Prize in 1950.

It was Ralph Bunche who directed the U.N. operations in the Congo in 1960, which were primarily responsible for keeping the Great Powers out of an internal struggle and enabling the people of what is now the Republic of Zaire to resolve their own differences.

It was Ralph Bunche who directed the U.N. peacekeeping force on Cyprus, which prevented the outbreak of further hostilities between that island's Turkish and Greek citizens.

In his quarter century of service to the United Nations, Ralph Bunche has been personally responsible for most of the U.N.'s accomplishments in the achievement and preservation of peace. Over the last quarter century, his name has become virtually synonymous with that of the world body which he helped to found. His values and principles, and those of the United Nations, have been one: peace, human rights, justice, and social progress.

Others will follow in his footsteps, and will seek to carry out his goals. But few if any will ever be able to equal the personal and professional accomplishments of this great statesman, great scholar, great peacemaker, and great man.

To his wife, Ruth, and to his surviving children, Joan and Ralph, Jr., I extend

my heartfelt sympathy, for theirs is the greatest loss of all.

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

Mr. BROOKE. I yield.

Mr. FULBRIGHT. Mr. President, I wish to associate myself with the Senator's comments. I had not heard, until listening to what the Senator from Massachusetts has just stated, that Ralph Bunche had died. I have known Mr. Bunche for many years, and there is no man in public life for whom I have had a higher respect. He was extraordinarily helpful and effective in his position in the United Nations, and we were extremely lucky to have him.

I am very sad to hear the news of his death. Although I had heard he was in ill health, I did not know he had died until the Senator just stated it. So I wish to associate myself with his comments about the services of Mr. Ralph Bunche.

Mr. BROOKE. Mr. President, I thank the chairman of the Committee on Foreign Relations for his expression of sympathy. I know that the passing of Ralph Bunche, even though he had been sick, as the chairman has stated, for a long period of time, comes as a great shock to the Nation and to the world.

Mr. FULBRIGHT. He was a great man, I think, in every respect.

Mr. BROOKE. I thank the Senator. 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. Without objection, it is so ordered.

Mr. JAVITS. Mr. President, I wish to add my statement to those of other Senators in respect to the passing of Ralph Bunche, the Deputy Secretary General of the United Nations, who was a friend of mine for 25 years or more, and a man whom I considered most skillful and most authoritative in every way, and a Nobel laureate—a prize which he probably considered the greatest recognition of his life.

He was for me, Mr. President, one of the true world figures of our times, with a passion for peace, and yet, when he sought for peace, he sought it with a determination and a dedication that were a complete absorption, which, unhappily for our world, meant generally to vote for war.

In addition to all of that, of course, he was such a magnificent exemplar of the capacity of black people as to dash completely the parochial ideas of those who seek to draw a distinction between the intellectual capacities of black and white people.

I join the other Senators who have spoken in my expression of sadness and of loss personally and in behalf of my constituency, at Ralph Bunche's passing; and Mrs. Javits and I, since we both knew them well, and they had been in our home many times, extend our profound condolences and sympathy to Mrs. Bunche, and only hope that this exalted position of esteem in which the world held Ralph Bunche may be of comfort to her and to their family in such a trying hour.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Hackney, one of its reading clerks, informed the Senate that Mr. NELSEN of Minnesota had been appointed as a conferee at the conference on the bill (S. 382) to promote fair practices in the conduct of election campaigns for Federal political offices, and for other purposes, vice Mr. SPRINGER, excused.

The message announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1828) to amend the Public Health Service Act so as to establish a Conquest of Cancer Agency in order to conquer cancer at the earliest possible date.

The message also announced that the House had agreed to the amendments of the Senate to the bill (H.R. 6893) to provide for the reporting of weather modification activities to the Federal Government.

The message further announced that the House had passed the following bills, in which it requested the concurrence of the Senate:

H.R. 1163. An act to authorize the establishment and maintenance of reserve supplies of corn, grain, sorghum, barley, oats, and wheat for national security and to protect domestic consumers against an inadequate supply of such commodities; to maintain and promote foreign trade; to protect producers of such commodities against an unfair loss of income resulting from the establishment of a reserve supply; to assist in marketing such commodities; to assure the availability of commodities to promote world peace and understanding; to protect producers' incomes when rebuilding reserve stocks of wheat or feed grains; and for other purposes; and

H.R. 12067. An act making appropriations for Foreign Assistance and related programs for the fiscal year ending June 30, 1972, and for other purposes.

ENROLLED BILLS SIGNED

The message also announced that the Speaker had affixed his signature to the following enrolled bills:

S. 29. An act to establish the Capitol Reef National Park in the State of Utah; and

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.

The PRESIDENT pro tempore subsequently signed the enrolled bills.

HOUSE BILLS REFERRED

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

H.R. 1163. An act to authorize the establishment and maintenance of reserve supplies of corn, grain, sorghum, barley, oats, and wheat for national security and to protect domestic consumers against an inadequate supply of such commodities; to maintain and promote foreign trade; to protect producers of such commodities against an unfair loss of income resulting from the establishment of a reserve supply; to assist is marketing such commodities; to assure the availability of commodities to promote world peace and understanding; to protect producers' incomes when rebuilding reserve stocks of wheat or feed grains; and for other purposes; to the Committee on Agriculture and Forestry.

H.R. 12067. An act making appropriations for Foreign Assistance and related programs for the fiscal year ending June 30, 1972, and for other purposes; to the Committee on Appropriations.

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. JAVITS. Mr. President, the time has now come for Senators who have come to a final decision on the Rehnquist nomination, which we are now debating, to state their point of view. One could just wait for the vote and cast it without comment, but it seems fairer, in a matter which is of such deep interest to the country, where Members wish to evaluate the arguments of those for and those against the nomination, where perhaps even factual replies may come forward when particular issues are raised, to declare oneself as well as one's reasons as a matter of conscience and public duty, and it is in that spirit that I speak today. I bear in mind the dignity of this appointment, and of the individual, who is a well-known member of the bar, highly respected, and I know that most of his colleagues who have made any statements in opposition to the nomination have not expressed themselves in derogation of the nominee as an individual or as a lawyer.

Probably the most important single factor affecting my own judgment in this matter—and I have concluded that I must vote against this nomination—is a speech I made in the Senate on October 20, when it was believed that the President was considering a group of individuals from which to make appointments to the Court. That compelled me to think through my own attitude on the confirmation of Supreme Court nominations and what criteria I would follow in deciding upon my vote on those subjects, in the best interests of the people of my State and of the Nation.

I came to the conclusion that I had, in the case of the nomination of a Supreme Court Justice, the same obligations that the President did, and this is the reason why I have decided to vote "no," because I am applying that standard of value to the nomination of Mr. Rehnquist.

The standards that I established for myself as to what I would seek in a Supreme Court nominee are the following:

First, an abiding love of freedom and human dignity and justice, and deep faith in and respect for the people.

Second, a high level of professional competence and technical craftsmanship as a lawyer, and personal integrity worthy of the Supreme Court.

Third, high intellectual quality, with the capacity to understand complex sociological issues, and the ability to see

those issues within the framework of broader social, economic, and Government concerns.

Fourth, objectivity on the great national questions which are before, or likely to come before, the Court, combined with a sure understanding of the governmental imperatives embodied in our Constitution and the place of the Supreme Court in a government with an independent judiciary.

Fifth, an understanding of the constitutional limits upon the powers of the executive and legislative branches and of the States, particularly with respect to the individual's rights, and importantly also with respect to the individual rights of the weak and the unpopular.

Sixth, an understanding of the constitutional limits upon the judicial power also, with respect for the authority of the other branches of Government—particularly as Supreme Court Justices are not subject to removal through the political process.

In that same speech I noted a distinction between nominees for the High Court and nominees for the President's Cabinet. For example, because the same standards do not apply to the latter, and because I believe the President should be allowed great latitude in choosing his own official family, I had no hesitation about voting to confirm the nomination of Secretary of Agriculture Butz only last week, though I may not have agreed with him in many of the things he has advocated, or is said to have advocated.

But a lifetime appointment to a judicial post of such power and importance—particularly when the nominee is of an age where he will most probably influence constitutional history for a quarter of a century or more—requires a far larger role by the Senate if it is to fulfill its constitutional duty. So, in establishing my own criteria for acting on Supreme Court nominations, I said:

> I have heard it said that the Senate ought to confirm a nominee unless we find the nominee either lacking in integrity or basically incompetent, and that otherwise the choice is for the President. I thoroughly disagree, for both historical and practical reasons.

Interestingly enough, Mr. President, my staff has discovered a quotation from the nominee himself which may be illuminating on that score.

Twelve years ago, a young attorney, writing in the Harvard Law Record deplored the failure of the Senate to inquire into the judicial philosophy of nominees for the Supreme Court prior to confirmation. Arguing that those who would change the Court could best do so by exercising a coequal role with the President in filling vacancies on the Court, the author, Mr. Rehnquist, favored a broad ranging interview of the nominee. While a nominee's "integrity, his learning, his success at the bar would be the only necessary subjects of inquiry in the case of a judge appointed to a lower court" since "he is not there to apply his own judicial philosophy, willy-nilly to the litigants before him, but rather to decide the case of those litigants by application of the principles laid down by higher courts," different standards should be applied to nominees to the higher court.

Referring to the then recent—14 years ago—confirmation of Mr. Justice Whittaker, Mr. Rehnquist asked—and this is very illuminating:

> Given this state of things in March 1957, what could have been more important to the Senate than Mr. Justice Whittaker's views on equal protection and due process? It is high time that those critical of the present Court recognize with the late Charles Evans Hughes that for one hundred seventy-five years the constitution has been what the judges say it is. If greater judicial self-restraint is desired, or a different interpretation of the phrases "due process of law" or "equal protection of the laws," then men sympathetic to such desires must sit upon the high court. The only way for the Senate to learn of these sympathies is to "inquire of men on their way to the Supreme Court something of their views on these questions."

It is, Mr. President, precisely those criteria that I established before this nomination came to us, and it is those criteria which have led me to the conclusion that I must vote "no" on the confirmation of this nomination.

There has never been any question about Mr. Rehnquist's high intelligence, ability as a legal craftsman or his personal integrity; and none is raised now. I might say parenthetically that I heard with deepest interest the very moving statement by the Senator from Wisconsin (Mr. PROXMIRE), with whom I am very closely associated in many things, and for whom I have a very high regard, on that subject. The nominee is a man of high intelligence, great ability as a lawyer, and great personal integrity, and I raised no question about that whatever. But I believe it is my duty to oppose the nomination solely on the basis of my disagreement with Mr. Rehnquist on many questions of constitutional law, and that were I not true to my own beliefs, I would be failing in my duty to my State and to the Nation and its future.

One must be specific. So here are some specific areas in which I disagree with Mr. Rehnquist's concepts of the Constitution.

I gather that the nominee believes that the Attorney General may wiretap without judicial authority, the communication of any person he believes to pose a threat to the national security. I emphasize the word "he." I believe the extraordinary right to wiretap without a warrant granted by the 1968 act is limited to cases of subversion from abroad and not to a threat to national security known as "internal subversion." In the latter case the Attorney General should be required to get a court order. While Mr. Rehnquist has every right so to interpret the statute until the Supreme Court makes a final decision this term, I believe this distinction illustrates a deep philosophical gap between us.

I might add, in substantiation of that, that when I was attorney general of the State of New York, I also had wiretap authority with regard to every kind of crime, including very serious crime. I practiced what I preach; I got court orders, and got them under a code of practice which I initiated myself, and which contained all the requirements since recommended by bar associations and civil libertarians.

The next point upon which I disagree with the nominee is the question of Government surveillance. The nominee believes "that self restraint on the part of the executive branch will provide an answer to virtually all of the legitimate complaints against excesses of information gathering." I am far less sanguine, given recent revelations about the magnitude and scope of Army Intelligence activities, regarding the preservation of every American's right to be let alone. Courts are vital to the preservation of this right, and justices who see no danger of excesses amounting to a threat to freedom in such surveillance are unlikely to be vigilant in its protection. I thoroughly disagree, therefore, with that philosophical concept.

The nominee, in an article published just this year, makes a case for restricting the free speech rights of Government employees in terms indicating that he values efficiency in Government more highly than first amendment rights in such cases. Again, I philosophically disagree.

Another point, and this is very recent, and I do not think it has been adequately discussed in this very fine debate—I say that for both sides—is the nominee's role in the arrest and prosecution of thousands of May Day demonstrators this year—which I characterized at the time as "clearly improper," and precluding the possibility of successful prosecutions. The nominee had a significant role in those May Day arrests. According to the hearing record, he attended numerous strategy sessions in the Justice Department, in which he was an important official, when this policy was being formulated, and significantly, within days of this disaster in law enforcement, defended the Government's actions in a lengthy speech citing, in the course of that justification, the rather original and highly dubious doctrine of "qualified martial law."

To me, if there is anything outstanding about the record of the nominee which is exceedingly relevant because it is so contemporary, it is this relationship to the May Day arrests—not the demonstrations and not how they were dealt with, but with the arrests. There he was addressing himself to a legal problem which he must meet as a Justice of the U.S. Supreme Court.

In my judgment, a lawyer worthy to sit on the Court should have seen the fact that the nature of the arrests, and so forth, the manner in which they were carried out, guaranteed the shambles that resulted, characterized by strict detention without law and, in my judgment, without even color of law.

To me, this is a critically important point, because I believe that prosecutors have a duty to show people innocent as well as guilty; and they have a duty, certainly, to see that the rights of the accused are protected, even though he may not have a lawyer or an adequate lawyer. How much more is this true of so supreme a judge as a justice of the U.S. Supreme Court?

So, to me, this is a very critically important point. And it did not rest upon silence. I understand that he sat in on the strategy sessions. When my staff wrote this statement for me—or a good deal of it, in terms of the basic facts—they made the point that according to

his own testimony he did not protest decisions made at the Justice Department on the handling of demonstrators. I struck it out and paid no attention to it. If he wanted to sit silent, that was his business. But he did not continue to sit silent, a few days later when he spoke in North Carolina.

So far as I am concerned, when he expressed himself on the critical basis involved, that was very critical testimony as to his capability for being a Justice of the U.S. Supreme Court, in my eyes.

The next point is the nominee's critical role in the enactment of the District of Columbia crime bill last year included unqualified support for the repressive doctrines of preventive detention and no-knock warrants which I characterized in voting against the conference report as "a drastic overreaction to a critical problem."

Lest I leave some of those who want to be tough on crime with the idea that I am soft on crime, let me say that I have had enough experience on both sides of the issues, in highly litigated cases, to believe—and I state this not only as a Senator but also as a lawyer of very great experience—that right now, with the state of the law as it is, if a prosecutor has a case, he is not being inhibited or restricted by any of the protections which the so-called Warren court has established for the accused. On the contrary, if a citizen has no right to be pilloried or is innocent, he has an infinitely better chance, under those rules, than he had before; and it is right that he should, because that is the whole concept, philosophically, of our criminal justice system.

So, on the whole, it has been a completely net plus, and has not in any way, in my judgment, invalidated or jeopardized law enforcement by any prosecutor who had a case worthy of the name. If you are looking for shortcuts or ways in which to shut your eyes to the innocence of the accused because it is your job to get convictions—then, yes; it could embarrass you as a prosecutor. But that is not my idea of a prosecutor or a judge.

Finally, Mr. President, is what I consider to be—and this has been referred to in the debate—an almost incredible insensitivity to the critical national problem of the last decade and for perhaps decades to come, legislation to correct unconstitutional racial discrimination, which I find in the nominee.

When a private citizen with no constituency, "without a client" as Mr. Rehnquist himself put it, voluntarily works, writes and speaks against those necessary changes time and time again, his acts clearly reflect a deep personal conviction.

So I specify, Mr. President, as the ground for my opposition to confirmation, certain of the signal instances in which the nominee has shown this position.

I respectfully submit—and I have read it in detail—that a blanket statement which the nominee just made, literally the other day, about one of these incidents, in which he said:

> I wish to state unequivocally that I fully support the legal reasoning and the rightness from the standpoint of fundamental fairness of the Brown decision, does not seduce me in the face of the record.

Not that I am callous and indifferent to changes in man. It is properly in the mind of many Senators, and in my mind, that in the case of Mr. Justice Black, who turned out to be a great lawyer on the issue of equal rights in terms of racial discrimination, there was a great deal of record which went the other way. But where you have deep philosophical concepts, not just rumors about what Justice Black's connections were with the Ku Klux Klan, but where a man of ability and standing expresses profound philosophical concepts, the number of cases in which the Brown decision has to be applied practically, whether it is the pupil placement or busing or something else, are so infinite and so varied that the basic philosophical concept is infinitely more important than the generous statement of support for Brown against Board of Education, which is now the highest law of the land, anyhow, and is very unlikely, as a basic principle, to be overturned. Operating within it, you can either destroy or dismantle all those civil rights or establish and secure them. That is where I think the nominee falls short.

I say that for this reason: I took special note of his attitude toward local public accommodations statutes as recently as 1964, and the questions raised about practicality in respect to those statutes. I also took significant account of the general philosophical attitude that Mr. Rehnquist is not on the side of segregation or desegregation. If that is his attitude, then what is the Constitution all about?

Mr. President, on the issue of restraints on government under questioning by the distinguished Senator from North Carolina (Mr. ERVIN), the nominee said:

> I think it quite likely that self-restraint on the part of the Executive Branch will provide the answer to virtually all the legitimate complaints against excesses of information-gathering.

Mr. President, this, plus what I consider to be the neutrality on a firm constitutional guarantee represents, to me, profound philosophical approaches which I cannot agree with in terms of applying the criteria I have established for myself in sending a lawyer to be a Justice of the Supreme Court.

The much quoted text of the memorandum which the nominee drew for Mr. Jackson 19 years ago in which he sustained the rightness of the equal but separate doctrine of Plessy against Ferguson could properly be objected to by him. Mr. Rehnquist should have the right to explain the memorandum he wrote as a law clerk for Justice Jackson 19 years ago, and he should be permitted to explain that away, as to his present struggle, and in light of the passing of 19 years. I agree with that.

But when we have a constant succession of reiterations of the same philosophy going on through the years until the May Day arrests which are so current, there I must give weight to the previous statement because, in my judgment, this is a materially uncontradicted statement by the historical record based on the philosophical approach to the enforcement of constitutional rights.

Thus, I shall vote "no" for the reasons which I have stated.

I wish to refer also, as I think it is important, to a letter to Members of the Senate sent by 20 members of the Harvard Law School faculty who wrote as follows:

> Our opposition to Mr. Rehnquist is based on our perception that his views on the relation between government and the individual in the area of security and the relation between established power and the disadvantaged in the area of human rights are so exceedingly deferential to the former and so undervalue the latter as to place him outside that central stream.

Mr. President, I concur in that assessment and ask unanimous consent that the letter be printed in the RECORD.

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

LAW SCHOOL OF HARVARD UNIVERSITY,
Cambridge, Mass., November 29, 1971.

Hon. JACOB K. JAVITS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR JAVITS: I enclose a statement on the subject of the pending nomination of William H. Rehnquist signed by those members of the Harvard Law School faculty whose names appear at the bottom of the attached page.

Sincerely,

LOUIS L. JAFFE,
Byrne Professor of Administrative Law.

STATEMENT

It is doubtless appropriate for the President to exercise his power of nomination to shift the Supreme Court in the direction of his constitutional philosophy. But history, from 1795 to the present, demonstrates that it is no less appropriate for the Senate to deny confirmation to a Presidential nominee, despite his personal integrity and professional competence, because the Senate believes that the addition of a man of the nominee's philosophy is, under the existing circumstances, against the best interests of the country and the effective functioning of the Court.

In deciding whether to confirm the Hon. William H. Rehnquist in this period of deep change and conflict, the Senate has a special obligation to preserve the position of the Supreme Court as an effective organ in our system of government. Recent changes have already shifted the consensus or balance of opinion in the Court. Within the central stream of contemporary constitutional thought exemplified by all present members of the Court and their predecessors for the past thirty years, there is a wide range for differences of constitutional view—and thus for Presidential and Senatorial choice. Our opposition to Mr. Rehnquist is based on our perception that his views on the relation between government and the individual in the area of security, and on the relation between established power and the disadvantaged in the area of human rights, are so exceedingly deferential to the former and so undervalue the latter as to place him outside that central stream. Twentieth century problems require Justices with a clearer sense of the ingredients of constitutional decision.

Accordingly, we urge that confirmation of William H. Rehnquist be denied.

Victor Brudney, Derrick A. Bell, Jr., Vern Countryman, Abram Chayes, Alan M. Dershowitz, Ruth B. Ginsburg, William B. Gould, Philip B. Heymann, Louis L. Jaffe, Andrew L. Kaufman, Frank I. Michelman, Arthur R. Miller, Karen S. Metzger, David Rosenberg, Henry J. Steiner, Stanley S. Surrey, Laurence H. Tribe, James Vorenberg, Robert B. Washington, Jr., Lloyd L. Weinreb.

November 29, 1971.

Mr. JAVITS. Mr. President, I conclude as follows: With all respect—and I do not in any way beg that question—for Mr. Rehnquist's intelligence, ability, and integrity—and I have had the privilege of conferring with him personally and I am grateful to him for being willing to meet Members like myself on a direct basis—and with respect to his right as a private citizen to his convictions on equal rights and equal opportunity, this is a nominee whose philosophy as a lawyer and a citizen, in my judgment, makes him unacceptable as one of the final arbiters of the rights of 200 million Americans so that I cannot, in good conscience, vote to put him on the Supreme Court.

Mr. President, I ask unanimous consent to have printed in the RECORD an editorial from the New York Post of December 8, 1971, entitled, "The Rehnquist Rush," and an editorial from the New York Times of December 8, 1971.

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

[From the New York Post, Dec. 8, 1971]

THE REHNQUIST RUSH

While all sorts of important responsibilities and obligations go with the post of U.S. Senate Majority Leader, it is nowhere specified that the incumbent must assume the meek role of a minority follower.

Nevertheless, that seemed to be the preference of Sen. Mansfield (D.-Mont.) yesterday when he was asked about the prospects for a confirmation vote on Assistant Attorney General Rehnquist's appointment to the U.S. Supreme Court.

"I would hope we wouldn't have to spend too much time on Rehnquist," the Senate leader commented. "I don't think any minds are going to be changed." He said he was hoping for a vote by tomorrow.

With that kind of opposition, perhaps neither Rehnquist nor his allies need worry. In fact, however, there are many grounds for differentiation between Lewis F. Powell Jr., the Virginia lawyer confirmed yesterday, and Rehnquist. There is a clear case for re-examining at length on the Senate floor the discrepancies and evasions in Rehnquist's testimony. Surely the fact that the American Civil Liberties Union has reversed a 51-year-old policy of neutrality toward court nominees in rejecting Rehnquist deserves thoughtful attention from every wavering Senator.

At this moment, no agency except the U.S. Senate can hold up this obnoxious appointment and subject it to extended scrutiny—and it has the duty to do so. We urge Sen. Javits and others who have spoken out against Rehnquist's nomination to join in stopping the stampede. Rehnquist could well be serving—if confirmed—on the high court in the year 2000. What's the rush? Are his sponsors fearful that the record will not survive full debate—or new disclosure?

[From the New York Times, Dec. 8, 1971]

THE REHNQUIST NOMINATION

With only one dissenting vote, the Senate has confirmed the nomination of Lewis Powell to the Supreme Court. In this decisive manner, the Senate has shown how false was the imputation that it would not approve a Southerner or a conservative. When a nominee is a man of professional stature, wide experience, and a fundamental belief in the basic guarantees of the Constitution, no regional bias or philosophical disagreement bars his way.

It is a source of profound regret that President Nixon's other nominee for the Court is not of the same quality. Instead, by submitting the name of William Rehnquist, the President has once again provoked the turmoil of a confirmation struggle.

The grounds for rejecting Mr. Rehnquist are quite different from those on which the Senate refused to confirm two earlier Nixon nominees. His record does not show either insensitivity to potential conflicts of interest or deficient professional qualifications. Rather, his are the defects of basic insensitivity to racial equality and seriously deficient understanding of the Bill of Rights.

He has repeatedly shown himself opposed to judicial or legislative efforts to eliminate racial discrimination. There was a time decades ago when a nominee with Mr. Rehnquist's opinions would have been confirmed for the Court with hardly a ripple of controversy. But twenty-five years of Supreme Court rulings, Congressional legislation and social upheaval have made him an anachronism. Commitment to equality of treatment and opportunity for all races has become one of the indisputable standards of modern constitutional democracy. Since Mr. Rehnquist is lacking in such a commitment, the Senate if it confirmed him would be voting to turn back the clock.

Mr. Rehnquist's evident lack of sympathy for individual liberties also disqualifies him. The Constitution is a libertarian document. The first ten amendments and many other provisions are prohibitions against the exercise of certain kinds of power by the Federal Government and against the arbitrary, excessive, or unreviewed exercise of other powers.

As a political activist and as an Assistant Attorney General, Mr. Rehnquist has relentlessly argued in favor of abridging and diminishing the liberties of the citizen and enhancing the powers of Government—to tap the citizen's phone and "bug" his home and office, to enter his premises without knocking, to use tainted evidence against him, to arrest him in dragnet sweeps, to compel him to testify against himself, to deprive him of his right to practice his profession if he is a radical lawyer.

It is easy and comfortable for the ordinary, law-abiding citizen to assume that these intrusions of governmental authority will never touch his life, but the whole history of human liberty shows that the unpopular dissenter is the first—but rarely the only—victim of arbitrary power.

In voting for the first time in fifty years to oppose a nominee for public office, the national board of directors of the American Civil Liberties Union stated: "We know Mr. Rehnquist as a person committed to the notion that in every clash between civil liberty and state power, it is civil liberty that should be sacrificed."

Free societies are judged by how they treat their racial minorities and by the extent of the liberty they allow the individual citizen. On both counts, Mr. Rehnquist fails to qualify as one of the guardians of a Constitution of free men.

Mr. BAYH. Mr. President, will the Senator from New York yield?

Mr. JAVITS. I yield.

Mr. BAYH. I have listened with great interest to the statement of my friend and colleague from New York and I just want to add my voice in agreement to the position he has espoused.

I could not help thinking that the editorial that the Senator put in the RECORD entitled "The Rehnquist Rush" is most appropriate here, on the eve of the vote on the cloture motion, particularly when we look at the amount of time that has been utilized during past deliberations on Supreme Court nominees. It is even more relevant when we compare this situation with the way other legislation of less significance has been treated in this body, and when we consider the critical nature of the decision we are making here. It is not a transitory decision that can be changed when we come back, or with a new Congress or a new President, but this decision is one for life—not for the life of any Member of the Senate, or for any President, but for the life of the nominee.

I, for one, hope that it will be a long one. But, because of the duration as well as the philosophy of the nominee, I think that the Senate would be better advised to consider this nomination more carefully under present circumstances. We are about to be denied this opportunity and I appreciate the insistence of the Senator from New York that we study this more carefully.

Mr. JAVITS. I thank my colleague very much for his graciousness. I am not satisfied that we will be denied this opportunity. I would like to state my own judgment as to the votes on cloture. I am glad that the Senator from Indiana (Mr. BAYH) was the principal leader of the opposition, as a member of the Committee on the Judiciary and as a Senator, and has stated that he does not intend to and is not filibustering this nominee, and that he certainly will not be a party to a filibuster. That ground rule having been laid down, I believe that the opponents are entitled to full and fair debate. I believe also that Senators are fair enough, even if they will vote for Mr. Rehnquist—although I will vote against him—to assure that debate—just as I will, at a given time, if I am satisfied—and I am against the Rehnquist nomination—I am satisfied that the opponents have had full and fair debate. I shall vote for cloture and then I shall vote against the nominee.

The matter needs to be fully explored. We have a literal veneration for this body, and I have that, too, of course, and I know it is shared by every Senator. It will be further justified by the fact that Members will vote on cloture, and they should vote on cloture, whatever our feelings about our desire to go home, which we all share—and we will go home—it is not a matter of weeks or months but only a few days.

It is the feeling of all of us that we have enough self-discipline to see that everyone gets a fair chance at it, and then when we have had that fair chance, we will vote our consciences yea and nay; but it will not affect what we consider to be a fair opportunity to debate. I hope

that will be the history of the votes on successive cloture motions.

Mr. BAYH. I hope that the Senator is right. I appreciate not only his confidence but also his articulating so clearly and well what our responsibility is.

I came on the floor when my colleague from Indiana made reference to the fact that the Christmas vacation was like a carrot that was being dangled in front of our noses, urging our rapid solution to this problem. On the one hand it is a carrot being dangled in front of our noses, and on the other it is a stick on the back of those of us who feel we have not had enough time. I think the way to be the most unpopular Member of the U.S. Senate is to proceed as the Senator from Indiana has, because we all do want to go home. Unfortunately, most Senators have other specific jurisdictions within the Senate that demand their attention immediately on a day-to-day basis. They do not have the time to study this matter thoroughly, as some of us on the Committee on the Judiciary do. Perhaps they would reach contrary conclusions from the Senator from Indiana, but at least it would seem to me that, in light of everything else that has been happening over the past few days—everything that is calling the attention of almost every Senator—that we ought to have a little time to meditate upon and to deliberate upon the matter before us.

I appreciate the concurrence of the Senator from New York.

Mr. SAXBE. Will the Senator yield?

Mr. BAYH. I yield.

Mr. SAXBE. I just must point out at this time when we are talking about sufficient time, the lengthy quorum calls and the absence of many on the floor. We worked last Monday at probably the slowest pace the Senate could work. I was here this morning at 9 o'clock, and we could not find anybody to talk until after 10 o'clock. Last night the Senate quit at 4:30 or 4:45, and probably will want to do it again today.

I just think, with all the gratuitous words in the past about this, we need time to discuss this, and we need time to debate this. It seems to me that these self-serving words should not go unchallenged, when there is nobody to talk and nobody wants to talk.

Mr. JAVITS. Mr. President, I did not complain about the Senator's rights or his point of view. I have been here a long time, 15 years, and with all respect, I do not believe that it is indicated that all time should have expired and the debate ended. A debate has to incubate. I have seen it happen time and again where on the 14th, or the 15th day, or the 13th day, or the 8th day—whatever is the given situation—the debate suddenly becomes hot and things come up which have not come up before.

A new light is cast on a given situation somehow which takes months, like a baby, to just state the fundamental issues in a debate and argument. I think it is rather more our fault, I say to the Senator, that we do not have enough Senators on the floor. We are all terribly preoccupied with many, many things. I will not give an accounting for myself, although I think the Senator will agree that I work as hard as anybody does here. I do want to say—and I say it unilaterally—I have no desire to have controversy with the Senator, but I do think in putting the matter before the country in terms of the length of debate, that something must be said for the fact that it does take a certain amount of time, even if that time is consumed in quorum calls, or days on which there is an early adjournment, in order to develop that climate and understanding which represents the consummation of a complete debate. I say that unilaterally. That is my idea.

Mr. SAXBE. I would just like to say on that matter that the nomination was made October 21 and the hearings began on November 3. That is some time ago. The hearings concluded on November 10, and the committee wanted to act, and Senator BAYH and a few others did not want them to act. They met on November 11. They met on November 18. They met on November 23. The minority views were filed on November 30, and the debate began on December 6. That was not yesterday, and I would like to also point out that Mr. BAYH at the time on December 6 said, "and maybe the week after that."

They were talking about time, and Senator HRUSKA was trying to say that we will be here all week and everyone will have his day in court, but Mr. BAYH said:

> Maybe not that week; maybe the week after that. Does not the Senator from Nebraska feel that perhaps it would be more helpful to those who are trying to study this, since he has made certain charges, for the Senator from Indiana to have a chance to have a colloquy right now?

Mr. BAYH. Would the Senator put those remarks in proper perspective? Are those words out of the air, or are they from the hearings, or are they from the RECORD?

Mr. SAXBE. I am reading them from the RECORD.

Mr. BAYH. Since the Senator is using my words, I would like to know where I used them.

Mr. SAXBE. This is in the CONGRESSIONAL RECORD of the Senate of December 6, 1971.

Mr. BAYH. I thank the Senator for informing me where I was when I said that.

I would also point out to my friend, the Senator from Ohio, that he has not had the opportunity, because he had duties elsewhere, to follow this debate on a day-to-day basis or an hour-to-hour basis, as the Senator from Indiana has. That is not his responsibility, and I do not say that critically at all.

Perhaps he was unaware, when he suggested that the Senator from Indiana was holding up debate, that Senator HRUSKA and members on his side of the Committee on the Judiciary absolutely refused to let us vote on the first day the Committee on the Judiciary met on the nomination of Lewis Powell. Therefore, we sat here until the day before yesterday with one totally unnecessary vacancy. There was no opposition to Mr. Powell then. We were the ones who urged that this man, over whom there was no opposition, be sent to the Senate as soon as possible. The other side refused.

Mr. SAXBE. All I am trying to point out in my statements here today—and I felt called upon after the statement of the Senator from New York—is that a small minority of Senators who are opposed to the nomination are trying to prevent a vote on this nomination, and while saying that it is not a filibuster, at the same time they are not taking the time that is available, if they want to present their views. They are dragging their feet. It is a filibuster, and I hope that they will recognize that the majority should have the opportunty to express their will.

Mr. JAVITS. Mr. President, as I have the floor, I wish to say that this particular member of that minority—if it be a minority, which is yet to be seen—will act diligently. I have already made plain my view. Given a reasonable period for gestation of this issue, I will myself vote for cloture, and my vote will help to bring it about. So I have no trouble with my own conscience in terms of the length of the debate. I would say that debate having opened on December 6 on a matter as portentous as this—again it has been unilateral, and my friend and colleague, the Senator from Ohio is entitled to his views as much as I am to mine—this is not a totally inordinate period to close off debate by cloture tomorrow. This is still the same week in which debate opened in the Senate.

I used to be on the Committee on the Judiciary; I am not now. Most of us who had to await the action of the committee, then had to analyze a record which is very complex, and a record that one must really dig into. It took me most of a day and a half to acquaint myself with the ins and outs of this controversy until I felt I was ready to make up my mind.

I insisted to the press that I be listed as undecided because I was. It was only after giving it time and attention that the nomination deserves that I was able to announce my views today.

Mr. President, as I say, I have no desire to claim that my view is superior to that of my colleague, the Senator from Ohio, but I do not believe that has been foot dragging or a filibuster. And I hope very much that whatever may be the views, the Senators will agree to that in terms of fairness and free and open debate.

Mr. COOPER. Will the Senator yield?

Mr. JAVITS. I yield to the Senator from Kentucky.

Mr. COOPER. I agree with the Senator from New York on the question of voting on cloture.

The Senator from Ohio may be correct in stating there was delay in reporting the nomination to the Senate, a delay which need not have occurred; but nevertheless we have had a week to debate this matter.

Without regard to my position on confirmation, which I will state, because of the importance of the confirmation of a Supreme Court Justice, I will not vote for cloture this week. I will vote for cloture next week, but I think it sum-

mary to close debate tomorrow or Saturday on an issue which is of importance to the country.

Will the Senator from New York yield to me for 4 or 5 minutes?

Mr. JAVITS. Yes. Why does not the Senator get the floor himself?

Mr. COOPER. I want the Senator from New York to be here.

Mr. JAVITS. Of course.

Mr. COOPER. I am always glad to listen to my colleague and close friend from New York, and particularly on legal and constitutional matters. I consider him the greatest lawyer in this body, dispassionate, a man of judgment, restraint, and one whose conscience and mind always moves him to what he thinks is right.

He has concluded to take the position he has stated, because of a series of statements and actions by the nominee for Associate Justice of the Supreme Court.

His conclusion that the nominee has fixed philosophical and institutional views on the question of civil rights and civil liberties which would not change if he became a Justice of the Supreme Court causes me to say that there are certain matters in his record which have given me trouble and pause. But I have reached a different conclusion than that of my friend from New York and I would like to address myself to the specific issues raised by the Senator from New York.

First, I shall speak of the memorandum the nominee wrote to Justice Jackson in 1952 when he was his law clerk, dealing with the segregation of schools, supporting Plessy against Fergusen and stare decisis. I think we have to consider the memorandum in the context of the times. In 1952, the Supreme Court had not made its decision, and could not reach a decision until 2 years later. Four cases had been appealed from the lower courts. The lower courts had held in the two cases from the Southern States, and from the non-Southern States involved, Delaware and Kansas, essentially to the doctrine of Plessy against Ferguson, although they had trouble with it. As I have said, it took 2 years for the Supreme Court to reach a unanimous and proper decision Brown against Board of Education in 1954. I do not believe the memorandum can be taken out of the context of the times. Many judges and lawyers were in disagreement on that subject.

I am troubled about the nominee's statement on the public accommodations ordinance, proposed in Phoenix City in 1964. The House had passed a bill approving public accommodation and there was a continuing debate in the Congress and throughout the country upon the subject.

The Senator from New York will remember that we served together as members of an ad hoc committee, to manage on the floor certain titles of the Civil Rights Act of 1964. Senator Douglas and I were assigned to assist in the management of the title dealing with education and desegregation of schools.

I supported the act, voted for it, and had introduced bills on public accommodation and civil rights before the administration introduced its bill. So naturally I have been troubled about the statement.

But in fairness, I must bring out a fact that has not been mentioned in this debate, to my knowledge. It has been argued by my distinguished friend from Indiana that Mr. Rehnquist did not change his mind about public accommodations until he was a witness before the committee. The RECORD shows that in 1966, when he was a representative to the conference on uniform State laws, one of the subjects of that conference was public accommodations, as a part of a uniform act for adoption by the States. The nominee voted for the draft model act, which included public accommodations. That was 5 years ago. So we cannot say, as was argued in the minority views, and in speeches on the floor that he only reached support of public accomodations in 1971.

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

Mr. COOPER. I yield.

Mr. BAYH. I do not wish to interrupt the Senator, but this is one of the points I was going to bring up relative to my good friend from Ohio, who asserted that we were conducting a filibuster.

One aspect that did not come to our attention when the hearings were held, and did not come to light until the final day in executive session when we voted, was this uniform commission matter.

I would like to point out to my friend from Kentucky that although he did vote as was stated, he did everything he could to lessen the impact of that effort so that it was not a uniform bill but a model act, relieving himself of the responsibility to go home and urge its adoption.

Mr. COOPER. It was a model act, hoped to be made uniform throughout the United States. I say this in all respect, but I do not agree with the Senator. The nominee, according to the RECORD, did not oppose the accommodations section and voted for it in 1966.

Mr. BAYH. With all respect, that is not what I said. I said he not only did everything he could to oppose the uniform act and public accommodations, but he led the effort to make it a model act. That commission did not adopt a uniform act; it adopted a model act.

Mr. COOPER. I understand, but I am talking about the public accommodations section.

The contrast between his position in 1964 and 1966 is much different than arguing that he waited until 1971, as a witness before the committee, to assert his support of public accommodations.

I now proceed to the next charge concerning his position on proposals for the city of Phoenix, Ariz., on schools—desegregation and other problems relating to discrimination in the schools. The minority brief does not quote his statement on integration fully. The last clause is left out, in which he said he believed in a free society where every man stands equal before the law to have the maximum liberty. It may be construed in various ways, but that is what he said. It does not appear in the minority brief, and I have not voted in reference to it in the speeches made against his confirmation.

With respect to the subject of busing, raised in connection with Phoenix and inherent in the "neighborhood school" position that also is still very much before the country. So far the Supreme Court has not passed comprehensively on the issue. There have been a number of decisions in Circuit Courts of Appeals varying decisions, some ruling against busing, some giving it large scope, some allowing it in limited circumstances, but the Supreme Court has not yet made a comprehensive decision. The debate in Congress on busing continues.

I know that some leaders of liberal beliefs—and I hope I am considered a liberal in my viewpoints—have changed their position of support of busing, and with the exception of a few brave men—the Senator from New York (Mr. JAVITS) is one, the Senator from Michigan (Mr. HART) is one, are fleeing from what they believe to be the opinion of their constituents.

So the argument about what the nominee said in 1967 is not conclusive either on the issue or on his past beliefs. The courts continue to decide the cases on "busing" and "neighborhood schools" on the facts.

Now I go to the question of wiretapping and surveillance. I wish the Senator from New York were here, because I believe that his statements on that subject do not conform wholly with the record of the Congress and the Executive. On the question of wiretapping for national security, it has been noted that not only has every President claimed this right, but has used it. The distinction between its use against external subversion or internal subversion I do not believe has been closely examined, but it has been used, and inferentially, supported by the Congress.

Also, it appears in the RECORD that the nominee, on this issue of the absolute right of the Executive to exercise the right of wiretapping in cases of national security, has questioned the theory of absolute right.

On the question of general wiretapping and surveillance, I would like to point to the attention of the Senate the fact that Congress in 1968 passed the omnibus crime bill, expanding authority for wiretapping, and the bill passed almost unanimously. It had a provision which allows officers to wiretap without a warrant if the officers make the decision that they do not have time to secure warrants in the proper manner.

Mr. President, I spoke against the bill on the floor of the Senate, upon the basis that it gave an unwarranted right and power to the Attorney General, or police officers. I voted against the bill. In that same bill, there were sections designed to weaken the famous cases of Miranda and Mallory, concerning the admission of confessions and the right of a person not to be detained after arrest and to be taken immediately before a magistrate. I make these points to indicate that the Congress seemed to have approved these provisions now used as arguments against the nominee.

In these circumstances, I find nothing

on the question of wiretapping which argues against the confirmation of the nominee.

Finally, on the question of the May Day arrests, I have some questions about the arrests. I do not know how much the nominee had to do with it. I assume he could not give an order. There is a statute which prohibits demonstrations upon the Capitol Grounds. I do not think it is constitutional. If there is any place where the people should have a right to present their petitions, it is the Capitol. The statute is on the books, however, and police authorities must carry out the law and its provisions. I am a supporter of first amendment rights; but a great many of the practices claimed by some as rights—violence, disobedience of law—are not first amendment rights.

Yet, reviewing each one of the arguments made against the nominee, I have come to the conclusion that in several cases they have been strained, and I do not see a case for voting against the nominee.

Finally, may I say this: It is said by all that he is a man of unquestioned integrity and great ability. If a man is of unquestioned integrity and great ability, it implies that he also has the quality of mind and of intellect, and character that he can look at cases upon their merits, that he can change, if necessary, any views he may have had, upon that great Court.

As my colleague, the Senator from Ohio, has said that is the record of the Supreme Court and of great Justices. There are Justices who have changed their minds. Justice Black was not a great lawyer when appointed to the Court. His practice was as a police court lawyer. I did not say police court lawyers are not good lawyers, but they do not try a great variety of cases. He had been a member of the Ku Klux Klan. He said he had been a member of the Ku Klux Klan. But he became a great champion of civil rights and civil liberties.

There are many other examples.

A few days ago the Senator from Arizona (Mr. GOLDWATER) placed a statement in the RECORD which, honest as he is, he said, not being a lawyer, it was prepared by his legal counsel. He named eight or 10 great Justices of the Supreme Court, described their background, their early views and how—as Justice Frankfurter once said in an opinion—the law itself, the times come to bear upon them as judges.

I think, with the exception of Justice Taney, I would agree with the estimates of the Justices made by the Senator from Arizona (Mr. GOLDWATER). Two of them were natives of my State. Judge Brandeis was born in Louisville, Ky., and Justice Harlan, the grandfather of the great Justice who has just completed service on the Supreme Court, was from Kentucky. The earlier Justice Harlan was a southerner, who had served in the Confederate Army, and was a former slaveowner. He wrote the great dissenting opinion in the civil rights cases for public accommodations based on the 14th amendment.

I take no issue with any of my colleagues in this Chamber. I have the greatest respect for their positions but there are organizations that want members of the Supreme Court to be with them in all matters, whether or not justified. That is not the proper function of a Justice.

Finally, I cannot accept the position that a man of integrity, which is admitted, a man of ability, which is admitted, a man of scholarly attainments and intellectual ability, which are admitted, cannot meet the problems of this country as a member of the Supreme Court.

Recently, I read a statement of Justice Frankfurter on this very issue expressing his belief in the conscience and mind of a Justice to discharge this duty. I read a little book a few nights ago by Justice Jackson, "U.S. Supreme Court—American System of Government."

He asserted the same faith.

We remember the writings by Brandeis, Cardozo, Holmes, maintaining that a man of character, intellect, integrity, and ability deserves that same faith.

I think it illiberal to hold otherwise. I think to say that a man is frozen, because of a few statements or positions—and there are four or five, and they have been strained, not by the argument of my friend from New York, but strained in the minority report. There have been omissions from the minority report. I noted an omission upon the question of harassment at the polls. The minority report does not contain the full text of the letter by Judge Hardy.

I have faith that a man of his ability, integrity, and scholarship can meet the challenges and the great problems of the Supreme Court, which are our problems, in the future.

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

Mr. COOPER. I yield.

Mr. JAVITS. Mr. President, I could say evey word the Senator from Kentucky has said about me about him, in terms of his being a lawyer, his character, and his honesty; and I do think that by an interchange between us, we might helpfully sharpen the issue for our colleagues.

But I shall not endeavor to do anything, but emphasize the two points that I think are most important when laid side by side with what my beloved friend, the Senator from Kentucky, has said.

I think the two important points are these:

First, I have based my judgment not upon the individual instances, beginning in 1952, because I said myself—the Senator may not have heard me, but that is not material—that surely I have said things myself that I would be very sorry about, and I would expect to be understood and forgiven within the context of my life.

So I based my judgment on the total 19 years from the time he was a clerk up until the May Day demonstrations, and his testimony before the committee as a whole, and I see, after considering it as a whole, rather a hardening, in his professional capacity as a lawyer, of opinions with which I could not agree. That is point one.

My second point is that there may be a basic difference between my criteria in casting my vote and those of the Senator from Kentucy or other Senators. I do not believe my criteria can be based solely on the fact that he is a man of integrity, ability, and professional standing, and a sincere man, because a man can be extremely wrong and yet extremely sincere. Some of the most inveterate opponents of civil rights in this body, in all the years I have fought for it since I have been here, since 1957, have met fully every one of those qualifications—able, sincere, and good lawyers; but they were absolutely wrong, and the Court said they were wrong time and time again.

I believe that it is my duty to determine, in my best conscience, whether this is a nascent Justice Black or whether this would be an influence on the Court which I think would be inimical to the future of our country. In this particular case, I came down on the latter side.

I might have voted against Black. I do not know what I would have done then. But then I would have been the first to throw myself at the feet of the Senate and confess my error. But I believe I would have had to judge at that time, not just on my finding of the fact that he was a man of quality, integrity, and professional skill, but that his basic constitutional philosophy gave an assurance of an approach to constitutional questions which might be for me or against me, but which I thought was consonant with the fundamental thrust of the Constitution itself.

Mr. COOPER. Let me say just one more word.

I agree with the Senator from New York that we cannot consider this nomination solely on the question of ability, integrity, and scholarship, as important as those qualities are. But I came to the conclusion, after looking into the broader questions, that the statements in question did not confine him, and that he could rule justly upon questions before the Court, not only from a sense of justice, but from a mind which, by reason of his abilities, is more likely to be enlightened than the mind of a lesser man.

A Senator's position will always be interpreted in different ways. I do not know that I have ever been more consonant with the views of another Senator on civil rights and liberties than I have been with those of the Senator from New York than with anyone else in this Chamber. I do not think we have ever differed upon the issue or the necessity for action, and we have voted together. Once or twice we have differed as to the best means to accomplish the end, I remember once on the question of voting rights and on another occasion upon public accommodations; but we have usually been together, and I am very proud to say that while in my whole life, this question has never been a problem to me, at home before I came here, as a judge, or as a Member of the Senate, I have been helped greatly by the ability, the reasoning, and my association with the Senator from New York.

Mr. JAVITS. I thank my colleague very much.

Mr. BAYH. Mr. President, I listened with a great deal of interest to the statement of my friend from Kentucky. As he knows, I have the greatest of respect and admiration for him.

I want to say just one or two words to clarify some statements that have been made on this issue, wherein our efforts have been attributed to filibustering. On occasion certain Senators who had suggested they had a speech to make were not here at the appointed hour. But I would suggest that anyone who is familiar with what most of the Senators are doing now—working on conference committees and trying to wind up the last minute legislative issues for which they are responsible—knows full well why it is extremely difficult for any Senator to be on this floor at any specific time. That reaffirms the position of the Senator from Indiana that we need more time for Senators who want to speak and who want to listen to the colloquy to be here.

Perhaps my friend was not here when the distinguished minority whip suggested we had a filibuster going on before even one word had been spoken.

I want to give one word of explanation to my friend from Kentucky relative to some items that he characterizes as omissions from the minority report: We have taken sentences and we have taken parts of letters and included them in the minority views. But certainly this is in no way designed to distort their true meaning. Nor does it result in any distortion.

Anyone who is at all familiar with the hearing proceedings knows that there is a full, detailed, word-for-word record of everything that was said, and both statements, parts of which are in the minority views, are listed fully not only in the hearing record but also in the CONGRESSIONAL RECORD. If we had listed every document to which we referred in the minority views, we would have had minority views fully as voluminous as the hearings.

I hope that any Senator who reads the minority views will not take part of a sentence or part of the letter but will look to the whole content here. Normally when a report is printed one tries to hit the high points and decrease the volume that otherwise would result.

I am concerned about cloture being invoked at this time because we still have facts that just now are being brought to our attention which have not been considered thoroughly. I have to admit that some of these facts have not even been adequately considered by the Senator from Indiana, much as I have tried to be familiar with the issue before us. There has been a great deal of discussion relative to the Brown against Board of Education memorandum written by Mr. Rehnquist. Only yesterday afternoon—not even a day ago—a letter came from the nominee trying to explain the content of that previous memorandum.

On first examination, the explanation of that earlier memorandum and the efforts to try to attribute those thoughts not to the nominee but to a former Justice of the Supreme Court, who is no longer alive and is unable to defend himself, raise rather critical questions in the mind of the Senator from Indiana. I am hard pressed to know what the man thinks. I would like to take everyone at his word, just as I would like to be taken at my word. It is only when I find contradictory remarks attributed to an individual on the issue at point that I then have cause to wonder.

Because of the critical nature of the Brown against Board of Education case, because of the controversy surrounding the Brown against Board of Education memorandum, and because of the letter yesterday, the Senator from Indiana would like to take a few minutes of the Senate's time to try to put this whole thing in perspective, with emphasis on the fact that we do not know—and probably cannot know—the answers. I do not know. I have deep concerns, but I must say that if I were called to judge beyond a reasonable doubt now on the question I am about to raise, I could not.

Last Sunday, December 5, it became known that William Rehnquist had written a memorandum to Mr. Justice Jackson during the 1952 term of the Supreme Court, while he was clerking. This memorandum urged that Plessy against Ferguson was right and should be reaffirmed. I was not out searching for this; neither was anybody on my staff. I received a phone call from a newspaper reporter who said, "Did you know this article was going to appear in Newsweek?" And there it was.

I still do not know what the source of that memorandum was. But nobody has doubted that Mr. Rehnquist did, indeed, prepare it. There is now some question as to the reason why he prepared it and whether these were his thoughts or those of Justice Jackson. But there it came Sunday night, about 6 or 7 o'clock.

The conclusion, the tone, and the language of this memorandum are strikingly close to the hostility that Mr. Rehnquist expressed to equal justice under law throughout his later life, including his opposition to a public accommodations ordinance in Phoenix in 1964, his opposition to anti-blockbusting and other key provisions of the Model State Antidiscrimination Law of 1966, and his opposition to modest efforts to deal with de facto school desegregation in 1967, coupled with his statement at that time that we are "no more dedicated to an integrated society than a segregated society."

Despite the very substantial questions presented by this memorandum, and in contrast to the Justice Department's almost instantaneous—indeed, in some cases, anticipatory—response to other questions raised by the nominee's nomination, no response was made until the afternoon of Wednesday, December 8. We learned of this on Sunday, and it was not until late in the day yesterday that somebody came forth with an explanation.

Mr. Rehnquist's letter now says unequivocally that he fully supports Brown against Board of Education. One would certainly hope this statement was the fact and is, indeed, his true feeling. But I must admit that a statement made at the crucial moment in a nominee's confirmation debate, in which we now find ourselves, must certainly be read in the light of this circumstance and the condition in which it is made, and with a view to a lifetime of prior opposition and, indeed, on occasion antagonism toward the rights of minorities. The most recent example of that antagonism occurred less than 2 years before he became an official of the Federal Government back in 1969. One has cause to wonder.

A matter of even greater concern than Mr. Rehnquist's recent statement on Brown against Board of Education is his questionable effort to attribute the ideas expressed in the memorandum to the late Justice Jackson. I do not think any of us, in fairness to the nominee, can really recall with total precision what was going on in our minds 19 years ago. I could not. I think most of us would be quick to say, "I do not know. I do not remember." The Senator from Indiana is concerned about the efforts not to say, "I do not know," or, "I do not remember." Any of us could understand that. But the attempt is made to suggest that these thoughts were not Mr. Rehnquist's although his initials appeared on the memorandum, and he has not denied preparing it. Instead he has said that these were really thoughts of the late Justice Jackson.

Mr. Rehnquist claims that his memorandum was written after an oral discussion with Justice Jackson and "as a statement of his views to be used at the conference of Justices rather than as a statement of my views." Unfortunately, as Mr. Rehnquist knows, it is impossible for Mr. Justice Jackson to deny these allegations. But a good deal can be inferred from the text of Mr. Rehnquist's 1952 memorandum.

An examination raises the gravest question of basic honesty and candor. If a man felt something in 1952, he ought to admit it and say he has changed his mind; or, if he cannot remember, he ought to say that. But I am deeply concerned when, instead of following either of these alternatives, there is an effort to shift the blame for these thoughts and attribute these thoughts to someone who is no longer alive.

In the first place, contrary to Mr. Rehnquist's explanation, the entire tone of the memorandum is one from a law clerk to his Justice, not one of a Justice's draft statement prepared by a clerk. Would a law clerk really have put such conclusory language, such sweeping statements, into the mouth of a Justice, after an oral discussion on the subject? If the views were really prepared for the purpose Mr. Rehnquist suggests, would they have been headed "A Random Thought on the Segregation Cases"? That is hardly the kind of brief a Supreme Court Justice would carry into a conference to argue with his fellow justices.

Even more damaging is the final paragraph of Mr. Rehnquist's 1952 memorandum. Even after an "oral discussion", would any law clerk have written for his justice's mouth the sentence:

> I realize that it is an unpopular and unhumanitarian position, for which I have been excoriated by "liberal" colleagues, but I think Plessy against Ferguson was right and should be reaffirmed?

Mr. Rehnquist now claims in this letter that this sentence "is not an accurate statement of my own views at the time." But does this sentence express the beliefs of Mr. Justice Jackson—who joined the court's unanimous decision in Brown against Board of Education—or does the memorandum instead contain the thoughts and language of William Rehnquist, the same William Rehnquist who in 1957 wrote an article for U.S. News & World Report criticizing:

The tenets of the "liberal" point of view which commanded the sympathy of a majority of the—Supreme Court—clerks I knew?

Mr. President, there is a great similarity between the feelings of Mr. Rehnquist's acknowledged piece from 1957 and the concluding paragraph of the 1952 memorandum.

Mr. BAYH. I appreciate the comments of the Senator from Kentucky. I certainly hope that will always be the case even when we are sometimes on opposite sides of an issue.

Mr. President, equally damaging is the fact that the thoughts in this memorandum are consistently at odds with the most fundamental principles of Mr. Justice Jackson, principles enunciated year after year in his writings, in his decisions, and in his opinions on the High Court, and this is something I am still trying to answer in my mind. I do not know the answer to the question. I do not know what conversation went on between Mr. Rehnquist and Justice Jackson. It is difficult for me to believe that anyone could really remember it in detail 19 years later. But we do have some positive evidence to look to. We can look to the specific wording in the memorandum under the authorship—whatever its purpose—of Mr. Rehnquist, and then we can look at some of the great decisions which were authored by Justice Jackson. Then we have to ask ourselves whose thoughts were really reflected in the 1952 memorandum.

The memorandum states:

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 command intervention from one of any conviction.

Now those were the thoughts that Mr. Rehnquist now says he composed to represent what were Justice Jackson's views. He claims that it was Mr. Justice Jackson who did not feel that segregation was one of those extreme cases which merited intervention from one of any conviction.

Well, I ask the Senate, is this the thought of Mr. Justice Jackson, who 2 years earlier had voted with the Court in *Sweatt* v. *Painter*, 339 U.S. 629 (1950), to strike down under the Equal Protection Clause a State's refusal to admit Negro law students to the State law school? Is this the thought of Justice Jackson who voted with the Court in *McLaurin* v. *Oklahoma State Regents*, 339 U.S. 637 (1950), to prohibit a State university from treating black graduate students differently than white graduate students? Or is this the thought of William Rehnquist who still believed in 1967 that "we are no more dedicated to an 'integrated' society than a 'segregated' society"?

That is a question that the Senate has to raise or should raise and should answer.

The memorandum states further:

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 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.

Now Mr. Rehnquist says these were the views of Justice Jackson. I wonder. Is this the thought of Justice Jackson who dissented in *Korematsu* v. *United States*, 323 U.S. 314 (1944), the case upholding the right to exclude American citizens of Japanese descent from the west coast of the United States? Is this the Justice Jackson who attacked the majority in Korematsu, saying they had—

Validated the principle of racial discrimination in criminal procedure and of transplanting American Citizens. The principle then lies about like a loaded weapon ready for the hand of any authority that can bring forward a plausible claim of an urgent need. Every repetition imbeds that principle more deeply in our law and thinking and expands it to new purposes?

Is this the Justice Jackson who spoke out against the arbitrary treatment of Japanese American citizens or, instead, is it the thought of Mr. Rehnquist himself who, in 1964, opposed a Phoenix public accommodations ordinance that would have allowed black people into the drugstores and lunch counters of his home town, saying—

Now there have been other restrictions on private property. 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?

Is it the thought of a nominee who agreed at the hearings that it could fairly be said that in 1964 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?

Is that the thought of a nominee who agreed at the hearings that in 1964 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?

Finally, the memorandum says:

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.

Mr. President, we are told by Nominee Rehnquist that these words contained in the 1952 memorandum were not the words of William Rehnquist but were the words of Justice Jackson. I wonder. Are these the words of Mr. Justice Jackson who wrote the majority decision in the landmark case of *West Virginia State Board of Education* v. *Barnette*, 319 U.S. 624 (1943), ruling that the first and 14th amendments guarantees of religious freedom prohibit the state from forcing Jehovah's Witnesses to perform a flag salute?

Some Members of the Senate may disagree with the *Barnette* opinion, but the late Justice Jackson is the man who wrote the majority opinion. Could this be the same Mr. Justice Jackson who had the insensitivity portrayed in the 1952 memorandum?

Could this be the same Mr. Justice Jackson who said in that opinion:

But freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order.

If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us.

That was what Justice Jackson wrote in the published opinion about the rights of a minority, the right of a child of a Jehovah's Witness father not to stand up and pledge allegiance to the flag if that violated his constitutional principle.

I wonder. Was that antipersonal antiminority language in the 1952 memorandum really the writing of Mr. Justice Jackson, as Mr. Rehnquist now professes, or was that the thought of William Rehnquist himself who, in 1964, wrote the editor of his local newspaper that—

If in fact discrimination against minorities in Phoenix eating-places were well nigh universal, the question would be posed as to whether the freedom of the property owner ought to be sacrificed in order to give these minorities a chance to have access to integrated eating places at all?

Mr. President, I have struggled with the inconsistencies contained in the 1952 memorandum and the great documents written by the late great Justice Jackson. They are in no way similar. I must say that, since it was only less than a full day ago that the Senate was advised for the first time that these views were not really the views of Mr. Rehnquist, but were those of Mr. Justice Jackson, I have not had the opportunity to read all of the cases that were authored by the late Justice Jackson. However, as of this moment, I cannot believe that this memorandum written in 1952 reflects the views of Justice Jackson, a man who, after suffering a heart attack in the spring of 1954, returned to the bench on May 17 of that year in order to demonstrate by his personal presence his support of the antisegregation decision that was handed down that day. He did so despite warning of the risk of a recurrence of his ailment, choosing to continue at the work to which he had dedicated his life. A second and fatal heart attack finally overtook him on October 9, 1954.

No, Mr. President, there is no similarity between the Plessy against Ferguson

views expressed in that 1952 memorandum and the dramatic personal effort that was made by the justice, who was to die before the year was out, but who was determined to be present and vote "yea" in a unanimous decision in that landmark, keystone case that for the first time in history opened the school house doors.

Mr. President, I am deeply concerned that the nominee's attempt to explain away the memorandum has only succeeded in raising a serious quesion concerning Mr. Rehnquist's candor. I for one believe this question must be answered before the Senate votes on the nominee.

This is not a charge that the Senator from Indiana makes lightly, because he realizes its critical nature. As I said earlier, I have not had a chance as yet to fully document it by reading all of the cases of Justice Jackson. However, since on tomorrow at noon we are going to be forced to vote on whether we will be given more time to explore the critical nature of this charge which, I think, can legitimately be speculated upon, I have no alternative, but to raise this question at this time for the consideration of my colleagues.

I for one believe that this question must be answered before the Senate votes on the nominee. It is a judgment which each Senator must make for himself on the basis of the evidence. But there is no argument in favor of making such a weighty judgment under the threat of cloture in the haste to get home for Christmas, when we are tired at the end of a long session.

ORDER OF BUSINESS

The PRESIDING OFFICER. The Senator from Vermont is recognized.

(The remarks of Mr. AIKEN when he introduced S. 2981 are printed in the RECORD under Statements on Introduced Bills and Joint Resolutions.)

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Hackney, 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 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.

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 amendments of the Senate to the bill (H.R. 10947) to provide a job development investment credit, to reduce individual income taxes, to reduce certain excise taxes, and for other purposes.

DISPOSITION OF CERTAIN INDIAN CLAIMS

Mr. METCALF. Mr. President, as in legislative session, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 602.

The PRESIDING OFFICER (Mr. BROCK) laid before the Senate the amendment of the House of Representatives to the bill (S. 602) to provide for the disposition of judgments, when appropriated, recovered by the Confederated Salish and Kootenal Tribes of the Flathead Reservation, Mont., in paragraphs 7 and 10, docket numbered 50233, U.S. Court of Claims, and for other purposes, which was to strike out all after the enacting clause, and insert:

That the funds appropriated to the credit of the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, in satisfaction of judgments awarded in paragraphs 7 and 10 in docket numbered 50233, United States Court of Claims, including interest thereon, after payment of attorneys fees and other litigation expenses, shall be used as follows: 90 per centum thereof shall be distributed in equal per capita shares to each person who is enrolled or entitled to be enrolled on the date of this Act; the remainder may be advanced, expended, invested or reinvested for any purposes that are authorized by the tribal governing body and approved by the Secretary of the Interior.

SEC. 2. Any part of such funds that may be distributed to members of the Tribes shall not be subject to Federal or State income tax.

SEC. 3. Sums payable under this Act to enrollees or their heirs or legatees who are less than eighteen years of age or who are under a legal disability shall be paid in accordance with such procedures, including the establishment of trusts, as the Secretary of the Interior determines appropriate to protect the best interests of such persons.

Mr. METCALF. Mr. President, I move that the Senate disagree to the amendment of the House and request a conference with the House thereon, and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to, and the Chair appointed Mr. MCGOVERN, Mr. BURDICK, Mr. METCALF, Mr. FANNIN, and Mr. HANSEN conferees on the part of the Senate.

NOMINATION OF WILLIAM H. REHNQUIST

The Senate, in executive session, continued with the consideration of the nomination of William H. Rehnquist to be Associate Justice of the Supreme Court of the United States.

Mr. GOLDWATER. Mr. President, earlier today my friend from New York (Mr. JAVITS) indicated that a critically important point relative to his own position on Mr. Rehnquist was his stand relative to the rights of persons arrested during the May Day incident in Washington.

Mr. President, it is a fact that there have been many erroneous news reports printed about Mr. Rehnquist's views on the May Day matter, and I hope that none of these exaggerated misstatements entered into my distinguished friend's thinking about the nominee.

It is important that all Senators should be aware that the nominee took the opportunity of the recent hearings on his nomination to rebut these false reports and to explain exactly what his very limited role and his impressions were in connection with the May Day situation.

In order to set the record straight today and to show that Mr. Rehnquist took no actual part at all in the arrest procedures, I ask unanimous consent to insert the remarks which Mr. Rehnquist made on this issue during questioning at the Judiciary Committee hearings.

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

TESTIMONY OF WILLIAM REHNQUIST AT HEARINGS BEFORE THE COMMITTEE ON THE JUDICIARY, U.S. SENATE, WEDNESDAY, NOVEMBER 3, 1971

Senator KENNEDY. Could I move to another area. Mr. Rehnquist, in the May Day situation, could you tell us what your role was? Did you have a role, to start off with?

Mr. REHNQUIST. This presents me with the same sort of problem, which I must resolve for myself, realizing that if I resolve it against answering anybody on the committee, or anybody in the Senate, is entitled to hold against me my refusal to answer.

I did speak publicly on the May Day matter down in North Carolina 2 or 3 days after it and I, therefore, feel that I do owe an obligation to the committee to describe at least in a general nature my role, without necessarily, without revealing, and "revealing" probably is not the right word, describing the various internal deliberations that went on in the Department. And this is a difficult line to walk.

I will try to walk it. My role, up until the time of the events that actually took place was being consulted as to the propriety of the use of the Federal troops in certain situations under the provisions of 10 U.S.C. 331 through 334. And I drafted an opinion which the Attorney General gave to the Secretary of Defense, saying that it was legally permissible to use Federal troops in order to preserve the operation of the Federal Government under the situation where a fairly large number of people had announced their intention to shut it down.

And that opinion was transmitted by the Attorney General to the Secretary of Defense. I participated in two or three meetings over the weekend, immediately prior to the demonstrations, at which a good number of people were present. I do not really think I had any significant input or contribution to make at those meetings.

During the time the events were actually happening, I was in and out of the Attorney General's office. I was at a large meeting in the Criminal Division at which a number of people from the Corporation Counsel's office, the U.S. Attorney's Office, our Criminal Division, our Internal Security Division, were present.

I do not believe I remained long, and since my own knowledge of the local practice of arraignment and arrest and that sort of thing is not very large, I found I had very little to contribute. There may have been more, but that is all that occurs to me now.

Senator KENNEDY. Well, at any time that how to handle the demonstrators was being discussed, did you raise any objections to the anticipated plans or programs?

Mr. REHNQUIST. One decision reached at a meeting that I was at over the weekend, was that the permit should be revoked for the campground down at Hains Point, I believe it was. I made no objection to that decision.

Senator KENNEDY. Well, at some time during the weekend there was a decision made to suspend the constitutional rights of the demonstrators and impose martial law, or qualified martial law were the words I think you used. And I was wondering whether, at any time during the meetings which you attended, you expressed any reservation about such a suspension or the imposition of qualified martial law?

Mr. REHNQUIST. I believe you have misread my statement, Senator.

Senator KENNEDY. This was at Boone, N.C.?

Mr. REHNQUIST. Yes.

Senator KENNEDY. Did you make a statement there defending the law enforcement actions that were taken at the May Day demonstrations?

Mr. REHNQUIST. I made a statement saying that the abandonment of the field arrest procedures and the consequent, or perhaps not necessarily consequent, delay in bringing the defendants before an arresting magistrate, or a committing magistrate, was, I thought, defensible because the requirements that a defendant be brought before a magistrate were that he brought before the magistrate within a reasonable time, and that in my opinion a reasonable time in this situation should take into consideration the necessity of the arresting officer, having made the arrest, continuing to be the field to prevent the occurrence of other violence.

I went on to say in the statement in Boone that in a situation more serious than that which prevailed in Washington on May Day, the doctrine of qualified martial law had on occasion been invoked. I made, I thought, quite clear, not only that it had not been invoked in Washington, but that it would be justified only in a more aggravated situation.

Senator KENNEDY. You are suggesting it was not imposed on May Day?

Mr. REHNQUIST. I certainly am suggesting that.

Senator KENNEDY. Well, what doctrine was imposed on May Day? It certainly was not probable cause in terms of the arrest procedures, was it?

Mr. REHNQUIST. Well, knowing the volume of arrests which were made, I simply would not be in a position to comment on whether any particular arrest was made with or without——

Senator KENNEDY. Well, do it in a general kind of way. You made a general endorsement of the procedures which were followed at May Day. You did that in North Carolina.

Mr. REHNQUIST. Well, I stand by the language I used in North Carolina, and I would call it something less than a general endorsement of everything that was done on May Day.

Senator KENNEDY. What was done on May Day that you did not think was right?

Mr. REHNQUIST. Well, I would have to know more about the facts to be satisfied that a particular thing done was not right. I did specifically say that I thought the abandonment of the field arrest forms by Chief Wilson was a legitimate and proper decision under the circumstances which he had to, I understand, confront.

Senator KENNEDY. What about the arresting without probable cause?

Mr. REHNQUIST. I do not think arresting without probable cause is ever proper, and if, in fact, it happened on May Day, I do not agree with it. I do not know enough about the facts to say that there were or were not arrests without probable cause on May Day.

Senator KENNEDY. Well, the thing I am driving at, Mr. Rehnquist, is that at some time, as you described here, you were involved in the development of the procedures which were outlined for May Day. I can understand that there may have been actions which preceded the suggested procedures which were agreed on at the meetings which you attended, and that you are not prepared to comment or describe or elaborate because you do not have those particular facts. But, nonetheless, you cannot get away from the fact that of the approximately 12,000 arrested, only really a handful ever were found guilty of any charge.

Mr. REHNQUIST. That is my understanding.

Senator KENNEDY. Which would suggest that the procedures—well, what does that suggest to you?

Mr. REHNQUIST. It suggests to me that whereas there may have been probably cause for the arrest of the great number of people, the District of Columbia police were faced with such an overwhelming situation of violation of the law that they chose to try to keep the streets free, and rather than to preserve the necessary information that would enable them to later show either that there had been probable cause for an arrest, or probable cause to bind a man over.

Senator KENNEDY. Well, if there are so many people that deserve arrests, I do not see why they followed a procedure that resulted in the arrest of a lot of people who were innocent.

Mr. REHNQUIST. I am not satisfied that they did arrest a lot of people who were innocent.

Senator KENNEDY. That were just bystanders, that were just walking to work, that were just students coming out of restaurants. The newspapers were full of these instances. I do not think there were many of us in the Congress who did not have constituents that had reports of this type of occurrence. With the cases that they had, so many that were violating the law, I find it difficult to understand why they were arresting so many others that were not.

And as well, thousands were "detained" on the basis of no evidence at all. Others were called for trial and came to trial where there was not the slightest basis for trying them. There were judicial findings for refund of bonds and recall of arrest records. You could almost say, given the results of the courts' rulings, what really went wrong with the development——

The CHAIRMAN. That is a rollcall.

Senator KENNEDY. Can he just answer this?

The CHAIRMAN. That is a rollcall vote.

Mr. REHNQUIST. Could I have the question repeated?

Could I have either the reporter read the question back or——

Senator KENNEDY. Yes. I was just saying that given the fact that there were thousands that were detained on the basis of no evidence at all, and these are court findings, others called for trial when there were no basis for trying them, and there were judicial orders for the refund of bonds and the recall of arrest records, I am just wondering what went wrong? Was it the development of the procedures to be followed on May Day or the execution of them?

Mr. REHNQUIST. I think one thing that happened was that the number of people who were to be involved in May Day was an overwhelming large number, larger than the Metropolitan Police contemplated. As a result, they were faced with a choice of either, when an individual policeman arrested a law violator, or someone he thought was a law violator, of himself taking that man to the stationhouse, booking him, and going through the usual procedures, or simply having the man taken in some other manner to the stationhouse.

And the policemen then would stay on the streets to try to arrest the next bunch who were coming along. And as I understand it, they were very deliberately trying to obstruct the movement of traffic, frequently by hazardous means. I think the District police opted in favor of the latter choice, and I cannot find it in myself to fault them for it.

The CHAIRMAN. The committee will stand in recess for a few minutes and will return right after a vote.

(Short recess.)

The CHAIRMAN. The committee will come to order, please.

Senator Kennedy.

Senator KENNEDY. If I got your final response to the question right, Mr. Rehnquist, you indicated that you were in general support of the law enforcement activities which were undertaken during the course of May Day. You had expressed earlier some reservations about particular actions and were unprepared to comment on some cases, but you were in general agreement.

Am I correct in that?

Mr. REHNQUIST. No; I would not interpret my final answer that way.

Senator KENNEDY. Would you restate it, then?

Mr. REHNQUIST. I think what I said was that the Chief of the Metropolitan Police made a decision to abandon field arrest forms and run some risk of being unable to follow up on the prosecution of arrestees in the interest of keeping his forces on the street in order to preserve order, and that I could not fault him for that decision.

Senator KENNEDY. Is there any procedure that was used during the course of that day, related to regulations, rules, or procedures which were established within the Justice Department, that you would have disagreed with?

Mr. REHNQUIST. Well, the abandonment of field arrest forms, as I understand it, there was no decision taken within the Department.

Senator KENNEDY. No; that was done in the field. But, in terms of the regulations and procedures to be followed on May Day, you were involved in these decisions at the Justice Department. As I understand from what you are saying here, you did not express any reservations about them during the course of their development, nor even in the wake of how they were implemented that particular day. In hindsight, would you have done anything differently?

Mr. REHNQUIST. I was involved in some of the decisions, Senator. I suspect there were a great many that I was not involved in. It is, of course, relatively easy to look back in hindsight and say that one would have done something differently.

And the one thing that occurs to me, and this is strictly a matter of hindsight, and I do not believe this was something that could have been fairly anticipated, was to supply more adequate facilities for those who were detained.

Senator KENNEDY. This is the only, the only point of departure?

Mr. REHNQUIST. Well, you have made the statement that there were arrests made without probable cause simply as bystanders and people who were walking to work. If that was the case I would certainly have done that differently.

Senator KENNEDY. Did you ever come to the belief that that was the case any time prior to the point where the court was throwing these cases out?

Mr. REHNQUIST. No; I did not.

Senator KENNEDY. Did you, in the course of those days, read the newspapers and hear about innocent people being arrested, put in the jails or the detentiton centers? Did you feel that there was a possibility of people being arrested without probable cause?

Mr. REHNQUIST. Well, certainly after newspaper accounts occurred one could not rule out that possibility.

Senator KENNEDY. Well, I am just trying to think back with you, Mr. Rehnquist, to that time. It appears to me that just from a general reading of the newspapers it was clear that there were hundreds of young people being detained under very trying circumstances, under very desperate conditions. I am just wondering whether you independently might have been sufficiently concerned about the possibility of false arrests or indiscriminate arrests or any of the other practices which led to the courts throwing these cases out, whether the chance that a great deal had gone wrong struck you prior to the time that the courts made these decisions?

Mr. REHNQUIST. Well, it certainly struck me after reading the stories in the newspapers, that if those accounts were true, people have been improperly arrested.

Senator KENNEDY. Did you feel you ought to do anything about it, as somebody who is in an important and responsible position in the Justice Department, and who has re-

sponsibility for insuring the protection of the rights of individuals?

I am wondering whether this aroused you so much that you felt that maybe you would walk down the corridor, so to speak, and speak to the Attorney General, and say: "If this is what is happening, Mr. Attorney General, I think we ought to do thus and so; we should not wait for the courts?"

Mr. REHNQUIST. By the time the newspaper accounts occurred, I think whatever had happened had happened and the Corporation Counsel and United States' Attorney's Office, as I understand it, were already engaged in a screening process. I did not do anything. I did not feel there was anything that would be appropriate for me to do.

Senator KENNEDY. Well, again, it was 2 days after the demonstrations you were down in North Carolina, I think, and one would have to say from your speech you were endorsing or supporting the May Day procedures. Was that a time when the Attorney General was suggesting that these procedures ought to be duplicated in cities all over the country? And this was 2 days afterwards, and it seems to be during that period of time it became eloquently apparent to many in the House and the Senate that there were many travesties of justice. Certainly that opinion was supported almost unanimously by the various court decisions that ruled on those cases. And I am just interested whether, when it became apparent to you that there had been an entrenching on basic rights——

Mr. REHNQUIST. My statement in North Carolina, Senator, as I recall it, and as I see it, glancing through it, dealt with the abandonment of field-arrest forms, and the concept of a reasonable time in which to take a person before a committing magistrate. It did not purport to sweepingly endorse everything that had been done during the May Day demonstrations.

As to what I may have done on my own, my own initiative, after becoming aware, I have already answered that I did nothing, and I did not think it was appropriate to do anything.

Senator KENNEDY. You would not deny that your statement down in North Carolina was a general endorsement of the steps that were taken by——

Mr. REHNQUIST. I have it in front of me, if you want me to read over a few pages and answer your question, I will do it or I will give you my recollection.

Senator KENNEDY. Well, why don't you give us your recollections?

Mr. REHNQUIST. I do not concede it to be a general endorsement.

Senator KENNEDY. Well, at any time did you express any dismay, either privately or publicly, about the procedures which were followed? You had a situation where you had about 12,000 arrests, practically all but a handful thrown out for a variety of different reasons, and I am just interested in whether you——

THURSDAY, NOVEMBER 4, 1971

Senator COOK. Getting back to another discussion of yesterday, I feel that great emphasis was made of how you completely and absolutely condoned, and were enthusiastic about, or words to that effect, the Government action in the May Day affair in Washington. Again, Mr. Chairman, I would like to put into the record the speech that Mr. Rehnquist made at Appalachian State University, I might say out of a speech of some 24 pages, the first five and a half pages dealt with a very general discussion of the ability of police departments to function, the ability to formulate a policy in its broadest sense under certain conditions. I find nowhere in here any endorsement of the actions of, or any mention of the police officials in the city of Washington other than the fact that you made reference to the fact that there was a metropolitan police force of approximately 5,000 men and that within the first few hours they had to make no less than 7,000 arrests.

Then you allude to what is referred to as qualified martial law. I might suggest I hope you and I both agree that this qualification is nothing new in the law.

I have before me a book entitled "A Practical Manual of Martial Law" that was written in 1940 by Frederick B. Wiener, Special Assistant to the Attorney General of the United States. It has quite a dissertation in the field of qualified martial law.

Would you tell me what you feel would be a definition of qualified martial law?

Mr. REHNQUIST. Recalling as best I can from Mr. Wiener's book, which I believe is the source of my knowledge on the subject, it is the situation where the force brought to bear against the law enforcement forces is such that the normal procedure of individual arrest and booking and admission to bail and appearance before a community magistrate simply cannot be carried out and in this situation it is my understanding that the courts, including the Supreme Court of the United States in the case of *Moyer* v. *Peabody*, have said it was lawful for the Government in that situation to resort to a situation of arrest not on the basis of criminal charge of individual wrongdoing but on a very temporary basis of simply restoring order, and that the process was not arrest in the normal sense and that release was required in a very short order as soon as the serious emergency has passed.

That is a short summary of my understanding of it, Senator.

Senator COOK. And, as a matter of fact, rather than be of the opinion as we discussed yesterday that there may have been either martial law or qualified martial law on that occasion, in your speech in North Carolina you took the position that there had been neither. I quote from page 4, "Indeed if one takes a more extreme situation than that which prevailed in Washington during the past couple of days," and then you went into a dissertation on qualified martial law. Is that not correct?

Mr. REHNQUIST. It is correct, Senator.

Senator COOK. Thank you, Mr. Rehnquist. Thank you, Mr. Chairman.

Mr. ALLEN. Mr. President, when the President announced in his speech on television that he was going to nominate Mr. Lewis Powell and Mr. William Rehnquist for positions on the Supreme Court made vacant by the retirement of Mr. Justice Black and of Mr. Justice Harlan, the junior Senator from Alabama felt that the President had made two excellent choices for these positions.

From that moment on, the junior Senator from Alabama has been ready to vote on these nominations. He has been ready to vote at all times since that time. He is ready now to vote, and he hopes that at an early date we will be allowed to vote on the nomination of Mr. Rehnquist, the Senate already having acted favorably on Mr. Powell's nomination by a vote of 89 to 1.

But tomorrow the question is not going to be whether we favor the confirmation of the nomination of Mr. Rehnquist to be a Justice on the Supreme Court; the question is going to be whether we shall cut off the debate on this question.

Since coming to the Senate almost 3 years ago, the junior Senator from Alabama never has voted to apply cloture. He has never voted to end debate on any subject under debate in the Senate. The right to engage in unlimited debate is one of the great rights that sets the U.S. Senate apart from all other legislative bodies in the world.

We have had debates on this floor on several occasions since I came to the Senate having to do with amending rule XXII to allow 60 percent of the Senators to cut off debate rather than the two-thirds that are now necessary.

The Senate never has been willing to cut off debate by a two-thirds vote on the question of reducing to 60 percent the number necessary to cut off debate.

Just recently three distinguished Senators in this body, the Senator from Idaho (Mr. CHURCH), the Senator from California (Mr. CRANSTON), and the Senator from Maryland (Mr. MATHIAS), who theretofore had supported the concept of reducing the number of Senators necessary to cut off debate from two-thirds down to 60 percent, changed their position herein the Senate Chamber and stated they were going to support the requirement of a two-thirds vote to cut off debate in the Senate.

So, much as I disagree with the Senator from Indiana on whether Mr. Rehnquist's nomination should be confirmed—he taking the position that his nomination should not be confirmed and the Senator from Alabama taking the position that his nomination should be confirmed—I will on tomorrow vote against the cloture motion seeking to cut off debate.

I want to make the record clear that my vote on this question on tomorrow does in no sense indicate that I am not a staunch supporter of Mr. Rehnquist for the position on the Supreme Court to which he has been nominated, but I believe that the question of allowing this debate to continue should be decided in the affirmative—that debate should not be cut off.

In due time debate will be cut off, and I certainly am not going to regret seeing that action taken, but it cannot be taken, certainly at this time, with the vote of the junior Senator from Alabama.

So I believe the concept of free and unlimited debate should continue. If we do not set any store by the principle of allowing free and unlimited debate in the Senate, it soon is going to be that if any question has the support of two-thirds of the Senate, then it can pass, whether or no, even though full debate has not yet been had.

If there is no validity to the concept of allowing free and unlimited debate in the Senate, then we might just as well say that if any question can get two-thirds of the votes, then debate automatically is cut off; that if that many want to vote for it, then there is no need of having the limitation of rule XXII, because the question would be: "Are you for a measure or against it?" If two-thirds are for it, then there is no need to have any debate.

Mr. TOWER. Mr. President, does the Senator conceive of any occasion in which he would vote for cloture?

Mr. ALLEN. I do not see any occasion at this time. Yes, I would feel that if the fate of the Republic were at stake, certainly to that extent I might be, but I am not allowing myself to speculate

that on this issue I would and on that I would not.

I will say to the Senator from Texas that, on the matter of the extension of the draft, while I was strongly for the extension of the draft and voted for it on every occasion, I did not vote to apply cloture, and have not since coming to the Senate voted to apply cloture. From time to time the distinguished Senator from Texas has voted on some occasions to apply cloture and on other occasions not to apply cloture, and the junior Senator from Alabama would infer from that that on those proposals that the Senator favors he would vote for cloture and on those proposals that he opposes he would not vote for cloture.

The junior Senator from Alabama is trying to be a little more consistent than that and to allow free and unlimited debate even on questions that he supports, because the principle of free and unlimited debate in the Senate is more important to the junior Senator from Alabama than whether we confirm Mr. Rehnquist on Friday, on Saturday, or next week.

I yield the floor.

A TRIBUTE TO RALPH BUNCHE

Mr. KENNEDY. Mr. President, I join in mourning the death of Ralph Bunche. His life was typified by the tremendous force of his dedication to the cause of peace and justice throughout the world. During the years of his magnificent career, Ralph Bunche symbolized the ideals of human understanding and social equality. Perhaps, more than any other single person, he represented the true spirit of self-determination for the developing era of the United Nations. Ralph Bunche was admired by peoples all over the world. Yet, here in his own country, black Americans were denied access to social justice and equality at a time when his brilliance and skill were helping to bridge the gaps of despair between nations.

It is my hope that the work of Ralph Bunche will be properly recorded in the annals of historic triumphs by great Americans. For in these times, when conflict and warfare seem to appear as normal and natural aspects of modern life, we must highlight the work of those among us who have tried to achieve peace and understanding among all men.

It is my hope that his life will be an inspiration for all who work and pray for an end to the turmoil and anguish of human conflict.

ORDER FOR RECOGNITION OF SENATOR McGOVERN AND SENATOR MAGNUSON TOMORROW

Mr. BYRD of West Virginia. Mr. President, as in legislative session, I ask unanimous consent that on tomorrow, immediately following the remarks of the distinguished Senator from New Jersey (Mr. WILLIAMS), the distinguished Senator from South Dakota (Mr. McGOVERN) be recognized for not to exceed 15 minutes, and that at the conclusion of his remarks, the distinguished senior Senator from Washington (Mr. MAGNUSON) be recognized for not to exceed 15 minutes.

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

DIVISION OF THE HOUR PRECEDING THE VOTE ON CLOTURE

Mr. BYRD of West Virginia. Mr. President, has the time under the rule with respect to the 1 hour preceding the vote tomorrow on cloture been divided yet?

The PRESIDING OFFICER. No; it has not.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the 1 hour under rule XXII be equally divided tomorrow between the distinguished Senator from Indiana (Mr. BAYH) and the distinguished minority leader or his designee.

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

ORDER FOR PERIOD FOR TRANSACTION OF ROUTINE MORNING BUSINESS TOMORROW

Mr. BYRD of West Virginia. Mr. President, as in legislative session, I ask unanimous consent that, at the conclusion of the remarks by the distinguished Senator from Washington (Mr. MAGNUSON) on tomorrow, there be a period for routine morning business for not to exceed 30 minutes.

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

Does the Senator wish to include a limitation of 3 minutes on speeches of Senators?

Mr. BYRD of West Virginia. Yes, Mr. President, with a 3-minute limitation on statements made therein.

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

ORDER TO RESUME CONSIDERATION OF NOMINATION TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that at the conclusion of routine morning business on tomorrow, the Senate return to executive session and resume the consideration of the nomination of Mr. William H. Rehnquist to the office of Associate Justice of the Supreme Court of the United States.

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

QUORUM CALL

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

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. TOWER. Mr. President, I have always believed in the thesis advanced by William S. White that one of the vital functions performed by the Senate is to protect the minority against the precipitate and emotional tyranny of the majority. Until recent years I never voted for cloture, even when I was in disagreement with those who were filibustering, an example being the communications satellite, but I have suddenly come to realize—perhaps not so suddenly, but gradually come to realize—that rule XXII, which provides for virtually unlimited debate, is not being used in the way that it has traditionally and historically been used in this Chamber, and that is on issues of vital, profound, deep-seated social, and constitutional concern.

As a matter of fact, it appears now that a certain group of willful men have discovered unlimited debate as a means of preventing the Senate from working its will on almost anything that they want to prevent the Senate from working its will upon, and I have come to the conclusion also that some people tend to claim unlimited debate, not as a means to an end, but as an end unto itself. I have, therefore, in recent months voted for cloture.

As a matter of fact, during the debate on the loan guarantee, I filed three cloture motions myself—quite a departure from my traditional stance. Many times I participated in what we might as well call filibusters, or, in the words of the late great Everett Dirksen, attenuated educational dialog, in an attempt to prevent matters from coming to a vote; but in each instance I have participated in those extended debates in order to prevent coming to a vote on a measure I thought was being carried on the wave of popular emotion, but that was contrary to the letter and the spirit of the Constitution of the United States.

We desperately need in this country to change the complexion of the Court, and that is what this debate is all about. I intend not only to vote for cloture as many times as is necessary so that this issue can be voted upon—the confirmation of Mr. Rehnquist—because I think everybody is pretty adequately informed, and I think arguments against Mr. Rehnquist are without substance and are so recognized by most commentators, but, Mr. President, I will go beyond that. I believe that the next time the issue of rule XXII comes up, I will abandon my traditional position of favoring a two-thirds majority to cut off debate and will accept the motion that 60 percent should be adequate to cut off debate, because I think too many matters of great public import have been postponed beyond a reasonable time by virtue of the fact that only one-third can thwart the Senate from working its will.

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

Mr. TOWER. I yield to the Senator from Michigan.

Mr. GRIFFIN. I wish to commend the Senator from Texas for his statement. Although I come from a different part of the country, and I have approached the question of cloture from a different point of view, I believe he has made a very significant statement that deserves the attention and consideration of other Senators, particularly those from the South.

In the past, the junior Senator from Michigan has voted for proposals to change the cloture requirement to three-fifths rather than two-thirds. Frankly, I will say that, in some respects, it is too bad that the Senate should have to make such a change. There is a good deal to be said for keeping the cloture rule as it is now. But when there are Senators who are so inflexible that they will never vote to invoke cloture under any circumstances—when it gets to the point where the Senate cannot get to a vote even on appropriation bills, which was the case in the last session, then it would seem clear that we are left with no real choice but to change the rule.

Mr. TOWER. The Senator will note that several southerners have signed cloture motions this year—the distinguished Senators from Mississippi, for example. I would think otherwise if unlimited debate were used as it was formerly used in the Senate, only on matters that involved vast and sweeping social change, or involved interpretation of the Constitution of the United States or matters that involved State sovereignty or statehood—as in the case of the State of Arizona. I remember our recent great colleague, Carl Hayden from Arizona, never voted for cloture except one time when he conceived that it was in the national interest to do so.

I have come to my current view reluctantly, because I wish we could leave it at two-thirds; but right now, as I have noted, there are willful men who from time to time will use unlimited debate on any issue to prevent the Senate from working its will.

I think that those of us, myself included, who have in the past been inflexible on the matter of cloture have done a disservice to the right of unlimited debate. I have mended my ways, and the next time the issue comes up, I will certainly support a vote of 60 percent of those present and voting to bring debate to a close. I think in the context of the current times that is reasonable and rational.

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

Mr. TOWER. I yield.

Mr. THURMOND. Mr. President, President Nixon is to be congratulated on his selection of William H. Rehnquist to be an Associate Justice of the Supreme Court. In making this selection, the President has chosen a man unquestionably qualified to fill this high office.

Having served as a law clerk for Associate Justice Robert H. Jackson and having personally tried several cases before the Supreme Court, William H. Rehnquist is uniquely familiar with the operation of the Court.

Mr. President, the Supreme Court is the ultimate body of the judicial branch of our Government, and it is the duty of the Senate to carefully examine the qualifications of a nominee for this body. William Rehnquist is well qualified for the position of Associate Justice. He is an exceptionally qualified attorney with positive scholastic achievements. In his engagements in the practice of law and in his position as Associate Attorney General of the United States, he has performed with legal and professional excellence.

Mr. Rehnquist received his B.A. degree from Stanford University "with great distinction" and was Phi Beta Kappa. He earned his M.A. degree from Harvard University, and received his LL.B. degree from Stanford University with a ranking of No. 1 in his class. While he was attending law school at Stanford, he was a member of the board of editors of the Stanford Law Review.

Mr. Rehnquist was engaged in the private practice of law in Phoenix, Ariz., for 16 years before he was appointed Assistant Attorney General, Office of Legal Counsel by President Nixon in January 1969. His job description in this position was described by Mr. Nixon as "the President's lawyer's lawyer."

Mr. President, as Assistant Attorney General, Mr. Rehnquist frequently appeared before various congressional committees testifying as to the position of the Department of Justice on various issues. On several occasions he appeared before the Committee on the Judiciary of which I am a member. His testimony, and analysis and perceptive responses to inquiries were always of the highest calibre, and I have always been impressed with his intelligence and professional competency.

The Constitution is the guiding document upon which our great country functions. The ultimate interpretation as to its application is made by the Supreme Court. As a member of that body, William Rehnquist will insure that equal justice under law will have real meaning and application.

Mr. President, it is with distinct pleasure that I shall vote to confirm the nomination of William H. Rehnquist to be an Associate Justice of the Supreme Court. As a member of that body Mr. Rehnquist will be a strong advocate for the quality of life under the Constitution as envisioned our forefathers.

Today an article appeared in the Washington Post by Joseph Kraft entitled, "Rehnquist: Top Mind." This article concisely establishes the fact that Mr. Rehnquist is eminently qualified to be an Associate Justice of the Supreme Court.

Even though I do not agree with every idea expressed in this column, I agree with its basic premise, that is, "Mr. Rehnquist, far more than any other recent nominee, has the calibre to restore intellectual distinction to the Court."

Mr. President, I believe this article by Mr. Kraft sufficiently evidences the fact that Mr. Rehnquist is qualified for the Supreme Court and I ask unanimous consent that the article entitled, "Rehnquist: Top Mind," which appeared in the Washington Post on December 9, 1971, be printed in the CONGRESSIONAL RECORD following these remarks.

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

[From the Washington Post, Dec. 9, 1971]

REHNQUIST: TOP MIND

(By Joseph Kraft)

Justice Holmes, on being asked what he thought of the intellectual abilities of another judge, once replied: "I never thought of him in that connection." And there lies the nub of the powerful, positive case that can be made for Senate confirmation of President Nixon's latest nominee for the Supreme Court, William Rehnquist.

For years now hardly anybody has thought of the Supreme Court as performing an intellectual function. Mr. Rehnquist, far more than any other recent nominee, has the calibre to restore intellectual distinction to the Court.

To understand why, it is necessary to say a word about the role of the Court in the country. The country is dominated by the million and one daily actions of an energetic population largely unconstrained in its capacity to buy and sell, move and dream, educate and obscure, build and tear down.

Given the nearly universal disposition toward almost constant action, it is ludicrous to think of tyranny being imposed on this country from above by some establishment eager to freeze the status quo or turn back the clock.

The central political problem of a populist country is to preserve some modicum of elite values—respect for achievement; toleration for difference of outlook; regularity of procedure. Partly by original design, but even more by the chance accretions of history, the Supreme Court has come to be the defender of those values—the elitist institution in a populist country.

Unfortunately for the Court, certain political decisions were thrust upon it by the deadlock that developed between Executive and Legislature during the post-war period. In the fields of civil rights and legislative reapportionment, the Court felt obliged—understandably considering that all other avenues seemed closed—to make rulings that might much more appropriately been the work of the President and the Congress.

In the heady atmosphere engendered by those decisions, the Court headed by Chief Justice Earl Warren became result-oriented. In case after case, it was increasingly hard to discover the inner logic of decisionmaking. Blacks seemed to be favored because they were blacks, baseball because it was a good clean American sport, anti-trust plaintiffs because they were against economic monsters.

President Nixon's efforts to correct the imbalance have been fumbling to the point of casting doubt on the sincerity of his claim to want "strict constructionists." His preferred candidates have been right-wingers, so little distinguished that the Senate and the American Bar Association have constrained him to throw them back in the pond.

Mr. Rehnquist is something else. He has not shown sensitivity to the needs of people in trouble, and he has said some hardline—and to me silly-sounding—things about the influence of Supreme Court clerks and the softness of judges towards communism. Some of these comments may be what ambitious juniors are required to say in order to get ahead in the Republican Party of Barry Goldwater and the Justice Department of John Mitchell. Still, I suppose they represent a genuine right-wing conviction.

But Mr. Rehnquist also has a mind of the highest candle-power. His comments in the Judiciary Committee hearings have been unfailingly lucid and discriminating. He has

been "hesitant"—a favorite word—when unsure of the fine details of a problem.

Even one of his staunchest opponents, Sen. Edward Kennedy, described him as "a man with a quick, sharp intellect, who quotes Byron, Burke, and Tennyson, who never splits an infinitive, who uses the subjunctive, at least once in every speech, who cringes when he sees an English word created from a Greek prefix and a Latin suffix."

Only it happens that the qualities that Senator Kennedy is pleased to dismiss so crudely express a critical aspect of the Court's present work. The Court does not now need more liberals, more conservatives, or more middle-of-the-roaders. There are enough of those to assure that nothing drastic is going to happen in civil rights or criminal law.

What the Court needs is more brains. Mr. Rehnquist has them—more abundantly perhaps than any present member. And by uplifting the quality of the Court in general, he will do far more than any particular decision in any particular case can do to advance the values thoughtful men hold dear.

Mr. COOK. Mr. President, earlier, I addressed the Senate in regard to the qualifications of Lewis F. Powell to be an Associate Justice of the Supreme Court as judged by the criteria or standards that I developed in previous Supreme Court nominations.

I now wish to examine the other nominee, Mr. William H. Rehnquist, in light of these standards.

WILLIAM H. REHNQUIST

In this instance, I am also combining the first two standards and considering them together.

1 AND 2. COMPETENCY; ACHIEVEMENT OR DISTINCTION

In 1948 Mr. Rehnquist graduated "with great distinction" from Stanford University and was elected to Phi Beta Kappa. The next year he received an M.A. from Harvard in government. At Stanford Law School he received his LL.B. degree, graduated first in his class, was elected to the Order of the Coif and served on the board of directors of the Stanford Law Review. Phil C. Neal, dean of the University of Chicago Law School has stated to the committee:

Rehnquist was a student of mine at Stanford Law School. He was not only the top student in his class but one of the best students in the school over a number of years. He has remained in my mind as one of the most impressive students I have had in some twenty-two years of teaching.

Mr. Jarril F. Kaplan, a Phoenix attorney who has publicly stated that he does not share the nominee's political views or philosophy, said in a letter to Senator BROOKE:

I have known Mr. Rehnquist well as a professional colleague for many years. He is an outstanding lawyer, completely thorough, scholarly, perceptive, articulate and possessed of the utmost integrity as well as a keen wit. He enjoys the highest respect of his fellow lawyers for his legal talent. There is, in my mind, no question about Mr. Rehnquist's legal qualifications to serve upon the Supreme Court.

Another prominent Arizonian familiar with the nominee, but who also disagrees with some of his views, Representative MORRIS K. UDALL, stated:

I say this though I can attest to his complete integrity and adherence to the highest ethical standards. In addition, he has had excellent legal training and experience and possesses a clearly superior legal mind. He certainly meets the demanding professional standards for and would bring intellectual distinction to the Supreme Court.

A number of law professors have given the nominee very high marks. Ralph K. Winter, Jr., of Yale Law School, said in a letter to the committee:

Mr. Rehnquist is experienced in matters of constitutional law. He will bring to the Court knowledge and a sense of history as well as intellectual power. He understands, and accepts, the fundamental principles of government established by the Constitution and appreciates the difficult role a court must play as a constitutional arbiter in a democratic society.

Thomas E. Kauper, professor of law at Michigan, said that:

He has all the qualities to become a truly great judge.

Willard H. Pederick, dean of the Arizona State University College of Law, thought so highly of Mr. Rehnquist's qualifications that he "was moved to approach him a year ago about the possibility of an academic career with the faculty of the college of law."

John Bingham Hurlbut, Jackson Eli Reynolds, professor of law at Stanford and a former law clerk to Chief Justice Earl Warren, and also a former teacher of the nominee, praised his abilities in the following manner:

Mr. Rehnquist is the product of the Stanford Law School, a member of one of those remarkable and very competent postwar classes, composed largely of veterans, eager to exploit what the law school had to offer in the pursuit of a solid foundation for a professional career in private practice and in public service, and for satisfying those heavy obligations of a lawyer citizen. And on the other side of the platform a strong, demanding, dedicated faculty including such names as Phil Neal (now law dean at Chicago), Sam Thurman (now law dean at Utah), Harold Shepherd (former dean at Duke), and Paul Freund (visiting professor from Harvard for a term). In this setting he was graduated first in his class—and as one of my former colleagues at Stanford has put it, "he was the outstanding student of his law school generation."

I can, I think, speak with some authority on William Rehnquist the student. He was a member of my class in criminal law in his first year and evidence in his third year. For a while he was my research assistant. We had a common interest in intercollegiate athletics as well as the law. So I saw a great deal of him in the classroom, in my office and in my home.

As a student he was nothing short of brilliant, determined to achieve excellence, and persistent in his expectation of excellence on the other side of the podium. In the give and take of the classroom he was sharp, forthright, courageous, and objective—precise and deep in his analysis of difficult problems—insistent that a problem be turned over and over to expose all of its facets before its solution—and always a gentleman.

Upon graduation from law school, the nominee served as a law clerk for Mr. Justice Robert H. Jackson. From 1953 through 1969 he was a lawyer in private practice in Phoenix and according to the American Bar Association's report to the committee:

Was clearly a person of recognized professional quality who, for his age, was highly regarded.

The ABA standing committee on Federal judiciary further stated that his rating, AV, in Martindale-Hubbell was the highest rating a lawyer could receive. In his present position as an Assistant Attorney General of the United States and head of the Office of Legal Counsel, he has clearly demonstrated for the public record that he is all of what his many admirers say he is. A perusal of his statements before the various House and Senate committees clearly reveals the qualities of legal scholarship and keen intellect for which he is famous. He has demonstrated his expertise in broad areas of constitutional law through these writings.

Mr. President, only time and space in the CONGRESSIONAL RECORD prevent me from continuing in the documentation of his competency and level of achievement and distinction within his chosen profession.

3. TEMPERAMENT

Here, I once again turn to those who know the nominee best, even though many of them are in fundamental disagreement with his political or philosophical views. I believe this to be an important qualification, because hostility to a certain class of litigants cannot be condoned in any judge, but especially for a Justice of the Supreme Court. Self-discipline is essential.

Judge Walter E. Craig, U.S. District Judge for the District of Arizona, a former president of the American Bar Association, and a man who has known the nominee for 25 years had the highest praise for patience and temperament. In testimony before the committee, Judge Craig said:

He has demonstrated, I think, his patience and judicial temperament in appearing before this body. I have observed it for 19 years, so it does not come as a surprise to me that he has handled himself so magnificiently here. I have seen only a relatively few minutes of his testimony, but I have kept in some touch with the progress of the hearings.

In his appearances before my court, Mr. Rehnquist conducted himself not only with outstanding professional skills but with dignity, intelligence, and integrity. I think he has conducted his life that way so long as I have known him.

Prof. Thomas E. Kauper declared that—

William H. Rehnquist is as fine a lawyer as I have encountered. He has a scholarly, intellectual approach to legal problems which is not found in many practicing lawyers. While he and I did not always agree on the resolution of legal issues, I always received a fair hearing and found him eager to learn all that he could before making a decision.

There have been many allegations that the nominee is a "racist" or an extremist and that he, therefore, does not possess the necessary open-mindedness and judicial temperament.

Jarril F. Kaplan, a former chairman of the Phoenix human relations commission, said that during all of his years of service he never once heard reference to the nominee's hostility toward any minority group. In his letter to Senator BROOKE urging favorable consideration, he stated:

Parenthetically, I wish to state that I do not share much of Mr. Rehnquist's political views or philosophy. But that hardly detracts from his legal abilities or from my recognition of those abilities. Nor am I aware of any real basis for characterizing his views as extremist. Mr, Rehnquist is a consummate advocate, as any good lawyer must be. He states his views (or the views of those whom he represents) with the zeal of a skilled advocate. This is what he is trained to do, and should not be misunderstood as extremism.

Another supporter of the nominee, a professor of law at Yale University Law School, and a man who has seen him in action was equally impressed. Robert H. Bork stated in a letter to the committee:

I have seen Mr. Rehnquist engage in debate on highly controversial subjects. Though some persons on both sides of the issue became quite heated, he did not. He remained calm but forceful in the presentation of his views, marshalling his arguments with great skill. That performance was indicative not merely of great professional qualifications, but also of a judicial temperament.

The Reverend George Brooks, a former president of the Arizona NAACP, had charged at one time that Mr. Rehnquist harrassed and denounced in an abusive manner certain civil rights demonstrators in 1964 at the Arizona State Capitol. As the Nov. 3 edition of the Washington Post reported, the Reverend Mr. Brooks has clarified his original statement:

By the end of last week, Brooks was telling a different story. He now says that the discussion with Rehnquist was calm, "the tone was professional, constitutional, and philosophical," he said. He was neither harassed nor intimidated, Brooks added.

His latest opinion certainly agrees with that of all the others who have commented on the nominee's temperament.

Finally, the nominee has been charged with attempting to deprive certain minority groups of their voting rights in the 1960's. The committee report more than adequately replies to these unsubstantiated allegations. I refer to pages 8–13. In addition, Mr. Rehinquist in a reply to questions from Senators BAYH, HART, and KENNEDY categoricaly denies these assertions. I ask unanimous consent that question No. 10 of the Senator's letter, and Mr. Rehnquist's reply be printed in the RECORD at this point.

Mr. President, in summary, many have called Mr. Rehnquist, "the ultimate reasonable man." The record certainly supports this description.

4 AND 5. ETHICAL CONDUCT; PERSONAL CONDUCT

Mr. Rehnquist has undergone a thorough investigation of his personal life by the Federal Bureau of Investigation as well as by private individuals and groups. Furthermore, Senator BAYH questioned him extensively about his l&w practice and the record reveals absolutely nothing which would indicate that he violated either the canons of ethics or the statutes governing the standard of conduct required of members of the bar. Professor Hurlbut succinctly summarized the thinking of everyone who knows William Rehnquist when he said that:

Above all else he is a man of complete intellectual and personal integrity.

CONCLUSION

Mr. President, as I have repeatedly stated, I do not believe that political philosophy or ideology is a relevant factor in the Senate's confirmation of Supreme Court nominations.

On November 28, Representative PAUL MCCLOSKEY, during an appearance on the WTOP–TV program "Newsmakers," stated his opinion as to Mr. Rehinquist's qualifications and temperament. He said, in part, that—

Bill Rehnquist, in my judgment, has a reverence, respect for the law.

In reply to a question about the nominee's philosophy, Representative MCCLOSKEY summarized my feelings on this matter when he said,

I think—as I say, his political views I don't agree with at all. But I hate to see us get to the point in this country where because a man is behind the times politically we deny him a seat on the court. I think the law's too important to have political views play a part in whether he's qualified or not.

Because Mr. MCCLOSKEY'S comments on "Newsmakers" were so timely and pertinent, I ask unanimous consent that the relevant portions of that program, exhibit "B", be printed in the RECORD at the conclusion of my remarks.

In an article entitled "The Rehnquist Dilemma," Tom Wicker said in the November 11, 1971, edition of the New York Times concerning the nominee's rejection on ideological grounds:

So the real question before the Senate is whether it can, or should, reject Mr. Rehnquist solely because of his political views. On the one hand, the writers of the Constitution, in giving the Senate the power to confirm or reject presidential nominees to the Judiciary, clearly meant the legislative branch to play a substantive role with the executive branch in this process. The Senate has the right, therefore, to judge for itself the qualifications of a man to sit on the Supreme Court.

On the other hand, to make that judgment solely on the basis of his political views (which, after all, may change) is dangerous business. It presumes some kind of rightful political orthodoxy.

In that same column he rebutted the argument of rejecting Rehnquist because the President has nominated a conservative, political activist by saying:

And the Senate is likely to compound the damage if it denies Mr. Rehnquist his court seat solely because of his political views.

Tom Wicker's credentials as a stout defender of political liberalism are, I believe, impeccable. However, he believes so strongly that Mr. Rehnquist should not be opposed on philosophical grounds that he wrote another column on this subject. In speaking once more of the liberal's dilemma, Mr. Wicker stated:

That means that the battle has to be fought, if at all, on the tricky ground of Mr. Rehnquist's political views—whether it is called his "judicial philosophy" or his "constitutional approach." The view was put forward in this space on November 11 that this kind of opposition was "dangerous business"—that it suggested the existence of a kind of political orthodoxy, would tend to politicize the Court, would punish some people for their ideas while frightening others out of having any and would lead inevitably to political retaliation.

He further went on to say:

On balance, with full awareness that Mr. Rehnquist's views on the Bill of Rights seem antilibertarian, and despite weighty arguments from many who disagree, it still is "dangerous business" to reject him for his political views. Is it seriously to be asserted that conservative—even arch-conservative—views disqualify a man for service on the Supreme Court? If so, then what prevents some other Senate from disqualifying a man for strongly liberal views or for being a "new leftist" or a "neo-isolationist" or some other stereotype?

I believe, as does Mr. Wicker, that it is much too late for many of Mr. Rehnquist's opponents to be faulting him on constitutional interpretation. Mr. Wicker has this to say:

Can it be shown that Mr. Rehnquist's views are factually in error or substantively wrong? No, it is a matter of interpretation, and it is late in the day for liberals to start asserting that the Constitution is an absolute document not subject to interpretation or differing ideas. It is, in fact, the prime duty of the Supreme Court to decide what the Constitution means, on given subjects at given times in history.

I ask unanimous consent that both of these columns by Mr. Wicker be inserted in the RECORD at the conclusion of my remarks as exhibits "C" and "D."

In conclusion, after attending the judiciary hearings, and examining the record I wish to give my unqualified endorsement of this very distinguished lawyer and legal scholar. As with Mr. Justice Powell, I believe Mr. Rehnquist to be uniquely qualified to sit on the Supreme Court of the United States.

If I may depart from my objectivity for just a moment, and insert a personal note, this is the first instance that I have had the opportunity to be personally acquainted with a Supreme Court nominee. I know that Bill Rehnquist is a superior human being in every sense of the word. He is superior in intellect, temperament and compassion. I wish him well.

Mr. President, I urge the immediate confirmation of the nomination of Mr. William H. Rehnquist to be an Associate Justice of the Supreme Court of the United States.

I ask unanimous consent that other exhibits be printed in the RECORD.

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

EXHIBIT A

QUESTION 10 BY SENATORS BAYH, HART, AND KENNEDY

10. Please describe in as much detail as possible your position (including title and the manner in which you were selected); responsibility, and activities in connection with Republican Party efforts to challenge Democratic voters in Arizona for each of the following elections, separately: 1958, 1960, 1962, 1964, 1966, 1968.

In addition, please answer the following questions concerning your position, responsibility or activities in each of the above-mentioned years:

(a) Did you personally engage in challenging the qualifications of any voters? If so, please describe the nature and extent of the challenging you did and the bases on which the challenges were made.

(b) Did you train or counsel persons selected to be pollwatchers or challengers about the procedures to be used in challenging? If so, please elaborate concerning how the persons were selected, and the training that you gave. Did you in any of the abovementioned years train or counsel persons selected to be pollwatchers on the bases on which challenges could be made? If so, please elaborate concerning what you advised these persons were proper bases under law for challenges in each of the relevant years.

(c) Did you prepare, select or advise on the use of printed passage from the Constitution designed to be employed by challengers to determine the literacy of a potential voter? Did any such practice come to your attention? Did you think it proper and lawful? If not, did you take steps to curb such procedures?

ANSWERS TO QUESTION 10 BY MR. REHNQUIST

10. During the course of the Committee's deliberations, I submitted the following affidavit to the Chairman of the Committee:

"I have read the affidavits of Jordan Harris and Robert Tate, both notarized in Maricopa County, Arizona. Insofar as these affidavits pertain to me, they are false. I have not, either in the general election of 1964 or in any election, at Bethun precinct or in any other precinct, either myself harassed or intimidated voters, or encouraged or approved the harassment or intimidation of voters by other persons."

In order to fully respond to question 10, an understanding of the background of Republican challenging procedures in Maricopa County is necessary. I have therefore tried as best I can to recall and set forth that background.

A combination of the peculiarities of Arizona election law, the customary practices of the Board of Supervisors in appointing precinct election officials, and the numerical weakness of registered Republicans in part of the County resulted in the fact that the only method by which a Republican observer or poll watcher could be stationed inside a particular polling place in many precincts in order to watch for voting irregularities was to be there as a "challenger." While he was authorized by law to challenge voters, the prospects of his being successful were not great, since the challenges he made were ruled upon by a three-man election board (two judges and an inspector) and in the precincts with extraordinarily heavy Democratic registration at least two and often three members of this board would be Democrats. The challenger's real usefulness to the Party, therefore, was not that he was going to be able to prevail upon the election board to disqualify any large number of voters, but that his mere presence as a party representative would have a tendency to discourage any large-scale irregularities in voting procedures at that precinct. My recollection is that the most frequent cause of dispute which arose in Election Day during the late 50s and early 60s was the nature of the credentials required for a challenger to be allowed to enter and remain in a polling place, since in many of these precincts there had never been a Republican representation on the scene during Election Day.

With respect to the specific questions posed, I have attempted to refresh my recollection by speaking with several persons in Arizona who acted in Republican Party affairs during the years covered in this question and to Judge Hardy, who was active for the Democratic Party at the same time. I have also had occasion to see two local newspaper articles which appeared in the Fall of 1964, describing my position during the elections of 1960, 1962, and 1964. I recall that at the time there were written schedules, instructions, and the like prepared at least for the elections of 1960, 1962, and 1964, but I have not found anyone who was able to locate any of this written material, and it may no longer be in existence.

In 1958, I became involved in the Election Day program on quite short notice, and spent all the day at Republican County Headquarters in Phoenix answering questions as to the election laws on the telephone. So far as I remember, I was the only person having this responsibility at County Headquarters. I don't believe I had a title, and I cannot remember by whom I was selected. As I recall, Don Reese, then of Phoenix but presently of Houston, Texas, was County Chairman in 1958.

My attention has been called to a clipping from the *Arizona Republic* in October 1964, which states that in 1960 I was co-chairman of the "Ballot Security Program." I do not have any independent recollection of this fact, but I have no reason to dispute the account in the newspaper. As I recall, however, the program in 1960 was not called the "Ballot Security Program," since I don't remember hearing that term used before 1964.

In 1960, I supervised and assisted in the preparation of envelopes to be mailed out in advance of the election for the purpose of challenging voters on the basis of their having moved from the residence address shown on the poll list; I also recruited about a half a dozen lawyers to work on a "Lawyers Committee" on Election Day. I did not myself recruit challengers, but I did speak to a "school" held for challengers shortly before election, in order to advise them on the law. I believe I also supervised and assisted in the assembling of returns of our mailings which were returned "addressee unknown", so that they could be made available to the particular challenger who was stationed in the precinct in which the address was located. On Election Day, I believe that I spent most of the day in County Headquarters. In that year, however, we had enough other lawyers available in County Headquarters so that I probably spent some of the day going to precincts where a dispute had arisen, and attempting to resolve it.

I cannot remember whether Don Reese or Ralph Staggs was County Chairman in 1960; I believe I was designated by whoever was County Chairman that year.

With respect to 1962, I have been shown an article in the October 1964, *Arizona Republic* which states that I was Chairman of a Lawyers Committee which operated on Election Day. This is consistent with my own recollection. I do not believe that in this year I participated in the mailing out of envelopes prior to election, though I may have. I did speak at a school for challengers, I believe, in much the same manner as in 1960. On Election Day, my recollection is that I spent most of the day in Republican County Headquarters; however, I think that on several occasions in 1962, just as in 1960, I went to precincts where disputes had arisen in an effort to resolve them.

With respect to 1964, I have seen an article in the *Arizona Republic* dated October 1964, stating that I was Chairman of the "Ballot Security Program." This is consistent with my recollection. I presume that I had overall responsibility for the mailing out of envelopes, the recruiting of challengers, and the recruiting of members of the Lawyers Committee to work in County Headquarters; however, I believe that there were individuals other than me who were directly responsible for each of these aspects of the program. At this time, Wayne Legg was Chairman of the Republican County Committee, and I presume it was he who designated me as chairman. My recollection is that on Election Day during this particular election I spent all of my time in County Headquarters.

I also think, though I am not certain, that I spoke at the school for challengers held just before the election; if I did not speak to the school, I believe I was present when someone else spoke on the law. Challengers were advised in this year, pursuant to an opinion issued by the State Attorney General, that challenging at the polls on the basis of literacy or interpretation of the Constitution was unlawful by virtue of the Federal Civil Rights Act of 1964.

In 1966, my best recollection is that I played no part at all in the election activities, though I am not absolutely certain. If I played any part, it was simply to serve as a lawyer on duty at County Headquarters for a period of several hours in order to handle questions that might come in over the phone.

In 1968, I played no part at all in the election activities.

(a) In none of these years did I personally engage in challenging the qualifications of any voters.

(b) The recruitment of challengers in each of these years was under the direct supervision of someone other than me. However, in at least two of these elections—1960 and 1962—and perhaps in 1964, I spoke at a challengers' school conducted shortly before the election. The purpose of my talk was to advise the various persons who were to act as challengers as to what authorization was required in order to enable them to be present in a polling place during the time the election was being conducted, and also as to the various legal grounds for challenging as provided by applicable Arizona law. My recollection is that I simply recited the grounds set forth in the Arizona Revised Statutes as to the basis for challenge, the method of making the challenge, and the manner in which the challenge was to be decided by the Election Board of the precinct in question.

(c) I did not. No such practice came to my attention until sometime on Election Day, 1962. The manner in which I saw this type of challenge being used, when I visited one precinct, struck me as amounting to harassment and intimidation, and I advised the Republican challenger to stop using these tactics. Since no question was raised at that time as to the propriety or lawfulness of the use of printed passages from the Constitution by challengers in conjunction with the election board in an otherwise courteous and lawful manner. I did not consider it. Shortly after the election, I discussed this type of challenge with Charles Hardy, now Judge of the Superior Court of Maricopa County, and expressed my vigorous disapproval of any scattergun use of literacy challenges. By the time of the next biennial election, in 1964, such challenges were no longer permitted under federal law.

EXHIBIT B

U.S. REPRESENTATIVE MCCLOSKEY COMMENTS ON REHNQUIST NOMINATION

Program: Newsmakers. Station: WTOP-TV. Date: November 28, 1971, 7:00 p.m. City: Washington, D.C.

CAROLYN LEWIS. Paul McCloskey is a third term congressman from the State of California. He's also the only announced Republican candidate for President. McCloskey served as a Marine in Korea and was decorated three times. He says he isn't against all wars; he is against America's involvement in Vietnam. The Vietnam war, however, is not the only issue dividing Paul McCloskey from Richard Nixon.

Joining us this evening is columnist and commentator Carl Rowan.

Mr. McCloskey, not long ago you criticized President Nixon for what you called a lack of moral leadership on civil rights. Today civil rights leaders are strongly opposed to the Supreme Court nomination of William Rehnquist. Yet you support William Rehnquist. Why?

Representative PAUL N. MCCLOSKEY, Jr. Bill Rehnquist, in my judgment, has a reverence, respect for the law. I disagree almost entirely with his political views. But I think that the

crucial thing with our courts and our legal system is that the law must be absolutely separated from politics. You can't have legal involvement in politics, and you shouldn't have political influence in the court.

I've known Bill for I guess twenty years. He's always had almost a fetish that people should not have their political views intrude in their judicial decisions. If there's going to be any conservative judge on the court, this would be the man I would pick.

CARL ROWAN. I find this interesting because some months ago you said this to *Congressional Quarterly:* "The attack on crime, in my judgment, is not a matter of removing civil liberties, as the Attorney General now prefers." There are a lot of people who think Rehnquist was the ringleader in the Justice Department's efforts to destroy civil liberties. How do you reconcile this to your view?

Representative MCCLOSKEY. Well, I don't know that to be true. And I have some skepticism about assigning to the counsel or the attorney for someone the basis for the arguments that were made. I know that Bill Rehnquist carries out the Attorney General's instruction. I know that he probably carries out the President's instructions. And I don't think you blame the attorney for the position that they necessarily take on all occasions.

ROWAN. Now you also have been harshly critical of President Nixon for backing away from enforcement of civil rights laws, particularly the Voting Rights Act. We've had some criticism come out of Arizona claiming that Rehnquist tried to stop blacks from voting. Is it that you don't believe the criticism, or what?

Representative MCCLOSKEY. No, I honestly don't believe that. As I say, I've known Bill since law school. He was the top man in the class the year that I left law school and went to Korea. He's not the kind of a man that would be down in the voting line elbowing people out. He just isn't the kind of a guy to do that. And I can recall in those years back in the early sixties when sometimes Democratic politicians did run people through the voting lines that may or may not have been qualified to vote in specific urban precincts. I accept Bill's explanation that he advised the people that were checking on the polls, but did not participate in it himself.

LEWIS. Mr. McCloskey, only recently Mr. Rehnquist admitted that he was a little behind the times on wanting blacks to have equal access to public accommodations. Don't you think this shows that he lags at least behind the general populace even on these issues and perhaps has . . .

Representative MCCLOSKEY. I think so.

LEWIS. . . . What did you say?

Representative MCCLOSKEY. I think so. I think—as I say, his political views I don't agree with at all. But I hate to see us get to the point in this country where because a man is behind the times politically we deny him a seat on the court. I think the law's too important to have political views play a part in whether he's qualified or not.

LEWIS. What about his sensitivity to these major issues which are cropping up and will crop up in the seventies and eighties, and probably the nineties? Don't you think a man on the court should have a sensitivity to these things?

Representative MCCLOSKEY. Very much so. But I don't think that the speed at which sensitivity comes to him—Bill is forty-seven. He's still learning; he's still growing. He's a man who, I think, is capable of changing his mind. And, you know, what are the real attributes of a judge? Reverence, respect for the law, an open mind, an absolute insistence on not having his political views intrude into his judicial decisions.

I disagree strongly with most everything Bill believes politically. But it seems to me that this is precisely what we need—is a man unwilling to let his political views intrude in his judicial decisions.

ROWAN. Well, you've touched upon a critical question there, and that is whether political views do intrude. You remember that marvelous quote from Chief Justice Hughes, who said the Constitution is what the judges say it is. Well, a man's political views go a long way toward determining how he rules on critical cases like *Brown* v. *Board of Education,* the 1954 school desegregation decision . . .

Representative MCCLOSKEY. I agree with you.

ROWAN. . . . So how can you assure the public that Rehnquist will not let his political views get into his interpretation of the Constitution?

Representative MCCLOSKEY. Well, because if you go back into Bill's history you find that even in law school he was concerned that liberal judges were writing their political opinions into judicial decisions. It's almost been a fetish with him, as I say, that he has opposed this concept.

Now when you take a judge ruling on the Constitution, he's taking the history of the country, the history of the Constitution, the evolution of our laws, the prior court decisions. Now, Bill Rehnquist could no more bring himself to back away from, say, *Brown* v. *Board of Education,* or any one of the great civil rights cases of our time, than the man in the moon.

I don't worry about him at all in that respect. My worry about his political views goes to his authoritarian comments about the position of the executive branch of government. I think we've reached the stage where if you took Attorney General Mitchell's concept that we're entitled to wire tap because we think it's right, or we're entitled to keep these papers secret because we think it is right, there is the real danger that you have. And there I'm convinced Bill Rehnquist is a far better lawyer than to permit his political views to intrude in his decisions.

LEWIS. But he's the lawyer who argued that case for the Attorney General.

Representative MCCLOSKEY. I know. I've debated with him at tremendous length and in some violent disagreement before my own committee on government information.

ROWAN. What we really have here is you expressing a hope and trying to reassure the public on the basis of your personal friendship with Rehnquist. Isn't that about the shape of things?

Representative MCCLOSKEY. No, because you can't really say that we're friends. We've known each other. We're not of the same temperament. We have as I've mentioned, I think we disagree on nearly everything. But I would feel very comfortable, Mr. Rowan, arguing a civil rights or a human rights, or a sensitivity case in front of Bill Rehnquist. I think he'd bend over backwards to try to base his judgment on the law and the facts. And that's what you're looking for in a judge. The whole practice of law—and I come from three generations of lawyers—the whole beauty of the law is the independence and the judicious temperament of the judge that rules on it. That's where the confidence and the support and the faith in the law comes from.

And I think this man can do it, even though we disagree so violently politically.

ROWAN: Well, of course, the Rehnquist appointment is only one tiny aspect of the performance of the Nixon administration, civil rights-wise and otherwise. Does this indicate a general satisfaction, on your part, with the performance of the administration?

Representative MCCLOSKEY. Not at all. I—you know, I'm accused of being a one issue candidate, because I've opposed the war. And I run against the President primarily because of the war. But the two things that bother me almost equally as much is this administration's secrecy, concealment of information, deception. That's the first thing, because they've made news management, concealment and deception almost a trademark of this administration.

The second is their failure and their refusal to enforce the civil rights acts, particularly the Voting Rights Act of 1965. When this Attorney General refused to enforce that law down in Mississippi, when he pulled the voting registrars out, refused to send them back; when he said I can't enforce the law—I think there's a Circuit Court of Appeals down in Alabama that has bitterly characterized the Attorney General as a Pontius Pilate washing his hands of the civil rights act and his responsibility even to respond when they asked whether or not the Voting Rights program received his approval.

If I thought Bill Rehnquist had any part of the advice to the President or the participation in not enforcing the Voting Rights Act, it would certainly change my opinion. I can't believe that he'd do this . . .

[From the New York Times, Nov. 11, 1971]

EXHIBIT C

THE REHNQUIST DILEMMA

(By Tom Wicker)

The spectacle of Senator Edward Kennedy defending the reputation of William Rehnquist against allegations by Joseph Rauh of the A.D.A. suggests the painful dilemma in which liberals and civil libertarians have been placed by Mr. Rehnquist's nomination to the Supreme Court.

This nomination is not like that of Clement Haynsworth, whom President Nixon earlier tried to put on the Court. Judge Haynsworth was not confirmed by the Senate on the ostensible ground that his record on the bench showed a lack of perception of possible conflict-of-interest situations.

Nor is the Rehnquist case similar to that of Mr. Nixon's other rejected nominee, G. Harrold Carswell. Judge Carswell was found to have made misstatements to a Senate committee, and his confirmation hearings disclosed a glaring lack of qualification for the Supreme Court.

The Rehnquist matter is not even like that of Lewis Powell, whom Mr. Nixon has also named to the Court.

Mr. Powell is a pillar of the Southern establishment, a good credential in the Senate, he is 64 years old and his tenure on the Court will be limited by that; he is not expected by most observers to become a powerful leader within the Court.

Mr. Rehnquist is a horse of a very different color. At 47, he can look forward to a long and active tenure on the bench. Moreover, his record is that of a hard-working and vigorous champion of conservative political causes, both in Arizona and within the Nixon Administration. Persons in and out of the Administration who know his work credit him with superior intellect and skill in the law.

Thus Mr. Rehnquist on the Court is altogether likely to become a driving force for the principles he espouses. There are those who believe that as the years go along he will be a more formidable leader than Chief Justice Burger in the conservative wing of the Court—a wing that may already be in the majority on some issues and will almost surely become dominant if Mr. Nixon wins another term in the White House.

It is no wonder, then, that liberals and liberatarians are desperately casting about for means of defeating the Rehnquist nomination in the Senate. Mr. Rehnquist's record of opposition to civil rights measures, his strong advocacy of state powers that would threaten Bill of Rights guarantees—at least what many people passionately believe to be guarantees—his youth and his obvious leadership qualities might alter the course of the Supreme Court for decades to come.

But the hard fact is that no one has as yet produced any evidence of the kind of ethical tangles that ruined Judge Haynsworth's chances—and before that led to the resignation of Abe Fortas from the Court; nor has anyone been able to identify misstatements like those that sank Judge Carswell, let alone a lack of legal or intellectual qualifications.

It was, in fact, on the matter of Mr. Rehnquist's integrity that Senator Kennedy rebuked Mr. Rauh. The latter had suggested that the nominee had been less than candid in denying ever having been a member of the John Birch Society. The Senator could hardly be sympathetic to a man of Mr. Rehnquist's views, but he insisted that the nominee's basic integrity was unchallenged.

So the real question before the Senate is whether it can, or should, reject Mr. Rehnquist solely because of his political views. On the one hand, the writers of the Constitution, in giving the Senate the power to confirm or reject Presidential nominees to the judiciary, clearly meant the legislative branch to play a substantive role with the executive branch in this process. The Senate has the right, therefore, to judge for itself the qualifications of a man to sit on the Supreme Court.

On the other hand, to make that judgment solely on the basis of his political views (which, after all, may change) is dangerous business. It presumes some kind of rightful political orthodoxy; it would tend to politicize the courts according to the temporary political coloration of Congress; it could punish some individuals for their ideas and frighten others out of having any.

Moreover, it is bound to lead to retaliation, as it did when Republicans and conservatives defeated President Johnson's nomination of Justice Fortas to be Chief Justice, at least partially on political grounds. Paying off that score had a good deal to do with Jude Haynsworth's subsequent rejection.

It may be argued that Mr. Nixon should not have handed Senators this dilemma by appointing an activist political figure to a nonpolitical court; but the precedents are ample, and the Senate is likely to compound the damage if it denies Mr. Rehnquist his Court seat solely because of his political views.

EXHIBIT D

IN RE REHNQUIST

(By Tom Wicker)

WASHINGTON.—The Senate apparently will confirm Lewis Powell next week as an Associate Justice of the Supreme Court. After that, it will either face up to or delay the far more controversial and difficult matter of William Rehnquist, President Nixon's other nominee to the Court.

As it now appears, Mr. Rehnquist will be confirmed, too, unless those who oppose him are determined enough and able to put together something like the filibuster that, in 1968, prevented confirmation of Abe Fortas as Chief Justice.

This is at least a long-shot possibility because of Mr. Rehnquist's comparative youth (47) and his reputation as a skilled, active and intent champion of strongly conservative causes. Liberals fear he may become for many years the vigorous leader of a reactionary Court, but their dilemma is that no ethical or professional charges sufficient to warrant Mr. Rehnquist's rejection have so far been proved.

That means that the battle has to be fought, if at all, on the tricky ground of Mr. Rehnquist's political views—whether it is called his "judicial philosophy" or his "constitutional approach." The view was put forward in this space on Nov. 11 that this kind of opposition was "dangerous business"—that it suggested the existence of a kind of political orthodoxy, would tend to politicize the Court, would punish some people for their ideas while frightening others out of having any and would lead inevitably to political retaliation.

On balance, with full awareness that Mr. Rehnquist's views on the Bill of Rights seem antilibertarian, and despite weighty arguments from many who disagree, it still is "dangerous business" to reject him for his political views. Is it seriously to be asserted that conservative—even arch-conservative—views disqualify a man for service on the Supreme Court? If so, then what prevents some other Senate from disqualifying a man for strongly liberal views or for being a "new leftist" or a "neo-isolationist" or some other sterotype?

This is not to deny that the Senate has a duty to consider the qualifications of a nominee to sit upon the Court. Or that among the qualifications it ought to consider is his general political, constitutional and judicial view of things. Judge Carswell, for instance, was judged to be lacking in intellectual and legal competence, a judgment that could be solidly documented.

But can it be shown that Mr. Rehnquist lacks fidelity to the Constitution? No, only that in his view it allows more power to the state and less to the individual than many other Americans believe to be the case.

Can it be shown that Mr. Rehnquist's views are factually in error or substantively wrong? No, it is a matter of interpretation, and it is late in the day for liberals to start asserting that the Constitution is an absolute document not subject to interpretation or differing ideas. It is, in fact, the prime duty of the Supreme Court to decide what the Constitution means, on given subjects at given times in history.

Nor is the political aspect of the Rehnquist nomination an open-and-shut affair. No doubt Mr. Rehnquist will be a formidable conservative force on the Court (although that remains a supposition that only time can justify). Even so, the damage he might do to liberal causes could well be less than the political consequences of a third rejected Nixon nominee, a third defeated conservative, in a Senate dominated by liberal Democrats. Just as the Court itself must sometimes practice "judicial restraint," so it may be that the Senate ought to practice some political restraint. This, of course, is a value judgment that each Senator must make for himself.

That also is true of the really crucial question about Mr. Rehnquist, which can best be explained by reference to Mr. Powell. Those who know the Virginia lawyer, a former American Bar Association president, concede that his views in many ways are as conservative as those of Mr. Rehnquist—and that fact was documented in an article by Mr. Powell recently reprinted on this page.

But Mr. Powell, it is said, is an experienced and fair-minded man of judicial temperament who, in deciding legal and constitutional questions, will put aside any personal or political preferences and prejudices that can't be squared with the law and the facts of a case. He might, for instance, generally approve wiretapping as a law-enforcement tool—yet be willing to rule against it when, in some particular case, the facts showed that the law and the Constitution had been violated.

It is to be hoped that this is true—of Mr. Powell and of any nominee, liberal or conservative. Whether or not it is true of William Rehnquist is the vital question about his nomination, and one that each Senator must judge for himself. If Mr. Rehnquist can put his personal views aside when they can't be fairly justified by the law and the facts, then those views should not be the deciding factor; but if any Senator feels that Mr. Rehnquist, or any other nominee, could not so discipline himself intellectually, voting to reject him would surely be a duty.

[From the Washington Post, Dec. 9, 1971]

REHNQUIST: TOP MIND

(By Joseph Kraft)

Justice Holmes, on being asked what he thought of the intellectual abilities of another judge, once replied: "I never thought of him in that connection." And there lies the nub of the powerful, positive case that can be made for Senate confirmation of President Nixon's latest nominee for the Supreme Court, William Rehnquist.

For years now hardly anybody has thought of the Supreme Court as performing an intellectual function. Mr. Rehnquist, far more than any other recent nominee, has the calibre to restore intellectual distinction to the Court.

To understand why, it is necessary to say a word about the role of the Court in the country. The country is dominated by the million and one daily actions of an energetic population largely unconstrained in its capacity to buy and sell, move and dream, educate and obscure, build and tear down.

Given the nearly universal disposition toward almost constant action, it is ludicrous to think of tyranny being imposed on this country from above by some establishment eager to freeze the status quo or turn back the clock.

The central political problem of a populist country is to preserve some modicum of elite values—respect for achievement; toleration for difference of outlook; regularity of procedure. Partly by original design, but even more by the chance accretions of history, the Supreme Court has come to be the defender of those values—the elitist institution in a populist country.

Unfortunately for the Court, certain political decisions were thrust upon it by the deadlock that developed between Executive and Legislature during the post-war period. In the fields of civil rights and legislative reapportionment, the Court felt obliged—understandably considering that all other avenues seemed closed—to make rulings that might much more appropriately been the work of the President and the Congress.

In the heady atmosphere engendered by those decisions, the Court headed by Chief Justice Earl Warren became result-oriented. In case after case, it was increasingly hard to discover the inner logic of decision-making. Blacks seemed to be favored because they were blacks, baseball because it was a good clean American sport, anti-trust plaintiffs because they were against economic monsters.

President Nixon's efforts to correct the imbalance have been fumbling to the point of casting doubt on the sincerity of his claim to want "strict constructionists." His preferred candidates have been right-wingers, so little distinguished that the Senate and the American Bar Association have constrained him to throw them back in the pond.

Mr. Rehnquist is something else. He has not shown sensitivity to the needs of people in trouble, and he has said some hardline—and to me silly-sounding—things about the influence of Supreme Court clerks and the softness of judges toward communism. Some of these comments may be what ambitious juniors are required to say in order to get ahead in the Republican Party of Barry Goldwater and the Department of Justice of John Mitchell. Still, I suppose they represent a genuine right-wing conviction.

But Mr. Rehnquist also has a mind of the highest candle-power. His comments in the Judiciary Committee hearings have been unfailingly lucid and discriminating. He has been "hesitant"—a favorite word—when unsure of the fine details of a problem.

Even one of his staunchest opponents, Sen. Edward Kennedy, described him as "a man with a quick, sharp intellect, who quotes Byron, Burke, and Tennyson, who never splits an infinitive, who uses the subjunctive

at least once in every speech, who cringes when he sees an English word created from a Greek prefix and a Latin suffix."

Only it happens that the qualities that Senator Kennedy is pleased to dismiss so crudely express a critical aspect of the Court's present work. The Court does not now need more liberals, more conservatives, or more middle-of-the-roaders. There are enough of those to assure that nothing drastic is going to happen in civil rights or criminal law.

What the Court needs is more brains. Mr. Rehnquist has them—more abundantly perhaps than any present member. And by uplifting the quality of the Court in general, he will do far more than any particular case can do to advance the values thoughtful men hold dear.

Mr. BROOKE. Mr. President, the confirmation proceedings on the nomination of William H. Rehnquist to be an Associate Justice of the Supreme Court appear to have narrowed to the actual intent of the nominee's 1952 memorandum to the late Justice Jackson. In a letter to the chairman of the Judiciary Committee (Mr. EASTLAND), Mr. Rehnquist has set the memorandum into a narrow context of a statement for Justice Jackson's tentative use in conference. Without attacking Mr. Rehnquist's candor in regard to this memorandum, I believe that serious questions can be raised as to the actual context in which the memorandum was drafted and for which the memorandum was to serve.

I ask unanimous consent that the memorandum be printed in the RECORD.

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

MEMORANDUM

Rehnquist states that the memorandum was prepared "as a statement of Justice Jackson's tentative views for his own use" for the conference of the Justices in the *Brown* case rather than as a statement of Rehnquist's own position and recommendation to the Justice.

1. The memorandum does not represent what is known of Justice Jackson's views on minority rights. It is highly improbable that he at any time believed that *Plessy* v. *Ferguson* had been rightly decided. Justice Jackson had a strong record against racial discrimination, exemplified most notably by his dissenting opinion in the Japanese relocation case, *Korematsu* v. *United States*, 323 U.S. 214, 242. (I should point out two cases in which he voted to sustain California's restrictions on aliens' rights to own land and fish, *Oyama* v. *California*, 332 U.S. 633, *Takahashi* v. *Fish & Game Commission*, 334 U.S. 410.) More telling, perhaps, is that Mr. Justice Jackson ultimately not only voted with the rest of the Court in *Brown* v. *Board of Education* but actually left his hospital bed to go directly to the Court to be present for the announcement of the decision on May 17, 1954. And aside from his judicial career, Justice Jackson had been America's chief prosecutor at the Nuremburg trials where his opposition to racism was manifested and reinforced. He referred to that experience in *Beauharnais* v. *Illinois*, 342 U.S. 250, 304 (dissent):

"Group libel statutes represent a commendable desire to reduce sinister abuses of our freedoms of expression—abuses which I have had occasion to learn can tear apart a society, brutalize its dominant elements, and persecute, even to extermination, its minorities. While laws or prosecutions might not alleviate racial or sectarian hatreds and may even invest scoundrels with a specious martyrdom, I should be loath to foreclose the States from a considerable latitude of experimentation in this field."

Even in that context, however, he was conscious that such laws must be carefully drafted because "the shoe may be on the other foot in some prosecution tomorrow." *Id.*

Not only does Justice Jackson's prior record on race repel the attribution of a pro-*Plessy* v. *Ferguson* view to him, but the memorandum contains another position which could not possibly have been intended to reflect that of the Justice:

"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."

Even if it stood alone, his opinion in *West Virginia Board of Education* v. *Barnette*, 319 U.S. 624, would be eloquent testimonial that he believed that the Court can and must protect the rights of minorities, including "Jehovah's Witnesses." Of the many passages in the opinion which bear this out, quotation of one is sufficient:

"It seems trite but necessary to say that the First Amendment to our Constitution was designed to avoid these ends by avoiding these beginnings. There is no mysticism in the American concept of the State or of the nature or origin of its authority. We set up government by consent of the governed, and the Bill of Rights denies those in power any legal opportunity to coerce that consent. Authority here is to be controlled by public opinion, not public opinion by authority.

"The case is made difficult not because the principles of its decision are obscure but because the flag involved is our own. Nevertheless, we apply the limitations of the Constitution with no fear that freedom to be intellectually and spiritually diverse or even contrary will disintegrate the social organization. To believe that patriotism will not flourish if patriotic ceremonies are voluntary and spontaneous instead of a compulsory routine is to make an unflattering estimate of the appeal of our institutions to free minds. We can have intellectual individualism and the rich cultural diversities that we owe to exceptional minds only at the price of occasional eccentricity and abnormal attitudes. When they are so harmless to others or to the State as those we deal with here, the price is not too great. But freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order.

"If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us." *Id.* at 641–642 (footnote omitted).

Indeed, Mr. Justice Jackson's entire career repudiates the claim that the memorandum reflected the Justice's view 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."

See, e.g., *American Communication Assn.* v. *Douds*, 339 U.S. 382, 422 (separate opinion) (freedom of speech and association); *Johnson* v. *United States*, 333 U.S. 10 (Fourth Amendment); *Everson* v. *Board of Education*, 330 U.S. 1, 18 (dissenting opinion), and *Zorach* v. *Clauson*, 343 U.S. 306, 323 (dissenting opinion) (both dealing with minority rights under First Amendment's Religion clauses). Justice Jackson sometimes disagreed with other members of the Court as to the scope of individual rights under the Constitution, but he yielded to no one in his insistence that the protection of such rights was a primary function of the Supreme Court. To put into his mouth the sentence "One by one the cases establishing such rights have been sloughed off, and crept silently to rest" is to contend that Justice Jackson was willing to repudiate a substantial part of his life's work.

2. There is considerable internal evidence in the memorandum, aside from the views which it expresses, to show that it could not have been intended for the use of Justice Jackson in a conference.

a. Taking the memorandum as a whole, it contains nothing that Justice Jackson did not know, or of which he would have to be reminded by a written memorandum. Doubtless, Justices ask their law clerks to draft summaries of precedents, or arguments of counsel to be used by a Justice at conference. But this memorandum does not contain that kind of legal analysis. It is, rather, a statement of judicial philosophy and well known, if somewhat one-sided, judicial history. It is doubtful whether any Justice would have needed a memorandum to refresh his recollection of the matters contained in that memorandum, but surely Justice Jackson, who was generally regarded as the most able and eloquent advocate on the Court, was unneedful of this kind of prop and would not have asked for it.

b. The title itself is a giveaway, "A Random Thought on the Segregation Cases." A memorandum drafted for use by a Justice in conference would probably have no title at all, but "random" is hardly an appropriate description of a memorandum written pursuant to instructions and for use in serious deliberations. On the other hand, the title is entirely appropriate if the memorandum is indeed what it otherwise appears to be, a memorandum from Mr. Rehnquist to Justice Jackson expressing the law clerk's views.

c. The history recited in the memorandum is so elementary that it would have insulted the intelligence of the other Justices if it had been recited in conference.

d. The personal references to the Justices are inconsistent with the tone which Mr. Jackson would have used, or could have been expected to use. There are three examples of this in the memorandum. Each of these is sufficiently telling that it merits separate attention.

i. "I would suggest that this is a question the Court need never reach; *for regardless of the Justice's* individual views on the merits of segregation, it quite clearly is not one of those extreme cases which commands intervention from one of any conviction."

If the "I" throughout this memorandum is Justice Jackson (that is, if the memorandum was, as Mr. Rehnquist asserts, a statement of Justice Jackson's own position), then the phrase *"for regardless of the Justice's* individual views on the merits of segregation" does not ring true. Rather, Justice Jackson would have said "I would suggest that this is a question the Court need never reach; for regardless of *our* individual views * * *." Indeed, the singular "Justice's" is (unless it is a typographical error) evidence that the Justice referred to is Justice Jackson being addressed by Mr. Rehnquist.

ii. "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."

It is at least unlikely that Jackson would have referred to the other members of the Court as "liberal" or that Rehnquist would have thought that this usage was proper for a statement that Jackson would make.

iii. The Third passage leaves little doubt that the "I" is Rehnquist, not Justice Jackson.

"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."

I know of no evidence that Justice Jackson was ever "excoriated by 'liberal' colleagues," that is, by other members of the Court. Indeed, since Justice Jackson had never previously taken any position suggesting that *Plessy* v. *Ferguson* was correct, there would have been no occasion for such excoriation. Mr. Rehnquist's explanation is questionable also because the " 'liberal' colleagues" are referred to in the third person, which would have been inappropriate if the memorandum was drafted for Justice Jackson to use in conference when only those colleagues would be addressed. If the memorandum was really intended for Justice Jackson's use in conference, it would have read something like "I realize that it is an unpopular and unhumanitarian position, for which I may be excoriated by some of my brethren * * *."

A minor, and perhaps less compelling, point as to the use of the third person is that one member of the Court is more likely to refer to the others as "brethren," and that a clerk writing for a Justice would adopt this formula. On the other hand, the word "colleague" is precisely the one which one would expect if a clerk was complaining about the treatment he was receiving from his fellow law clerks. Finally, it is particularly unlikely that Mr. Justice Jackson, of all people, should have required a law clerk to draft language for him in response to other members of the Court who had excoriated him for his position. Mr. Justice Jackson, as is well known, was entirely able to take care of himself in such intramural debate.

e. The tone of the memorandum is uncharacteristic of Justice Jackson, but more characteristic of Mr. Rehnquist. Most obvious, perhaps, is the *ad hominem* thrust, "To the argument made by Thurgood, not John Marshall * * *."

3. Evidence of Mr. Rehnquist's subsequent actions strongly suggests that the memorandum is a representation of Mr. Rehnquist's own views.

As I pointed out in an earlier floor speech.

a. The memorandum is entirely consistent with the position Mr. Rehnquist took on racial issues until the time of his nomination. For, even a decade after the *Brown* decision Mr. Rehnquist opposed a local anti-discrimination ordinance, expressing greater concern for the discriminator than those discriminated against. And in 1967 Mr. Rehnquist opposed integration of the Phoenix public schools saying, in that context, "we are no more dedicated to an 'integrated' society than we are to a 'segregated' society." It is far more plausible to attribute the views of that memorandum to one with Mr. Rehnquist's unfortunate record on racial matters than to Mr. Justice Jackson.

b. The passage quoted earlier, "I have been excoriated by 'liberal' colleagues," is illuminated by Mr. Rehnquist's article about the practices of law clerks at the Supreme Court. In that article in *U.S. News & World Report* he objected that "the political cast of the clerks as a group was to the 'left' of either the nation or the Court". It would now appear that the article was, in part, Mr. Rehnquist's reaction to the excoriation to which he referred in his memorandum to Justice Jackson. In that same article Mr. Rehnquist said:

"An ideal clerk ought, in most aspects of his official capacity, to mirror as best he can the mind of the Justice for whom he works. There is room for sensibly presented difference of opinion when the lines of dispute are clearly drawn and in the open, but there is no room for the clerk's deliberate use of his position as research assistant to champion a cause to which his Justice does not subscribe."

As we have already shown, the statement does not appear to mirror Mr. Justice Jackson's mind, particularly on the question of the role of the Court in protecting minority rights. Indeed, if the memorandum is what it appears to be, Mr. Rehnquist's statement of his own views to Justice Jackson, it violates the very precepts which Mr. Rehnquist purported to set forth in the article and whose unconscious violation he ascribed to the other clerks.

c. The *ad hominen* approach of the memorandum is consistent with Mr. Rehnquist's normal style. As I pointed out in my remarks Tuesday, "the contemptuous tone of Mr. Rehnquist's letter [of October 21, 1971, to the *Washington Post*] is almost as disturbing as its content."

d. Mr. Rehnquist's cavalier use of history in the memorandum is mirrored by his argument in opposition to the proposed public accommodation ordinance in Phoenix where he stated:

"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."

Yet, in fact, since 1701 the common law has been that a businessman, particularly an innkeeper, is "bound to serve the subject in all things that are within the reach and contemplation of" his calling. *Lane* v. *Cotton*, 12 Mod. 472, 484 (1701), quoted in *Lombard* v. *Louisiana*, 373 U.S. 267, 274 at 277 (concurring opinion). As of 1964 many states and cities had ordinances such as the one proposed for Phoenix. One such was sustained by the Supreme Court during Mr. Rehnquist's own tenure as law clerk. *District of Columbia* v. *John R. Thompson*, 346 U.S. 100.

Mr. SCOTT subsequently said: Mr. President, I have a cablegram addressed to Mr. J. R. Kendall, International Government Relations Adviser, Washington, from "Mobileurope, London." The cablegram is from Mr. Donald Cronson. The cablegram, which is from London, reads as follows:

Please relay following memorandum to William Rehnquist.

A reporter telephoned me from the States last night and asked if I had any recollection concerning the memorandum on the segregation cases attributed to you in Newsweek. As a result of his request I have examined my files and reflected on the matter. It is my recollection that the memorandum in question is my work at least as much as it is yours and that it was prepared in response to a request from Justice Jackson to prepare such a memorandum. My recollection of the events leading to it is as follows.

Prior to the preparation of the memorandum referred to in Newsweek another memorandum was prepared of which I still have a copy. It is my recollection that I actually typed the first memorandum, although it is possible that you did. It was in any case the result of collaboration between us. That first memorandum supported the position that Plessy was wrongly decided, and that the Court should announce that it was wrongly decided, but that the Court should leave to the Congress the responsibility for taking action to change the system of segregated education that had grown up on the basis of the wrong decision in Plessy. After examining that memorandum—

I say parenthetically that it is still in the possession of Mr. Cronson, in London.

Justice Jackson requested that a memorandum be prepared supporting the proposition that Plessy was correctly decided. The memorandum supporting Plessy was typed by you, but a great deal of its content was the result of my suggestions. A number of phrases quoted in Newsweek I can recognize as having been composed by me, and it is probable that the memorandum is more mine than yours.

I leave to your good judgment whether my recollection as set forth above should be publicized.

If you think I can provide any further information that will be helpful please telephone me. My office number in London is 839 1262. My home number is London 493 8181 or Gstaad, Switzerland, 43674.

DONALD CRONSON.

I think that this furnishes some very interesting and further enlightenment and establishes the credibility of Mr. Rehnquist which was so unwarrantedly attacked today.

If reporters are interested, let them call Mr. Cronson in London.

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

The PRESIDING OFFICER (Mr. BROCK). Without objection, it is so ordered.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Hackney, one of its reading clerks, announced that the House had disagreed to the amendments of the Senate to the bill (H.R. 6065) to amend section 903(c)(2) of the Social Security Act; agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. MILLS of Arkansas, Mr. ULLMAN, Mr. BURKE of Massachusetts, Mr. BYRNES of Wisconsin, and Mr. BETTS 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. 10604) to amend title II of the Social Security Act to permit the payment of the lump-sum death payment to pay the burial and memorial services expenses and related expenses for an insured individual whose body is unavailable for burial; asked a conference with the Senate on the disagreeing votes of the two Houses thereon, and that Mr. MILLS of Arkansas, Mr. ULLMAN, Mr. BURKE of Massachusetts, Mr. BYRNES of Wisconsin, and Mr. BETTS were appointed managers on the part of the House at the conference.

LEGISLATIVE SESSION

Mr. BYRD of West Virginia. Mr. President, I move that the Senate resume the consideration of legislative business.

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

ORDER OF BUSINESS

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the distinguished Senator from Louisiana (Mr. LONG) be recognized.

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

UNANIMOUS-CONSENT AGREEMENT

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that time on the conference report which the Senator from Louisiana is about to call up be limited to 1 hour, to be equally divided between the able Senator from Louisiana (Mr. LONG) and the able Senator from Nebraska (Mr. CURTIS).

Mr. JAVITS. Mr. President, reserving the right to object—and I shall not object—I want to ask the Senator from Louisiana, if it will suit his convenience, to give me a few minutes for colloquy, as we struck out the amendment we carried in the Senate unanimously. I understand why we have structured it out, but we should spread the facts on the RECORD and whenever the Senator could accommodate me in that respect, I would appreciate it.

Mr. LONG. Of course.

The PRESIDING OFFICER. 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, my understanding is that we are in agreement that a yea and nay vote will be requested on this conference report.

Mr. GRIFFIN. I am glad the Senator from West Virginia has indicated that.

Mr. BYRD of West Virginia. So Senators should be alerted to that fact.

Mr. LONG. Mr. President, I would like to have the attention of the Secretary of the Senate or his representative and ask that he undertake to see that the staffs of the Committee on Finance and the Joint Committee on Internal Revenue Taxation be alerted to the fact that this conference report is now under consideration, in order that members of those staffs may be available to consult with and advise Senators on technical aspects of the conference report while it is being considered on the floor.

REVENUE ACT OF 1971—CONFERENCE REPORT

Mr. LONG. Mr. President, I submit a report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 10947) to provide a job development investment credit, to reduce individual income taxes, to reduce certain excise taxes, and for other purposes. I ask unanimous consent for the present consideration of the report.

The PRESIDING OFFICER (Mr. BROCK). 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 4, 1971 at pages 44768–44776.

Mr. LONG. Mr. President, I cannot say that I view this as a very satisfactory conference agreement from the standpoint of the Senate. I say this because the Senate will find that many of the provisions added here on the Senate floor have been deleted. Despite this, there were many Senate provisions which were accepted in conference and which will become part of the final law.

As I analyze the situation, there are two basic reasons which account for the deletion of most of the Senate provisions which proved to be unacceptable to the House conferees. The first of these reasons is that the Senate in its action here on the floor added very appreciably to the revenue loss. Some of us recognized that this might occur and tried—I know that I tried—although unsuccessfully—to prevail upon the Senate to accept other amendments—such as the cutback in depreciation—which would have recouped an appreciable amount of this loss. That, in my judgment, would have been necessary if we were to persuade the House to agree to some of the Senate provisions entailing a large tax reduction and a large revenue loss.

The result of this was that the House passed a bill which, in the 3 years 1971, 1972, and 1973, would lose $15.4 billion.

The Senate action increased the total for this 3-year period to $27.9 billion—actually some $12.5 billion more than that provided by the House bill. I should note that virtually all of this was added on the Senate floor. The House conferees felt that a revenue loss in the range of $15 to $16 billion was all that was appropriate at this time. They believed that any appreciably larger revenue loss would tend to refuel the inflationary fires despite our wage and price controls. This was the principal reason why the House conferees were unwilling to accept the following amendments—

First, extending the investment credit for farm machinery back to January 1. This involves a revenue loss of $75 million in 1971.

Second, allowing a 10-percent investment credit in place of a 7-percent credit in rural areas and in central city areas. This represents a revenue loss of $100 million in 1971, $750 million in 1972, and $750 million in 1973.

Third, increasing the minimum standard deduction from $1,050 to $1,300 for 1971. The revenue cost of this was $1.4 billion in 1971.

Fourth, increasing the personal exemption for 1972 and subsequent years from $750 to $800. This involves a revenue loss of slightly over $1.8 billion in 1972 and slightly over $1.9 billion in 1973.

Fifth, providing a tax credit for college education expenses. This involved a revenue loss of $2.2 billion in 1972 and $2.3 billion in 1973.

Sixth, providing a tax credit for real property taxes or rents paid by the elderly. This involves a revenue loss of $225 million in 1972 and $235 million in 1973.

Seventh, providing an extra exemption for the disabled. This involves a revenue loss of $190 million in 1972 and $200 million in 1973.

Eighth, finally, in this category, requiring only quarterly deposits of withholding and social security taxes collected by employers from employees where the number of employees is 50 or less. In terms of the fiscal year collections for 1972, this would have involved a decrease in collections of $1.5 billion.

In some of the other modifications of Senate amendments also, the modifications were designed, at least in part, to save revenue.

The second reason the House conferees refused to accept an appreciable number of Senate amendments was that they considered a number of the amendments as not being germane under their rules. That included six items some of which I sponsored and fought for hard myself, and some of which I hope we may yet enact. In the Legislative Reorganization Act of 1970 a provision was added which, with respect to the House rules, had the effect of providing that the House conferees may not accept—without subjecting the conference report to a point of order—a provision which could not have been added on the floor of the House when the bill was originally considered.

No one can be quite sure how this would be interpreted under the House rules since, with the closed rule under which the House customarily acts on a tax bill, there have been very few prior tests of germaneness in the case of tax provisions. The House conferees seemed to feel, however, that since the bill the House sent over to the Senate constituted basically an amendment to the Internal Revenue Code of 1954, amendments to be germane must either be amendments directly to the Internal Revenue Code or amendments which were clearly related to material which is in that code.

If this interpretation of the House rules is correct, this represents a severe restriction on Senate action, not only with respect to tax bills, but also with respect to other legislation. It seems to me that this is a problem which the Senate must face up to if it is to maintain its position in legislation, not only in the area of taxation but in other areas as well.

The Senate provisions which were not agreed to in large part because the House conferees believed the provisions were not germane under the House rules are as follows—

First, the Senate provision allocating 7 percent of alcohol tax receipts to the highway trust fund—this was an amendment to the highway trust fund rather than to the Internal Revenue Code.

Second, the Senate provision which would authorize the President to impose quotas and import surcharges up to 15 percent on articles imported during a balance-of-payments emergency period. This amendment also directed the Secretary of the Treasury to exempt from the present import surcharge, piston-type internal combustion engines to be installed in snowmobiles.

Third, the portion of the work incentive program—WIN—amendments which relates to changes in the WIN program in the Social Security Act. As indicated elsewhere, the tax credit relating to the

WIN program was agreed to by the conferees.

Fourth, the amendemnt offered by Senator MAGNUSON which would have provided unemployment compensation benefits for up to 26 weeks to unemployed individuals who have exhausted their right to both regular unemployment benefits and emergency benefits provided for under the 1970 Act. This is the amendment which would have provided the additional unemployment benefits in those States where unemployment benefits in those States where unemployment was at a rate of 6 percent or above.

Fifth, the amendment which would have required the President to transmit reports to the Congress and the Comptroller General containing information as to appropriated funds which are impounded.

Sixth, and finally, the amendment offered by Senator COTTON which would have authorized the President under certain conditions to impose import quotas and other import restrictions on imported articles.

Those were amendments that, under the House rules, we were informed could not be agreed to because they were subject to a point of order. I regret that the Senate agreed to a provision, as part of the Reorganization Act, which, in effect, prevented the Senate from obtaining consideration of amendments which were in order under the Senate rules. This rule in effect, set the foundation for the House to decline to accept Senate amendments because they are not germane under the rules of the House of Representatives.

In my judgment, when the Senate did that, it did a very foolhardy thing. It tended to make the Senate an inferior, rather than a coequal body in this legislative process.

I would hope that the Senate some day would realize the folly of that action and try to do something about it. I had hoped to try to prevent this from happening in the first instance.

That was the reason why the Senate was not even able to obtain consideration of six important Senate amendments, some of which I was privileged to sponsor myself while this measure was being considered in the Committee on Finance.

Mr. President, turning now to the political contribution and public campaign financing amendments, as Senators undoubtedly know, the House did agree to the Senate amendments but with some very significant modifications. The House agreed to the tax credit of up to $25 for joint returns and $12.50 for single returns, as well as the alternative of a deduction for up to $100 in the case of joint returns and up to $50 in the case of separate or single returns.

In addition, the House conferees agreed to the checkoff system for the public financing of presidential elections. However, in view of the President's attitude toward this provision, the House conferees were unwilling to make this provision effective for the 1972 election. The House conferees believed, given the President's direct statement that he would veto the bill if this provision were in it, that to make this provision applicable to the 1972 elections would defeat any public campaign financing either for 1972 or for subsequent years. In addition, the President's attitude, would presumably also defeat the passage of any tax reduction for individuals and provisions of an investment credit for business, at least in this session of Congress.

I must say that it is with great reluctance that I and the majority of the other Senate conferees went along with the change making the checkoff system inapplicable to the 1972 election. However, as unfortunate as I believe that is, this provision is still in the bill and will be applicable to all presidential elections after the 1972 election. I believe that this is a great step forward as I am sure the majority in this body will believe also. In any event, let us hope that postponing the provision beyond the 1972 election will, in fact, give us a little bit more bipartisan support for the provision.

Despite the fact that I have devoted some time to pointing out the unsatisfactory aspects of our conference on the Revenue bill of 1971, there were a great number of changes proposed by the Senate which were accepted by the House conferees. In fact, I think I can say that for the most part, the Senate amendments which did not involve an appreciable revenue loss or which did not fall before the House germaneness rule in almost all cases survived and are in the conference report before us. These include some 26 provisions. They are as follows:

First, the provision which gave taxpayers the option in their accounting methods of either flowing through the benefit of the investment credit to profits currently or of flowing these benefits through to profits ratably over the life of the property. As approved by the conferees, this provision applies both to the report to Federal agencies and also to all reports over which any Federal agency has jurisdiction—this includes financial reports to shareholders over which the SEC has jurisdiction. The conferees provided an exception to this treatment in the case of regulated public utilities subject to the special rules relating to the treatment of the investment credit for ratemaking purposes. This was provided because taxpayers taking the second option—namely, the option of flowing the benefits of the investment credit through in profits over the life of the asset—also are required to account generally in their financial reporting for the credit on the same basis. However, it is expected that regulated companies which do not select this option will have the same rights as taxpayers generally to either flow the benefits of the credit through in profits currently or ratably over the life of the asset as they choose.

Second, the Senate amendment which would have permitted the administration to deny the investment credit for foreign produced property on a country-by-country basis even though the surcharge is repealed. The House agreed to a version of this amendment under which this is treated as another method of offsetting under the Trade Act of 1962, discriminations imposed by foreign countries with respect to U.S. products.

Third, the treatment of used property under the investment credit provided by the Senate bill. Thus, the investment credit will be available for up to $50,000 of used property and the amount of the credit which can be taken for used property will not be offset by any new property purchased by the taxpayer and eligible for the investment credit.

Fourth, the Senate modifications of the House bill designed to perfect the treatment of the investment credit in the case of regulated public utilities. These were accepted with virtually no modifications from the Senate-passed provisions.

Fifth, the Senate version of the limitation which permitted only 20 percent of pre-1969 investment credit carryovers to be used in any one year. The Senate version of the bill made this inapplicable to the portion of the year coming after August 15, 1971. The House would have continued the application of this 20-percent rule with respect to the second portion of 1971.

Sixth, the Senate provision for deduction for domestic service and child care. The Senators will recall that the Senate version of the bill contained a provision making a deduction of up to $400 a month available for domestic service or child care expenses either in the home, or in the case of child care expenses, to a limited extent, outside the home. In the case of single persons and also in the case of couples where one spouse was disabled, this was available under the Senate version without any income limitation. For married couples, the provision was limited to those where both were working and the combined incomes were $18,000 or less. A transitional rule provided for those with incomes immediately above $18,000. The House conferees agreed to the Senate provision but made this $18,000 rule applicable across the board, not only to married couples but also to single persons as well. In addition, as agreed to by the conferees, this deduction will be available only to those who itemize their personal deductions. This modification from the Senate provision is expected to save $170 million.

Seventh, the Senate provision requiring that a levy generally cannot be made on a salary or wages of an individual until he is notified of this in writing.

Eighth, the Senate provision providing that, in the case of a taxpayer who is the dependent of another taxpayer, the percentage standard deduction and low-income allowance are to be computed only with reference to that individual's earned income.

Ninth, the Senate modification of the House provision relating to the limitation on the carryover of unused investment credits, foreign tax credits and unused net capital losses. The Senate amendment provides that this rule is not to apply to reorganizations and other changes in ownership in the case of plans or contracts entered into before September 29, 1971.

Tenth, the changes in the definition of a net lease agreed to by the Senate. These apply for purposes of the minimum

tax on tax preferences and also for purposes of the limitation of the deductibility of excess investment interest.

Eleventh, the Senate provision postponing for 1 year the application of the capital gain distribution rules applicable in the case of accumulation trusts in existence on December 31, 1969.

Twelfth, the modifications made in the provision relating to whether a corporation qualifies for Western Hemisphere Trade Corp. treatment when it derives income from within the Virgin Islands.

Thirteenth, the Senate provisions providing that bribes, kickbacks, medical referral payments, and other illegal payments are not to be deductible for income tax purposes with two modifications. First, the conferees provided that the burden of proof as to whether a payment is an illegal payment is to be upon the Government to the same extent as the Government bears this burden of proof in tax cases relating to fraud. Second, in the case of medical referral payments, instead of amending the Social Security Act to make these illegal as such, the conference agreement treats such payments as not being deductible. I expect the Finance Committee, in connection with subsequent social security legislation, to again propose a provision making medical referral payments illegal.

Fourteenth, the modification made by the Senate in the provision of present law which provides a rebuttable presumption that an activity is engaged in for profit if there is a profit in the activity in 2 out of 5 of the last taxable years—or 2 out of the last 7 in the case of the breeding or raising of horses.

Fifteenth, the Senate amendment providing that a distribution of property to a foreign corporation—unless effectively connected to a trade or business in the United States—is, for tax purposes, to be the fair market value of the property distributed.

Sixteenth, the Senate provisions relating to original issue discount.

Seventeenth, the Senate provision providing that if a taxpayer leases a domestically produced aircraft or vessel to a U.S. person he may treat the income derived as income from sources within the United States.

Eighteenth, a portion of the Senate amendment relating to industrial development bonds. The House conferees accepted the portion of this amendment which places in a separate category bonds issued with respect to the furnishing of water. It did not, however, agree to permit the issuance of industrial revenue bonds in the amount of $5 million irrespective of the size of the other capital investments made by the company involved. Instead, the conferees agreed that the escape valve which does not deny the exemption where the capital expenditures made in the period 3 years before or 3 years after the issuance of the tax exempt bonds exceed the $5 million limit by no more than $250,000 was to be raised to $1 million.

Nineteenth, the Mathias amendment prohibiting those who prepare tax returns for compensation from disclosing information on the returns or from using the information for other purposes, except to the extent provided for by regulations.

Twentieth, in the case of the amendment which would have required the publication of estimates of tax expenditures in the budget or related budget documents each year, although the amendment as such was deleted, the Treasury has promised to make these reports annually to the tax committees and it may also include estimates of this type in the annual report of the Secretary of the Treasury. In any event, the material will be published in a form which will be available to the general public on an annual basis.

Twenty-first, the Senate amendment repealing the excise tax on trailers used primarily in connection with light-duty trucks where the gross vehicle weight of the trailer is 10,000 pounds or less.

Twenty-second, the amendments providing for exemption of the tax on busses used in urban mass transportation service and the truck tax on domestic trash containers.

Twenty-third, the Senate amendment subjecting to tax tires and tubes on imported vehicles.

Twenty-fourth, the Senate amendment providing for a credit against the Federal occupational tax on coin-operated gaming devices where similar State taxes are imposed. However, the conference agreement omits the requirement that the State tax be one which is in effect on the date of enactment of this bill.

Twenty-fifth, most of the Senate amendments with respect to the DISC—domestic international sales corporation—provision. The House conferees did not agree to the termination of the provision after a 5-year period but they agreed to the other basic changes made by the Senate.

Twenty-sixth, the tax credit provided to employers who, through the work incentive—WIN—program, hire individuals who are on welfare. The tax credit in this case is 20 percent of the payments made in the first year.

Despite the fact that the House conferees were unwilling to go along with the Senate on those amendments which involved a large revenue loss or those which were considered not germane under the House rules, in virtually all other cases, the House conferees did accept the Senate amendments. In view of this and the importance of this bill in increasing production in the period ahead, I would urge the Senate to agree to the conference report.

In summary, let me add these personal thoughts. I believe the bill we have brought from the conference is a good bill as far as it goes, but should have gone further in the direction of tax relief for individuals than it did. Personally, I supported many of the Senate amendments calculated to make the bill more responsive to what I considered to be in the best interest of the people of the United States, and I hated to lose them in conference.

When one examines the tax bill it is apparent that permanent new tax relief of tremendous magnitude is being provided for the business community. I do not quarrel with that; taxes are too high. But, unfortunately, so far as individual taxpayers are concerned the bill adds little new relief to the tax cuts Congress approved in 1969. Rather, it merely accelerates these tax cuts and makes them available a little sooner than otherwise would be the case.

I recognize fully that the effect is lower taxes now and now is when the economy needs the stimulus that comes from lower taxes. I remain convinced, however, that in the long run Congress is going to have to do more to lift the burden of individual income taxes either through changes in the tax rates, or by permanent increases in the personal exemption, and I intend to direct my efforts to this end.

I have made reference to the fact that many important Senate amendments to the bill were rejected because it was claimed that the rule of germaneness in the House of Representatives would not permit them. I believe that provision is wrong in principle. It is, in fact, an affront to the Senate. There is no doubt in my mind that we made a grievous error when we permitted that provision to be included in the Legislative Reorganization Act. No doubt it will haunt future conferees.

In my many years as a conferee with those conferees who represent the House of Representatives in the conferences, the conferees have always been willing to consider the proposals of the Senate. However, they are now less willing to discuss proposals properly made in accordance with the Senate's rules. In fact, they were never less willing to consider amendments appropriate under the Senate rules than they were on this bill. The Senate can blame itself for that result, especially in having, in effect, imposed a House rule upon the Senate.

I repeat this is a good bill as far as it goes. It is my hope that on another bill at another time we can persuade the House conferees of the wisdom and desirability of some of the tax-cutting amendments, as well as some of those proposals which were considered nongermane on this bill, which they so adamantly refused to accept as part of this bill.

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

Mr. LONG. I yield.

Mr. MOSS. Mr. President, do I correctly understand from the Senator's report that the conferees did keep a tax checkoff on the return, but set off the date until 1976?

Mr. LONG. The Senator is essentially correct. Under the compromise agreed to between the two Houses, a taxpayer for returns filed starting in January 1973 would have the privilege of marking on the tax return whether he wanted his dollar to go to the party of his choice or whether he wanted that dollar to go into the nonpartisan presidential election account.

The House was unwilling to agree to the automatic appropriation. It was contended that that might be subject to a point of order in the House of Representatives. It also was anticipated by the House conferees that there would be serious opposition from members of the

House Appropriations Committee. Therefore, the House was willing to agree only that this be an authorization subject to annual appropriations.

I honestly think that if this provision works as we think it will work and tens of millions of people signify their desire that their dollars be used in the fashion they indicate, Congress in practice will be required to respect their wishes.

Whether the checkoff can be provided for the 1972 election or not before the 1976 election, it still would be very desirable that we propose again what we did in our version of the bill, a permanent appropriation that would automatically take effect and make the will of the people felt when they mark on their tax return that they want their $1 used in the manner in which I have described.

Mr. MOSS. This was objected to by the House conferees as a nongermane item. They thought there would be objection from their Appropriations Committee.

Mr. LONG. In the conference every Democrat voted to agree at least in part to what the Senate did in regard to the tax checkoff; every Republican voted against it. It was a partyline vote, insofar as the conference was concerned. Those who agreed to go along with the tax checkoff did not feel that, in view of the problems I have mentioned, they could persuade the House at this point to accept the automatic appropriations.

I would hope we could renew this issue on the permanent appropriation, but I would submit to the Senator if the people of this country do what I think they will do, and that is mark on their tax returns that they want $1 used in this fashion, it will strengthen our hand and help us prevail on the Congress and the President to respect the wishes of the people in this regard.

Mr. MOSS. It seems to me we made a most significant change in the Senate. The Senator well remembers, because he was the manager of the bill, that we spent many hours debating this provision. There were a number of rollcall votes perfecting that part of the bill.

As a matter of fact, I felt that was one of the many great strides forward we had made toward relieving the election process of the one who could scare up the biggest contributors. To set it aside now and say that because there is an election in the offing and that we will put it off until after that election, seems to me to take most of the steam out of it and put it back in the debating situation rather than one of action.

I deeply regret that the conferees came to that conclusion.

If it were not so late in the session, with the pressures that are on us so much for the tax features of the bill, with which I agree, and I think that is important to our economy, I think this is one instance where we should disagree and have some further conference with the House.

Mr. LONG. I have been struggling in this area for more than 6 years, as the Senator well knows. If I thought we could have achieved any more than we accomplished at this point I would never have signed the conference report. The Senator can be sure of that.

I am reminded of an illustration one of our colleagues who has since departed this body gave on one occasion. He said that the situation could be compared to that of a farmer trying to get a wagon up a steep hill, with a horse pulling on the wagon and the farmer pushing on the wagon. He would manage to move the wagon up the steep hill to the point where the horse could not pull any further and he could not push it any further. When this point was reached our former colleague suggested it was a good idea to put a rock under the wheel, rest both the horse and the man and then, thereafter, to see if they could push the wagon farther, and if not, go down the hill to get help to push it farther.

In a similar fashion I think we have done everything we could at this time. My guess is that if we had refused to make this agreement we would have accomplished nothing. We would have wound up either defeating the entire bill, which the country much needs for the purpose of economic recovery, and in any event we would have failed to get any part of our tax checkoff proposal.

As it stands now, we have provided the Ameircan people with the oportunity to express their wishes, and we have the authorization on which the appropriation can be voted as an amendment to any appropriation bill. Further, I am persuaded that having moved this far, we are now in a position to take this matter to the American people. I do not have the slightest doubt that even though we cannot finance the campaign this way in 1972, this will be discussed more. Every time I explain this to an audience, as I did today to a group of young people, they say they have no doubt that those of us who voted for this were right.

Mr. President, I would like to say this takes effect in 1972, and for the small amount of money involved—about $50 million once every 4 years, which is the equivalent of a revenue impact of about $12.5 million a year—it will be a most significant change. It will change our way of financing campaigns. It will be a most important stride toward making the Government a government of the people, not controlled by the power of private financial contributions.

Mr. MOSS. I hope it has that effect. I agree that to establish the principle is a very significant step. If we have done that, it is significant.

Did the tax credit remain in where a person may contribute $25, or a couple $50, and get a 50-percent tax credit?

Mr. LONG. The Senator is correct.

Mr. MOSS. That is a significant step, and it will encourage the small contributor, who in no way could be suspected of buying influence. This gets away from the big, heavy contributor.

Mr. LONG. I wish to say to the Senator that it does this. This feature of the Senate amendment will be in effect in 1972 and it will make money easier to raise, particularly insofar as the little people are concerned, people who are willing to make a modest contribution that could not possibly result in any undue influence.

Mr. MOSS. Their names could not even be known, there would be so many.

Mr. LONG. Then there also is the deduction of $50 a couple that will be the law, which should make it easier to raise money for the next campaign.

Further, we succeeded in enacting a law where there is a limit as to how much can be spent through the news media. Also we have provided ways which should make money in small amounts easier to raise.

I am sorry we could not prevail with the $1 checkoff for the coming election. If the Senator had his way and I had my way it would have been in effect in the last presidential election, not to mention 1972. The Senator did the best he could to help me enact that measure.

Mr. MOSS. I thank the Senator.

Mr. LONG. Mr. President, I ask for the yeas and nays on the conference report.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. MOSS. Mr. President, I would like to commend the Senator from Louisiana for the job he has done on this very complex and difficult bill, for managing it through the Senate, as well as serving on the conference. I recognize that when we go to conferences it is a matter of compromise in order to get a bill.

In expressing my disappointment I do not want to reflect at all on my confidence in the work done by the chairman of the Committee on Finance. I think we are making a fundamental step forward in the entire financial picture of our country, as well as the matter we are talking about on the political checkoff.

Mr. JAVITS. Mr. President, will the Senator yield to me briefly?

Mr. LONG. I yield.

Mr. JAVITS. Mr. President, when the Senate debated the tax bill it agreed to an amendment, which I had offered, which would have required inclusion in the annual budget of Treasury estimates of "tax expenditures," which are revenue losses from special tax provisions. Naturally I had hoped that the House would recede from its disagreement to this amendment and I am disappointed that it did not. However, I am gratified that the conferees have arranged for reporting of the tax expenditure data compiled by the Treasury to the tax committees of the Congress. It is my understanding that this data will be presented in no less detail than in the 1968 annual report of the Secretary of the Treasury; this format will be most useful. The Department of the Treasury has also undertaken to furnish this information to the Joint Economic Committee, which will thereby be in a position to analyze tax expenditures in connection with its annual report. It is my hope that current data will be provided to the Joint Economic Committee promptly at the beginning of each calendar year, at the same time as the annual and the committee's preparation of its report. I very much appreciate the efforts of the conferees and the cooperation of the Department of the Treasury on this matter. I ask unanimous consent that the appropriate passage from the conference report, describing the arrangement with the Treasury for making this information available to the Congress, and also the letter from

Senator PROXMIRE and myself to Secretary Connally and the reply of John S. Nolan, Deputy Assistant Secretary, be printed in the RECORD at the conclusion of my remarks.

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

BUDGET INFORMATION WITH RESPECT TO REVENUE LOSSES AND INDIRECT EXPENDITURES

Amendment No. 74: The Senate amendment amends the budget and accounting act to require the budget submitted by the President (or special analyses presented with the budget) to contain estimates of losses in revenue from provisions of the Federal income tax laws and also estimates of indirect expenditures through the operation of Federal tax laws.

The conferees concluded that it would be more appropriate to have such estimates of tax expenditures made by the Treasury Department and to have the estimates submitted annually to the Committee on Ways and Means of the House, the Committee on Finance of the Senate and the Joint Committee on Internal Revenue Taxation. It is expected that these tax expenditure reports to the tax committees will initially be modeled after similar reports previously made and included in the Annual Reports of the Secretary of the Treasury in 1968 and 1970. Modifications may, of course, be made from time to time in consultation with the tax committees. In addition to making these reports to the tax committees on an annual basis, the Treasury Department may desire to include these data on tax expenditures in the annual report of the Secretary of the Treasury. The Treasury Department has indicated its willingness to submit information to the tax committees in the manner indicated above and as a result the amendment no longer appears necessary.

The Senate recedes.

DECEMBER 9, 1971.

Hon. JOHN B. CONNALLY, JR.,
Secretary, Department of the Treasury, Washington, D.C.

DEAR MR. SECRETARY: The Conference Report on H.R. 10947, the Revenue Act of 1971, states that the Treasury Department is willing to submit annually to the Committee on Ways and Means of the House, the Senate Finance Committee and the Joint Committee on Internal Revenue Taxation estimates of tax expenditures, in addition to including these tax expenditures in the annual report of the Secretary of the Treasury. Because of this willingness on the part of the Treasury Department, the conferees on H.R. 10947 felt that there was no need to publish estimates of tax expenditures in the U.S. budget as required by the Javits amendment to the Revenue Act of 1971.

We consider the Treasury's action to be a significant step toward giving the public balanced information as to the economic effect of the Federal government's activities and commend you for your willingness to supply this information to the Congress.

However, we also feel that the information submitted to the tax Committees should be made available to the Joint Economic Committee at such time as it may request the information. The Joint Economic Committee would find such information extremely useful in its continuing review of the economy and would be the most appropriate vehicle for any public discussion of the tax expenditure figures. Therefore, we request that the Treasury Department agree to make this information available to the Joint Economic Committee as well.

Sincerely yours,

WILLIAM PROXMIRE,
Chairman, Joint Economic Comittee.
JACOB K. JAVITS,
Member, Joint Economic Committee.

THE DEPARTMENT OF THE TREASURY,
Washington, D.C., December 9, 1971

Hon. WILLIAM PROXMIRE,
Hon. JACOB K. JAVITS,
Joint Economic Committee, U.S. Senate, Washington, D.C.

DEAR SENATORS PROXMIRE AND JAVITS:

In your letter of December 9, 1971, you have requested that the Treasury Department make available to the Joint Economic Committee information as to so-called "tax expenditures" which we will be furnishing annually to the House Ways and Means Committee, the Senate Finance Committee, and the Joint Committee on Internal Revenue Taxation. As I am sure you know, we have agreed to make such information available on the basis that it was previously compiled by the Treasury Department or as specifically requested by those Committees. We do not propose to make decisions as to what are to be deemed "tax expenditures" in compiling such information. On this basis we are entirely agreeable to supplying the information to the Joint Economic Committee as well.

Sincerely yours,

JOHN S. NOLAN,
Deputy Assistant Secretary.

Mr. JAVITS. Mr. President, my question is this, Will it be understood that the tax expenditure information will be made available, generally speaking, about the time the President submits his budget and the special analysis presented with the budget?

Mr. LONG. It might not be quite that soon, but we will request the presentation of the material as early in the year as it is practicable.

Mr. JAVITS. The Senator satisfies us and assures us that it will be made available to us, to be utilized in connection with our report and recommendations, which are so heavily based on the President's budget.

Mr. LONG. I think I can assure the Senator that that will be the case.

Mr. JAVITS. Mr. President, I believe that the regular availability of tax expenditure information to the Congress is a step toward rational budget priorities and tax reform. I understand that it is the intention of the Joint Economic Committee to publish this information so that it will also be available to the public, which should be fully informed of the revenue losses in question.

Furthermore, now that it has been agreed that tax expenditure data can and will be provided in a meaningful and systematic manner to the Congress and to the public, I believe that it is appropriate for the Committee on Government Operations to consider how such data can best be coordinated with the annual budget. It may still be useful in clarifying the meaning of tax expenditures to have a format setting forth and comparing both indirect tax expenditures and direct outlays. In his testimony before the Joint Economic Committee in 1969 Secretary Barr made such a comparison and it was most illuminating.

I thank my colleague.

Mr. CURTIS. Mr. President, the chairman has accurately described the content of the conference report. It is true we lost a lot of good amendments to the House, but it is also true that the House accepted a good many Senate amendments. Many of those the House did not accept were accurately portrayed by the President as "budget busting" amendments.

At another time in a different context, no doubt, some of these Senate provisions would have been more attractive than the House conferees found them in this bill. But today, we are confronted with a serious situation. Our balance of payments is in trouble, unemployment continues at record highs, and the stifling influence of today's tax law discourages job development investments by business enterprise.

We undo in this legislation some of the things that were done in the so-called Tax Reform Act of 1969, which was one of the greatest mistakes this Congress ever made. I am delighted that we are undoing part of that law now. The act of 1969, in my opinion, was responsible to a large degree, for our present recession.

The bill is, I believe, accurately called a job development bill. The investment tax credit has already established its ability to spur job developing investments. The repeal of the automobile excise tax on cars and on light-duty trucks will substantially reduce the cost of these items and generate greater sales activity leading to the creation of more jobs in automobile manufacturing, sales, and service.

The codification of the so-called asset depreciation range rules of the Treasury Department, as this bill provides, will create certainty in the business community where today uncertainty prevails. Taxpayers will know that faster depreciation is theirs if they wish to take advantage of it. This more rapid depreciation, coupled with the restoration of the investment tax credit, goes a long way toward equalizing the cost of capital formation in this country, as compared to the other leading industrial nations of the world. It will not completely close the gap, and we need to do more in the future. But it is a good, desirable first step in recognizing that American business must be competitive with foreign business if it is going to survive.

I am pleased at the conference decisions with respect to the DISC. These provisions are now written in such a way as to be a true incentive to export stimulation. Today, far too many American businesses are expanding their production facilities abroad, rather than at home. This has taken jobs out of America, and no doubt, it has influenced the level of unemployment we face today. The DISC can, and I am hopeful will, encourage plant expansion in this country, rather than abroad, and that jobs which today are being lost to overseas plants will be retained here, and the products we make will be sold in foreign markets in volumes sufficient to help restore a fair balance in our international payments position.

The acceleration of the increase in the personal exemptions and standard deduction gives balance to the bill by cutting personal taxes and increasing consumer purchasing power now when the economy can stand an increased flow of dollars without setting off another round of inflationary pressures.

H.R. 10947 is thus a balanced attack on the economic problems facing the Nation. On the one hand, it encourages business to invest more, to produce more,

and to sell more. On the other hand, it assures lower prices for one of the most costly items in the American economy—the automobile. It also assures more dollars in the hands of consumers to buy the greater output of American industry.

Frankly, I am pleased that this integral, double-barrel assault on inflation and business lethargy, as recommended by President Nixon in his August 15 speech, has been retained in the bill.

Now, a word about political campaign financing. Speaking candidly, making the checkoff plan apply to the 1976 election, rather than in 1972, is a victory for this bill. In my opinion, the Senate amendment represented an unwise abrogation by Congress of its appropriation responsibility. It involved nothing less than an appropriation of public moneys without the benefit of current congressional scrutiny.

As it is now drafted, we will have 4 years within which to explore, debate, and amend the checkoff plan, and we can do this in a more orderly fashion than we could hope to achieve if this tax bill—so badly needed by today's economy—were held up by prolongation of the tax checkoff debate.

Now let me say a word about the conference procedure. In my experience, I cannot recall a conference where the House conferees were less willing to consider the merits of Senate amendments than this one. In far too many instances, they took the position—from which they would not budge—that Senate amendments were not germane to this bill. Strangely, the House conferees on the public debt bill earlier this year raised no objection on the ground of germaneness to the Senate amendment attaching a social security increase to that bill. But this time any amendment, no matter how trivial, which amended an act outside the Internal Revenue Code was resisted on the ground of germaneness with a fervor uncommon to the House conferees.

Despite the efforts of our distinguished chairman and the support he got from other Senate conferees, we could not breach the solidarity of the House conferees on the germaneness question. In my opinion, if this situation continues in the future, it is going to affect comity between the House and the Senate.

Mr. President, I urge the Senate to approve the conference report.

Mr. ALLOTT. Mr. President, a few weeks ago in good conscience I had to vote against final passage of this bill. I pointed out how the Senate had nearly doubled the revenue loss and had warped the President's economic measures out of recognition. The bill we have before us today for approval is a much improved piece of legislation.

Mr. President, I wish to, at this time, commend the conferees for their diligent and admirable work in arriving at this compromise. The present revenue losses contained in the conference bill are in line with fiscal realities; and ungermane and amendments unnecessary to economic recovery have for the most part been eliminated.

It is for these reasons that I am voting for the conference report.

Mr. President, I ask unanimous consent that a table supplied by the Treasury Department, setting forth the revenue losses for fiscal years, 1972, 1973, and 1974, be printed in the RECORD.

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

REVENUE LOSSES UNDER H.R. 10947

[In billions]

	Fiscal year—		
	1972	1973	1974
As proposed by administration	$6.0	$7.6	$5.2
As passed by Senate	8.8	12.3	11.6
As passed by House	5.0	6.1	6.0
As agreed in conference	4.4	6.9	6.1

Mr. DOLE. Mr. President, President Nixon's position on the economy further illustrates his nonpartisan concern for the American people and this country. I want to focus, for a moment, on two recent issues.

The economy and phase II of the economic program have dominated national interest. Many national figures have criticized phase II even though their criticisms bear no foundation. The fact is that these people who criticize the economic policy of the present administration do not offer a better approach for tackling this problem nor do they offer a stronger alternative program. While criticism is highlighted by the media, President Nixon continues his honest effort to rejuvenate the economy for the long term. He is not interested in producing a false prosperity which would assure him reelection. Rather, he is risking his political life in order to save the economy and strengthen America. President Nixon must share the responsibility of this effort with the American people.

An honest man could not suggest that this burden is the President's alone, or that any citizen is capable of restoring the economy without cooperation from the people involved daily with the economy of the United States. Yet, only a few weeks ago, George Meany and the AFL–CIO officials welcomed President Nixon and the new economic policy to their convention in Miami with threats and demeaning treatment. While Mr. Meany's behavior does not reflect that of the people he supposedly represents, it was inexcusable and an obvious effort to deter a stable and prosperous economy from the American people. President Nixon has created a Pay Board with members representing labor, business, and the general public. Mr. Meany's harassments accomplish nothing except the degradation of the position he maintains. The President's economic program is working and will continue to work with the cooperation and participation of all the American people, including the rank and file of organized labor.

Another economic issue is President Nixon's tax program. Some of my colleagues, both in the Senate and House have sought to tack a campagn financing scheme to the tax program. Interested supporters of this effort are contenders for the Democratic presidential nomination in 1972.

What does this "tax checkoff" campaign finance provision really accomplish? Millions of dollars of Federal tax money which could finance important concerns such as health, aid for the poor, and education would instead finance presidential campaigns. And we must expect the figure to escalate with the growth of the population. Proliferation of funds through taxes will not be controlled. Organized labor would have a disproportionately powerful role in presidential elections since the "education" fund would exempt it from the amendment's provision. Minor party candidates who generally lack national credibility would have nothing to lose by running in a presidential campaign since the taxpayer would finance the expense.

And the question of whether the amendment is constitutional surfaces. Would Congress be delegating a nondelegable function to private citizens—that of appropriating funds from the Federal Treasury? We must also consider the amendment's impingement on freedom of expression and its discriminatory treatment of splinter party candidates.

Two of President Nixon's most serious efforts to renovate the economy—phase II of the economic policy and the tax program—have been under attack by men with partisan concerns. The President's interest is only with what is good and wise for all the American people. We must not allow fabricated issues to overshadow concrete solution. This time America cannot afford the intolerable burden of selfish citizens.

I have here a column from the New York Times written by Tom Wicker, not normally a supporter of the President, which offers further insight to the situation we confront. This administration piloted the programs. President Nixon has made the initial efforts. The responsibility is now ours in the Congress. We must rise about partisan politics and personal gain to consider what is best for the people. The decisions this Congress makes concerning the economic policies of this Nation must be decisions which are not only for the constituency each of us represents, but for the Nation and the entire citizenship of the United States.

I commend the entire column to the attention of Senators and ask unanimous consent that it be printed in the RECORD.

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

[From the New York Times, Dec. 2, 1971]

THE BLAME GAME

(By Tom Wicker)

The public is likely to consider even the most partisan President as more nearly concerned for the general welfare than is any representative of a narrower interest. That is because the President is elected by the people; no matter how narrow his margin, he can rather effectively claim to represent them.

That is a lesson George Meany and organized labor ought to be learning as a result of their confrontation with President Nixon on Phase Two of his economic program. It will be difficult for them to maintain their

hostility without looking as if they are grabbing for advantage or sulking in a corner while the President tries to curb inflation and boost the economy.

It is a lesson that Congressional Democrats and their party's National Committee also may be taught in their conflict with Mr. Nixon over the campaign financing scheme they have inflicted on his tax program. The elimination by a House-Senate conference committee of some tax reduction amendments the President did not want has narrowed the issue to ground on which Mr. Nixon can fight most effectively. That is, if the conferees do not eliminate the campaign financing plan too, he can throw down the gauntlet with a veto.

What position would the Democrats then be in? Theoretically, they could override the veto, but that takes a two-thirds majority in each house and the dollar check-off amendment barely scraped through the Senate on a virtual party-line vote. Overriding, therefore, is a forlorn hope.

Alternatively, the Democrats controlling Congress could refuse to pass a new tax bill embodying Mr. Nixon's economic program. But aside from the merits, or lack thereof, of the campaign financing plan, it would clearly provide a terrific windfall for the Democratic party in 1972—a year when they badly need such largesse and the well-heeled Republicans do not.

Thus, if the Democrats allowed the Nixon tax program to go down the drain because he would not countenance their dollar check-off windfall, they are bound to look as if they were willing to sacrifice the general welfare to their own financial needs. This is doubly true since the President's economic proposals are mostly tax reductions, and he would not hesitate to point out who had kept them from going into effect.

Larry O'Brien, the Democratic chairman, has attempted to get out front on this issue by charging that Mr. Nixon wants to keep political finance in the hands of fat-cat contributors. This is a splendid example of Mr. O'Brien's gift for Irish blarney, and a pretty good political try, but as Lyndon Johnson used to say, "That dog won't hunt."

No party in history ever fell further into dependence on big contributors than the Democrats under Mr. Johnson and in the 1968 campaign. One of the main reasons that the party is in such financial straits today is because for so long it put its reliance on devices like the $1,000-a-membership President Club, while signally failing to develop any widespread base of financial support against the time when it would be out of power. In the same years, the Republicans were developing the best small-contributor financial support any modern American party has had. Barry Goldwater in 1964 had the most broadly based financial support of any major-party nominee.

This is not to suggest that Mr. Nixon does not have many big contributors behind him; he does, but to picture him and his party as the only offenders in this respect is poppycock. In fact, through the years since President Kennedy's elections finance commission recommended tax incentives to stimulate small contributions, Democratic Congresses have repeatedly refused to take this major, necessary step.

Even as the Democrats gear themselves up to picture the Republicans as the villains of the piece, what are they doing on another front in the Congress they control? In the bill to limit campaign spending they are carving a loophole big enough to push a fat cat through.

Another set of House-Senate conferees has eliminated the Republican-sponsored plan to have tough disclosure reports filed with a new, bipartisan Federal Elections Commission; instead, contributor and spending reports will continue to be filed with political employes of Congress, the secretary of the Senate and the clerk of the House. This all but guarantees that absolutely nothing will be done, as nothing ever is under present law, about violations of the statutes controlling political contributions and expenditures; and it assures that the public will remain mostly in the dark, where it now is kept.

Thus, it will not be easy for the Democrats to pose as fervent reformers of campaign finance; and anyway, if they go so far as to frustrate the President's proposed tax reductions, what grounds can they then find for blaming a lack of economic recovery on him?

Mr. HOLLINGS. Mr. President, if any article of our American faith should be held sacred, it is that each individual have the opportunity to share in both the burdens and the benefits of democracy. That faith has seen us through two centuries of challenge and change, including the most awful wars in the history of man. When there is a burden to be shouldered, the people must shoulder it together. Similarly, when there is a break to be enjoyed, the people should enjoy it together.

When it comes to giving a tax break, Congress has always found the opportunity to take care of the big businessmen who are afforded loophole after loophole, incentive after incentive, depreciation allowance after depreciation allowance, write-off after write-off. And what about Mr. and Mrs. Average American? Well, they work hard and file their returns and pay their taxes, and do not get any special breaks—but watch out if they deduct a dollar too much or list a questionable expense. It is long past time that the hard-working breadwinner—the backbone of America—got some tax relief and some tax incentive. He has been watching Congress help the Haves and the Have Nots—and he wonders what about himself. What about the Have Somes who keep America going?

On November 15, I offered an amendment to the Tax Revenue Act to provide relief to parents who are struggling to provide their children with a college or trade school education. The provision was not new. It had passed the Senate on two prior occasions—only to be deleted in conference with the House. On November 15, the Senate again approved the amendment by a margin of two-to-one.

By adopting this amendment, we recognized two vitally important facts. First, the tax bill had to be balanced more in favor of the individual middle-income bracket taxpayer. Secondly, the soaring costs of education are rapidly pricing most families out of the market.

I was hopeful that this amendment would be agreed to by the House conferees. The old argument that the budget would not allow such a break was clearly irrelevant this time around. A small reduction in the write-off benefits given the wealthy in the $30 billion package would have easily afforded the $2.2 billion for the tax credit in 1972.

The amendment was deleted in conference. My surprise in learning of its deletion was exceeded only by my dismay in learning that almost no time was devoted to study of the measure. Certainly tuition credit affects more people than the Presidential Campaign Fund provisions, which were debated for days. Meanwhile, 8 million students were callously disregarded—not to mention their tax-paying parents.

Mr. President, legislators spend a lot of time talking about what is germane and what is not germane. Let us be germane. If we would spend a tenth as much time talking about the financing of education as we do about busing students miles away from their homes, then we could make some real progress. If we would worry about the substance of bills rather than about some legislator's fear that his prestige might be damaged by a set-back on the floor or a presidential veto, we would be much better off.

I do not believe that the conferees' decision to delete the tuition tax credit represents the will of the majority of Congressmen. We know the Senate favors the bill—it has passed it three times now. And the chairman of the House Ways and Means Committee (Mr. MILLS) has indicated that if the tuition tax credit were considered on the floor of the House, it would pass overwhelmingly.

Mr. President, I stand opposed to the conference report. I will vote against it. I will not be party to a measure which ignores completely the interests of the average American taxpayer. Mr. and Mrs. Average American are tired of rhetoric, tired of can't, tired of promises. They want performance. And they want a little recognition for their contribution to making America what it is. This conference report gives them nothing but the back of the hand. I urge my colleagues to vote "Nay" on the report of the conference committee. And I urge them to go to work on a tax revenue bill which lives up to the ideals of fairness and equity which Americans have been fighting for throughout history.

MESSAGES FROM THE PRESIDENT

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

EXECUTIVE MESSAGES REFERRED

The Presiding Officer (Mr. BROCK) 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 Senate proceedings.)

CONQUEST OF CANCER—S. 1828—UNANIMOUS-CONSENT AGREEMENT ON CONFERENCE REPORT

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that time on the conference report on S. 1828, conquest of cancer, be limited to 30 minutes, to be equally divided between the Senator from Massachusetts (Mr. KENNEDY) and the Senator from New York (Mr. JAVITS).

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

INCREASED AVAILABILITY OF DENTAL CARE, S. 1874—UNANIMOUS-CONSENT AGREEMENT

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that time on S. 1874, a bill to provide for increased availability of dental care, be limited to 30 minutes, to be equally divided between the distinguished Senator from Washington (Mr. MAGNUSON) and the distinguished minority leader or his designee.

Mr. GRIFFIN. Mr. President, would the majority whip think he should provide some limit of time for the possibility of amendments?

Mr. BYRD of West Virginia. Yes; shortly I shall do so.

S. 2945—SERVICE ACADEMY ADMISSIONS—A UNANIMOUS-CONSENT AGREEMENT

Mr. BYRD of West Virginia. I ask unanimous consent that at such time as S. 2945—a bill by the Senator from New York (Mr. BUCKLEY) to provide for service academy admissions to sons of prisoners of war—is called up, there be a time limitation thereon of 30 minutes, to be equally divided between the distinguished Senator from New York (Mr. BUCKLEY) and the distinguished Senator from Mississippi (Mr. STENNIS).

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

Mr. BYRD of West Virginia. I ask unanimous consent that time on any amendments in the second degree, motions, appeals, or points of order, with the exception of nondebatable motions, to any of the foregoing, be limited to 10 minutes, to be equally divided between the mover of such and the manager of the bill or conference report whichever is the case.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

ORDER FOR CONSIDERATION OF CONFERENCE REPORT ON S. 1828

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that following the vote on the pending conference report, the Senate proceed to the consideration of the conference report on the conquest of cancer, S. 1828, and that upon the expiration of the time on that conference report, or the yielding back thereof, whichever may occur, the Senate proceed without a vote thereon to the consideration of S. 1874, a bill to provide for increased availability of dental care; and that at the expiration of the time thereon, or the yielding back thereof, whichever may occur, the Senate then return to the consideration of executive business for a resumption of consideration of the pending nomination, with the understanding that the votes on the conquest of cancer conference report and the bill (S. 1874) dealing with dental care occur in that order, and without further debate thereon, tomorrow morning immediately following the remarks of the distinguished Senator from Illinois (Mr. PERCY).

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

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that it be in order to order the yeas and nays on the conquest of cancer conference report and on S. 1874 the dental care conference report at this time, and with one show of seconds.

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia? Without objection, it is so ordered.

Mr. BYRD of West Virginia. Mr. President, at the request of the distinguished Senator from Massachusetts (Mr. KENNEDY), I asked for the yeas and nays on the conference report on the conquest of cancer and on S. 1828, dealing with dental care.

The yeas and nays were ordered.

Mr. GRIFFIN. Have the yeas and nays been ordered on the pending conference report?

Mr. BYRD of West Virginia. Yes.

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

Mr. GRIFFIN. I yield.

Mr. PASTORE. Mr. President, may we have an indication of when a vote on the conference report may take place? We are engaged in a serious conference over on the House side, and away from a telephone.

The PRESIDING OFFICER. The Chair would advise the Senator from Rhode Island that the time for debate on the conference report expires at 5:03.

ORDER FOR RECOGNITION OF SENATORS JACKSON AND PERCY TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that following the remarks of the distinguished Senator from Washington (Mr. MAGNUSON) tomorrow, the distinguished junior Senator from Washington (Mr. JACKSON) be recognized for not to exceed 15 minutes, and that at the conclusion of his remarks, the distinguished Senator from Illinois (Mr. PERCY) be recognized for not to exceed 15 minutes.

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

AMENDMENT OF TITLE II OF SOCIAL SECURITY ACT

Mr. LONG. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 10604.

The PRESIDING OFFICER (Mr. BROCK) laid before the Senate a message from the House of Representatives announcing its disagreement to the amendments of the Senate to the bill (H.R. 10604) to amend title II of the Social Security Act to permit the payment of the lump-sum death payment to pay the burial and memorial services expenses and related expenses for an insured individual whose body is unavailable for burial, and requesting a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. LONG. I move that the Senate insist upon its amendments and agree to the request of the House for a conference 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. LONG, Mr. ANDERSON, Mr. TALMADGE, Mr. CURTIS, and Mr. MILLER conferees on the part of the Senate.

REVENUE ACT OF 1971—CONFERENCE REPORT

The Senate continued with the consideration of the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 10947) to provide a job development investment credit, to reduce individual income taxes, to reduce certain excise taxes, and for other purposes.

Mr. GRIFFIN. Mr. President, will the Senator from Nebraska yield a few minutes to me?

Mr. CURTIS. I yield 5 minutes to the Senator from Michigan.

AUTO AND LIGHT-DUTY TRUCK PARTS AND ACCESSORIES

Mr. GRIFFIN. Mr. President, for the purpose of establishing legislative history, I wish to direct an inquiry to the distinguished chairman of the Finance Committee as to his understanding, and what he believes to be the committee's understanding, of how parts and accessories are treated under the manufacturers' excise-tax provisions.

Both the Senate and the House decided against exempting parts and accessories for light-duty trucks in this bill, even though light-duty trucks are themselves exempt from the tax. There were a number of considerations involved in not exempting replacement parts, including the factor that many of the parts or accessories used for replacement purposes on the light-duty trucks are interchangeable with parts and accessories which are used in connection with passenger automobiles. These interchangeable parts have been exempt since the Excise Tax Reduction Act of 1965 and continue to be exempt under this bill. I believe it would be helpful to clarify the treatment of these replacement parts for the benefit of those who manufacture interchangeable parts.

As I understand it, the parts and accessories tax will not be imposed upon any part or accessory which is suitable for use and ordinarily is used on or in connection with, or as a component part of, passenger automobiles, passenger automobile trailers and semitrailers, and house trailers, whether of domestic or foreign manufacture.

In my State of Michigan, there are at least 50 manufacturers of replacement parts and accessories for all types of motor vehicles. I understand there has been substantial difficulty in dealing with the application of the present parts tax because no regulations have been promulgated in the 6 years since the 1965 act was enacted. It appears that the Internal Revenue Service has averaged a little more than one published ruling per year with no straightforward criteria to assist taxpayers in evaluating their potential tax liability. The lack of regulations has caused considerable difficulty because

Internal Revenue agents, not only in Michigan but throughout the United States, have different viewpoints on what parts and accessories should be considered as exempt.

In my view the lack of regulations is particularly distressing because the 1965 changes are permanent law, not simply a transitory change in Federal excise taxation. The need for a common understanding and uniform application of the parts tax is imperative to a healthy and competitive industry. As evidenced by a recent Court of Claims decision (*IBM* v. *United States*, 343 F. 2d 914), the lack of uniformity in applying manufacturer's excise taxes can cause severe dislocation of business opportunities.

Just this past week the Service published two rulings establishing some useful guidelines. One important element that remains to be established, however, is how large a portion must be passenger auto usage in order to satisfy the common usage or interchangeability test.

Now, I have no brief for any particular numbers in this area, but one approach that I have heard suggested would be that if at least one-third of the highway vehicle usage is on passenger autos, then the part is commonly used on passenger autos and is exempt; if less than one-third is on passenger autos, then each case would be decided on its own facts and circumstances under criteria which could be set forth in regulations.

In view of Congress' decision not to exempt light-duty truck parts and accessories the administration of present law remains critical, and I would appreciate any comments of the distinguished chairman of the Finance Committee on this point.

Mr. LONG. Mr. President, as the Senator from Michigan has so well noted, the committee decided not to exempt light-duty truck parts and accessories, largely because most of these parts and accessories are interchangeably usable on passenger autos, and so are exempt. I think that the Senator's description of how the Internal Revenue Service could go about deciding what is a taxable part and what is an exempt part, is sensible and is in accord with what the committee understood to be the effect of these provisions when it reached its decisions.

Mr. GRIFFIN. I thank the distinguished chairman very much.

Mr. KENNEDY. Mr. President, I am pleased to support the conference report on the Revenue Act of 1971. Although I disagree with a number of its specific tax provisions, and although I regret that some of the most important Senate floor amendments were dropped by the conferees, I believe that overall, the legislation will be of substantial assistance in restoring the good health of our economy, and I also believe that it will become a landmark in our efforts to reform the financing of campaigns for public office.

Indeed, I believe that the importance of the election reform aspects of this legislation—the tax incentives for small contributions, and the public financing provisions for presidential campaigns—will be recorded as among the truly significant reforms of this century in the political process in America. It is for this reason that I wish to take the opportunity to make some general remarks on the constitutionality of the public financing amendment, as well as some comments on the deepening crisis the Nation now faces over the abuses in campaign financing.

An analysis of the relevant Supreme Court precedents—which follows as an appendix to these remarks—demonstrates that the Senate had adequate constitutional authority to enact the campaign fund provision, and that there is ample justification for the President to sign it. Inevitably, of course, the final determination of constitutionality will be made by the courts, and that is where the issue ought to be tested.

Now that the Senate and House conferees have removed the most bitterly contested provision of the bill by deleting its application to the 1972 campaign, there appears to be no real doubt that President Nixon will sign the bill into law. In approving this legislation, the President will be following essentially the same course he followed in the case of the bill approved by the Senate in 1970 lowering the voting age to 18. There, the President signed the bill, expressed his reservations as to its constitutionality, and directed the Attorney General to seek a rapid court test of the issue.

As it should be, the real question over the public financing amendment is not the constitutional issue, but the policy issue squarely raised in the Senate debate—whether the financing of presidential election campaigns belongs to the people or to the special interests.

The more we learn about the present system, the more distressed we are, and the more momentum we accumulate for real reform. The enormous recent escalation in the cost of political campaigns has brought new and unparalleled urgency to the movement for reform. I am pleased that the conferees were able to salvage the essential parts of the public financing amendment, because I believe it will become the centerpiece of all our efforts for reform.

Long after the partisan aspects of this controversy are forgotten, the enactment of public financing will be remembered as a landmark reform in the political process in America. It will rank with the Civil Rights Acts of the sixties, and with the constitutional amendments extending the franchise to women and lowering the voting age to 18, as the major milestones in election reform in this century. And let us hope that the 1972 campaign will be recorded as the last campaign that was the private preserve of the special interests.

The American people are fed up with the abuses of money in politics. A rising tide of public and congressional opinion supports the principle of public financing for political campaigns, and the action of the Senate will bring rich rewards to our democratic system of government in the future. I hope the conference report will be approved by an overwhelming margin in the Senate, and that it will be signed into law by the President.

I ask unanimous consent to have the appendix printed in the RECORD.

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

The appendix follows:

APPENDIX—MEMORANDUM SUPPORTING THE CONSTITUTIONALITY OF THE PUBLIC FINANCING AMENDMENT FOR PRESIDENTIAL CAMPAIGNS

Although the following paragraphs are not intended as an exhaustive analysis of all the constitutional issues that may be raised with respect to the provisions of the so-called Campaign Fund or public financing amendment for Presidential elections—Title VIII of H.R. 10947 as approved by the conferees of the House and Senate—they do deal with the principal issues, and they establish, I submit, both that Congress has ample constitutional authority to enact the amendment, and that whatever doubts that may remain may appropriately be left for final resolution by the courts.

A. CONGRESS HAS BROAD GENERAL POWER TO LEGISLATE IN THE AREA OF FINANCING OF PRESIDENTIAL ELECTION CAMPAIGNS

A long line of Supreme Court decisions, extending back over nearly a century, establishes the power of Congress to regulate financial and other abuses in Federal elections in general, and in Presidential elections in particular. Thus, *Ex parte Siebold*, 100 U.S. 371 (1880), sustained a Federal criminal statute prohibiting fraud in Congressional elections.

Smiley v. Holm, 285 U.S. 355 (1932), contains the famous declaration of Chief Justice Charles Evans Hughes, writing for a unanimous court, that Article I, Section 4 of the Constitution, which gives Congress the power to regulate the "Times, Places, and Manner," of Congressional elections, is broad enough to authorize Congress to write a complete election code, including the prevention of "corrupt practices" and other abuses in the area of campaign financing.

In *Ex Parte Yarbrough*, 110 U.S. 651 (1884) sustaining a reconstruction statute prohibiting the intimidation of voters in Federal elections, the court dealt with the question of the influence of money in elections, suggesting that the power of Congress to protect the election of Federal officials from violence, corruption, and fraud was an inherent power of sovereignty. As the Court stated,

"If the recurrence of such acts as these prisoners stand convicted of are too common in one quarter of the country, and give omen of danger from lawless violence, the free use of money in elections, arising from the vast growth of recent wealth in other quarters, presents equal cause for anxiety.

"If the government of the United States has within its constitutional domain no authority to provide against these evils, if the very sources of power may be poisoned by corruption or controlled by violence and outrage, without legal restraint, then, indeed, is the country in danger, and its best powers, its highest purposes, the hopes which it inspires, and the love which enshrines it, are at the mercy of the combinations of those who respect no right but brute force, on the one hand, and unprincipled corruptionists on the other." *Id.*, at 667.

In a separate passage in the Yarbrough case, the court had dealt specifically with the power of Congress in presidential elections:

"That a government whose essential character is republican, whose *executive head* and legislative body are both elective . . . has no power by appropriate laws to secure this election from the influence of violence, of corruption, and of fraud, is a proposition so startling as to arrest attention and demand the gravest consideration." (Emphasis added.) *Id.*, at 657.

Fifty years later, in *Burroughs* v. *United States*, 290, U.S. 534 (1934), the Supreme Court held unequivocally that Congress had extensive power to control the use of money in Presidential elections. As the Court stated:

"The President is vested with the execu-

tive power of the nation. The importance of his election and the vital character of its relationship to and effect upon the welfare and safety of the whole people cannot be too strongly stated. To say that Congress is without power to pass appropriate legislation to safeguard such an election from the improper use of money to influence the result is to deny to the nation in a vital particular the power of self-protection. Congress undoubtedly possesses that power, as it possesses every other power essential to preserve the departments and institutions of the general government from impairment or destruction, whether threatened by force or by corruption." *Id.*, at 545.

The decision in the Burroughs case also establishes a separate and equally important principle for present purposes—the principle that it is for Congress, and Congress alone, to determine the manner of safeguarding Presidential elections. So long as the judgment of Congress bears a reasonable relation to the goal to be achieved, the Courts will not substitute their judgment for the judgment of Congress. In language reminiscent of Chief Justice John Marshall's famous definition of Congressional power under the Necessary and Proper Clause of the Constitution in *McCulloch* v. *Maryland*, 4. Wheat. 316 (1819), the Supreme Court went on to state in the Burroughs case that:

"The power of Congress to protect the election of President and Vice President from corruption being clear, the choice of means to that end presents a question primarily addressed to the judgment of Congress. If it can be seen that the means adopted are really calculated to attain the end, the degree of their necessity, the extent to which they conduce to the end, the closeness of the relationship of the means adopted and the end to be attained, are matters for congressional determination alone." *Id.*, at 547–548.

Obviously, the broad principles enunciated in these decisions do not decide the concrete issues involved in the public financing amendment. They do, however, set the overall tone in which these issues must be considered. That tone is clearly one of broad congressional power over Presidential elections, and broad judicial deference to the exercise by Congress of its admitted power.

An analysis of three of the most significant constitutional issues follows:

B. THE 5-PERCENT—25-PERCENT FORMULA IN THE PUBLIC FINANCING AMENDMENT IS A REASONABLE AND CONSTITUTIONAL ACCOMMODATION OF THE INTERESTS OF MINOR PARTIES AND NEW PARTIES IN THE ALLOCATION OF PUBLIC FUNDS

The public financing amendment contains a series of provisions enabling both minor parties and new parties to participate in the allocation of public funds. In order to qualify for public funds, such parties must attain at least 5% of the vote in either the preceding Presidential election or the current election. If such parties achieve more than 25% of the vote, they are entitled to share in the public funds on an equal basis with major parties.

The constitutional question contained in the provisions dealing with minor parties and new parties is the question whether the provisions unconstitutionally discriminate against such parties. The most relevant constitutional guidelines have been set out by the Supreme Court in two recent decisions dealing with the restrictions that States have traditionally imposed upon minor parties seeking a position on the ballot.

Williams v. Rhodes, 393 U.S. 23 (1968), involved the constitutionality of the election laws of the State of Ohio, which contained a provision that minor parties must file a petition signed by 15% of the voters in the past election, as well as a number of other extremely onerous requirements, including prohibitions against write-in votes and against independent candidates and unreasonably early filing deadlines for candidates not endorsed by established parties. The Supreme Court held that these requirements were so severely restrictive that they effectively limited the ballot to the Republican and Democratic candidates, and thereby precluded minor parties from qualifying on the ballot, in violation of the rights of free speech and association protected by the First Amendment and the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the Constitution.

Subsequently, however, in *Jenness v. Fortson*, 403 U.S. 431 (1971), the Court distinguished the Williams case and sustained a Georgia law establishing a series of much more lenient requirements for minor parties to qualify on the ballot, including a provision requiring such parties to file petitions signed by at least 5% of those eligible to vote in the last election. In upholding the Georgia law, the Court pointed specifically to provisions freely allowing write-in votes, recognizing independent candidates, and establishing reasonable filing deadlines.

Thus, in the treatment of minor parties, as in so many other areas of the Constitution, the Supreme Court applies a balancing test that weighs the legitimate interests of minor parties against the legitimate interests of government in enacting reasonable measures regulating the election process. A wide range of other Supreme Court precedents in the area of election laws could be cited to establish the same principle. It is clear that the Court will require proof of a "compelling state interest" in sustaining laws that differentiate between major and minor parties, but it is also clear that the Constitution does not prohibit all such differentiations.

A strong argument can be made that the provisions of the public financing amendment meet this test of reasonable differentiation. The 5% cut-off for minor parties to qualify for public funds is precisely the sort of reasonable provision sustained by the Supreme Court in the Jenness case. The amendment contains none of the onerous requirements held unconstitutional by the Court in the Williams case. Thus, write-in designations are permitted, and designations may be made for independent candidates. If a tax return is filed before a candidacy is declared, the taxpayer may file an amended return at a later date to make his designation.

In addition, the amendment contains additional safeguards enabling new parties that meet the 5% requirement in the current election to qualify for retroactive reimbursement of their expenses, so that new parties may enjoy the benefit of the amendment even if they have no prior election record.

In enacting the public financing amendment, Congress clearly weighed the interests of minor parties. The resulting legislation contains a series of provisions that are designed neither to encourage the artificial proliferation of minor parties formed solely for the benefit of obtaining public funds, nor to freeze the status quo of the present two parties. As such, the legislation is a reasonable exercise of Congressional power in the area of election reform. The Constitution demands no more.

C. THE PROVISIONS OF THE AMENDMENT LIMITING INDIVIDUAL CONTRIBUTIONS AND EXPENDITURES ON BEHALF OF CANDIDATES USING PUBLIC FUNDS DO NOT VIOLATE THE CONSTITUTION

In general the public financing amendment prohibits major party candidates using public funds and their authorized committees from accepting private contributions. Candidates and committees of minor parties receiving public funds are authorized to accept private contributions in order to reach the expenditure limit imposed on major parties. In addition, no unauthorized committee may spend more than $1,000 on behalf of a candidate receiving public funds.

The constitutional issues that arise under these provisions present a variety of different and complex questions, virtually all of which were extremely well canvassed and debated in the present Congress in connection with S. 382, the Election Reform Act passed by the Senate last August, and H.R. 11060, the similar Act passed last week by the House of Representatives. These bills contain a series of major provisions limiting campaign expenditures by or on behalf of candidates for Federal office, and they also contain strict requirements for the reporting and disclosure of such contributions and expenditures.

The Federal Corrupt Practices Act of 1925, for all its loopholes and lack of enforcement, has long been accepted as establishing the principle that Congress has the authority to enact reasonable limitations on campaign contributions and expenditures. See *Burroughs* v. *United States*, supra. The principal constitutional questions deal with the First Amendment problem of the restrictions on freedom of speech and freedom of association inherent in any such limitations, and the application of these vital constitutional guarantees to such diverse issues as: limits on the amount of contributions; limits on the source of contribution, such as contributions by individuals as opposed to corporations or labor unions; limits on expenditures as opposed to contributions; limits on expenditures by individuals, as opposed to expenditures by committees; limits on certain categories of expenditures, such as broadcasting expenditures, as opposed to expenditures for the written press or other media; and, the appropriate level of all such limits.

Apart from the Supreme Court decisions previously cited in Part A, two of the most important precedents setting forth the constitutional considerations in this area are the statement of Justice Douglas in *United States* v. *Auto Workers* 352 U.S. 567 (1957), and Justice Rutledge in *United States* v. *C.I.O.*, 335 U.S. 106 (1948). As Justice Douglas stated, in an opinion joined by Chief Justice Warren and Justice Black in the Auto Workers case:

"If Congress is of the opinion that large contributions . . . to candidates for office and to political parties have had an undue influence upon the conduct of elections, it can prohibit such contributions." *United States* v. *Auto Workers, supra*, at 598, n. 2.

And as Justice Rutledge stated in the C. I. O. case:

"There is therefore an effect in restricting expenditures for the publicizing of political views not inherently present in restricting other types of expenditure, namely, that it necessarily deprives the electorate, the persons entitled to hear, as well as the author of the utterance, whether an individual or a group, of the advantage of free and full discussion and of the right of free assembly for that purpose." *United States* v. *C. I. O., supra*, at 144.

Another leading Supreme Court decision with strong implications in this area is *United Public Workers* v. *Mitchell*, 330 U.S. 75 (1947), in which the Supreme Court sustained the constitutionality of the Hatch Act and its severe restrictions on political activity by Federal employees. The decision involved in part the case of a Mr. Poole, a skilled mechanic employed in the Federal mint, whose job involved no contact with the public. Mr. Poole asked the Court to declare that his outside political activities as an individual in his free time were a negligible threat to the integrity of the Federal Civil Service, as compared to the infringement on his constitutional rights. The Court rejected his contention, saying:

"There are hundreds of thousands of United States employees with positions no more influential upon policy determination than that of Mr. Poole. Evidently, what Congress feared was the cumulative effect on employee morale of political activity by all employees who could be induced to participate actively. It does not seem to us an unconstitutional basis for legislation." *Id.*, at 101.

By analogy, it may be argued in the present circumstances that Congress is equally entitled to protect the Presidential election process from the collective influence of political committees in a position to give or to spend more than $1,000 on the candidate of their choice, thereby achieving the twin goal of not only limiting the influence of large contributions, but also reducing the disparity between the rich and the poor in their ability to make political contributions.

According to this view, in the exercise of its broad power to regulate Presidential elections, Congress is constitutionally entitled to set a $1,000 limit on expenditures, as a reasonable accommodation between the First Amendment interests of groups of citizens in expressing their views, and the power of Congress to prevent the undue influence of money in Presidential elections. In addition, by deleting the provision in the Senate amendment that set a similar limit on spending by individuals—so that the limit now applies only to political committees—the Senate-House conferees have avoided altogether the need to deal with one of the most difficult aspects of this issue.

Moreover, the present amendment, with its $1,000 limit, offers a somewhat easier case than would exist in the absence of the tie between the limitation and the public financing provisions. The limitation applies only to Presidential candidates who choose to go the route of public financing for their campaigns. It does not apply to candidates who elect to finance their campaigns with private contributions. In these circumstances, it may be argued, the $1,000 limitation is an even more clearly reasonable restriction on the expression of political views, since substantial public funds are already being made available to advance the views of the candidate, and since the individual still retains the right to spend a substantial sum from his own funds.

Finally, it is worth emphasizing that, whatever the result of a court challenge to the $1,000 limit, it would have no impact on the central and crucial feature of the public financing amendment—the allocation of public funds to Presidential candidates. Under traditional constitutional doctrines of severability, a holding of unconstitutionality with respect to the $1,000 limit would not invalidate other provisions of the amendment. The sole result would be that Presidential candidates using public funds would also be entitled to receive private contributions, and political committees would be subject to no restrictions on their expenditures, other than those now applicable under existing law. Congress clearly stated its preference in the amendment to limit private financing for candidates using public funds, but just as clearly, the overriding goal of the amendment was to provide public funds for Presidential campaigns. That goal can be accomplished regardless of the outcome of litigation on the $1,000 limit.

D. THE TAX CHECKOFF PROCEDURE IS A CONSTITUTIONALLY PERMISSIBLE METHOD FOR CONGRESS TO DETERMINE THE ALLOCATION OF PUBLIC FUNDS

The funds to be made available under the public financing amendment are determined in the first instance by the actions of individual taxpayers, who are authorized to designate that $1 of their income tax may go either into a special account established in the Treasury for the Presidential candidate of a particular party, or into a general account that may be allocated in certain circumstances for the benefit of all the candidates.

Far from being an unconstitutional delegation of the power of Congress to appropriate Federal funds, the so-called "check-off" procedure actually helps to meet a number of the constitutional objections that might possibly be raised against the amendment. In effect, by adopting the check-off procedure, Congress has removed itself from a major part of the decision on the allocation of public funds, and thereby eliminated a corresponding part of the constitutional objections, whether valid or not, that might possibly be raised were Congress simply to legislate its own formula for allocating funds between major and minor parties. By the simple expedient of the check-off procedure, Congress enables individual taxpayers to determine the amount of public funds that candidates are entitled to receive, subject only to the 5% threshold mentioned above and to specified ceilings on the total amount of public funds for which they are eligible.

In effect, the check-off procedure is comparable in many respects to a 100% tax credit for political contributions, with the Treasury serving as transfer agent for the individual to forward his contribution to the candidate of his choice. A separate title of the tax bill contains a provision enacting a 50% tax credit, up to a total credit of $25, for contributions to candidates for all public offices—Federal, State, or local—and for all elections—primary, general, or special. Surely, it may be argued, Congress has the power to enact a 100%, $1 tax credit solely for Presidential candidates and solely for the general Presidential election.

Two additional considerations lead to the view that the check-off procedure is not an unconstitutional delegation by Congress of its power of appropriation. First, as Section 9006 of the amendment as approved by the conferees makes clear, Congress itself has specifically provided for the separate appropriation of Federal funds, in accord with the amounts designated by taxpayers for the accounts of the various candidates.

The check-off procedure simply provides a method by which the amount of the appropriation is to be determined, with Congress itself retaining the final power to transfer the funds. In this respect, the check-off procedure is not substantially different from countless other formulas in other Federal statutes that determine how Federal funds are to be allocated. Traditionally, for example, the funds appropriated for many Federal grant programs are apportioned among the States according to formulas that take into account such factors as population, per capita income, and the local need for the specific programs. As such, the formula in the check-off procedure is unobjectionable.

Second, the Supreme Court has repeatedly sustained the relatively broad delegation by Congress of its legislative powers. I know of only three major decisions in which such delegation has been held unconstitutional.

The decisions in *Panama Refining Co. v. Ryan*, 293 U.S. 388 (1935), and *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935), involved the broad economic controls given President Roosevelt under the National Industry Recovery Act of 1933. If those decisions are still law today, they would probably require a holding of unconstitutionality with respect to the recent delegation by Congress of the powers the President is now using to justify the current wage and price controls over the economy.

The other precedent is *Carter v. Carter Coal Co.*, 198 U.S. 238 (1936), which authorized coal producers and miners to exercise broad and coercive economic powers over minority producers and miners. As such it is hardly a valid precedent for the public financing amendment, since the objectionable element of coercion is absent.

In fact, the judicial precedent most nearly in point strongly supports the constitutionality of the delegation of powers in the check-off procedure. In *Cincinnati Soap Co. v. United States*, 301 U.S. 308 (1937), the Supreme Court specifically sustained a statute providing that taxes collected from the local manufacturers of coconut oil in the Philippines were to be held in a separate fund for the Philippine Treasury. The Court upheld the tax, even though the proceeds were earmarked for a special purpose. As the Court stated:

"If Congress, for reasons deemed by it to be satisfactory, chose to adopt the quantum of receipts from this particular tax as the measure of the appropriation, we perceive no valid basis for challenging its power to do so." *Id.*, at 313.

Similarly, Congress is entitled to measure the appropriation of public funds for presidential candidates in accord with the designations of individual taxpayers, without violating any constitutional prohibition against the undue delegation of its powers.

Mr. MANSFIELD. Mr. President, I am happy to note that the conferees have now completed work on the President's economic tax package. I wish at this time to commend them for the expeditious manner in which they addressed themselves to the task of constructing a measure that we all hope will put this Nation's economy back on its feet. Particularly, I am pleased that the conferees retained the concept of election financing.

Overall, in this endeavor, the conferees undertook an enormous task, thrashed out the differences and pieced together what appears to be a reasonably balanced package; one that we hope will both stimulate productivity, encourage employment and for the first time remove the primary dependency on election costs from the large economic interests of the Nation.

My personal view is that the measure is somewhat defective in at least one major respect. For the first 3 years of operation the permanent revenue loss under this measure will reach close to $16 billion; and the permanent loss of well into the billions will continue every year thereafter. Such losses will occur in my judgment at too great an expense to the consumer and lower income Americans and with too great a benefit to the large economic business interests of the Nation. Aside from this imbalance, however, for the sake of this Nation and its floundering economy, I hope and pray this program achieves the ends it seeks.

The ravages of inflation, unemployment and the host of ills that have followed in their wake have been permitted to endure for too long. Too many Americans have been made to suffer. To put it plainly, the need for this tax bill is now, and I am pleased indeed that the veto talk which greeted its reference to conference has subsided.

Of course, it is the President's prerogative at any time to indicate to the Congress through his press secretary, or otherwise, his concern over various features of legislation passed by both Houses. Just as certainly, conferees meeting in such cases are not bound by such admonitions. Indeed, in the conference, the President's views may or may not be helpful.

What is clear is that the conference on the economic tax measure is now over

and what must come first and foremost is this Nation's economy. It was out of a deep concern for the economy that the Congress—the Senate and the House alike—joined to expedite this measure as the President's No. 1 priority legislative item. It did so to help an economy that has been plagued for too long by worsening unemployment, increasing inflation and a dollar that has been severely and permanently weakened.

In the process, other legislative business of the Senate—also most important and even vital to the American people—has been postponed, or otherwise moved aside to help turn the economic tide and get this Nation back on its feet. As a result, the economic tax bill went through in record time for a measure of such far-reaching dimensions. As was expected, too, the proposal underwent the give and take and working out that is an essential part of the legislative process.

In that respect, I think a word ought to be said about those provisions of the measure which for the first time will permit the public to help finance election costs. Let me first dispel all doubts on this matter at this time; election financing is here to stay as far as this Senator is concerned. The issue is larger than 1972. It is larger than any party as well. Much larger. The law is on the books, and as a first step, commencing next year, all citizens, no matter their income status, will be encouraged to participate in the elective process with tax credits and tax deductions. They will benefit all candidates to whatever office—Federal, State, or local.

It is only in this way, may I say, that a candidate can be able to overcome his becoming just another investment for some large economic interest. Only with such assurance can an end be put to the notion that this elected official or that is "labor's man" or "industry's man" or whoever else's man. Only with such a system can there be a man elected by and for all people, insulated from dependency upon either his own personal fortune or that of some wealthy interest group that chooses to back him or, to state it honestly—to buy him.

For the presidential campaign the feature of this proposal that allows the people to participate is enormously important. It was most unfortunate that its effect was postponed. The sooner implemented, the better off will be this Nation and its ability to protect and preserve the democratic institutions we love and cherish so much.

If by postponing its effective date a veto was avoided, that is well. In my judgment there is nothing sacred about the year 1972. But it is tragic that this matter was viewed by some in such political and partisan terms. The particular financial condition of one or another of the political parties at a given time should not be a factor. Whether it has $40 million in the bank obtained largely from enormous economic interests or whether it is in debt, the people should not be precluded from joining the elective process.

Beginning in 1973, what this proposal provides is that on a voluntary basis, citizens themselves can authorize the campaign funds for the presidential race. That is well. It would make it permissible for the American people—if they so choose—to absorb a portion of election costs that have skyrocketed beyond all reason. In turn, it would compel those seekers of this Nation's highest elective office to be beholden but to a single, solitary interest group—the American people themselves.

Indeed, this provision must remain. Without it, democracy as it has been here constituted and as we have come to know and love it today, simply cannot endure.

Mr. CURTIS. Mr. President, I am prepared to yield back the remainder of my time.

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

Mr. BYRD of West Virginia. Mr. President, before the Senator yields back his time, will he yield to me?

Mr. LONG. I yield.

Mr. BYRD of West Virginia. Mr. President, Senators will recall that the distinguished Senator from Rhode Island (Mr. PASTORE) came into the Chamber a moment ago, and it was indicated to him that the time would be up on the pending conference report at 3 minutes after 5. Would the Senator allow a quorum call so that Senator PASTORE and other Senators could be advised?

Mr. LONG. If the Senator has no objection, we can yield back the time and then can have the quorum call.

Mr. BYRD of West Virginia. Yes.

Mr. LONG. I yield back the remainder of my time.

Mr. CURTIS. I yield back the remainder of my time.

QUORUM CALL

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. BURDICK). Without objection, it is so ordered.

ORDER OF BUSINESS

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent to be recognized for 1 minute.

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

WAIVER OF RULE XII ON S. 1874

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that rule XII be considered to be waived with reference to the vote on S. 1874, a bill to provide for the establishment of projects for dental care.

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

ORDER FOR EXECUTIVE SESSION

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that, immediately following the vote on the pending conference report on H.R. 10947, the Senate go into executive session for not to exceed 5 minutes, and then return to legislative session to take up the conference report on the conquest of cancer, S. 1828.

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

ORDER FOR RECOGNITION OF SENATOR MOSS

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that when the Senate returns to legislative session, following the 5 minutes within executive session, the distinguished Senator from Utah (Mr. Moss) be recognized for 2 minutes prior to the calling up of the conference report on the conquest of cancer, S. 1828.

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

REVENUE ACT OF 1971—CONFERENCE REPORT

The Senate continued with the consideration of the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 10947) to provide a job development investment credit, to reduce individual income taxes, to reduce certain excise taxes, and for other purposes.

Mr. TOWER. Mr. President, it is with reluctance that I shall vote to support the conference report on the Revenue Act of 1971. I voted against the bill when it passed the Senate, believing that not only was the revenue loss too great, nearly $45 billion, but that the so-called campaign financing plan was an unconscionable raid on the Federal Treasury.

To its credit, the conference committee was able to significantly clean up this bill and report it back to the Senate in very nearly the form that the President had requested. The reduction in taxes is close to the figure that the President had suggested. It is a figure that should stimulate economic growth without generating a new inflationary spiral.

Unfortunately, the Conference Committee did not eliminate the checkoff campaign financing provision, though it did change its effective date until 1973. I very strongly beleve that the Federal Government should not become involved in structuring and financing political institutions. From past experience, it is quite evident that what the Federal Government finances, it eventually controls. Should the Government ever control our political parties, freedom in this country will be extinguished. I believe that this proposal is most unwise and should not be enacted.

I urge the President to seek an early court challenge to the constitutionality of this section. The checkoff is a partisan raid on the hard-earned tax dollars

of the American people and should not be allowed.

Mr. HART. Mr. President, shortly before we began debate on the Revenue Act of 1971, I made the following statement regarding my intention to vote against it as it was proposed by the administration:

We all want inflation slowed and more jobs created.

We all want Phase II to work effectively and fairly.

Unhappily, Phase II is stacked against the individual wage earner. And even worse, perhaps, not only does the Phase II tax bill heavily favor industry, but it will probably do little to increase employment.

If it isn't changed from its present form, I will vote against it, while opposing any effort to water down repeal of the excise tax on cars and trucks.

Also, in the interest of fairness and in the interest of creating more jobs, wage increases frozen during Phase I should be treated in the same way as future wage increases will be treated. That means workers should be paid retroactively for all frozen back wages if the payments fall within the general guidelines established for the months ahead.

When the proposed tax cuts were totaled, industry was getting a $75 billion cut over the next 9 years, while reductions for individuals would have been less than one-fifth that figure. Clearly, such a proposal was out of balance.

This body labored long and hard to redress this imbalance. The bill we have before us now is a mixed bag. Although many of the changes we made were not sustained in conference, happily enough were kept so that the individual taxpayer is assured a somewhat better break. Over a 3-year period, estimates indicate that tax cuts for business will now be $15 billion, compared with $11 billion for individuals.

The opportunity to move on the issue of public financing of presidential campaigns, as represented by the Senate's inclusion of the contribution check-off system, was one which I welcomed. My views of the necessity of eliminating the real or imputed influence of large contributors have been expressed before. When a presidential campaign is planned on such a grand scale that $5 million must be raised in a single evening, to support a candidacy yet to be announced, it is time we revamped the whole system.

So I see the postponement to 1976 of the opportunity to avoid private fundraising in a presidential race as a great loss—a loss not to the candidates who might use public funds so much as a loss of the chance to restore integrity and dignity to political campaigning and to restore confidence in the political structure.

Of course, I am delighted that the conferees retained provisions for tax credits and deductions for political contributions. This at least begins the process of moving away from reliance on the fat cats of politics.

On balance, then, I support passage of the Revenue Act of 1971, fully realizing that the proposals we sent to the conference represented a preferable approach.

Mr. HARTKE. Mr. President, I am disappointed by the actions taken in conference on this legislation—I shall reluctantly, vote for this bill.

But I do not blame the conferees for their action. It was clear that they were working under the threat of a Presidential veto.

Apparently the President believes that it is big industry and not the average consumer who needs tax relief at this time. The simple facts are, that this legislation contains three times as much tax savings for business as it does for the individual taxpayer. I believe that that is a mistake, perhaps a fatal one for our economy. What we need now are balanced incentives which help both the businessman and the ordinary consumer, and not lopsided bonuses for industry.

The proposal that I offered, which would have increased the personal exemption to $800 next year, was a responsible attempt to bolster consumer demand at a time when such bolstering is desperately needed. I regret that it was deleted in conference, but I do not blame the conferees, I blame the President.

As the author of legislation which would have reinstated the investment tax credit at a level of 10 percent, I am not unmindful of the legitimate capital needs of business at this time. However, there is no logic in also accepting the fantastically expensive accelerated depreciation system which merely adds to the capital investment incentives already provided in the investment tax credit.

In sum, I am saying that this bill lacks equity. At a time when it is the average taxpayer who needs help the most, we are giving the juiciest plums to those who need it the least.

Mr. EAGLETON. Mr. President, the Senate worked long and hard on the Revenue Act of 1971. Some very positive good could have come out of our effort including, I believe, my own amendment to provide tax relief for the elderly. This revenue bill, as it left the Senate, would have provided roughly $21 billion worth of tax relief for individuals which would soon have been converted into consumer spending. It provided roughly $15 billion in tax relief for business.

The conference committee has reversed this balance. It provides $15 billion relief to business and $11 billion for the individual taxpayer, with a total loss to the Treasury of $25 billion for the 3-year period 1971–73.

The catch is that the tax relief for individuals is simply an acceleration of what was already scheduled, whereas the corporate tax breaks represent a permanent loss of revenue—investment tax credit, ADR, repeal of the excise tax.

Of all the tax adjustment amendments we passed, only the child care deduction provision remains in the bill. The improvements we made, the efforts we expended, have gone for naught.

Mr. President, the tax bill before us is supposed to provide the shot in the arm required to get the economy moving again. We need a short-run stimulus that will not undermine the inflation control goals of phase II.

How can we accomplish this objective? With an investment credit, when the lead time of many businesses for their major capital projects is sometimes as long as 5 or 6 years? By liberalizing depreciation rules when no one can produce conclusive evidence that establishing an arbitrary time period for the useful life of a machine in any way affects the actual usefulness or encourages increased productive investment? Does it help to create a billion dollar loophole in the corporate income tax law by exempting the export profits of a DISC, without any incentive to increase exports?

The essential trigger for an economic resurgence is consumer demand. The inflation we now have in this country is not a demand-pull, but a cost-push inflation. The phase II controls will be sufficient to ward off pressures that might ordinarily be generated by an increase in demand. So we have a reasonably good opportunity to stimulate the economy in the short run without undermining the efforts to curb inflation. Instead, this bill opts for tax cuts which, if they have an effect at all, provide longrun stimulus, and result in permanent loss of revenues.

Furthermore, the erosion of the tax base in the face of so many pressing national needs is something for which we will pay heavily in the future. Charles L. Schultze, former Budget Director and now senior fellow at the Brookings Institution, in testimony before the Joint Economic Committee on August 20, 1971, articulated my sentiments exactly:

While welcoming the aggregate stimulating effect (of the particular components of the President's proposals), I do not believe they are at all well-balanced from the standpoint of equity or national priorities.

A related point has to do with the *permanent* nature of part of the tax reductions proposed by the President. The auto excise tax repeal and 5% of the investment credit represent permanent tax reductions, losing about $5 billion a year in revenues. While we need tax cuts at the present time, to help bring the economy out of recession, we will—once the economy has returned to full employment—need every dime of revenue generated by the present tax system to meet even a minimal estimate of national needs in the public sector. Almost every future projection of the fiscal dividend for the mid 1970's shows that it is very slim indeed, and far too small to be eroded by permanent tax cuts.

Finally, I direct my attention to the conference committee action on the Pastore campaign financing amendment.

In analyzing this "compromise" we must first examine the basic premise behind the amendment.

The essence of our democratic process is that there will be competition among candidates of different parties and differing philosophies seeking the same public office. This is true whether the office sought is the Presidency, U.S. Senator, Governor, mayor, or alderman. In recent years, the campaign expenses entailed in seeking any of these offices have soared astronomically. The traditional methods of campaigning—large public rallies, placards, handout cards, radio speeches, et cetera—were relatively speaking, inexpensive. These methods have been either replaced or supplemented by the "modern" techniques—television commercials including half-hour, Hollywood-style films, jet aircraft caravans, direct mailings to every regis-

tered voter, et cetera. These techniques are horrendously expensive and for our only nationwide offices, President and Vice President, ridiculously so.

Analysts are still guessing as to the cost of the 1968 campaign. Newsweek magazine this week estimated $300 million. Newsweek says the figure for 1972 will likely be $400 million.

The costs are such that a presidential aspirant has to place himself at the mercy of big money—big money from individuals, big money from special interest groups, big money from big labor. A big campaign contribution is a big investment—an investment in seeing to it that the candidate espouses a certain position.

Thus, a candidate for President, in order to be competitively viable and have the financial wherewithal to pursue an effective campaign, must pander to the "big boys" for their monetary aid.

The thrust of the original Pastore amendment was to take the Presidency off the big money auction block and put it where it traditionally belongs, in the public domain for all of the people.

I strongly supported that amendment.

But now, Mr. President, the conference committee has injected a new ingredient into the picture which disquiets me.

I am not referring to the postponement of the implementation of the amendment beyond the 1972 election. I presume the Nation can endure one more "money bag" election. I realize that in the art of legislative compromise the postponement may have been a pragmatic necessity.

I am referring to the addition of the new ingredient that these funds must now be appropriated by the Appropriations Committees of the House and Senate.

The privilege to appropriate or not to appropriate puts in these two already powerful congressional committees an additional awesome power. If it should result, as we get close to the 1976 presidential campaign, that one or two candidates in each party appear to be emerging as the likely nominees, and if such likely nominees appear to be philosophically at variance with the concensus philosophy of the Appropriations Committees, then these committees could legally use their discretionary power to influence the outcome of the respective national political conventions.

Thus, Mr. President, we may be substituting for the power of big private money the power of a few Members of Congress serving on the Appropriations Committees.

The revenue bill we vote on today is in its present form for one simple reason: This is the way President Nixon wants it.

This is the way he wants the tax package balanced.

This is the way he wants the 1972 presidential campaign financed.

He made it plain that the bill would be vetoed if it did not suit—and a veto would mean delay and further uncertainty in an economy already suffering deeply from delay and uncertainty. Regrettably, a veto of the conference report by the Senate would have about the same result.

Therefore I shall reluctantly vote "aye"—hoping as I do it that the bill will at least contribute some buoyancy to the American economy—that there will be at least a few beneficiaries of the administration's latest exercise in trickle down economics—and that we will soon make another opportunity to save ourselves from the evils of big money politics.

Mr. ROTH. Mr. President, this tax bill is entirely different from the one we sent to the conference committee. It is, in my judgment, a far more equitable measure and one that deserves our prompt support.

In the course of the two week debate on the bill, we added provisions which would have reduced Federal revenues nearly $13 billion over fiscal years 1972–74, and added more than $2.5 billion to the $34 billion anticipated deficit for this year.

Now, the bill returning from conference has been stripped of $12 billion in revenue losing proposals, over these 3 fiscal years. The remaining provisions are, I believe, designed to produce a balanced and prudent incentive to businesses and individuals alike.

The added exemptions and larger minimum deductions will provide particularly lower income families much needed funds. We have seen savings rates increase and consumer credit decrease over the last 18 months. A tax measure designed to reverse these trends will be an important contributor to restoring consumer confidence, a key stimulus in generating new buying power.

Further, the investment tax credit and the accelerated depreciation schedules will help to spur the needed capital investment which is necessary to keep our physical plant competitive with foreign manufacturers. Repeal of discriminatory excise taxes on autos and light trucks will stimulate—as it already has—sales in one of our most important business sectors.

THE INEVITABILITY OF TAX INCREASES

Mr. STENNIS. Mr. President, at the time that the Senate originally passed the Revenue Act of 1971, I voted against it. Having studied the bill as it emerged from conference, I have decided to vote affirmatively on the conference report. I believe this bill should pass, and that the tax cuts incorporated in it will be beneficial to the economy by spurring its growth. But, I must state that the stimulus of tax cuts can only be effective in the short-run, and that tax increases are inevitable. We can cut taxes now but will later have to bear the responsibility of increasing them.

The philosophy behind the tax cut in the Revenue Act of 1971 is that decreased taxes will leave more spending money in the hands of the consumer, and the increased spending will stimulate the economy. The increased spending would bring in revenues in such forms as the excise tax, but the question is whether the amount of increased revenue tax generated by the growth in the economy will be sufficient to cover the increased cost of Government programs or to cover the gap left in tax revenue by the cuts incorporated in the bill.

Facts and figures that I have studied and will briefly discuss to make my point lead me to believe that the current tax cuts may well stimulate the economy in the short-run, but in the long run these cuts cannot be maintained, or if they are maintained, our Government spending must be drastically reduced and new programs envisioned by the administration, the public, or both, and by many Members of Congress, must be abandoned.

The national debt, created by the difference between spending and revenues, is now $418 billion, up $100 billion from 1965. For fiscal year 1972, with unemployment running 6 percent, the budget deficit is estimated to be $28.1 billion. In fiscal year 1971, the deficit was $24.2 billion.

Having so high a national debt—and increasing it so much each year—necessitates paying a huge amount of interest each year. For fiscal year 1971, the gross interest expense on our national debt was almost $40,000 per minute, or a total of about $21 billion. That $21 billion that paid the interest could have bought all HEW programs except social security or covered all allowances and pay, except retirement, of all military personnel including Reserves for fiscal year 1971.

The larger the gap between revenues and spending, the larger the deficit is each year to add to the national debt. Federal spending is rising sharply each year and is running at about $232 billion this fiscal year. Expenditures increased at an annual rate from the first quarter to the third quarter of 1971 of 11 percent, more than double the 4.7 percent annual rate from mid-1968 to early 1970. If spending is increasing at this rate, revenue—to cover the expenditures—must also increase.

Fiscal spending has been increasing from $10–$20 billion per year, as follows: Fiscal year 1970—$197 billion; fiscal year 1971—$212 billion; fiscal year 1972—$232 billion (estimated).

If this trend continues, and there are no indications to the contrary, the budget for fiscal year 1973 will be as high as $245 billion. Revenue this fiscal year is estimated at $204 billion and would have to increase about $12 billion in fiscal year 1973 just to hold the deficit at its current $28 billion level.

The trend of increased Federal spending, which has occurred throughout the Government and its many functions and interests, is best seen in the human resources area—an undeniably important area of high public priority. In the 6 years from fiscal year 1966 to 1972, education and manpower costs have doubled; income security costs, which include welfare and retirement, have more than doubled; health costs have increased sixfold. These demands will increase rather than decrease.

Briefly looking at the defense budget, it was lower in fiscal years 1971 and 1972 than it had been previously (fiscal years 1967–70). I have done what I could to bring about reasonable reductions and shall continue to do so. Secretary Laird has said that the request for the military will go up next year. I hope this is error. There are other unfunded obligations of

large sums and these will continue to increase.

One large part of the national defense figure is military retirement, which increases yearly. From fiscal year 1966 to 1972, the cost of paying military retirement more than doubled. And the accrued, unpaid military retirement rose from $66 billion in fiscal year 1966 to $113.8 billion in fiscal year 1972.

I have given just a few examples of the trends in Government spending, but it is evident that we are spending more and more. The current tax cut can only be effective in the short-run as a stimulus to the economy and will, I believe, inevitably give way to tax increases to cover the rising cost of Government programs. I think the people should be fully advised of this fact now so that they may fully understand the situation and make their plans accordingly.

HIGHWAY TRUST FUNDS MUST BE PROVIDED TO COMPLETE PROGRAM

Mr. RANDOLPH. Mr. President, I call the attention of the Senate to the deletion by the conferees of a section of the Revenue Act of 1971 which would have prevented a reduction in income for the Highway Trust Fund.

In its original consideration of this measure, the House Ways and Means Committee repealed the excise tax on light trucks, a tax that is dedicated to the Highway Trust Fund and one that would provide approximately $350 million during the current fiscal year for highway transportation development. I called this situation to the attention of the Senate Finance Committee, explaining that this loss of income for the trust fund would prolong the meeting of highway program commitments. To compensate for this loss, the Senate Finance Committee designated 7 percent of the excise tax on wine and beer for the Highway Trust Fund.

During floor consideration of the bill, there were proposals to earmark this money for other purposes and others to delete it entirely from the trust fund. All of these proposals were rejected by the Senate.

I inquire of my friend, the chairman of the Finance Committee, if it is correct that the germaneness rule of the House of Representatives was imposed on the Senate during the conference on this bill so that the transfer of money to the trust fund could not be agreed to. Did this rule give the Senate conferees no choice but to accede to avoid a total impasse on important legislation?

Mr. LONG. That was exactly the situation. It was purely a matter of germaneness. I regret that was the case. However, as I said in my previous statement, unfortunately under the Reorganization Act, the Senate has permitted itself to be governed by the House of Representatives rule of germaneness rather than by the Senate rule.

Mr. RANDOLPH. Is it also true, Mr. Chairman, that the elimination of the transfer was not based on opposition by the conferees to the highway trust fund or the program it supports, but was solely a matter of adhering to the House rule?

Mr. LONG. The Senator is entirely correct.

Mr. RANDOLPH. I remind Senators that the action they approved last month was not an addition of new revenues to the highway trust fund. It was compensation for revenues that will be lost because of the repeal of the light truck tax. The deletion of this income will cause a total loss estimated at $2.2 billion over the present statutory life of the trust fund. This is equivalent to approximately 40 percent of 1 year's income for the Federal highway program.

I ask the chairman of the Finance Committee if this deficiency in income means that the trust fund will have to be continued beyond its present 1977 expiration date since the lost revenues are needed to complete the Interstate System and to carry out other facets of the highway program already authorized?

Mr. LONG. If we are unable to provide additional tax so as to provide for this, I hope the Committee on Appropriations will be willing to vote an appropriation into the trust fund to assure enough funds will be available to keep the highway program on schedule.

Mr. RANDOLPH. The concept of the highway trust fund is being questioned and there are those who believe its resources should be committed to other transportation purposes.

The action of the conferees in reducing the trust fund's income, however, can not be looked at as a victory for this point of view. It must, instead, be recognized as a setback. Not only does the loss of revenue to the trust fund prolong the day when consideration can be given to altering the form and direction of the highway program, it denies improved transportation to the American people and raises the ultimate cost they must pay for highway construction.

Mr. President, I thank the chairman for his responsiveness and his attention to the subject. Our debate highlights the importance of restoring this lost revenue in the future.

The PRESIDING OFFICER (Mr. BURDICK). All time on the conference report has expired.

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. MANSFIELD (after having voted in the affirmative). On this vote I have a pair with the distinguished Senator from Texas (Mr BENTSEN), who is absent on official business. If he were present and voting, he would vote "yea;" if I were at liberty to vote, I would vote "nay." I withdraw my vote.

Mr. BYRD of West Virginia. I announce that the Senator from New Mexico (Mr. ANDERSON), the Senator from Virginia (Mr. BYRD), the Senator from Georgia (Mr. GAMBRELL), the Senator from Oklahoma (Mr. HARRIS), the Senator from Iowa (Mr. HUGHES), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Washington (Mr. JACKSON), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Maine (Mr. MUSKIE), the Senator from Georgia (Mr. TALMADGE), and the Senator from California (Mr. TUNNEY) are necessarily absent.

I further announce that the Senator from Texas (Mr. BENTSEN) 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 Georgia (Mr. GAMBRELL), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Washington (Mr. Jackson), and the Senator from California (Mr. TUNNEY) would each vote "yea."

I further announce that, if present and voting, the Senator from Oklahoma (Mr. HARRIS) and the Senator from South Dakota (Mr. MCGOVERN), would each vote "nay."

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 Nebraska (Mr. HRUSKA), the Senator from Maine (Mrs. SMITH), and the Senator from Vermont (Mr. STAFFORD) are necessarily absent.

Also, the Senator from New York (Mr. BUCKLEY), the Senator from Oregon (Mr. HATFIELD), and the Senator from Illinois (Mr. PERCY) are necessarily absent.

If present and voting, the Senator from Nebraska (Mr. HRUSKA), the Senator from Illinois (Mr. PERCY), and the Senator from Maine (Mrs. SMITH) would each vote "yea."

The result was announced—yeas 71, nays 6, as follows:

[No. 443 Leg.]

YEAS—71

Aiken	Ellender	Packwood
Allen	Fong	Pastore
Allott	Fulbright	Pearson
Baker	Goldwater	Pell
Bayh	Griffin	Proxmire
Beall	Gurney	Randolph
Bellmon	Hansen	Ribicoff
Bible	Hart	Roth
Boggs	Hartke	Saxbe
Brooke	Inouye	Schweiker
Burdick	Javits	Scott
Byrd, W. Va.	Jordan, N.C.	Sparkman
Cannon	Jordan, Idaho	Spong
Case	Kennedy	Stennis
Chiles	Long	Stevens
Cook	Magnuson	Stevenson
Cooper	Mathias	Symington
Cotton	McGee	Taft
Cranston	McIntyre	Thurmond
Curtis	Metcalf	Tower
Dole	Miller	Weicker
Dominick	Mondale	Williams
Eagleton	Montoya	Young
Eastland	Moss	

NAYS—6

Brock	Fannin	Hollings
Ervin	Gravel	Nelson

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Mansfield, against.

NOT VOTING—22

Anderson	Hatfield	Muskie
Bennett	Hruska	Percy
Bentsen	Hughes	Smith
Buckley	Humphrey	Stafford
Byrd, Va.	Jackson	Talmadge
Church	McClellan	Tunney
Gambrell	McGovern	
Harris	Mundt	

So the conference report was agreed to.

EXECUTIVE SESSION—NOMINATION OF WILLIAM H. REHNQUIST

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate go

into executive session and that the distinguished minority leader be recognized.

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

CLOTURE MOTION

Mr. SCOTT. Mr. President, I send to the desk a cloture motion and ask that it be stated.

The PRESIDING OFFICER. The motion for cloture having been filed, the clerk will state the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate on the confirmation of the nomination of William Rehnquist, to be an Associate Justice of the Supreme Court of the United States.

1. Hugh Scott.
2. Paul J. Fannin.
3. William B. Saxbe.
4. Marlow W. Cook.
5. Lowell P. Weicker, Jr.
6. J. Caleb Boggs.
7. Robert Dole.
8. Robert Taft, Jr.
9. Carl T. Curtis.
10. Howard H. Baker, Jr.
11. Henry Bellmon.
12. Peter H. Dominick.
13. Gordon Allott.
14. Ernest F. Hollings.
15. Strom Thurmond.
16. Bill Brock.
17. Richard S. Schweiker.
18. William V. Roth, Jr.
19. Robert P. Griffin.
20. James O. Eastland.
21. Len B. Jordan.
22. Clifford P. Hansen.
23. Barry Goldwater.
24. Jack Miller.
25. James B. Pearson.
26. James L. Buckley.
27. Edward J. Gurney.
28. Norris Cotton.
29. J. Glenn Beall, Jr.
30. John G. Tower.

Mr. SCOTT. Mr. President, after consultation with the distinguished majority leader, I ask unanimous consent that the time on this motion start running on Saturday morning at 10 a.m.

The PRESIDING OFFICER. Is there objection?

Mr. BAYH. Mr. President, reserving the right to object, I want to ask a question of our distinguished minority leader. Is it a sign of weakness that the Senator might have to use that second cloture motion?

Mr. SCOTT. I will be glad to reply on my time.

The Senator reserved the right to object?

Mr. BAYH. I shall not object.

Mr. SCOTT. I understand. I am glad to reply. It is a sign of convenience. We are trying to accommodate Senators; and also it is a sign of credibility, because I promised Senators that I will file a cloture motion every day from now until the end of the session.

I assume that if the stars are in the right ascendancy perhaps the motion on Saturday will not be necessary and that we may be able to bring matters to a solution tomorrow in the vote.

But I am one who believes in caution and confidence, as I said to my friend the other day. Therefore, I will be doing this every day until Senators decide they want to go home. I rather think two-thirds of the Senators want to go home now. If they do not, we will give them another chance, and another next week.

Mr. BAYH. Mr. President, will the Senator yield for an observation?

Mr. SCOTT. I yield.

Mr. BAYH. I hope that more than one-third of the Senate and hopefully a majority of the Senate on both sides will be more concerned about other things than how the stars are, and weigh the merits of this man who will be on the Supreme Court for many moons if he is confirmed.

Mr. SCOTT. The merits bring us to invoke the rule. We are convinced, I believe, that a vast majority of the Senators, based on the merits, are in favor of the nominee, and believing that, we see in our minds that the time has come to vote. The Senator from Indiana may be unwilling to vote now or at any time in the foreseeable future, but this is one of the things on which we disagree.

Mr. BAYH. I respect the Senator's right to disagree, but I assure the Senator there are foreseeable dates in the future when the Senator from Indiana would be willing to vote.

I would like to ask my friend, the Senator from Pennsylvania, if he had an opportunity to read or have discussed with him the remarks that the Senator from Indiana made today in which he read into the RECORD the historical decisions that had been decided by the late distinguished Justice Jackson, and if he had a chance to review the memorandum, which the nominee said were Justice Jackson's views and not his own. The decisions, I cited we know, are Justice Jackson's.

Mr. SCOTT. I would say this to the Senator.

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mr. SCOTT. Mr. President, I ask unanimous consent that I may proceed for an additional 3 minutes.

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

Mr. SCOTT. The distinguished Senator will remember I said yesterday that the nominee had been requested by the Justice to furnish him information on one side, one point of view of the question. I made the point that I, myself, disagreed with that point of view. I further went on to say that those who knew Justice Jackson, and we had outside information on this, know he already had the views of his brethren on the bench on the opposite side and he was, therefore, asking an employee to prepare information on one side of an issue, having been informed on the other. I do not see anything wrong with that.

The Senator from Indiana has staff members and he probably asks them to give him both sides of a question because he wants to be a well-rounded Senator—because the Senator is not as well rounded in some aspects as I may be, but well rounded—and I am sure he likes to hear both sides of the question.

Mr. BAYH. The observation of the Senator from Indiana is that these are various questions that we are trying to resolve. The Senator from Indiana and some of us are concerned, deeply concerned. I understand the junior Senator from Massachusetts has a presentation he wishes to make. We are looking at information on Rehnquist as we received it 24 hours ago. It is rather contrary to that stated by the Senator from Pennsylvania. This is the kind of thing we want the Senate to consider without thinking of the tinkling of Christmas bells and without being under the pressure of cloture. This is hardly the way to put a man on the Supreme Court.

Mr. SCOTT. I may be wrong but I have a strong impression the Senator from Indiana was prepared to vote against the nominee before he heard of him and certainly from the moment he did hear of him, but I am not sure too many others have been similarly persuaded. We will find out if the Senator lets us get to a vote. If we apply the standards which the Senator from Indiana is seeking to apply he very well knows one-half of the Founding Fathers of this Nation would never have qualified for confirmation to the Supreme Court.

He knows that Abraham Lincoln could not have made it before he came to the Presidency because of the Lincoln-Douglas debate in which his remarks in today's context would certainly be deemed negative in some respects by some people—by many people. Certainly I think the only member of the Founding Fathers who was in the clear, by the Senator's test, would be Benjamin Franklin.

Mr. BAYH. The Senator from Indiana has read some chapters of history relative to some of the activities of our beloved Mr. Franklin in Paris that might bring into question whether he would be qualified under the test placed by some, but I am not suggesting this type of thing.

I think my friend, the Senator from Pennsylvania, is not his usual benevolent and straightforward self when he suggests that any Member of this body is prepared to vote against a nominee before he has even heard of him.

I was more than happy to go along with Justice-designate Lewis H. Powell. I was hoping to be able to go along with William H. Rehnquist, but I must say I am concerned, and I think I have the obligation to express this concern. I would like to have the question fully discussed before the Senate votes on him, even if we are voted down by an overwhelming vote.

Mr. SCOTT. I thank the Senator. He has expressed his views, and he has done so with considerable opportunity to appear many times, more often than any other single Senator has appeared, on this issue.

The Senator opened this colloquy by asking me whether the filing of a cloture motion was a sign of weakness. I think I had better answer that it is a sign of strength. If the Senator thinks there are any signs of weakness around here, why does he not bring the matter to a vote and we shall see where the weakness is?

Mr. BAYH. The Senator from Indiana is perfectly happy to suggest that the nomination be put to a vote when the Senate has had an adequate time to

discuss it; this is my position now, and I do not intend to change it.

Mr. SCOTT. The Senator continues to hold that time when we can come to a vote, if I can use a papal term, in pectore—only in his own breast. He has not confided to the Senate and to his colleagues when it will be revealed from within his breast his intention to let the remainder of the Senate express its will.

We have been through this sort of thing before, and we have only one remedy, which is cloture, and I am sure the Senator applauds my filing of the cloture motion, because I am so clearly within the rule.

Mr. BAYH. The Senator from Indiana in no way suggested that his friend, the Senator from Pennsylvania, would violate that first rule of the Senate, and I think he approaches this with not only his conscience but his duty in mind. I would suggest that I can better answer that question, whether it is in pectore, or ad infinitim, or whatever it might be.

Mr. SCOTT. Or even ad nauseam.

Mr. BAYH. Well, perhaps it is ad nauseam to all of us.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request of the Senator from Pennsylvania? Without objection, it is so ordered.

ORDER OF BUSINESS

Mr. BYRD of West Virginia. Mr. President, has the Senate gone back into legislative session?

The PRESIDING OFFICER. No, it has not.

Mr. BYRD of West Virginia. Under the order, the Senate was to go back into legislative session.

The PRESIDING OFFICER. Without objection, the Senate will return to legislative session.

LEGISLATIVE SESSION

The Senate resumed the consideration of legislative business.

ORDER FOR RECOGNITION OF SENATOR JORDAN OF NORTH CAROLINA

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that following the recognition of the Senator from Utah (Mr. Moss) under the previous order, the Senator from North Carolina (Mr. JORDAN) be recognized for not to exceed 2 minutes.

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

CLAIM OF SHOSHONE TRIBE OF INDIANS

Mr. MOSS. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 2042.

The PRESIDING OFFICER laid before the Senate the amendment of the House of Representatives to the bill (S. 2042) 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, which was to strike out all after the enacting clause, and insert:

That the funds on deposit in the Treasury of the United States to the credit of the Shoshone Nation or Tribe of Indians and the Shoshone-Bannock Tribes that were appropriated by the Act of June 19, 1968 (82 Stat. 239), to pay a judgment in the sum of $15,700,000 entered by the Indian Claims Commission in consolidated dockets numbered 326–D, 326–E, 326–F, 326–G, 326–H, 366, and 367, and the interest thereon, after deducting attorneys' fees, litigation expenses, and other appropriate deductions, shall be apportioned by the Secretary of the Interior to the Shoshone Tribe of the Wind River Reservation, Wyoming, the Shoshone-Bannock Tribes of the Fort Hall Reservation, Idaho, and the Northwest Band of Shoshone Indians (hereinafter the "three groups"), as set forth in this Act.

SEC. 2. The sum of $500,000, and the interest thereon, less attorneys' fees and other appropriate deductions all in the proportion that the $500,000 bears to the $15,700,000, shall be credited to the Shoshone-Bannock Tribes of the Fort Hall Reservation for claims of the tribes enumerated in dockets numbered 326–D, 326–E, 326–F, 326–G, and 366.

SEC. 3. The sum of $1,375,000 plus the earned interest thereon less $181,732 shall be credited to the Northwestern Bands of Shoshone Indians for claims of the bands enumerated in dockets numbered 326–H and 367.

SEC. 4. The remainder of the award shall be apportioned between the Shoshone-Bannock Tribes of the Fort Hall Reservation and the Shoshone Tribe of the Wind River Reservation in accordance with an agreement entered into between the Shoshone-Bannock Tribes and the Shoshone Tribe of the Wind River Reservation in May 1965, approved by the Associate Commissioner of Indian Affairs in December 1965.

SEC. 5. For the purpose of apportioning the award in accordance with this Act, membership rolls, duly approved by the Secretary of the Interior, shall be prepared for each of the three groups, as follows:

(a) The governing body of the Shoshone Tribe of the Wind River Reservation and the governing body of the Shoshone-Bannock Tribes, each shall, with the assistance of the Secretary, bring current the membership rolls of their respective tribes, to include all persons born prior to and alive on the date of this Act, who are enrolled or eligible to be enrolled in accordance with the membership requirements of their respective tribes.

(b) The proposed roll of the Northwestern Bands of Shoshone Indians entitled to participate in the distribution of the judgment funds shall be prepared by the governing officers of said Northwestern Bands, with the assistance of the Secretary of the Interior, within six months after the date of the enactment of this Act authorizing distribution of said funds. The roll shall include all persons who meet all of the following requirements of eligibility:

(1) They were born prior to and alive on the date of the enactment of this Act;

(2) Either their names appear on one of the following Indian census rolls of the Washakie Sub-Agency of the Fort Hall jurisdiction:

(a) Roll dated January 1, 1937, by F. A. Gross, Superintendent of the Fort Hall Reservation.

(b) Roll dated January 1, 1940, by F. A. Gross, Superintendent of the Fort Hall Reservation.

(c) Roll dated March 10, 1954.

(d) Roll dated April 21, 1964.

or they possess one-quarter Shoshone Indian blood and they are descendants of those appearing on at least one of said rolls;

(3) They are not recognized as members of the Shoshone-Bannock Tribes of the Fort Hall Reservation, the Shoshone Tribe of the Wind River Reservation, or any other Indian Tribe; and

(4) They shall elect not to participate in any settlement of claims pending before the Indian Claims Commission in docket 326–J, Shoshone-Goshute, and docket 326–K, Western Shoshone.

The proposed roll shall be published in the Federal Register, and in a newspaper of general circulation in the State of Utah. Any person claiming membership rights in the Northwestern Bands of Shoshone Indians, or any interest in said judgment funds, or a representative of the Secretary on behalf of any such person, within sixty days from the date of publication in the Federal Register, or in the newspaper of general circulation, as hereinbefore provided, whichever publication date is last, may file an appeal with the Secretary contesting the inclusion or omission of the name of any person on or from such proposed roll. The Secretary shall review such appeals, and his decision thereon shall be final and conclusive. After disposition of all such appeals to the Secretary, the roll of the Northwestern Bands of Shoshone Indians shall be published in the Federal Register and such roll shall be final.

SEC. 6. The funds apportioned to the Northwestern Band of Shoshone Indians, less attorneys' fees, and expenses due the attorneys representing the Northwestern Band under an approved contract, effective March 1, 1968, shall be placed to its credit in the United States Treasury and shall be distributed equally to the members whose names appear on the final roll and in accordance with the provisions of this Act.

(a) The per capita shares shall be determined on the basis of the number of persons listed on the proposed roll published as hereinbefore provided and the number of persons on whose behalf an appeal has been taken to the Secretary contesting omission from such proposed roll. The share of those persons excluded from the final roll by reason of the decision of the Secretary on appeal shall be distributed equally to the persons included on the final roll.

(b) The Secretary shall distribute a share payable to a living enrollee directly to such enrollee. The per capita share of a deceased enrollee shall be paid to his heirs or legatees upon proof of death and inheritance satisfactory to the Secretary, whose findings upon such proof shall be final and conclusive. A share or interest therein payable to enrollees or their heirs or legatees who are less than twenty-one years of age or who are under legal disability shall be paid in accordance with such procedures, including the establishment of trusts, as the Secretary determines appropriate to protect the best interest of such persons.

SEC. 7. (a) The funds apportioned to the Shoshone-Bannock Tribes of the Fort Hall Reservation shall be placed to their credit in the United States Treasury. Seventy-five percent of such funds shall be distributed per capita to all persons born on or before and living on the date of this Act who are duly enrolled on the roll prepared in accordance with section 5(a) of this Act.

(b) The per capita shares shall be determined on the basis of the number of persons eligible for per capitas and the number of persons rejected for per capitas who have taken a timely appeal. The shares of those persons whose appeals are denied shall revert to the Shoshone-Bannock Tribes to be expended for any purpose designated by the tribal governing body and approved by the Secretary.

(c) Sums payable to enrollees or their heirs or legatees who are less than twenty-one years of age or who are under a legal disability shall be paid in accordance with such procedures, including the establishment of

trusts, as the Secretary of the Interior determines appropriate to protect the best interests of such persons.

(d) The funds remaining after provision is made for the per capita distribution may be used, advanced, expended, invested, or reinvested for any purpose authorized by the tribal governing body and approved by the Secretary of the Interior.

SEC. 8. The funds apportioned to the Shoshone Tribe of the Wind River Reservation shall be placed to its credit in the United States Treasury and shall be distributed in accordance with the provisions of the Act of May 19, 1947, as amended (61 Stat. 102; 25 U.S.C. 611–613).

SEC. 9. Any funds distributed per capita under provisions of this Act shall not be subject to Federal or State income tax.

SEC. 10. The Secretary of the Interior is authorized to prescribe rules and regulations to carry out the provisions of this Act.

Mr. MOSS. Mr. President, on October 13, 1971, the Senate passed with committee amendments, S. 2042, to provide for the apportionment of funds in payment of a judgment in favor of the Shoshone Tribe in consolidated dockets, No. 326–D, 326–E, 326–F, 326–G, 326–H, and 367 before the Indian Claims Commission and for other purposes.

The purpose of S. 2042, which I sponsored with others, is to provide for the division of a $15,700,000 judgment, plus accumulated interest, between the three tribal groups of the Shoshone Tribe or Nation of Indians and to authorize the use of the funds. The money has been appropriated. A sum of $500,000 is specifically earmarked in favor of the Shoshone-Bannock Tribes at Fort Hall, Idaho. Legislation (S. 101) covering this portion of the award was approved by the Senate on June 9, 1971.

On December 6, 1971, the House passed H.R. 10846, a similar bill with a committee amendment. The committee amendment struck the provision which would have exempted any funds distributed per capita from consideration as income, revenue, or expendable funds under the provisions of the Social Security Act.

In considering S. 2042, the House struck out all after the enacting clause and substituted in lieu thereof, the provisions of H.R. 10846.

Mr. President, while I continue to believe that the provision in my bill which was stricken by the House amendment was meritorious, I am prepared to accept the change in S. 2042 for several reasons. First, the several tribal groups authorized to share in the judgment fund award have waited patiently for many years for the successful prosecution of their claim through the Indian Claims Commission. Second, the Indian recipients of the award have constructive plans for the individual and collective uses of their funds. In order that we may fulfill our obligation to the Indian people and bring justice to this long awaited claim against the Federal Government, I recommend to the Senate that it concur in the House-passed version of S. 2042.

Mr. President, I move that the Senate concur in the amendment of the House.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Utah.

The motion was agreed to.

RIVER BASIN MONETARY AUTHORIZATION ACT OF 1971

The PRESIDING OFFICER. Under the previous order, the Senator from North Carolina (Mr. JORDAN) is recognized for not to exceed 2 minutes.

Mr. JORDAN of North Carolina. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 2887.

The PRESIDING OFFICER laid before the Senate the amendment of the House of Representatives to the bill (S. 2887) authorizing additional appropriations for prosecution of projects in certain comprehensive river basin plans for flood control, navigation, and for other purposes which was to strike out all after the enacting clause, and insert:

That (a) in addition to previous authorizations, there is hereby authorized to be appropriated for the prosecution of the comprehensive plan of development of each river basin under the jurisdiction of the Secretary of the Army referred to in the first column below, which was basically authorized by the Act referred to by date of enactment in the second column below, an amount not to exceed that shown opposite such river basin in the third column below:

Basin	Act of Congress	Amount
Alabama-Coosa River	Mar. 2, 1945	$38,000,000
Arkansas River	June 28, 1938	57,000,000
Brazos River	Sept. 3, 1954	20,000,000
Central and southern Florida	June 30, 1948	18,000,000
Columbia River	June 28, 1938	130,000,000
Mississippi River and tributaries	May 15, 1928	97,000,000
Missouri River	June 28, 1938	101,000,000
North Branch, Susquehanna River	July 3, 1958	17,000,000
Ohio River	June 22, 1936	62,000,000
Quachita River	May 17, 1950	1,000,000
San Joaquin River	Dec. 22, 1944	44,000,000
South Platte River	May 17, 1950	37,000,000
Upper Mississippi River	June 28, 1938	2,000,000
White River	do	4,000,000

(b) The total amount authorized to be appropriated by this section shall not exceed $628,000,000.

SEC. 2. The Chief of Engineers, under the direction of the Secretary of the Army, is hereby authorized to perform such work as may be required, including the construction of dikes, to prevent shoaling near the pumping plant intake of the Frazer-Wolf Point irrigation unit on the Fort Peck Indian Reservation, located on the north bank of the Missouri River about thirty miles downstream from the Fort Peck Dam, at an estimated cost of $335,000 subject to the provision that the Bureau of Indian Affairs, Department of the Interior, obtain all necessary lands, easements, and rights-of-way, and maintain the project after completion.

SEC. 3. (a) That in connection with the improvements authorized by section 6 of the Act approved October 3, 1962 (76 Stat. 704, 706), to be undertaken on the Crow Creek Sioux Reservation in South Dakota, the Secretary of the Army is authorized and directed to provide the following under plans approved by the Crow Creek Sioux Tribal Council, at an estimated cost of $800,000:

(1) in connection with the community center building which serves as the Crow Creek Tribal Council offices: offices or conference rooms for visiting Bureau of Indian Affairs personnel, auditorium facilities, sufficient offices and conference rooms for tribal offices, and an adequately sized and equipped kitchen to serve community gatherings;

(2) adequate water, sewer, and drainage facilities;

(3) a street lighting system throughout the townsite;

(4) widening of streets and provision of offstreet residential parking;

(5) sufficient parking near the community center for community gatherings;

(b) The Secretary of the Interior is hereby authorized and directed to reimburse the Crow Creek Sioux Tribe, from appropriations authorized by subsection (a) of this section, for all attorneys' fees and engineering fees, and expenses related thereto, as approved by the Secretary of the Interior, that the tribe has incurred or will incur in obtaining and implementing legislation to remedy difficulties arising from implementation of the Act of October 3, 1962 (76 Stat. 704), but such reimbursement shall not exceed a total of $22,500.

SEC. 4. Section 221 of the Flood Control Act of 1970 (84 Stat. 1824, 1831) is amended by striking the period at the end of subsection (f), substituting a comma therefor, and adding the following: "or to the assurances for future demands required by the Water Supply Act of 1958, as amended."

SEC. 5. The Secretary of the Army, acting through Chief of Engineers, is hereby authorized to cause a survey to be made for flood control and allied purposes, including channel and major drainage improvements, and floods aggravated by or due to wind or tidal effects on Chiltipin Creek at and in the vicinity of Sinton, Texas.

SEC. 6. The project for flood protection on Fourmile Run, city of Alexandria and Arlington County, Virginia, approved by resolutions of the Committees on Public Works of the United States Senate and House of Representatives, dated June 25, 1970, and July 14, 1970, respectively, in accordance with the provisions of section 201 of the Flood Control Act of 1965 (Public Law 89–298), is hereby modified to provide that the Secretary of the Army, acting through the Chief of Engineers, shall replace the George Washington Memorial Parkway bridge over Fourmile Run, at Federal expense, substantially as recommended by the Chief of Engineers in his report dated March 2, 1970, published as House Document Numbered 91–358.

SEC. 7. The project for flood control and improvement of the lower Mississippi River, adopted by the Act of May 15, 1928 (45 Stat. 534), as amended and modified, is hereby further modified to provide that local cooperation to be hereafter furnished in connection with the Obion River Diversion aspect of the Tiptonville to Obion River, Tennessee project, authorized by the Act approved June 22, 1936, and amended by the Act approved July 24, 1946, shall consist of the requirement that local interests agree to maintain the completed works in accordance with the provisions of section 3 of the Act of May 15, 1928, and hold and save the United States free from damages due to the construction works.

SEC. 8. Nothing in any prior Act of Congress, committee report, or congressional document, shall be construed as requiring the State of West Virginia, in connection with the construction of the Stonewall Jackson Lake, West Fork River, West Virginia, and the Rowlesburg Lake project, Cheat River, West Virginia, to furnish assurances that it will hold and save the United States free from any claims for damages from storage of water.

SEC. 9. The Act entitled "An Act to provide for municipal use of storage water in Benbrook Dam, Texas" approved July 24, 1956 (70 Stat. 632) as amended by Public Law 91–282, is further amended by inserting immediately after the end of the Act the following:

"The Secretary of the Army is authorized to contract with the city of Arlington, Texas, for the use of water supply storage in the Benbrook Reservoir for municipal water supply for any storage not used by the city of

Fort Worth or the Benbrook Water and Sewer Authority, for a period not to exceed four years or until such time as the water supply storage is needed for navigation purposes, whichever first occurs."

SEC. 10. (a) In order to protect the environment, promote safety, and provide access to the public use recreation area around Perry Reservoir, Kansas, the Secretary of the Army, acting through the Corps of Engineers, is authorized and directed, notwithstanding any other provision of law, to take such action as may be necessary to improve the following roads in the vicinity of the Perry Reservoir area, Kansas:

(1) The road leading north from United States Highway Numbered 24, at Perry, Kansas, to an intersection with a black top road east of the dam, consisting of approximately three miles;

(2) The road on the west side of Perry Reservoir beginning at the north end of Delaware State Park running north and west and intersecting State Highway K Numbered 92 approximately one and one half miles west of Ozawkie, Kansas, consisting of approximately six miles; and

(3) The road beginning on State Highway K Numbered 92, one mile east of Old Town Public Use Area, and running north approximately eight miles to intersect with State Highway K Numbered 4 and State Highway K Numbered 16 east of Valley Falls, consisting of approximately nine miles.

(b) In carrying out such improvements, the Secretary of the Army shall be authorized to realign and grade such roads, and to pave such roads with a plant-mix bituminous surface (including chemical stabilization), in accordance with secondary road standards of the State of Kansas.

SEC. 11. (a) In order to provide adjustments in the lands or interests in land heretofore acquired for the Verdigris River portion of the McClellan-Kerr River Navigation Project in Oklahoma to conform such acquisition to a lesser estate in lands now being acquired to complete the real estate requirements of the project the Secretary of the Army (hereinafter referred to as the "Secretary") is authorized to reconvey any such land heretofore acquired to the former owners thereof whenever he shall determine that such land is not required for public purposes, including public recreational use, and he shall have received an application for reconveyance as hereinafter provided, subject to the following limitations:

(1) No reconveyance shall be made if within thirty days after the last date that notice of the proposed reconveyance has been published by the Secretary in a local newspaper, an objection in writing is received by the former owner and the Secretary from a present record owner of land abutting a portion of the reservoir made available for reconveyance unless within ninety days after receipt by the former owner and the Secretary of such notice of objection, the present record owner of land and the former owner involved indicate to the Secretary that agreement has been reached concerning the reconveyance.

(2) If no agreement is reached between the present record owner of land and the former owner within ninety days after notice of objection has been filed with the former owner and the Secretary, the land made available for reconveyance in accordance with this section shall be reported to the Administrator of General Services for disposal in accordance with the Federal Property and Administrative Services Act of 1949, as amended (63 Stat. 377).

(b) Any such reconveyance of any such land or interests shall be made only after the Secretary (1) has given notice, in such manner (including publication) as regulations prescribe to the former owner of such land or interests, and (2) has received an application for the reconveyance of such land or interests from such former owner in such form as he shall by regulation prescribe. Such application shall be made within a period of ninety days following the date of issuance of such notice, but on good cause the Secretary may waive this requirement.

(c) Any reconveyance of land therein made under this section shall be subject to such exceptions, restrictions, and reservations (including a reservation to the United States of flowage rights) as the Secretary may determine are in the public interest, except that no mineral rights may be reserved in said lands unless the Secretary finds that such reservation is needed for the efficient operation of the reservoir project designated in this section.

(d) Any land reconveyed under this section shall be sold for an amount determined by the Secretary to be equal to the price for which the land was acquired by the United States, adjusted to reflect (1) any increase in the value thereof resulting from improvements made thereon by the United States (the Government shall receive no payment as a result of any enhancement of values resulting from the construction of the reservoir project specified in subsection (a) of this section), or (2) any decrease in the value thereof resulting from (A) any reservation, exception, restrictions, and condition to which the reconveyance is made subject, and (B) any damage to the land caused by the United States. In addition, the cost of any surveys or boundary markings necessary as an incident of such reconveyance shall be borne by the grantee.

(e) The requirements of this section shall not be applicable with respect to the disposition of any land, or interest therein, described in subsection (a) if the Secretary shall certify that notice has been given to the former owner of such land or interest as provided in subsection (b) and that no qualified applicant has made timely application for the reconveyance of such land or interest.

(f) As used in this section the term "former owner" means the person from whom any land, or interests therein, was acquired by the United States, or if such person is deceased, his spouse, or if such spouse is deceased, his children or the heirs at law; and the term "present record owner of land" shall mean the person or persons in whose name such land shall, on the date of approval of this Act, be recorded on the deed records of the respective county in which such land is located.

(g) The Secretary of the Army may delegate any authority conferred upon him by this section to any officer or employee of the Department of the Army. Any such officer or employee shall exercise the authority so delegated under rules and regulations approved by the Secretary.

(h) Any proceeds from reconveyances made under this Act shall be covered into the Treasury of the United States as miscellaneous receipts.

(i) This section shall terminate three years after the date of its enactment.

SEC. 12. The project for Whiteoak Dam and Reservoir on Whiteoak Creek, Ohio, Ohio River Basin, for flood protection and other purposes, is hereby authorized substantially in accordance with the recommendations of the Secretary of the Army in his report on the Development of Water Resources in Appalachia, dated April 1971, at an estimated cost of $40,031,000, except that no funds shall be appropriated to carry out this section until the project is approved by the Appalachian Regional Commission and the President.

SEC. 13. (a) The Lower Monumental Lock and Dam Project, Snake River, Washington, authorized by the River and Harbor Act approved March 2, 1945 (59 Stat. 10), is hereby modified to provide that the United States shall perform, or pay the cost of performance of, such measures as the Secretary of the Army determines are or may have been necessary to protect any railway bridge or structure from damage caused by the project.

(b) The Secretary of the Army in making the determination required by subsection (a) of this section shall charge to the owner of any such bridge or structure an amount equal to the net value to such owner of any direct and special benefits accruing to the owner from any improvement or addition to or betterment of the bridge or structure, including any expectable decrease in repair, maintenance, or operating expense.

SEC. 14. This Act may be cited as the "River Basin Monetary Authorization Act of 1971".

Mr. JORDAN of North Carolina. Mr. President, it is my understanding that the Senator from Kentucky (Mr. COOPER) has some remarks to make on this matter, and I am glad to yield to him.

Mr. COOPER. Mr. President, I do not oppose this measure. I had understood that three amendments were added by the House, one dealing with the reconveyance of some acres purchased by the Corps of Engineers to the original owner along the Kerr-McClellan River Basin. I understand there is no objection to that. There were two other items added by the House which I understand have not been the subject of hearings.

I think it has become more common for items and great river basin developments costing millions of dollars to be placed in the bill when no hearings have been held on those projects. We usually have a clause that it shall be subject to the approval——

Mr. BYRD of West Virginia. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will suspend until there is order. Will Senators desist from conversation?

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Senator be allowed 2 additional minutes.

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

Mr. COOPER. Mr. President, the amendments authorizing river projects on which no hearings have been held usually have in them a clause that they will not be final until approved by the President. I think it places a burden on the President that he should not be required to bear. I believe the growing habit of placing in the bill projects on which no hearings have been held, costing millions of dollars, is bad. I just wanted to say that. I am not going to object, but I think it is something that should be considered by the Public Works Committee next year.

I thank the Senator for yielding.

Mr. JORDAN of North Carolina. Mr. President, each of the projects that were added by the House have been checked out by the committee staff and with the Senators in whose States the projects will be located. They have all been cleared. There is no opposition to these items. The Committee on Public Works of the Senate did hold a hearing on one of the projects last year. Whether the House did or not, I do not know, but they have all been checked out. As I have stated, they have been checked by the staff of the Public Works Committee and cleared by the Senator in whose State the project will be located.

Mr. President, I move that the Senate concur in the amendment of the House of Representatives.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

ORDER OF BUSINESS

The PRESIDING OFFICER. Pursuant to previous order, the Senate will proceed to the consideration of the conference report on S. 1828.

NATIONAL CANCER ACT OF 1971—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 bill (S. 1828) to amend the Public Health Service Act so as to establish a Conquest of Cancer Agency in order to conquer cancer at the earliest possible date.

The PRESIDING OFFICER (Mr. BURDICK). In accordance with the previous order, the Senate will proceed to consideration of the report.

(The conference report is printed in the House proceedings of the CONGRESSIONAL RECORD of December 8, 1971, at pages 45220–45222.)

Mr. KENNEDY. Mr. President, as I understand, there has been a time set aside for a vote on the conference report. Am I correct in that assumption?

The PRESIDING OFFICER. Will the Senator repeat the question?

Mr. KENNEDY. There has been a time set aside for a vote on the conference report tomorrow, as I understand it; is that correct?

The PRESIDING OFFICER. The vote will occur tomorrow morning after the speech by the Senator from Illinois (Mr. PERCY).

Mr. KENNEDY. Have the yeas and nays been ordered, Mr. President?

The PRESIDING OFFICER. The yeas and nays have been ordered.

Mr. KENNEDY. Mr. President, first of all, I wish to express my very warm appreciation to the senior Senator from New York (Mr. JAVITS)—Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order.

Mr. KENNEDY. To the distinguished senior Senator from New York (Mr. JAVITS) and the distinguished Senator from Colorado (Mr. DOMINICK) for the work they have done in bringing S. 1828 to the Senate, in the Health Subcommittee, the full Committee on Labor and Public Welfare, and also for the very extraordinary degree of support that they gave to the Senate position in the conference. I also thank the distinguished Senator from Pennsylvania (Mr. SCHWEIKER), who is now the ranking Republican member of the Health Subcommittee, for his efforts.

Mr. President, some time ago, in 1970, the Health Subcommittee held some 2 days of hearings to hear the report of a very distinguished group of lay and professional citizens who had been charged, under a Senate resolution, to consider how this country could best develop a program to meet what I think is really perhaps the No. 1 health hazard today, which is the danger of cancer.

This panel, made up of some very distinguished lay and research people and successful businessmen charged with this responsibility, gave an extraordinary amount of their time to an effort to developing a series of recommendations which were the basis of the initial bill which the former Senator from Texas, Mr. Yarborough, had considered, developed, and introduced as well as the basis of the bill that I introduced, of the bill that Senator DOMINICK introduced, and also of the conference report which is now before the Senate.

The chairman of that committee was the very distinguished Mr. Benno Schmidt, of New York City, who has achieved preeminence in the field of business and has also had a very deep concern for the problems of cancer. He has devoted his very considerable talents to helping us develop a program to meet the cancer problem.

We have heard the report of that panel. Initially, legislation was developed and introduced. After the elections of 1970, I assumed the chairmanship of the Senate Health Subcommittee and reintroduced such legislation with numerous cosponsors.

We had extensive hearings, and modified the legislation in conformance with a number of recommendations that were made by the administration. I must say at this point that I have yet to see the kind of cooperation and close working relationships that were developed between both Democrats and Republicans on the committee and the administration, on any other piece of legislation, as were developed on this program.

A considerable number of hearings were held, we debated the proposition on the floor of the Senate, and it was passed overwhelmingly by a vote of 79 to 1, I believe, in the Senate. Then we went to conference.

The House of Representatives had the benefit of our legislation and patterned their program very much after the Senate bill, with one key exception. Many of us had felt that in order to develop a sufficient program to attack the problems of cancer, we ought to create a type of program modeled on the Space Agency. There were those in the scientific and biomedical research field who felt it should remain within the National Cancer Institute, and the House provided accordingly. But in most other respects, the Senate and the House programs were consistent.

The conference met on three different occasions, and at this time we are prepared to present the conference report, which I do enthusiastically. I believe that the conference report retains the better features of both the House and Senate bills. It preserves the National Cancer Institute, but provides that the Director of the National Cancer Institute be a Presidential appointee.

It provides as well for a new advisory board, with much expanded responsibilities and with an expanded participation by the scientific community as well as the lay community. It provides for a President's cancer panel that will work very closely with the President of the United States to provide him with a direct line, direct liaison, and direct oversight into the progress of the Cancer Institute, and also to the contributions that are being made by the Cancer Advisory Board. It provides for independent budgeting, for independent reporting to the President of the United States, and for what I think is a greater sense of line authority by the President, in selecting the person that he wants to develop and direct this effort to meet the attack on cancer. It provides as well for the establishment of some 15 cancer research centers around the country, refunded at approximately $5 million each, so that we can develop an even greater effort in the research areas on cancer. It also provides for some line authority for a 3-year authorization, with some $400 million, $500 million, and $600 million in 3 successive years. That will bring a continuing oversight responsibility to the Congress of the United States which has heretofore not existed or had existed only in a very general way in the National Institutes of Health.

I believe that we have here, Mr. President, legislation which will give the President of the United States the necessary tools so that he can direct his very considerable sense of urgency toward meeting the problems of cancer. I think we have provided authorization for the resources which are necessary. I think we have provided the kind of line authority in management which was recommended by the panel to obtain the greatest sense of managerial technique and skill and to avoid the bureaucracy which often slows down programs.

I am extremely pleased and delighted to present this program to the Senate, and to say that it does, I believe, represent the best judgment of the members of the Health Subcommittee, the ranking Republican members of the full Committee on Labor and Public Welfare (Mr. JAVITS), Senator SCHWEIKER, Senator DOMINICK, and the members of the committee on the Democratic side, who have devoted such energy and effort to seeing that this is achieved.

I feel that it is important that we have a rollcall vote on this issue. I think it is important that those who will be charged with the responsibility for the program have a very clear indication of the kind of support this program has in Congress, and I think it is important that the American people understand the very strong commitment that we in the Senate feel about this effort and the energies that we are going to continue to devote to see that this scourge is ended.

Mr. JAVITS. Mr. President, I strongly support the report on the National Cancer Act of 1971 and hope that the Senate will approve it. This legislation will enable us to establish a national program for the conquest of cancer, essential if we are to exploit effectively the great opportunities which are presented as the result of our knowledge about cancer research, treatment, and diagnosis.

There was not nearly the abyss of differences between the Senate and the House versions that we have been led to

believe. To illustrate that the legislative differences were matters of rhetoric, not reality:

First, both bills were essentially the same in their findings and declarations, except the Senate did not make reference to other major diseases. I might note that the conference substitute now before us also limits itself to the problem under attack, cancer.

Second, both bills provide for direct transmittal of the cancer budget to the President. Although the House did permit others to comment, the House bill specifically precluded any change in the budget sent to the President.

Third, both bills assured dissemination and exchange of scientific knowledge regarding cancer within the institutes of the National Institutes of Health and other scientific, medical, and biomedical disciplines.

Fourth, both bills provide for the utilization of existing peer review groups and the establishment of new ones where necessary.

Fifth, both bills provide for the direct submission of annual reports to the President.

Finally, both bills, in essence, sought to achieve the same goals by providing new authorities to the existing cancer institute. However, where the Senate bill renamed the Cancer Institute as an agency within the National Institutes of Health and gave direct access to the Director the House sought to accomplish the same results through the formation of a cancer attack panel.

Also, I might add that the Senate's National Cancer Advisory Board prevailed, which was a thoroughly implemented and a well-articulated provision, which will engage the best brains in the field so far as the Senate is concerned.

The real difference was in direct access by the Director of the Cancer Institute to the President or an attack panel to monitor the work of the institute, which was in the House bill. We took the House bill, but there is nothing in this provision of the House bill which would prevent the President from putting the Director of the Cancer Institute, if he wishes to do so, on the Panel, or making him a Presidential special assistant. The President sent us a letter, when we wrote to him and asked him exactly how he wanted this worked out, in which he said that if he wants access to the Director, he is sure he can get it. And he is right.

There can be no question regarding the accuracy of the President's position. The President said:

> The normal powers of the executive could still be used to include the agency heads when desirable if the House view is adopted.

The Senate conferees concurred. There is nothing in the House amendment which could preclude the President from naming to membership on the Panel or naming as Chairman of the Panel a Federal employee, such as the man or woman the President appoints as Director of the National Cancer Institute. Also, the President could utilize his Executive powers to also name the presidentially appointed National Cancer Institute Director to be a special assistant to the President.

I ask unanimous consent that our letter to the President—that of Senator KENNEDY and myself—and the President's letter to us be printed at this point 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.

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

DEAR MR. PRESIDENT: As you know, the Senate and the House of Representatives are now in conference on the bill S. 1828, the cancer legislation. Given the urgency for the Congress to enact effective legislation in respect to an enhanced effort to conquer cancer and given your strong personal interest in assuring that such a program be practically capable of early implementation at the Executive level, we would greatly appreciate your views in respect to the substantive areas of differences between the Senate and House bills. We are hopeful that such specific guidance from you will form a basis upon which all of the conferees will find it possible accordingly to agree upon a bill which can be sent to you for your signature.

Specifically, we would find it helpful to have your views regarding the principal function and requisite membership of the Cancer Attack Panel. As you know, the House-passed bill envisions such a panel as performing oversight functions and therefore its membership to consist of non-governmental experts whose responsibility is to advise you in respect to the cancer program. The Senate conferees have suggested that the functions of the panel be enlarged to include three of the key program experts so as to make it possible for them to have a suitable channel for direct access to you that will ensure that they can directly advise you regarding the implementation of the entire cancer program. In this regard, the Senate conferees have suggested that the Attack Panel be enlarged to six members by adding to it the Director of the Cancer Program, the Chairman of the Cancer Advisory Board, and the Director of the National Institutes of Health. With such an arrangement we believe that it would be possible for the Senate to concur with the provisions in the House bill which are designed to further assure that the cancer program will remain an integral part of the broad-based biomedical research programs carried out by the National Institutes of Health. Related to this enlarged concept of the Attack Panel, proposed by the Senate conferees, of course, is the enlarged scope of responsibilities contained in the Senate bill for the National Cancer Advisory Board.

Your assistance in this matter will be greatly appreciated. Our conference is scheduled to resume Tuesday, December 7, 1971.

Sincerely yours,

EDWARD M. KENNEDY, HARRISON A. WILLIAMS, JR., WALTER F. MONDALE, CLAIBORNE PELL, HAROLD E. HUGHES, ALAN CRANSTON, THOMAS F. EAGLETON, RICHARD S. SCHWEIKER, AND JACOB K. JAVITS.

THE WHITE HOUSE,
Washington, December 6, 1971.

Hon. JACOB K. JAVITS,
U.S. Senate,
Washington, D.C.

DEAR JACK: Thank you for your letter of Decemmber 3, 1971 requesting my views concerning the differences between the Senate and House versions of pending legislation to help conquer cancer.

With respect to your specific question regarding the function and membership of the Cancer Attack Panel, my view is that I could work effectively with either version. The Senate version would have the advantage of bringing those who are directly responsible for the Government's cancer effort into all discussions with the President concerning its progress. On the other hand, I can understand the feeling of the House conferees that the activities of the National Cancer Institute can be more effectively monitored if the heads of that program are not monitoring their own performance. In any event, the normal powers of the executive could still be used to include the agency heads when desirable if the House view is adopted, or to exclude them when appropriate if the Senate view prevails.

With respect to the National Cancer Advisory Board, I would like to see the legislation provide functions and powers for the board along the lines of those which are provided in the Senate bill. This provision would allow for the greatest possible scientific contribution from the private sector. Here again, we could work with the provisions of the House bill if that is necessary to gain prompt passage of the legislation. I hope, however, that we will not let the opportunity which the Senate version provides for expanded outside assistance slip by for unfounded bureaucratic reasons.

The most important point I can make about the cancer legislation concerns the need to pass it promptly. The differences which still exist are largely a matter of detail and I urge the conferees to resolve them during the current session of the Congress so that I can sign cancer legislation into law in the very near future.

Both the Senate and House bills clearly recognize the complexities and difficulties we face in the cancer field and both provide the avenue for hope which the American people deserve and desire.

The fact that we are now so close to final legislation reflects great credit on the members of the Senate and the House who have given so much time and thought and energy to this subject—which is so critically important to so many millions of Americans.

As you know, I have personally favored an approach to the Government's cancer program which gives the person in charge of the program a high degree of independence and responsibility, so that he can cut through the red tape which so often has choked other Government programs. It is my judgment that, with strong leadership, either of the bills now being considered would allow us to mount and sustain an effective attack against cancer. I intend to provide this kind of leadership—and I again urge the Congress to move quickly in passing this vital legislation.

Sincerely,

RICHARD NIXON.

Mr. JAVITS. Mr. President, it was on that basis that we settled the situation.

I deeply believe that this is a landmark, historic bill.

I wish to mention the name of former Senator Yarborough, of Texas, as the one who introduced Senate Resolution 376, causing the establishment of a panel of consultants on the conquest of cancer chaired by Benno C. Schmidt, and to pay my tribute to Senator Yarborough, with whom I cooperated in this matter—as I have cooperated with Senator KENNEDY—and to Benno C. Schmidt, managing partner of J. H. Whitney & Co., New York City, who has rendered fantastic public service, and to Dr. Sidney Farber, of Boston, the scientific cochairman of the panel, and to each member of the panel, who were:

I. W. Abel, William McC. Blair, Jr., Elmer Bobst, Dr. Joseph Burchenal, Dr. R. Lee Clark, Dr. Paul B. Cornely, Emer-

son Foote, G. Keith Funston, Emil Mazey, Michael J. O'Neill, Jubal R. Parten, Laurance S. Rockefeller.

Dr. Solomon Garb, Mrs. Anna Rosenberg Hoffman, Dr. James F. Holland, Dr. William B. Hutchinson, Dr. Henry S. Kaplan, Dr. Mathilde Krim, Mrs. Mary Wells Lawrence, Dr. Joshua Lederberg, Dr. Jonathan E. Rhoads, Dr. Harold P. Rusch, Dr. Wendell G. Scott, Lew Wasserman.

Mr. President, I hope the Senate will—as it certainly should—agree to this conference report and I am confident that the President will provide the kind of leadership necessary to mount, coordinate, and sustain an effective attack against cancer which is of critical importance to so many millions of Americans.

Mr. KENNEDY. Mr. President, I ask unanimous consent to have printed in the RECORD a summary report of the special panel of cancer consultants; a letter dated December 3, 1971, the President; and a letter dated December 6, 1971, from the President.

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

SUMMARY REPORT OF THE SPECIAL PANEL OF CANCER CONSULTANTS

The principal findings and recommendations of the Panel were as follows:

1. Cancer is the No. 1 health concern of the American people. A poll conducted in 1966 showed that 62 percent of the public feared cancer more than any other disease. Of the 200 million Americans alive today, 50 million will develop cancer at present rates of incidence, and 34 million will die of this painful and often ugly disease, if better methods of prevention and treatment are not discovered. About one-half of cancer deaths occur before the age of 65, and cancer causes more deaths among children under age 15 than any other disease. Over 16 percent of all deaths in the United States are caused by cancer, making it by a wide margin our second greatest killer (after cardiovascular diseases). Cancer often strikes as harshly at human dignity as at human life, and more often than not it represents financial catastrophe for the family in which it strikes.

2. The amount spent on cancer research is grossly inadequate today. For every man, woman, and child in the United States, we spent in 1969; $410 on national defense; $125 on the war in Vietnam; $19 on the space program; $19 on foreign aid and only $0.89 on cancer research. Cancer deaths last year were 8 times the number of lives lost in 6 years in Vietnam, 5½ times the number killed in automobile accidents, and greater than the number of Americans killed in battle in all 4 years of World War II. Given the seriousness of the cancer problem to the heath and morale of our society, this allocation of national priorities seems open to serious question. In addition to the poignancy of the disease, and the death and suffering that it causes, the economic loss is staggering, with estimates of its costs to the Nation running as high as $15 billion per year, of which some $3 to $5 billions represents direct care and treatment costs and the balance is loss of earning power and productivity.

3. The incidence of cancer is increasing. This is partly due to the fact that a greater number of our citizens are reaching more advanced ages, where cancer strikes more frequently, but it is also due to the sharp increase in lung cancer, undoubtedly attributable to the air pollution in certain environments and most importantly to the self-pollution of those who smoke cigarettes. It is estimated that if the American people stopped smoking cigarettes this alone would eliminate about 15 percent of all cancer deaths.

4. The nature of cancer is not yet fully known. We know that human cancers are caused by certain chemicals, by certain types of radiation, and probably by viruses. The precise mechanisms by which these carcinogenic agents cause, or interact to cause, cancer is not known, and very little is known about the natural defense mechanisms that prevent cancer in some cases and not in others. A great deal more must be learned about chemical carcinogens, radiation, and viruses, and how they work. We must also learn more about what takes place at the cellular level when cancer occurs. There is very strong suggestive evidence that viruses cause some human cancers, but which viruses, how they are transmitted, and how they operate are unknown. It is erroneous to think of cancer as a single disease with a single cause that will be subject to a single form of immunization (as in the case of polio) or a single cure. Cancer comprises many diseases and results from a variety of causes that will have to be dealt with in a variety of ways. However, as our knowledge is expanded, more and more cancers will become preventable or curable.

5. The cure rate for cancer is gradually improving. In 1930 we were able to cure only about one case in five; today we cure one case in three; and it is estimated that the cure rate could be brought close to one in two by a better application of knowledge which exists today, i.e. detection at an earlier stage through the more widespread use of existing techniques (such as the Papanicolaou test for women and mammography), coupled with an extension to all citizens of the same quality of diagnosis and treatment now available at the best treatment centers. There are three methods for curing cancer today; surgery, radiation therapy, and chemotherapy. Often two or even three of these methods are used in combination. Some types of cancer are far more curable than others. For example, early breast cancer treated by surgery, cancer of the cervix by radiation or surgery, and choriocarcinoma and Burkitt's tumor by chemotherapy, are among those most susceptible to cure today. Treatment techniques are improving markedly, particularly in radiation therapy and chemotherapy, and more widespread availability of the best quality detection and treatment will give us more and more cures. However, it is still true that those cancers which disseminate rapidly are seldom curable today, and this represents a major gap in our existing knowledge. Where we stand today in our knowledge of the causes, nature, prevention, diagnosis, treatment, and control of cancer is set forth in detail in part II of this report.

6. There have been major advances in the fundamental knowledge of cancer in the past decade, and these advances in knowledge have opened up far more promising areas for intensive investigation than have ever heretofore existed. These areas of special promise must be explored with vigor, if we are to exploit the great opportunities that lie before us. They are examined in detail in part II of this report.

Among the areas of special promise which must be aggressively pursued are:

(*a*) The identification and study of the chemical, physical, and other environmental factors that cause cancer (food additives, air pollutants, industrial hazards, radiation, and other carcinogens);

(*b*) Viruses causing cancer (what viruses cause cancer, how are they transmitted, and how do they act);

(*c*) Cell and tumor biology (including cell surface phenomena, molecular functions, differentiation and genic expression, controls of cell division mechanisms of metastasis, nutritional requirements and other biological factors);

(*d*) Immunology (host resistance against cancer, its nature, causes and therapeutic use);

(*e*) Epidemiology (the variables in cancer incidence and types stemming from geographic, social, economic, nutritional, occupational, and constitutional differences);

(*f*) Cancer prevention (more effective utilization of existing knowledge and intensified research on preventive measures);

(*g*) Diagnosis (the development of new and improved diagnostic techniques);

(*h*) Chemotherapy (the development of new and better drugs and improvement in their uses);

(*i*) Radiotherapy (development of new and better techniques and apparatus for radiation therapy);

(*j*) Surgery (the best techniques in cancer surgery coupled with earlier diagnosis must be made generally available in order to further increase the cure of cancer. Better rehabilitation techniques must be further developed and utilized to return the cancer patient to an active and full life);

(*k*) Combinations of treatment modalities (improvement in treatment results by better combinations of surgery, radiotherapy, chemotherapy, and immunotherapy).

7. A national program for the conquest of cancer is now essential if we are to exploit effectively the great opportunities which are presented as a result of recent advances in our knowledge. However, such a program will require three major ingredients that are not present today:

First, effective administrative with clearly defined authority and responsibility;

Second, the development of a comprehensive national plan for a coherent and systematic attack on the vastly complex problems of cancer. Such a plan would include not only programmatic research where that is appropriate, but also major segments of much more loosely coordinated research where plans cannot be definitively laid out nor long-range objectives clearly specified; and

Third, the necessary financial resources.

At the present time there is no coordinated national program or program plan. The National Cancer Institute has done excellent work itself and has supported grants and contracts in the scientific community which have resulted in much outstanding work, but the overall research effort is fragmented and, for the most part, uncoordinated. The effort in cancer should now be expanded and intensified under an effective administration charged with developing and executing a comprehensive national plan for the conquest of cancer at the earliest possible time. The three foregoing elements are considered separately in more detail in the succeeding paragraphs 8, 9, and 10.

8. *Administration.*—An effective major assault on cancer requires an administrative setup which can efficiently administer the coherent program that is required in this formidable and complex scientific field. Such a setup will not be easy to achieve within the Federal Government. The effective implementation of such a program will require a simplification of organization arrangements and a drastic reduction in the number of people involved in administrative decisions. This type of straight-line organizational efficiency does not exist today in the National Cancer Institute, the National Institutes of Health, or the Department of Health, Education, and Welfare. Obviously, from many standpoints it can be argued that any cancer programs should be in the Department of Health, Education, and Welfare and indeed that it should be in the National Institutes of Health. However, there is real doubt whether the kind of organization that is required for this program can in fact be achieved within the National Institutes of Health or within the Department of Health, Education, and Welfare.

Apart from the question of whether it can be done, there is also the question of whether it would be wise to require the Secretary of Health, Education, and Welfare to attempt to give cancer the priority necessary to carry out the congressional mandate in a department charged with the multiple health and other responsibilities of that Department.

In the past when the Federal Government has desired to give top priority to a major scientific project of the magnitude of that involved in the conquest of cancer, it has on occasion, with considerable success, given the responsibility for the project to an independent agency. Such an agency provides a degree of independence in management, planning, budget presentation, and assessment of progress which is difficult if not impossible to achieve in a large government department. Accordingly, if the Congress and the administration are truly committed to making the conquest of cancer a "national crusade", as expressed in the concurrent resolution of the Congress, it is the view of the Committee that a National Cancer Authority should be established whose mission is defined by statute to be the conquest of cancer at the earliest possible time. All the functions, personnel, facilities, appropriations, programs, and authorities of the National Cancer Institute should be transferred to the National Cancer Authority. The Authority should be headed by an Administrator appointed by the President with the advice and consent of the Senate, and he should report directly to the President and present his budgets and programs to the Congress. In considering the feasibility of an independent agency, it should be borne in mind that we are talking about a major scientific program and, as pointed out in subsequent paragraphs, not the delivery of patient care generally in cancer cases. The only patient care involved in this program will be that associated with clinical research and teaching and the development and demonstration of improved methods in the delivery of patient care undertaken as a part of the comprehensive program plan.

The powers of such a National Cancer Authority should be very broadly defined in order to accomplish a mission of this complexity. It would not be useful to attempt to enumerate here all the powers that such an Authority should have and in the writing of the implementing legislation, the Committee believes that the powers should be broadly defined and not enumerated. However, the following are illustrative of the kinds of powers which the National Cancer Authority will have to be able to exercise in order to carry out a comprehensive program of the type envisaged:

(a) The power to enter into prime contracts with authority in the prime contractor to enter into subcontracts;

(b) The power to commit available funds until expended rather than on a year-to-year basis;

(c) The power to authorize exceptions to existing regulations, where necessary, to permit the use of experimental drugs, biologicals, and devices in cancer research;

(d) The power to establish or support the large-scale production of specialized biological materials for cancer research, such as viruses, cell cultures, animals, and the like, as well as the power to set standards of safety and care for those using such materials;

(e) The power to support research outside the United States by highly qualified foreign nationals, collaborative research involving American and foreign participants, and training of American scientists abroad and foreign scientists in the United States, to the extent that such activities will promote the accomplishment of the mission. The Committee believes that cancer research offers a particularly fruitful field for collaboration with other nations, including those nations with whom present cooperation is limited but with whom greater collaboration is desired;

(f) The power to fund by loan, grant, contract, or otherwise any facilities or programs, or to take such other actions, as may be required for the accomplishment of the mission.

9. *Program plan.*—A comprehensive national plan for the conquest of cancer should be developed as promptly as possible. The development of a coherent overall program plan should include the following features:

(*a*) The present research activities now being carried forward under the National Cancer Institute should in no way be impeded or interrupted while plans are being made for the expansion, intensification, and coordination of the cancer research program;

(*b*) Existing research facilities and manpower should be used as promptly as possible for the accelerated exploitation of the opportunities in the areas of special promise. There is substantial unused capacity in this country today that should be utilized in order to attract and retain the manpower that is needed. It is a myth that we could not spend effectively on cancer very much more than is now being spent. The fact that Federal support for cancer research has leveled off since 1967 and that, due to inflation, the actual amount of work done has decreased, has created a serious gap between what we are doing now and what we could and should be doing in cancer research. It is estimated that current expenditures could be doubled within the framework of the existing facilities and manpower potential of this country today, exclusive of the great industrial research capability in this field which should be brought to bear on an appreciable scale in high priority areas to which this type of capability is particularly suited.

(*c*) Existing cancer centers should be strengthened and additional cancer centers in different parts of the country should be created. The solution of the cancer problem lends itself to a multidisciplinary effort, where teams of highly qualified specialists are available to interact on problems of research, both clinical and nonclinical, teaching, diagnosis, preventive programs, and the development of improved methods in the delivery of patient care, including rehabilitation. Among those who work in the cancer field, there is great emphasis on the advantages of critical mass—a critical mass of scientists and physicians committed to the cooperative solution of the cancer problem, of research facilities, of patients, and of financial and other resources. This is simply another way of saying that the comprehensive cancer center offers the best organizational structure for the expanded attack on cancer. In addition to the few comprehensive cancer centers that exist in the United States today, there are a number of other institutions which combine all or most of the capabilities for a multidisciplinary effort in cancer. These could serve as a base for the creation of additional centers. The new centers should have appropriate geographic distribution and should, wherever possible, be created where a nucleus of scientific, professional and managerial personnel already exists and preferably where a university or a medical school affiliation exists or is planned.

In the creation of new cancer centers, manpower limitations should be taken into account, and new centers should not be created where there would be a dilution in the effectiveness of existing centers which would offset any gain from the new center. There should be a realistic operating plan for each center which assures the scientific and managerial commitment and ability necessary to the creation and operation of a successful center.

It should be emphasized that the strengthening of existing cancer centers and the creation of new cancer centers does not mean that under this program general responsibility should be undertaken for the care of the Nation's cancer patients. The delivery of patient care in cancer cases is a part of the general problem of the delivery of patient care and should be so dealt with. However, this inhibition must not prevent the cancer centers from including such patient care facilities as are necessary for clinical research and teaching and for the development and demonstration of the best methods of treatment in cancer cases.

(*d*) The cancer centers should also serve as administrative coordinators of those programs which require regional coordination. Such centers should support and assist clinics and community medical centers in their own geographic areas in order to assure the widespread use of the best available methods for early detection and treatment of cancer. They should also serve to collect data useful in the prevention and cure of cancer, including patient follow-up information, and be responsible for the dissemination of information, both at the lay and professional levels, that is useful in the prevention, diagnosis and cure of cancer. The effective dissemination and utilization of such information is a most important part of any national plan to conquer cancer.

(*e*) A national plan of the type envisaged must take account of the manpower requirements for this effort. There is a critical need for training and career opportunities for young scientists, physicians, and other personnel in this program. We must reaffirm to young investigators our confidence in the future of American science and in our national dedication to success in the conquest of cancer. A manpower program in this field should include training stipends, predoctoral fellowships for particularly promising candidates, postdoctoral fellowships for brilliant investigators, and career positions where appropriate through career initiation awards, career development awards, and senior career awards.

(*f*) A national plan for the conquest of cancer should provide for the generous use of grants as well as contracts and other methods of funding. There should be increased emphasis on the grants mechanism in order to stimulate continued independent exploration, particularly in those areas where knowledge is not sufficiently mature for a coordinated program aimed at reaching defined objectives.

(*g*) A comprehensive national program requires optimum communication and centralized banks of information. There must be an accurate and prompt information flow in both directions. This will call for integrated data processing, storage, and retrieval in order to rationalize the decision-making and where needed. As indicated above, the an to make information available when centers can be important foci in both the collection and dissemination of this information.

(*h*) A coordinated national program plan should, to the greatest possible extent, be generated by the voluntary productive interaction and joint planning of the scientists who will be responsible for doing the work. The program should not be the result of the happenstance of a multitude of random decisions independently arrived at. An integrated and coherent plan resulting from the joint effort of representative scientists who will be responsible for its execution is fundamentally different from the hierarchial imposition or direction of a research program from above. However, the effective use of collective planning does not mean that centralized administration or management of resources should be sacrificed.

10. *Funding.*—The Committee estimates that a coordinated national program aimed at the conquest of cancer at the earliest possible time, as envisaged by the concurrent resolution of the Congress, would require

an appropriation in fiscal 1972 of approximately $400 million. Thereafter, the cost of the program would increase at the rate of approximately $100 to $150 million per year, reaching a level of $800 million to $1 billion in 1976. These sums are not large in terms of our national resources or of the human suffering and economic loss attributable to cancer. A program of the type herein recommended is so important to the American people and to the world that we feel that the amounts called for should be provided even if this necessitates the raising of additional revenues. It is of utmost importance that the financing of this program not result in cutbacks in other health programs.

11. *National Cancer Advisory Board.*—Both the public and the scientific community must be effectively represented in this effort, and must have a part in its planning as well as its execution. To this end, a National Cancer Advisory Board should be created with 18 members, nine of whom are distinguished scientists and doctors in the field of cancer, and nine of whom are distinguished laymen. The members should serve for a term of 6 years with the terms of one-third of the members expiring every 2 years. Members of the Board should be appointed by the President of the United States with the advice and consent of the Senate. The Chairman of the Board should be elected by the members and should serve for a term of 2 years. The Board should meet not less than once each quarter and its function should be to advise and assist the National Cancer Authority and its Administrator in the development and execution of the program. The Administrator should be an ex-officio member of the Board. The Board should have statutory responsibility for the approval of each year's program plan and budget, but the responsibility for administering the program should rest with the Administrator. The Board should have full investigatory powers and should be required to report once each year to the President and the Congress on the progress of the National Cancer Authority in the accomplishment of its mission. This Board should supersede the presently existing National Advisory Cancer Council, and the members of that Council should serve as additional members of the National Cancer Advisory Board for the duration of their present terms.

12. Cancer is an implacable foe and the difficulty of eliminating it as a major disease must not be underestimated. A top priority commitment by the Congress, the President, and the American people is required if we are to mount and sustain an assault on cancer of the magnitude envisaged by Senate Resolution 376 and the concurrent resolution of the Congress. Such a commitment involves a recognition not only of the difficulty and complexity of cancer but also of the time and resources required to attack it effectively. While it is probably unrealistic at this time to talk about the total elimination of cancer within a short period of time or to expect a single vaccine or cure that will eradicate the disease completely, the progress that has been made in the past decade provides a strong basis for the belief that an accelerated and intensified assault on cancer at this time will produce extraordinary rewards. The Committee is unanimously of the view that an effective national program for the conquest of cancer should be promptly initiated and relentlessly pursued.

U.S. SENATE, COMMITTEE ON LABOR AND PUBLIC WELFARE,
Washington, D.C., December 3, 1971.

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

DEAR MR. PRESIDENT: As you know, the Senate and the House of Representatives are now in conference on the bill S. 1828, the cancer legislation. Given the urgent need for the Congress to enact effective legislation in respect to an enhanced effort to conquer cancer and given your strong personal interest in assuring that such a program be practically capable of early implementation at the Executive level, we would greatly appreciate your views in respect to the substantive areas of differences between the Senate and House bills. We are hopeful that such specific guidance from you will form a basis upon which all of the conferees will find it possible accordingly to agree upon a bill which can be sent to you for your signature.

Specifically, we would find it helpful to have your views regarding the principal function and requisite membership of the Cancer Attack Panel. As you know, the House-passed bill envisions such a panel as performing oversight functions and therefore its membership to consist of non-governmental experts whose responsibility is to advise you in respect to the cancer program. The Senate conferees have suggested that the functions of the panel be enlarged to include three of the key program experts so as to make it possible for them to have a suitable channel for direct access to you that will ensure that they can directly advise you regarding the implementation of the entire cancer program. In this regard, the Senate conferees have suggested that the Attack Panel be enlarged to six members by adding to it the Director of the Cancer Program, the Chairman of the Cancer Advisory Board, and the Director of the National Institutes of Health. With such an arrangement we believe that it would be possible for the Senate to concur with the provisions in the House bill which are designed to further assure that the cancer program will remain an integral part of the broad-based biomedical research programs carried out by the National Institutes of Health. Related to this enlarged concept of the Attack Panel, proposed by the Senate conferees, of course, is the enlarged scope of responsibilities contained in the Senate bill for the National Cancer Advisory Board.

Your assistance in this matter will be greatly appreciated. Our conference is scheduled to resume Tuesday, December 7, 1971.

THE WHITE HOUSE,
Washington, D.C., December 6, 1971.

Hon. EDWARD M. KENNEDY,
U.S. Senate,
Washington, D.C.

DEAR TED: Thank you for your letter of December 3, 1971 requesting my views concerning the differences between the Senate and House versions of pending legislation to help conquer cancer.

With respect to your specific question regarding the function and membership of the Cancer Attack Panel, my view is that I could work effectively with either version. The Senate version would have the advantage of bringing those who are directly responsible for the Government's cancer effort into all discussions with the President concerning its progress. On the other hand, I can understand the feelings of the House conferees that the activities of the National Cancer Institute can be more effectively monitored if the heads of that program are not monitoring their own performance. In any event, the normal powers of the executive could still be used to include the agency heads when desirable if the House view is adopted, or to exclude them when appropriate if the Senate view prevails.

With respect to the National Cancer Advisory Board, I would like to see the legislation provide functions and powers for the board along the lines of those which are provided in the Senate bill. This provision would allow for the greatest possible scientific contribution from the private sector. Here again, we could work with the provisions of the House bill if that is necessary to gain prompt passage of the legislation. I hope, however, that we will not let the opportunity which the Senate version provides for expanded outside assistance slip by for unfounded bureaucratic reasons.

The most important point I can make about the cancer legislation concerns the need to pass it promptly. The differences which still exist are largely a matter of detail and I urge the conferees to resolve them during the current session of the Congress so that I can sign cancer legislation into law in the very near future.

Both the Senate and House bills clearly recognize the complexities and difficulties we face in the cancer field and both provide the avenue for hope which the American people deserve and desire.

The fact that we are now so close to final legislation reflects great credit on the members of the Senate and the House who have given so much time and thought and energy to this subject—which is so critically important to so many millions of Americans.

As you know, I have personally favored an approach to the Government's cancer program which gives the person in charge of the program a high degree of independence and responsibility, so that he can cut through the red tape which so often has choked other Government programs. It is my judgment that, with strong leadership, either of the bills now being considered would allow us to mount and sustain an effective attack against cancer. I intend to provide this kind of leadership—and I again urge the Congress to move quickly in passing this vital legislation.

Sincerely,

RICHARD NIXON.

Mr. KENNEDY. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from New York has 12 minutes, and the Senator from Massachusetts has 4 minutes.

Mr. JAVITS. I yield myself 2 additional minutes.

Mr. President, I believe that all the information which is required to show the legislative intent respecting this act is clearly spelled out in everything we have already stated and put into the RECORD.

I believe that one thing must be emphasized—that our debate here and our debate in the conference showed that we expect a massive attack to be made on cancer, that that is the purpose of this. It is not just to absorb it as another one of the activities of the National Institutes of Health, just with more money; but, really, we expect that we are going to use this particular scourge as a breakthrough point. We want to break through on cancer. We believe it can be done. We believe that the American people want it done, even though the bigger killer is heart disease. We believe—and scientific analysis seems to bear it out—that a real breakthrough, not just one cure—there are an infinite variety of cancers—is possible in this field.

Therefore, we hope that in the administration of the law, the President will have in mind our strong intention that this shall be the point of breakthrough with respect to a massive killer the American people believe can be broken through with this massive application of means.

Mr. ROTH. Mr. President, I join with my colleagues today in applauding the fine work of the cancer conferees with regard to the National Cancer Act of

1971. Their promptness in reaching an agreement will insure final congressional consideration of this important legislation before adjournment. The timely action of the conferees is consistent with the fact that throughout this session of Congress, the cancer issue has both deserved and received consideration of the highest priority.

The National Cancer Act of 1971 will provide our country with the means to develop and implement an effective and coordinated national program against a disease which annually claims the lives of over 300,000 Americans. By greatly strengthening and streamlining the cancer program at the National Institutes of Health, the act incorporates the major recommendations of the Senate Panel of Consultants and also permits maximum utilization of the fine resources already available through NIH. In addition, the authorizations of approximately $1.6 billion over a 3-year period insure that the program will have the requisite financial resources to conduct and support the type of research programs necessary for the achievement of its goals. Without causing major disruption of the existing cancer program, the act also provides for incorporating new approaches and new ideas—through creation of a new National Cancer Advisory Board and a three-member Presidential Cancer Panel to monitor the progress of the program.

Mr. President, the National Cancer Act is among the most important of the legislative matters now before the Congress. Its prompt passage and enactment will provide us with the means by which to strengthen the program aimed at eliminating the disease which is the major health concern to the American people.

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

Mr. JAVITS. Mr. President, so do I.

The PRESIDING OFFICER (Mr. ALLEN). All time has now been yielded back.

CHILDREN'S DENTAL HEALTH ACT OF 1971

The PRESIDING OFFICER (Mr. ALLEN). Under the previous order, the Senate will now proceed to consider the bill, S. 1874, which the clerk will state.

The assistant legislative clerk read as follows:

S. 1874, a bill to provide for the establishment of projects for the dental auxiliaries, to increase the availability of dental care through efficient use of dental personnel, and for other purposes.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Labor and Public Welfare with an amendment to strike out all after the enacting clause and insert:

That this Act may be cited as the "Children's Dental Health Act of 1971".

SEC. 2. The Public Health Service Act is amended by adding at the end thereof the following new title:

"TITLE XI—DENTAL HEALTH PROJECTS

"GRANTS FOR PROJECTS FOR DENTAL CARE FOR CHILDREN

"SEC. 1101. (a) There are authorized to be appropriated $5,000,000 for the fiscal year ending June 30, 1972; $15,000,000 for the fiscal year ending June 30, 1973; and $30,000,000 for the fiscal year ending June 30, 1974; which shall be used by the Secretary to make grants to the health agency of any State (or political subdivision thereof) or to any other public or nonprofit private agency, organization, or institution to pay for part of the cost of the carrying out (on a planned and systematic basis) by such agency, organization, or institution, of one or more comprehensive projects for dental care and services for children of preschool and school age. Any such project shall include such comprehensive corrective, followup and preventive services (including dental health education), and treatment as many be required under regulations of the Secretary.

"(b) Grants under this section shall not be utilized to provide or pay for dental care and services for children unless such children are determined (in accordance with regulations of the Secretary) to be (A) from low-income families, or (B) unable, for other reasons beyond their control, to obtain such care and services.

"(c) Grants under this section may be utilized for the conduct of research, demonstrations, or experimentation carried on with a view of developing new methods for (A) the prevention, diagnosis, or treatment of dental problems, (B) the payment of dental care and services, or (C) the utilization of dental health care personnel with various levels of training; except that not more than 10 per centum of any grant under this section shall be so utilized.

"(d) In making grants under this section, the Secretary shall accord priority to projects designed to provide dental care and preventive services for children of preschool age and school age children who are in the first five grades of school.

"GRANTS FOR WATER TREATMENT PROGRAMS

"SEC. 1102. (a) There are hereby authorized to be appropriated $2,000,000 for the fiscal year ending June 30, 1972; $3,000,000 for the fiscal year ending June 30, 1973; and $4,000,000 for the fiscal year ending June 30, 1974; which shall be used by the Secretary to make grants to States, political subdivisions of States, and other public or nonprofit private agencies, organizations, and institutions to assist them in initiating, in communities or in public elementary or secondary schools, water treatment programs designed to reduce the incidence of oral disease or dental defects among residents of such communities or the students in such schools (as the case may be).

"(b) Grants under this section may be utilized for (but are not limited to) the purchase and installation of water treatment equipment.

"(c) Grants under this section shall not exceed—

"(1) 80 per centum of the cost of the treatment program with respect to which such grant under this section is made in the case of any grant under section 1101; and

"(2) 66⅔ per centum of the cost of the treatment program with respect to which such grant is made in the case of any other grant.

"GRANTS TO TRAIN AUXILIARY DENTAL PERSONNEL

"SEC. 1103. There are hereby authorized to be appropriated $12,000,000 for the fiscal year ending June 30, 1972; $20,000,000 for the fiscal year ending June 30, 1973; and $25,000,000 for the fiscal year ending June 30, 1974; which shall be used by the Secretary to make grants to public and nonprofit private institutions to assist them in establishing and carrying out programs to educate and train persons for careers as auxiliary dental personnel with special emphasis on the education and training of veterans of the Armed Forces who have received experience and training in dental auxiliary functions.

"PROJECTS TO PROMOTE EFFECTIVE USE OF AUXILIARY DENTAL PERSONNEL

"SEC. 1104. (a) There are hereby authorized to be appropriated $6,000,000 for the fiscal year ending June 30, 1972; $10,000,000 for the fiscal year ending June 30, 1973; and $10,000,000 for the fiscal year ending June 30, 1974; which shall be used by the Secretary to make grants and enter into contracts (without regard to section 3648 of the Revised Statutes, 31 U.S.C. 539) under subsection (c) and to make grants to dental schools, and to other public or nonprofit private agencies, organizations, and institutions, and to enter into contracts (without regard to section 3648 of the Revised Statutes, 31 U.S.C. 529) with individuals, agencies, organizations, and institutions, for projects described in subsection (b),

"(b) Grants and contracts under this section may be made or entered into for projects for—

"(1) planning, establishing, demonstrating, or supporting programs to teach dental students and dentists the efficient and effective utilization of dental auxiliaries and the management and supervision of total dental health teams (including, but not limited to, teams consisting of various types of auxiliary dental personnel who are trained in carrying out expanded functions or procedures which do not require the knowledge and skill of the dentist), with special emphasis on the employment and utilization of veterans of the armed forces who have received experience and training in dental auxiliary functions;

"(2) demonstration and experimentation of ways to organize dental health services to achieve maximum effectiveness in the use of auxiliary dental personnel, which projects take into account such factors as patient acceptance, quality of care, and cost of services; and

"(3) planning, establishing, demonstrating, or supporting field training programs for dental students and auxiliary dental personnel in which dental care and preventive services are provided by such persons under professional supervision in areas characterized by low family incomes or shortages of and need for dental services.

"(c) The Secretary is authorized to utilize sums appropriated pursuant to subsection (a) to make grants to dental schools and to other public or nonprofit private agencies, organizations, and institutions, and to enter into contracts with individuals, agencies, organizations, and institutions for special projects related to investigation and demonstration of ways of providing incentives for developing or establishing dental facilities or services in areas or communities in a State determined by the appropriate State health authority in such State to have a shortage of and need for dentists.

"DENTAL ADVISORY COMMITTEE

"SEC. 1105. (a) The President shall appoint a Dental Advisory Committee consisting of seven members, four of whom shall be selected from the dental profession and three from the general public. Members shall be appointed from among persons who, by virtue of their training, experience, and background, are exceptionally qualified to appraise the programs established by this title. The Secretary shall be an ex officio member of the Committee.

"(b)(1) Members shall be appointed for six-year terms, except that of the members first appointed three shall be appointed for

two years, two shall be appointed for four years, and two shall be appointed for a term of six years as designated by the President at the time of appointment. The members shall select their own chairman.

"(2) Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall serve only for the remainder of such term. Members shall be eligible for reappointment and may serve after the expiration of their terms until their successors have taken office.

"(3) The Dental Advisory Committee shall advise the Secretary in regard to the reports required under section 1006, in regard to programs established under this title, and in regard to activities carried on by the Department of Health, Education, and Welfare related to dental health, dental manpower, or dental training and services, and shall serve as a reviewing body for grants made pursuant to this title, where such review is deemed necessary by the Secretary.

"(4) Members of the Dental Advisory Committee who are not officers or employees of the United States shall receive compensation at rates not to exceed the daily rate prescribed for GS–18 under section 5332, title 5, United States Code, for each day they are engaged in the actual performance of their duties, including traveltime, and while so serving away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as the expenses authorized by section 5703, title 5, United States Code, for persons in Government service employed intermittently.

"(5) The Secretary shall make available to the Dental Advisory Committee such staff, information, and other assistance as it may require to carry out its activities.

"(6) The Secretary, after consultation with the Dental Advisory Committee, shall promulgate such rules and regulations as are necessary to carry out the purposes of this title.

"REPORT

"SEC. 1106. (a) The Secretary shall submit a report to the Congress not later than January 31 of each year on the progress of the implementation and administration of the programs established under this title.

"(b) The Secretary shall submit to the Congress a report containing his recommendations concerning the need and feasibility of a comprehensive national dental health program for children within ninety days before the end of the fiscal year ending June 30, 1974."

SEC. 3. Section 1902(a)(10) of title XIX of the Social Security Act is amended by adding at the end thereof the following: "and except that services described in paragraph (10) of section 1905(a) may be made available to individuals or groups of individuals under age eighteen without making available such services of the same amount, duration, and scope to individuals of any other ages;".

SEC. 4. (a) Section 1 of the Public Health Service Act is amended to read as follows:

"SECTION 1. Titles I to XI, inclusive, of this Act may be cited as the 'Public Health Service Act'."

(b) The Act of July 1, 1944 (58 Stat. 682), as amended, is further amended by renumbering title XI (as in effect prior to the enactment of this Act) as title XII, and by renumbering sections 1101 through 1114 (as in effect prior to the enactment of this Act), as sections 1201 through 1214, respectively.

SEC. 5. Section 602 of the Federal Food, Drug, and Cosmetic Act is amended by adding at the end thereof the following new subsection:

"(g)(1) If it is a dentifrice and (A) because of its nature, composition, or packaging it involves a potential risk to consumers including but not limited to its potential sensitizing, allergenic, or abrasive character or (B) because of any foreseeable handling, storage, or use by individuals it presents such a potential risk; then such dentifrice shall bear adequate cautionary labeling (such labeling shall be conspicuous and shall include first-aid information if appropriate). Whenever the Secretary finds any dentifrice or class of dentifrices to be subject to this subsection and in his judgment a declaration to that effect will reduce the potential risk to the consumer, he may by regulation declare such dentifrice or class thereof to be subject to such provision and may in such regulation specify the content of such cautionary information, the appropriate type size to be used for such warning, its placement on labels and may in pursuance of the objective of this subsection require the submission of the quantitative formula for such dentifrice or class thereof by the manufacturers of such dentifrice.

"(2) If it is a dentifrice and its labeling fails to bear cautionary information in the manner prescribed in clause (1) of this subsection.".

SEC. 6. Section 201 of the Federal Food, Drug, and Cosmetic Act is amended by adding at the end thereof the following new subsection:

"(y) The term 'dentifrice' means any cosmetic, drug, or other article recommended, suggested, or indicated for use by humans in the cure, mitigation, treatment, or prevention of diseases of the teeth or for cleansing or beautifying teeth.".

SEC. 7. Title V of the Lead-Based Paint Poisoning Prevention Act is amended by adding at the end thereof the following new section:

"AUTHORITY TO MAKE GRANTS TO STATE AGENCIES IN CERTAIN CASES

"SEC. 504. Notwithstanding any other provision of this Act, grants under sections 101 and 201 may be made to an agency of State government in any case where State government provides direct services to citizens in local communities or where units of general local government within the State are prevented by State law from implementing or receiving such grants or from expending such grants in accordance with their intended purpose; and in any such case the term 'local' when used in section 101 or 201 with respect to any program shall be deemed to read 'State'."

Mr. KENNEDY. Mr. President, I yield myself what time I need. This bill was introduced by the distinguished Senator from Washington. It has been carefully examined, and amended as a result of hearings held by the Health Subcommittee I have the privilege of chairing. It has been unanimously approved by the full Committee on Labor and Public Welfare. It bears the cosponsorship of 38 Members of this body from both sides of the aisle. It has been warmly endorsed by such concerned national organizations as the American Dental Association, the National Dental Association, the AFL–CIO, the American Academy of Pediatrics, the National Congress of Parents and Teachers, the Consumer Federation of America, and the American Society of Dentistry for Children.

Its progress, then, has been swift but measured. That has come about, I think, for a number of sound reasons.

The first that should be mentioned is that the bill has been authored and introduced by the distinguished senior Senator from the State of Washington. Few Members of this body enjoy the high level of affection and respect that he does. His very authorship of a bill commends it favorably to the attention of all of us.

Another powerful reason for our committee's prompt action on this bill is the simple fact that it is so well designed to meet needs we all know have existed not for a few months nor even a few years, but literally for decades; needs that are far from being met.

It is, I should think, a common experience in most congressional offices to receive inquiries about dental care services for poor children, or ways in which readier access to dental services can be achieved by those living in small, semi-isolated communities, or ways in which Federal resources can be used to assist the States and localities to improve the dental health of their people. It has been exceedingly difficult to be responsive to such legitimate requests for help. It has been difficult, first of all, because the size of the problem is such that one hardly knew where to begin. A decade ago, Wilbur Cohen, then as Assistant HEW Secretary, noted that—

Dental disorders are the most neglected of all health conditions plaguing the American people.

It has been difficult, second, because the Federal Government has never really gotten down to the business of analyzing what appropriate role it could play in the area of dental health. And, as with any area victimized by inattention, the result has been administratively chaotic as well as, in instances, fiscally wasteful.

S. 1874 would begin to rectify this situation. It would not solve overnight the complex problems that have been festering for so long, but it would put us on the right path. It would permit rational planning and establishment of a sound order of priorities. It is long overdue.

The heart of the bill is contained in four sections: First, project grants for dental care of children; second, grants for water treatment programs; third, grants to train auxiliary dental personnel. The sections would have a 3-year life and the total authorization for them is $142 million. While the section-by-section analysis of S. 1874, which I am placing into the RECORD, explains fully the thrust of each aspect of S. 1874, there are some additional comments that can usefully be made on these four sections in particular.

PROJECT GRANTS FOR DENTAL CARE FOR CHILDREN

There are today some 63 million youngsters in this Nation between the ages of 2 and 17. Of that total, approximately 14 million are members of families with annual incomes of under $5,000.

Current estimates being made by the American Dental Association indicate that nearly 50 percent of the children in this Nation under the age of 15 have never been to a dentist. Among poor children, almost 70 percent have never been to a dentist.

As a result, statistics show that the average 15-year-old American child has had 11 teeth attacked by decay while, for every 100 selective service recruits, the Armed Forces needs to perform or supply 500 fillings, 80 extractions, 25 bridges,

and 20 dentures. Nor is tooth decay the only manifestation of dental disease suffered by children. It is estimated that nearly half of America's children have the beginnings of gum disease and each year in this country some 6,500 children are born with cleft lip, cleft palate, or both.

As is generally true with all aspects of health, the burden of disease falls most heavily on the poor. The progressive nature of dental disease—tooth decay and gum disease are not self-healing, they continually worsen if not attended to—means that the oral health of the poor child can deteriorate to the point where it seriously affects not only his physical well-being, but also his capacity to fulfill his potential in the classroom and elsewhere. The national nutrition survey, conducted by the U.S. Public Health Service, discovered cases of children whose general nutrition was deficient, because their teeth hurt them so badly they could not chew food.

This is disgraceful and unconscionable.

S. 1874 could move into this area with both short-range and long-range effect. The authorized funds would permit direct care to be given to perhaps as many as 1 million children who do not now receive dental treatment; children in inner cities as well as those living in rural poverty. That in itself justified the $60 million expenditure that is authorized by the committee's bill under section 1101.

The bill would do more than that, however. By directing that these care projects be established in various settings and by making use of various administrative and delivery methods, we can derive hard, reliable data on which methods show the greatest promise in terms of efficiency and economy. Such data will be invaluable when we move, as we soon must, toward a dental health program encompassing all the Nation's children.

GRANTS FOR WATER TREATMENT PROGRAMS

The universal incidence of dental disease has long impelled researchers to search for methods whereby we might be protected against the beginning of such disease. In the case of the most common sort of dental disease, tooth decay, the search has long proved frustrating. There may someday be a vaccine against tooth decay or some other method of inoculation. Today, there is not and we spend an estimated $2 billion a year in repairing the damage done by it.

The early years of the 20th century, however, witnessed the discovery of a public health measure that, after years of meticulous testing, proved to be an eminently safe, effective, and economical weapon against tooth decay. This is, of course, fluoridation.

The efficacy of fluoridation was widely known for some years before it was put into practice as a public health measure. Its safety had to be conclusively documented before any community should be asked to begin fluoridating. The scientific literature establishing fluoridation's acceptability includes literally thousands of references.

Our committee, Mr. President, received overwhelming scientific evidence of the safety and the effectiveness of fluoridation as a powerful preventive weapon against dental disease. I ask unanimous consent to include in the RECORD at the conclusion of my remarks a brief summary of some of that evidence which caused our committee to unanimously order this bill favorably reported to the Senate.

Fluoridation in the United States celebrated in 1970 its 25th anniversary. It bears the endorsement of every reputable health organization that has investigated it, including the U.S. Public Health Service, the American Medical Association, the Pan American Health Organization, the American Heart Association, the American Public Health Association, the Association of State and Territorial Health Officers and, of course, every major dental organization beginning with the American Dental Association. It is unequivocally endorsed, as well, by such groups as the National Congress of Parents and Teachers, the National Education Association, the American Public Welfare Association, and the AFL–CIO.

The progress of fluoridation has been heartening, particularly with respect to major, urban areas. Regrettably, though, there are still more than 100 million people who do not enjoy its benefits, which include documented reduction of tooth decay by as much as 65 percent.

For many smaller communities, the major obstacle to fluoridating has been the one-time costs incurred at the time it begins. Equipment must be purchased and installed and initial operating expenses must be met.

An informal survey of a number of States taken late this summer by the directors of dental health confirms this belief that financial considerations are indeed a barrier. In response to an inquiry, for example, the dental health department in Wisconsin noted that—

> There were 257 communities below 5,000 in population . . . Many of these smaller communities would, we feel, fluoridate if funds were made available for the purchase and maintenance of equipment.

A reply from Massachusetts indicated that in towns containing fully 10 percent of the total State population, fluoridation has been "ordered and legal steps accomplished but not funded." Georgia noted that 60 communities in that State, with a total population of more than 200,000, said they were not yet fluoridating because they had not the money to begin. Arkansas pointed to 40 communities within its jurisdiction that wish to fluoridate but lacked the money to do so. Tennessee, in 1965, carried out a State-level program of financial assistance to communities wishing to fluoridate and, the first 9 months, had received requests from 25 communities. Twenty more came into the program during the remainder of its life.

The evidence is clear, then, that a modest amount of assistance could produce enormous benefits. Section 1102 of S. 1874 authorizes the expenditure of only $9 million. These would be one-time, matching grants and, it is estimated, could bring fluoridation benefits to as many as 30 million more people, or about one-third of those who do not now enjoy the benefits of fluoridated water.

One more thing remains to be said. Fluoridation, we all know, has been the subject of political controversy on more than one occasion and in more than one community. While the controversy has subsided considerably in recent years, it still exists in some places. I regret that there are still those who still suffer fears and doubts. I do not believe, however, that the fears of a few should stand in the way of a community if it decides that it wishes to fluoridate. And, of course, it should be clearly kept in mind that S. 1874 provides that each community must decide this issue on its own by whatever method is acceptable to it. Only after a community has decided in favor of fluoridation and only after it has initiated a request to the Federal Government would S. 1874 come into play. There is nothing compulsory in this provision of the bill. It is wholly voluntary. I do not see how a more reasonable provision could have been written.

What we are talking about, then, is tooth decay on which we spend as much as $2 billion a year. What we are suggesting is that $9 million be authorized over a 3-year period to help as many as 30 million people, if they wish, to fluoridate their water supplies and thus reduce the incidence of tooth decay by as much as 65 percent.

DENTAL AUXILIARY TRAINING

The dental profession in the United States has traditionally shown an enlightened, progressive attitude toward the question of auxiliary assistance. Investigation after investigation has shown how substantially an individual dentist can increase his productivity by the judicious use of well-trained auxiliaries. Productivity increase is of substantial importance in an area where you are faced with universal incidence of disease and a severe shortage of professional practitioners.

The most recent of such studies shows that a dentist who increases from one to two auxiliaries could increase his office's productivity by 44.2 percent; a dentist who increases from two to three auxiliaries increases productivity by 25 percent; and a dentist who increases from three to four auxiliaries increases productivity by 21.9 percent. If a dentist increased his staff from zero auxiliaries to four auxiliaries, the same study shows, his office productivity could jump as much as 225 percent.

These are exciting findings. They have urgent relevance today as we are moving toward implementation of the right to health care for all Americans. The problems, however, is that there is a desperate shortage of dental auxiliaries and, at the present rate of progress, that shortage will not significantly improve during the decade of the 1970's.

There is today one dental hygienist for every five or six dentists. There ought to be at least one hygienist for every two dentists. We have today some 103,000 dental auxiliaries, but there ought to be about 225,000 such auxiliaries. By 1980, under present circumstances, we will be short about 25,000 hygienists and 137,000 dental auxiliaries.

The funds available under S. 1874 would enable us to narrow that gap sig-

nificantly. Or, to put it more positively, it means we could have available an immensely greater dental care capability than would otherwise be obtainable. The amount being asked by way of authorizations is $57 million. That would fund 3 years of programs. Today, we are spending more than $60 million every week, 52 weeks a year, in purchasing dental care services. What we are suggesting, then, is the equivalent of 1 week's expenditure to be invested over a 3-year period in order to substantially increase the capability of the dental care system. And, also, it is reasonable to suggest this will reduce the per unit cost of dental care since auxiliary personnel will be available to perform many of the duties now undertaken only by the dentist himself.

There will be those, I know, who contend that this section of S. 1874 duplicates existing legislation. This may have some theoretical truth, but the facts of the situation are otherwise.

The only funds currently available for the purpose of this section are authorized under the Health Manpower Training Act. Experience with that program, which is designed to cover the whole spectrum of health professions personnel and thus encompass literally thousands of institutions, demonstrates that it cannot do the job unaided, much less do it with sufficient swiftness to fill shortage gaps in any one area. Regrettably, the administration's recent meager budget request for that act reinforces my conviction that this legislation is urgently required.

In fiscal 1971, for example, more than 800 dental auxiliary curriculums had distributed to them only some $9 million in basic improvement grants. This translates to about $12,000 per curriculum. There are some 26,000 students in the total curriculums.

The provision in S. 1874, then, contemplates a targeted approach designed to meet a specific, identifiable need in the field of dental health. The productivity statistics that I have cited earlier demonstrate that we know precisely how much assistance we can purchase with the grants and how valuable it will be.

EFFECTIVE USE OF AUXILIARY PERSONNEL

Section 1104 of S. 1874 is closely related to provisions of section 1103 in respect to manpower. This section would provide some $26 million over the life of the bill to promote effective use of dental auxiliary personnel. If a young man or woman enters dental school and spends 3 or 4 years being trained to render care on a solo basis, we can hardly expect that, after graduation, that young dentist will be inclined to begin practicing with the assistance of auxiliaries. The student must, instead, be taught how to use such assistance properly during the education process. Such a program, I might add, has been in existence, with Federal support, in dental schools for some time and has proved invaluable. The Federal funding, however, has never had a statutory existence and the annual uncertainties of the budgetmaking process has militated against effective planning and efficient use of the available funds. Section 1104 of S. 1874 will remedy that. In addition, this section will permit the schools to broaden the work they are doing in this area in a number of other interesting and useful ways. It asks the dental schools, for example, to make greater use than they do now of veterans who have received training and had experience in dental auxiliary duties while in military service. It would encourage field training programs, using the dental team approach, that will bring properly supervised dental students and auxiliaries to areas where there is a shortage of dental care. And it will also permit exploration of incentives for developing more permanent solutions for areas suffering from a dentist shortage.

SUMMARY

The 18th century English scholar Samuel Johnson once remarked that "those who do not feel pain seldom think it is felt." An admittedly bitter remark, it nonetheless has some relevance here today.

I would suppose, in one sense, that there is no one within range of my voice who has not felt the pain of dental disease at some time or other. But, for a great many of us, it is a pain that is under control because there is a dentist to whom we can go and whose services we can afford. For too many millions of Americans, over too many long years, this has not been so. That, I think we can all agree, must change.

If it is going to change, however, we must undertake a sober reconsideration of what we have been doing, or not doing, about dental disease. We have invested too little thought and, on the Federal level, even less money to the subject.

The universality of dental disease has long made it plain to those who have invested time, thought, and effort that the only sane approach to control of it is prevention. And to prevent dental disease means to pay special attention to children. It also means that we must somehow achieve a sufficient supply of manpower so that preventive services are readily available to everyone. And, finally, it means that we must make intelligent use of safe and effective preventive measures as are now available.

S. 1874 takes these steps. It is a modest bill in terms of its years of life and in the amounts of money it would authorize. But it is a most significant proposal.

The time is swiftly drawing near, as every Member of this body realizes, when this Nation will at long last inaugurate a national health insurance program. Dental care is inescapably an integral part of such a program; dental care today consumes some 9.3 percent of the private health dollar. S. 1874 is an important precursor to national health insurance with respect to the prevention of dental disease. I urge my colleagues on both sides of the aisle to vote for this excellent bill.

Mr. President, I ask unanimous consent to have printed in the RECORD the strong letter of support for the provisions of S. 1874 which I received from the chairman of the Labor-HEW Appropriations Subcommittee, Senator MAGNUSON.

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

U.S. SENATE,
Washington, D.C., November 9, 1971.

Hon. EDWARD M. KENNEDY,
Chairman, Senate Health Subcommittee, Old Senate Office Building.

DEAR MR. CHAIRMAN: I am writing to reiterate my conviction that enactment of the Children's Dental Health Act (S. 1874) would be a responsible and effective step toward the eventual solution of this country's dental health problem. I am very hopeful that the full Labor and Public Welfare Committee will act on this legislation before the Senate adjourns for the holidays and that it will report favorably on the bill as it was approved by the Health Subcommittee.

Each of the four major components of this legislation would serve an important part in an effective national dental health effort. Congress recognized the need for dental care projects to serve low-income children when it enacted Title V of the Social Security Act in 1967. Unfortunately, however, that law's failure to provide a separate authorization for children's dental care projects has resulted in an almost total disregard by the executive branch of Congress' concern for the dental health of poor children. As you know, since 1967 only slightly more than $1 million has been spent on the dental projects authorized under Title V and, at best, only about 15,000 youngsters have been served by them. Section 1101 of the Children's Dental Health Act would provide the separate authorization for pilot dental care projects for economically disadvantaged children which is necessary if the Congress' concern for the dental health of these youngsters is to ever be translated into meaningful action.

The $9 million authorized in Section 1102 for matching grants to public schools and communities wishing to fluoridate their water supplies would be a sound investment in preventive dental care. At a time when Americans are spending nearly $4 billion each year for corrective dental care it is entirely appropriate that the federal government should spend $9 million to assist those communities and schools which wish to utilize water fluoridation to prevent costly dental disease. As you know, the decision to fluoridate or not fluoridate any school or community's water supply would be made entirely by local officials and no community or school would be required by this bill to fluoridate its water.

Projections indicate that unless we sharply accelerate the training of new paradental personnel we will face a shortage of 23,500 technicians, 25,000 hygienists and 137,000 assistants by 1980. Concern over these forthcoming shortages is evidenced in the recently enacted Comprehensive Health Manpower Training Act, but it must be noted that separate authorizations are not provided in that Act for programs to train *dental* auxiliaries. Without separate authorizations, I fear that dental auxiliary training programs will meet the same fate as have the children's dental care projects provided for under Title V of the Social Security Act. That fear is heightened by a close reading of the Administration's White Paper entitled "Towards a Comprehensive Health Policy for the 1970's." Written last Spring by Secretary Richardson, this policy statement indicates no intention on the Administration's part to increase our output of dental auxiliaries. In view of the fact that there *is* specific reference in the White Paper to increasing the supply of *physicians* assistants, the omission of any reference to dental auxiliaries does not appear to be an inadvertent one. For these reasons, then, a separate authorization

for programs to train dental auxiliaries is included in S. 1874 as Section 1103. Similarly, Section 1104 provides a separate authorization for programs to teach dentists and dental students how to effectively utilize dental auxiliaries whereas the Health Manpower Training Act does not.

In sum, passage of the Children's Dental Health Act as it is now written would, for the first time, identify dental disease as the major national health problem it is and would provide a coordinated beginning toward an effective national dental health effort.

Warmest personal regards.

Sincerely,

WARREN G. MAGNUSON,
U.S. Senator.

Mr. JAVITS. Mr. President, will the Senator from Massachusetts yield?

Mr. KENNEDY. I yield.

Mr. JAVITS. I tell the Senator that I think this is a very fine bill. I have only one comment to make on the question of fluoridation which was raised in committee. It was able to be shown that the evidence is so overwhelming on that subject now that the cliches and the prejudices which persisted sometime ago are not tenable in the face of the facts.

I deeply believe that this may prove to be one of the best things to come out of the bill in a peripheral sense. It is a very fine bill dealing with the health of our children in a basic and constructive way and in which the chairman of the subcommittee, the Senator from Massachusetts (Mr. KENNEDY), has taken a fine lead. I am very much pleased to see it come so close to the voting stage now.

Mr. KENNEDY. I thank the Senator from New York. There is an area that has been of some concern to Members; namely, the second provision dealing with fluoridation. As we indicated previously, the program of fluoridation can have a significant impact in terms of dental health for all the people of this country.

Mr. JAVITS. Mr. President, as I said before, I strongly support the Children's Dental Health Act, S. 1874. This legislation—authored by Senator MAGNUSON and of which I am a cosponsor—permits us to launch a substantially expanded Federal dental health effort in this area of critical need.

To begin to bring dental care to the more than half the children in this Nation who have never visited a dentist—and I might note that among low-income groups the number approaches 70 percent, which is to say that almost three-quarters of these children have never seen a dentist—a total of $50 million is authorized over 3 years for pilot dental care projects providing preventive, corrective, and followup care to children. These dental projects will not provide care to all children or even to all economically disadvantaged children. We have neither the funds nor the manpower to set out upon such an ambitious course. Instead, these would be pilot projects which—while providing direct care to 1.5 million disadvantaged children—would also provide an opportunity for determining how quality dental care can be provided to large numbers of people with maximum efficiency and minimum cost.

No child should be permitted to suffer ill health because he lives in an isolated area or because his father is poor and this provision would move that principle from promise to performance. To make it possible for the American people to save a sizable proportion of the nearly $4 billion which they are spending every year on corrective dental care, the bill provides $9 million over 3 years for Federal matching grants to schools or communities wishing to fluoridate their water supplies. The effectiveness and safety of fluoridation in preventing tooth decay has been demonstrated again and again and in March 1969, the Surgeon General stated:

> The United States Public Health Service endorses water fluoridation as a safe and effective public health measure and urges all communities to make its benefits available at the earliest possible time.

I wish to repeat that I recognize that fluoridation has been the subject of intense controversy; however, dental, medical, and statistical data, judged by a committee of experts and special councils of national and international organizations concerned with public health, concluded that the adjustment of the fluoride content of water supplies to a concentration optimal for dental health is a safe and beneficial procedure with no detrimental effects of any kind. In addition, long-term health studies in cities having controlled fluoridation continue to attest to the effectiveness and safety of fluoridation. Also, this bill would not require any school or community to fluoridate its water. What the bill would do is assist those schools and communities which decide—on their own—that they wished to fluoridate their water.

We must not only improve our dental care delivery system but also train much larger numbers of dental health personnel. While we must continue to increase our supply of dentists, we can no longer rely upon dentists alone to provide dental care. The bill authorizes $57 million over 3 years to train new dental auxiliaries and thus improve our capacity for meeting increased demands for dental services. In addition, $26 million is authorized to train dentists and dental students to work with auxiliary personnel. We will thus be provided with dentists and dental auxiliaries trained to work as efficient, productive teams capable of providing higher quality dental care to more Americans than ever before.

For both philosophical and practical reasons, dental auxiliaries assume today more importance than ever before in our history.

We know there are a number of dental care duties that auxiliaries can perform and that they can be educated in a much shorter period of time, and at much less expense than a dentist. We know that a dentist with just one well-trained auxiliary can stretch his productivity by more than 50 percent.

If our shortage of dentists is acute, the shortage of dental auxiliaries is even more critical. At the present time, there are some 18,000 full-time—or full-time equivalent—dental hygienists in practice. This gives a ratio of one hygienist to every five or six dentists. At a minimum, the desirable ratio should be one hygienist for every two dentists.

The numerical shortage of trained dental assistants is even worse. Presently, there are some 103,000 dental assistants in practice, giving a ratio of about 1 to 1 with repect to dentists. A minimally desirable ratio would be two assistants for every dentist.

The third auxiliary, the dental laboratory technician, does not engage in chairside care nor is he normally employed directly by the dentist. His work, however, is vital and the shortage here is also quite severe.

Based on the current graduation rate, the deficit by 1980 for these three auxiliaries with respect to the desirable ratios will be 25,000 hygienists, 137,000 assistants and 23,500 technicians.

The bill would help move us toward achievement of the proper ratios in an accelerated way.

The next logical step in the attempt to stretch dentists' productivity—and as provided for by this bill—is to institute, on a much broader scale than has heretofore existed, programing to instruct both the practicing dentist and the dental student on how to work most effectively with auxiliaries and thus create and use the most effective dental team possible.

Given what we know about the potential to be realized from effective use of auxiliaries, it would be logical to assume that no dental student is permitted to graduate today without intensive instruction in this subject area. In fact, this is not so. Current surveys indicate that almost no first- or second-year students receive it, and that few third-year students have such training. Moreover, senior students have far less of it than necessary.

This relative inattention lies in the fiscal crisis that has gripped the dental education system for some years now. The lack of such education during school years—coupled with the shortage of auxiliary personnel—goes far toward explaining why there are still some 15,000 dentists who practice without auxiliaries. This legislation would enable us to change this and increase the availability of dental care in a relatively short period of time.

Mr. KENNEDY. Mr. President, I ask unanimous consent to have printed in the RECORD a very fine statement containing some facts concerning the safety of fluoridation and various studies which justify the action which has been taken in the inclusion of that provision in this legislation.

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

STATEMENT ON THE SAFETY OF FLUORIDATION

The Division of Dental Health endorses and actively promotes the fluoridation of community water supplies as an effective method of preventing tooth decay. This stand is based on several decades of study of the effects of fluorides. Because of the widespread occurrence of fluorides as a normal constituent of water supplies, research scientists have had a natural laboratory of unprecedented scope.

The first established relationship between fluorides and dental health concerned mottled tooth enamel. Culminating investigations that began about 1908, researchers reported in 1931 that persons with noticeably mottled enamel had invariably been reared in areas where *excessive* quantities of fluoride appeared naturally in the water supply. Those who were studying the mottling phenomenon noticed that mottled teeth, although they were not considered well developed, did not suffer as much decay as teeth that were apparently normally developed. This observation led to studies to determine the exact relationship between tooth decay and fluoride in drinking water.

Results of these studies and others conducted in several countries were remarkably uniform. They demonstrated conclusively that persons born and reared in temperate-climate communities having from 1.0 to 1.5 parts per million of fluoride in the water had only one-third as much tooth decay as persons living in areas where the drinking water was without fluoride.

Further, at this level of fluoride concentration teeth did not show undesirable mottling. These and other epidemiological findings, together with the results of animal studies on the caries-inhibiting effects of ingested fluorides, led to the conclusion that fluorides added in optimum amounts to water supplies would result in substantial reductions in the incidence of tooth decay.

The early dental investigations were carried out in areas where millions of people had been using naturally fluoridated water throughout their lifetimes, with fluoride concentrations ranging up to 14 parts per million. Later, medical and dental teams also conducted detailed long-term general health studies in high fluoride areas. Though tooth mottling was evident in people from communities having high fluoride concentrations, neither the dental researchers nor the medical teams found any detectable adverse effect on the general health of the population examined.

The evaluation of mortality-morbidity rate data in relation to the use of fluoride-bearing water was another method used in investigating the influence of fluoride ingestion on general health. Both the incidence of selected diseases and the numbers of deaths resulting from them in areas having significant concentrations of fluoride in drinking water have been compared with those in areas having very little fluoride. No patterns were found that suggest any relationship between mortality-morbidity rates and the consumption of fluoride-bearing water.

The dental, medical, and statistical evidence has been judged by committees of experts and special councils of National and international organizations concerned with public health. Specific allegations of injury or hazard have been carefully evaluated. The conclusions have been that the adjustment of the fluoride content of water supplies to a concentration optimal for dental health is a safe and beneficial procedure with no detrimental effects of any kind. Long-term health studies in cities having controlled fluoridation, some of them under way nearly twenty-five years, continue to attest to the effectiveness and safety of fluoridation.

In March 1969, Surgeon General William H. Stewart reiterated the position of the Public Health Service by saying:

"The United States Public Health Service endorses water fluoridation as a safe and effective public health measure and urges all communities to make its benefits available at the earliest possible time."

COMPREHENSIVE DOCUMENTATION, WITH INDEX, OF SAFETY AND EFFECTIVENESS OF FLUORIDATION

INDEX

The following publications present a comprehensive scientific basis for water fluoridation as a safe, effective caries-preventive public health measure. After the complete bibliographic reference, there appears in parenthesis an abbreviated title as used in this index to the publications.

Water Fluoridation—The Search and the Victory by Frank J. McClure, National Institute of Dental Research, National Institutes of Health, Department of Health, Education, and Welfare. Government Printing Office, Washington, D.C., 1970. (Fluoridation.)

The Role of Fluoride in Public Health—the Soundness of Fluoridation of Communal Water Supplies, a Selected Bibliography by Irene R. Campbell, Kettering Laboratory, College of Medicine, University of Cincinnati, Cincinnati, Ohio, 1963. (Role of Fluoride.)

Classification and Appraisal of Objections to Fluoridation by Kenneth R. Elwell and Kenneth A. Easlick, The University of Michigan, Ann Arbor, Michigan, 1960. (Objections.)

Fluoridation: A Modern Paradox in Science and Public Policy by Freeman H. Quimby, Science Policy Research Division, Legislative Reference Service, the Library of Congress, Washington, D.C., February 17, 1970. (Paradox.)

Fluoridation Issue, the Journal of the American Dental Association, Vol. 65, No. 5, November 1962. (1962 JADA)

Special Issue, the Journal of the American Dental Association, Vol. 74, No. 2, January 1967. (1967 JADA)

Background

Books and general reviews, Pp. 1–5—Role of Fluoride.

General, pp. 3–10—Paradox.

Occurrence of fluoride in nature, pp. 6–9—Role of Fluoride; pp. 191–5—Fluoridation.

Biology and safety

Metabolism and deposition of fluoride in animals and man, Pp. 10–50—Role of Fluoride; pp. 197–200—Fluoridation; pp. 82–87—Paradox; pp. 598–602—1962 JADA.

Nature and extent of scientific consensus, Pp. 14–22—Paradox.

Use of fluoridated water in artificial kidneys, PHS statement, enclosed.

Diseases alleged to be caused or made worse by consumption of fluoridated water, PHS statement on allergy, enclosed Pp. 1–17—Objections; a copy of the table of contents listing specific diseases is attached.

Mortality statistics, Pp. 233–8—Fluoridation; pp 15–16—Paradox.

Caries reduction and fluoride water, Pp. 51–62—Role of Fluoride; pp. 75–108—Fluoridation.

Preventive effects in adult life Caries, Pp. 153–6—Fluoridation.

Possible skeletal benefits, pp. 161–3—Fluoridation.

Studies of populations drinking fluoride waters, Pp. 109–152, 220–231—Fluoridation; pp. 11–13, 21—Paradox; pp. 581–7, 608–21—1962 JADA; pp. 233–302—1967 JADA.

Mottled enamel and fluoride water, Pp. 57–74—Fluoridation.

Endemic skeletal fluorosis, U.S., Pp. 231–3—Fluoridation.

Approval of water fluoridation, Pp. 245–61—Fluoridation.

Approving organizations, pp. 249–52—Fluoridation; Statement on Health Insurance Assn., enclosed.

Other means of controlling caries by fluoride, Pp. 175–88—Fluoridation; pp. 62–8—Role of Fluoride, pp. 63–8—Paradox.

CURRENT STATUS REPORT ON THE FLUORIDATION OF PUBLIC WATER SUPPLIES

OCTOBER 21, 1971.

A comprehensive study on the need for funds for purchase and installation of fluoridation equipment was carried out in 1967 by the Division of Dental Health of the Public Health Service. Results of this study clearly showed that serious problems in the fluoridation of community's water systems centered around the need for the federal funding of community programs.

A more recent (August 9, 1971) survey of the Directors of Dental Health in several states revealed the following facts on status of fluoridation of communal water systems:

1. There are a significant number of community water supplies in the various states polled that understand the positive value of fluoridation, and honestly desire to implement such a system.

2. A major factor preventing implementation is simply the initial cost of purchasing equipment and supplies.

The following are excerpts from the responses to an inquiry that asked the States Department of Dental Health Director if there were any communities that would fluoridate their water supplies, but could not because of lack of funds to purchase equipment.

Wisconsin: "We have 257 communities below 5,000 in population who would benefit from the passage of the Children's Dental Health Act of 1971. Many of these smaller communities would, we feel, fluoridate if funds were made available for the purchase and maintenance of equipment. Costs are always an issue whenever fluoridation is mentioned."

Massachusetts: "Fluoridation ordered and legal steps accomplished but *not funded* (in) 10% of total Massachusetts population." This includes a list of 14 towns of 586,811 people.

Illinois: "There are a number of small communities in Illinois who state that due to financial reasons it is difficult for them to comply with the Mandatory Fluoridation Law in Illinois. Since the Mandatory Fluoridation Law passed in 1967, we have increased 6.5 million to more than 10 million people now receiving fluoridated water; however, we still do have some small communities who have not fluoridated or implemented their plans which they have sent to us."

Maryland: "Enclosed please find a list of communities in Maryland with central water supplies that can feasibly be fluoridated. It appears that the main obstacle to fluoridation is the original cost of fluoridation equipment." The list had 36 towns of 40,000 population.

Colorado: "Approximately three years ago we made such monies available for the town of Walden to install fluoridation equipment. This represented approximately $4,900. This year the town of Trinidad is considering installing fluoridation equipment." Attached were news clippings from the communities of Walsenburg and Del Norte indicating that they were ready for fluoridation if money was available.

West Virginia: "In answer to your telegram of August 9, 1971, we can assure you there have been and will continue to be towns in West Virginia that cannot fluoridate solely because of a lack of funds to purchase equipment."

Georgia: "In sixty communities in Georgia, lack of funds to purchase equipment is given as the reason for not fluoridating. These communities serve more than two hundred thousand population."

Kansas: "We have known for several years that the reason some of the smaller communities in Kansas have not initiated the fluoride adjustment of their fluoride-deficient public water supplies is because of the initial cost involved in the purchase of fluoridation equipment."

Arkansas: "We have about forty small communities that would be willing to install fluoridation but for the lack of funds. These communities all do not have full time water works employees so that too is a cost factor."

Tennessee: The State Public Health Service instituted a program in 1965 to provide matching funds to qualified small community applicants that desired to install fluori-

dation equipment in their water systems. The purpose of the program was to spur the fluoridation effort and test the often given reason of financial embarrassment for not fluoridating. In the first nine months of the program, 28 communities applied, and 25 communities remitted their share of the costs. In a five year period, 45 towns had taken advantage of this after asking for financial assistance. It is conceivable that this program could serve very well as a pilot study in considering financial assistance programs to fluoridate on a nationwide basis.

Wyoming: "I am personally convinced that availability of funds would solve at least ¾ of our problems. I have said this to Federal people for years and I have said this at the American Dental Association level. I hope I live long enough to see something done."

The last statement perhaps represents most closely the concern of the profession that has in its hands a safe and effective means of alleviating dental decay, yet cannot complete its implementation because of the lack of financial resources.

Forty-seven per cent of the nation's population are now effectively protected by properly fluoridated communal water systems. But those covered are mainly from large urban centers with fiscal resources to implement this safeguard of children's oral health. The smaller communities, the rural communities are not able to avail themselves of this positively beneficial health program. This inequity could be resolved with a one-time matching grant fund that would help communities to begin fluoridation if they desire to do so, such as are found in the provisions of the Children's dental Health Act of 1971.

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

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

The PRESIDING OFFICER (Mr. ALLEN). All time has now been yielded back. The vote on this bill will take place tomorrow, following the vote on the conference report on S. 1828.

THE CLOSING OF PUBLIC HEALTH SERVICE HOSPITALS

Mr. SPONG. Mr. President, this morning's Washington Post included a news item attributing to an Assistant Secretary of the Department of Health, Education, and Welfare a memorandum to the Secretary of Health, Education, and Welfare concerning the closing of public health service hospitals. The memorandum is quoted as suggesting to Secretary Richardson that we tell the Congress "as little as we can get away with." A similar article in the New York Times quotes the memorandum more fully. It says: "Hopefully, decisions about these two cases"—that is, the Boston and San Francisco hospitals—"will be made prior to any further detailed discussion with key elements of the Congress." The memorandum further states:

> We decided that the better part of valor at this time would be to offer them as few materials as we can get away with and hold off for as long as possible a confrontation concerning what we will or will not do vis-a-vis each of the hospitals.

Just four pages further on in the Washington Post than the first item, the Secretary of Health, Education, and Welfare is quoted as having blamed the low public image of Federal employees on "the propensity of politicians who promise more than they can obviously deliver."

If there is any bad image, the Secretary obviously has not named the full cause. I have stated on a number of occasions that one of our major problems in this country is overpromise, but that can hardly create a bad image of executive branch employees themselves. Both Senate and House committees have been attempting to obtain definitive information concerning HEW's plans with respect to the public health service hospitals. I have been unable to obtain any information concerning the advantages of either closure of these hospitals or transfer of operation to some other agency. So far as I know neither of the committees involved has been able to obtain information.

The news articles referred to a letter of November 24 to key Members of Congress, and I have a letter from the Secretary dated November 15 which says that:

> None of the proposals is at this time sufficiently well spelled out to provide us with all of the data and information we would need to take final action hospital by hospital.

Apparently, HEW, without adequate information, has already decided to discontinue its operation of the Boston and San Francisco hospitals, has established its priority for closing all eight of the hospitals, and has informed the administrators of the hospitals of the procedures to follow in negotiating with other bodies for the operation of these hospitals.

In the meantime, those individuals authorized medical care in public health service hospitals including merchant seamen, fishermen, Coast Guard personnel, and armed services' dependents are just as much in the dark as the Congress.

The distinguished chairman of the Subcommittee on Public Health and Environment in the other body, the Honorable PAUL ROGERS of Florida, has scheduled a hearing for tomorrow morning on the matter. I hope the chairman can obtain information concerning just what HEW plans to do. In the meantime, perhaps the Secretary should look to his own house and his own executives for the cause of any bad images the public may see.

ORDER TO VACATE ORDER FOR RECOGNITION OF SENATOR McGOVERN

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the previous order recognizing the distinguished Senator from South Dakota (Mr. McGOVERN) tomorrow for 15 minues be vacated.

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

ORDER FOR RECOGNITION OF SENATOR BYRD OF WEST VIRGINIA TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous concent that immediately following the remarks of the distinguished Senator from Illinois (Mr. PERCY) on tomorrow, the junior Senator from West Virginia (Mr. BYRD) be recognized for not to exceed 15 minutes.

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

ORDER FOR TIME OF VOTE ON CONFERENCE REPORT ON NATIONAL CANCER ACT OF 1971

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that at the conclusion of the orders for the recognition of the Senators for 15-minute speeches on tomorrow, the first rollcall vote, the vote on the conference report on the National Cancer Act of 1971, then occur.

Mr. GRIFFIN. Mr. President, reserving the right to object, would the Senator restate that request?

Mr. BYRD of West Virginia. Mr. President, my request was that at the conclusion of the 15-minute speeches on tomorrow, the rollcall vote, which had been ordered on the cancer conference report, then occur. That would make it occur at about 10:15 a.m., in the event all orders are consumed.

Mr. GRIFFIN. Mr. President, reserving the right to object, several Senators have asked for assurance that the first vote not occur prior to 10 o'clock. It is my best judgment that it would not occur prior to 10 o'clock. I wonder if we might not have that understanding.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the vote on the conference report on the National Cancer Act of 1971 begin at 10:15 tomorrow morning.

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, if one of the Senators should decide tomorrow to vacate his order for a 15-minute speech, and should a hiatus occur, I ask unanimous consent that, following the conclusion of the remarks of the last Senator on the list and until the hour of 10:15 tomorrow morning, there be a period devoted to the transaction of routine morning business, with statements therein limited to 3 minutes.

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

ORDER OF BUSINESS

Mr. BYRD of West Virginia. Mr. President, has an order been entered for the return to executive session immediately following the two rollcall votes that are scheduled for tomorrow morning?

The PRESIDING OFFICER. The Senator is correct. An order has been entered to that effect.

PROVISIONAL ORDER ON DIVISION OF TIME UNDER RULE XXII ON SATURDAY

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the time during the 1 hour for debate under rule XXII on Saturday—if a vote occurs on cloture again on Saturday—be equally divided between the distinguished Senator from Indiana (Mr. BAYH) and the distinguished minority leader or his designee.

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

QUORUM CALL

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

ORDER TO VACATE ORDER FOR TRANSACTION OF ROUTINE MORNING BUSINESS TOMORROW

Mr. BYRD of West Virginia. Mr. President, I wish to make a slight revision in the schedule for tomorrow morning. There was an earlier order for the transaction of routine morning business for not to exceed 30 minutes on tomorrow. I ask unanimous consent that that order be vacated.

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

ORDER TO CONSIDER HOUSE MESSAGE ON S. 1866 TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that at the conclusion of the remarks by the junior Senator from West Virginia (Mr. BYRD) on tomorrow, the Senate proceed to consideration of the House message on S. 1866.

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

Mr. BYRD of West Virginia. I ask unanimous consent that the time thereon be limited to 20 minutes, to be divided as follows: 15 minutes under the control of the distinguished Senator from New York (Mr. JAVITS) and 5 minutes under the control of the distinguished Senator from North Dakota (Mr. BURDICK).

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

ORDER FOR PERIOD FOR TRANSACTION OF ROUTINE MORNING BUSINESS TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that at the conclusion of the action on the House message on S. 1866 tomorrow, the Senate proceed to the consideration of routine morning business, with statements limited therein, and that such period not extend beyond 10:30 a.m.

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

ORDER FOR ROLLCALL VOTE ON CANCER ACT CONFERENCE REPORT TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that at 10:30 a.m. tomorrow the rollcall vote on the cancer conference report occur.

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

QUORUM CALL

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum, and I trust that this will be the final quorum call of the day.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

REVISION OF ORDER RECOGNIZING SENATOR BYRD OF WEST VIRGINIA TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order recognizing the junior Senator from West Virginia (Mr. BYRD) for remarks tomorrow be revised to place a limitation thereon of 5 minutes instead of 15 minutes.

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

PROGRAM

Mr. BYRD of West Virginia. Mr. President, the program for tomorrow is as follows:

The Senate will convene at 9 o'clock a.m. After the two leaders have been recognized, the following Senators will be recognized for not to exceed 15 minutes each, and in the order stated: Mr. WILLIAMS, Mr. MAGNUSON, Mr. JACKSON, and Mr. PERCY, after which the junior Senator from West Virginia (Mr. BYRD) will be recognized for not to exceed 5 minutes.

At the conclusion of such orders the Senate will proceed to the consideration of a message from the House of Representatives on S. 1866, with a time limitation thereon of 20 minutes, to be divided as follows: 15 minutes under the control of the distinguished senior Senator from New York (Mr. JAVITS) and 5 minutes under the control of the distinguished junior Senator from North Dakota (Mr. BURDICK).

At the conclusion thereof, if the hour of 10:30 a.m. has not arrived, there will be a period for the transaction of routine morning business not to extend beyond 10:30 a.m., with statements limited therein to 3 minutes. In any event, when the hour of 10:30 a.m. arrives, the Senate will proceed to vote by rollcall on the cancer conference report, without any debate thereon.

Immediately following the rollcall vote on the cancer conference report, the Senate will proceed by rollcall to vote on the so-called dental care bill, without debate thereon.

At the conclusion of the rollcall vote on the dental care bill, the Senate will go into executive session to resume the consideration of the nomination of Mr. William H. Rehnquist to the office of Associate Justice of the Supreme Court of the United States.

At 11 o'clock a.m., the 1 hour for debate under rule XXII will begin to run. The time will be divided between the distinguished junior Senator from Indiana (Mr. BAYH) and the distinguished Republican leader (Mr. SCOTT) or his designee.

At the conclusion of the 1 hour, in accordance with the rule, at 12 noon, the Senate will proceed to establish a quorum, which is mandatory under the rule. Once a quorum has been established, the rollcall on the motion to invoke cloture will occur, it being mandatory under the rule. Hence, the rollcall vote on the motion to invoke cloture will begin at about 12:15 p.m. tomorrow.

Other votes will likely occur tomorrow, but, Mr. President, we are certain that there will be at least three rollcall votes tomorrow, the first to occur at 10:30 a.m. Various conference reports remain to be acted upon, and they may be called up at any time, and rollcall votes may be ordered thereon.

There will be a session Saturday.

A second motion to invoke cloture has been introduced today, and in the event that the first motion to invoke cloture fails of approval on tomorrow, a second vote to invoke cloture will occur on Saturday.

Mr. President, the distinguished majority leader has already entered an order for the convening of the Senate at 9 o'clock a.m. on tomorrow and on Saturday. Was an order entered with respect to whether or not the Senate would adjourn or recess today and tomorrow?

The PRESIDING OFFICER. No such order has been entered.

Mr. BYRD of West Virginia. I thank the distinguished Presiding Officer.

ORDER FOR ADJOURNMENT UNTIL 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 a.m. tomorrow.

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

ORDER FOR ADJOURNMENT FROM TOMORROW UNTIL 9 A.M. SATURDAY

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that when the Senate completes its business tomorrow, it stand in adjournment until 9 o'clock a.m. on Saturday.

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

ADJOURNMENT UNTIL 9 A.M. TOMORROW

Mr. BYRD of West Virginia. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in adjournment until 9 o'clock a.m. tomorrow.

The motion was agreed to; and (at 6 o'clock and 35 minutes p.m.) the Senate adjourned until tomorrow, Friday, December 10, 1971, at 9 a.m.

NOMINATIONS

Executive nominations received by the Senate December 9, 1971:

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

George W. Draper II, of Maryland, to be an associate judge, Superior Court of the District of Columbia, for the term of 15 years, as

prescribed by Public Law 91-358, approved July 29, 1970, vice Mary C. Barlow, retired.

Joseph M. F. Ryan, Jr., of Maryland, to be an associate judge, Superior Court of the District of Columbia, for the term of 15 years, as prescribed by Public Law 91-358, approved July 29, 1970. He is now serving in this office under an appointment which expired September 26, 1971.

HOUSE OF REPRESENTATIVES—*Thursday, December 9, 1971*

The House met at 12 o'clock noon.

The Chaplain, Rev. Edward G. Latch, D.D., offered the following prayer:

Trust ye in the Lord forever: for in the Lord God is everlasting strength.—Isaiah 26: 4.

O God, most merciful and gracious, may this new day glow with a deep experience of Thy presence and an actual awareness of the leading of Thy spirit.

Inspire us with the conviction that as we live and labor for Thee we also live and labor for the good of our country and the peace of the world.

Give us the assurance that there is a power working for righteousness, justice, and good will in our world and may we have faith enough to work with it and strength enough to live by it, for Thine is the kingdom, and the power, and the glory forever. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Without objection, the Journal stands approved.

There was no objection.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Mr. Leonard, one of his secretaries.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Arrington, one of its clerks, announced that the Senate agrees 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) entitled "An act to establish the Capitol Reef National Park in the State of Utah."

The message also announced that the Senate agrees to the amendment of the House to a bill of the Senate of the following title:

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.

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

S. 978. An act authorizing the conveyance of certain lands to the University of Utah, and for other purposes;

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;

S. 1438. An act 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; and

S. 2676. An act to provide for the control of sickle cell anemia.

ELECTION TO COMMITTEE

Mr. GERALD R. FORD. Mr. Speaker, I offer a privileged resolution (H. Res. 732) and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 732

Resolved, That H. John Heinz III of Pennsylvania be, and he is hereby, elected a member of the standing committee of the House of Representatives on Government Operations.

The resolution was agreed to.

A motion to reconsider was laid on the table.

REPORTING OF WEATHER MODIFICATION ACTIVITIES

Mr. STAGGERS. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (H.R. 6893) to provide for the reporting of weather modification activities to the Federal Government, with Senate amendments thereto, and concur in the Senate amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendments as follows:

Page 1, line 10, strike out "which" and insert "who".

Page 1, line 10, strike out "not".

Page 2, line 1, after "tivities" insert: ", except where acting solely".

Page 2, lines 3 and 4, strike out "intentional, artificially produced change" and insert: "activity performed with the intention of producing artificial changes".

Page 2, line 15, after "before" insert: ", during,".

Page 2, after line 24, insert:

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

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

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

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

Page 2, line 25, after "person" insert: "whose activities relate to weather modification".

The SPEAKER. Is there objection to the request of the gentleman from West Virginia?

There was no objection.

The Senate amendments were concurred in.

A motion to reconsider was laid on the table.

CONFERENCE REPORT ON SENATE CONCURRENT RESOLUTION 6—PUBLIC HEALTH SERVICE HOSPITALS AND OUTPATIENT CLINICS

Mr. STAGGERS. Mr. Speaker, I call up the conference report on the Senate concurrent resolution (S. Con. Res. 6) to express the sense of Congress relative to certain activities of Public Health Service hospitals and outpatient clinics, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the Senate concurrent resolution.

The SPEAKER. Is there objection to the request of the gentleman from West Virginia.

Mr. HALL. Mr. Speaker, reserving the right to object, may I inquire of the distinguished gentleman from West Virginia, the chairman of the Committee on Interstate and Foreign Commerce, if this is the sense of Congress resolution having to do with the utilization of U.S. Public Health Service hospitals?

Mr. STAGGERS. Mr. Speaker, if the gentleman will yield, yes, it is.

I might explain this briefly to the gentleman from Missouri. The conference, in the first instance, broke up in disagreement. In the meanwhile one of the U.S. hospitals closed at Fort Worth. We went back into conference and we accepted the fact that we had to get together in order to keep these hospitals operating and until we did have a study made of the situation. We came together, and this is essentially the House proposition that that facility be kept open until July 1972.

Mr. HALL. This "hospital" that closed was the Fort Worth, Tex., narcotics treatment facility of the Public Health Service which has been closed in the interim by the executive branch?

Mr. STAGGERS. That is right.

Mr. HALL. Then we are just accepting that as a fait accompli and going ahead in expressing the will of the Congress that the remainder be kept open? In other words, the will of the House, except for that one facility, has been preserved; is that correct?

Mr. STAGGERS. That is correct.

Mr. HALL. And, are we bringing this up after it has been duly filed, because I