the taxpayer; to the Committee on Ways and Means.

By Mr. HANNA (for himself, Mr. ESCH, Mr. MCCORMACK, Mr. COUGHLIN, Mr. FLOWERS, Mr. SEIBERLING, Mr. RANGEL, Mr. MURPHY of Illinois, Mr. ROE, and Mr. COTTER):

H.R. 7728. A bill to establish an Office of Technology Assessment for the Congress as an aid in the identification and consideration of existing and probable impacts of technological application; to amend the National Science Foundation Act of 1950; and for other purposes; to the Committee on Science and Astronautics.

By Mr. HELSTOSKI:

H.R. 7729. A bill to provide for the settlement of certain land claims of Alaska Natives, and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. MATHIAS of California:

H.R. 7730. A bill to amend the Internal Revenue Code of 1954 to clarify the status of certain oil well service equipment under subchapter D of chapter 36 of such code (relating to tax on the use of certain vehicles); to the Committee on Ways and Means.

By Mr. PREYER of North Carolina:

H.R. 7731. A bill to suspend until the close of March 31, 1972, the duty on seed corn; to the Committee on Ways and Means.

By Mr. RAILSBACK (for himself, Mr. MATSUNAGA, Mr. MINSHALL, Mr. MORSE, Mr. MOSHER, Mr. MOSS, Mr. PREYER of North Carolina, Mr. RARICK, Mr. RHODES, Mr. ROBINSON of Virginia, Mr. RUNNELS, Mr. SKUBITZ, Mr. STEELE, Mr. THOMSON of Wisconsin, Mr. THONE, Mr. VANDER JAGT, Mr. WAGGONNER, Mr. WHITEHURST, and Mr. WYATT):

H.R. 7732: A bill to amend title 28, United States Code, to prohibit Federal judges from receiving compensation other than for the performance of their judicial duties, except in certain instances, and to provide for the disclosure of certain financial information: to the Committee on the Judiciary.

By Mr. ROGERS:

H.R. 7733. A bill to amend chapter 83 of title 5, United States Code, to eliminate the annuity reduction during periods of nonmarriage of retired employees and members, and for other purposes; to the Committee on Post Office and Civil Service.

H.R. 7734. A bill to provide increases in certain annuities payable under chapter 83 of title 5, United States Code, and for other purposes; to the Committee on Post Office and Civil Service.

By Mr. ROGERS (by request):

H.R. 7735. A bill to amend the Agricultural Adjustment Act, as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, so as to authorize certain grapefruit marketing orders which provide for an assessment against handlers for the purpose of financing a marketing promotion program to also provide for a credit against such assessment in the case of handlers who expend directly for marketing promotion; to the Committee on Agriculture.

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

H.R. 7736. A bill to amend the Public Health Service Act to extend for 1 year the student loan and scholarship provisions of titles VII and VIII of such act; to the Committee on Interstate and Foreign Commerce.

By Mr. THONE:

H.R. 7737. A bill to amend the act of June 27, 1960 (74 Stat. 220) relating to the preservation of historical and archeological data; to the Committee on Interior and Insular Affairs.

H.R. 7738. A bill to amend the Internal Revenue Code of 1954 to allow a deduction from gross income for social agency, legal, and related expenses incurred in connection with the adoption of a child by the taxpayer; to the Committee on Ways and Means.

By Mr. WINN:

H.R. 7739. A bill to amend title 10, United States Code, to equalize the retirement pay of members of the uniformed services of equal rank and years of service, and for other purposes; to the Committee on Armed Services.

By Mr. KING:

H. Con. Res. 279. Concurrent resolution to establish a joint committee to investigate the treatment of prisoners of war in Vietnam; to the Committee on Rules.

SENATE—*Monday, April 26, 1971*

The Senate met at 10 a.m. and was called to order by Hon. ADLAI E. STEVENSON III, a Senator from the State of Illinois.

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

O God, our help in ages past, our hope for years to come, we pray for Thy strength and guidance at the beginning of a new week. Above the tangled tragedies of our times and the tumult of many voices enable us to hear Thy still small voice. Be with this Nation and all its people. Keep our goals clear, our hearts pure, our spirits courageous, our loyalties firm, our faith enduring. Help us all to wage peace by peaceable means, to rely on reason and persuasion and the power of the spirit. Keep our hearts free from the hidden hate which corrupts the soul and blights the spirit, and separates us one from the other. Give Thy higher wisdom to all who bear the burdens of government. Bind us together as one great and good people, strong in the Lord and in the power of His might, for the making of His kingdom of justice and righteousness.

We pray in the name of that One who is the truth and the way and the life. 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 assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., April 26, 1971.

To the Senate:

Being temporarily absent from the Senate, I appoint Hon. ADLAI E. STEVENSON III, a Senator from the State of Illinois, to perform the duties of the Chair during my absence.

ALLEN J. ELLENDER,
President pro tempore.

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

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Friday, April 23, 1971, be dispensed with.

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

WAIVER OF THE CALL OF THE CALENDAR

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the call of the Legislative Calendar, under rule VIII, be dispensed with.

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 be authorized to meet during the session of the Senate today.

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

EXECUTIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider nominations of the Executive Calendar.

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

The ACTING PRESIDENT pro tempore. The nominations on the Executive Calendar will be stated.

DEPARTMENT OF COMMERCE

The assistant legislative clerk read the nominations in the Department of Commerce, as follows:

James T. Lynn of Ohio, to be Under Secretary of Commerce.

William N. Letson of Ohio, to be General Counsel of the Department of Commerce.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the nominations be considered en bloc.

The ACTING PRESIDENT pro tempore. Without objection, the nominations are considered and confirmed en bloc.

NATIONAL TRANSPORTATION SAFETY BOARD

The assistant legislative clerk read the nomination of John H. Reed, of Maine, to be a member of the National

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

Transportation Safety Board for the term expiring December 31, 1975.

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

U.S. COAST GUARD

The assistant legislative clerk proceeded to read sundry nominations in the U.S. Coast Guard.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the nominations be considered en bloc.

The ACTING PRESIDENT pro tempore. Without objection, the nominations are considered and confirmed en bloc.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of these nominations.

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

LEGISLATIVE SESSION

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

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

ADDITIONAL ASSISTANT SECRETARY OF THE INTERIOR

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 77, S. 1399, and that its consideration and disposal in no way interfere with the Pastore rule of germaneness.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered, and the bill will be stated by title.

The assistant legislative clerk read as follows:

S. 1399, to establish within the Department of the Interior the position of an additional Assistant Secretary of the Interior.

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

There being no objection, the bill was considered, ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 1399

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there shall be hereafter in the Department of the Interior, in addition to the Assistant Secretary now provided for by law, an additional Assistant Secretary of the Interior who shall be appointed by the President, by and with the advice and consent of the Senate, who shall be responsible for such duties as the Secretary of the Interior shall prescribe, and shall receive compensation at the rate now or hereafter prescribed by law for Assistant Secretaries of the Interior.

SEC. 2. Section 5315, title 5, United States Code, is amended by striking the figure "(5)" at the end of item (18) and by inserting in lieu thereof the figure "(6)".

SEC. 3. Section 4 of Reorganization Plan Numbered 3 of 1950, as amended (64 Stat. 1262), is repealed, effective upon the confirmation by the United States Senate of a Presidential appointee to fill the position created by this Act.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–75), 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 MEASURE

The purpose of this legislation, which was proposed by the Department of Interior, and introduced by Senators Jackson and Allott, is to create a sixth Assistant Secretary of the Department of the Interior who will be appointed by the President with the advice and consent of the Senate. His responsibility will be the duties assigned to him by the Secretary of the Interior and he will be compensated at the rate of executive level IV.

The new position will replace the now existing position, Assistant Secretary for Administration. However, the bill provides that the existing position will not be abolished until an appointee is confirmed by the Senate to fill the new office.

The present Assistant Secretary for Administration is appointed by the Secretary of the Interior with the approval of the President and is compensated at executive level V. It is felt that by placing the new Assistant Secretary for Administration on the same level as the other Assistant Secretaries, he will be better able to carry out his functions. In addition, by providing for Senate confirmation, the Congress will be better able to review the qualifications of the nominees for this important position dealing with budgeting and management operations in the Department of Interior.

COMMITTEE RECOMMENDATIONS

The Interior and Insular Affairs Committee recommends that S. 1399 be enacted without amendment.

TRIP TO THE MIDDLE EAST BY SECRETARY OF STATE ROGERS: THE QUIET ONE

Mr. MANSFIELD. Mr. President, our distinguished Secretary of State, Mr. William Rogers, leaves today for a trip to the Middle East.

I believe that Secretary Rogers has been one of the most significant men in the affairs of our Government. While he is sometimes referred to as the "quiet man," he has always been working in his job, seeking to do what he thinks is in the best interests of the people of the United States and the Nation as a whole.

I wish Secretary Rogers all the best in this momentous trip which he is undertaking and to assure him that I have always supported his policy in the Middle East, still do, and expect to continue to do so in the months ahead.

Secretary Rogers goes to the Middle East with the full trust and the full confidence of the Senate and, I feel quite certain, the full trust and confidence of the American people in this momentous undertaking which he is now about to assume.

Mr. AIKEN. Mr. President, will the distinguished majority leader yield?

Mr. MANSFIELD. I am delighted to yield to the Senator from Vermont.

Mr. GRIFFIN. Mr. President, I yield also from my time to the Senator from Vermont.

Mr. AIKEN. Mr. President, in regard to what the distinguished leader has just said, I point out that last Saturday we had many visitors from around the country—200,000 to 500,000, it has been estimated—conscientious people beyond a doubt, law abiding, and well behaved. Their mission to Washington was to bring an end to the war in South Vietnam and the withdrawal of our forces from that part of the world almost immediately.

I agree that we should withdraw from South Vietnam at the earliest possible moment and I hope that it will be done very quickly.

In a few weeks the President will have withdrawn at least one-half the number of our troops sent there between the years 1961 and 1968.

However, when I asked one of them, "What about the Middle East?" he said, "Oh, we do not care about the Middle East. We are just concerned with Vietnam."

Well, Mr. President, I cannot understand that line of thinking because, should war break out in the Middle East, it could involve most of the so-called civilized nations of the world, and that would make the war in Southeast Asia look like a barnyard scuffle. Yet, apparently, this person did not recognize the importance of preventing war in the Middle East.

Therefore, I believe that the trip of Secretary Rogers to the countries of the Middle East, and those countries which are concerned with preventing war in the Middle East, is one of the most significant trips that anyone has taken in our time.

Secretary Rogers has shown courage. He has shown understanding. I believe that he has the confidence of both sides—confidence that he is trying to do everything he can to prevent an outbreak of war, which would be truly horrible.

Thus, Mr. President, I join the distinguished majority leader in commending Secretary Rogers. He is one of the outstanding public servants of our time.

Mr. MANSFIELD. I thank the distinguished Senator from Vermont for his comments.

Mr. President, I ask unanimous consent to have printed in the RECORD a commentary which was published in the New York Times on yesterday entitled "The Quiet One," written by James Reston, and also an article published in the Christian Science Monitor on April 24, 1971, entitled "Rogers Scores on Two Fronts," written by Joseph C. Harsch.

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

THE QUIET ONE

(By James Reston)

WASHINGTON, April 24.—Secretary of State Rogers is beginning to play an increasingly significant role in the Nixon Administration's foreign-policy planning.

The preoccupation in Washington with Vietnam and White House diplomacy has tended to overwhelm the quiet influence Mr. Rogers has been exerting, particularly in the Middle East and post-Vietnam policy.

It would be wrong to say that he opposes the President's timetable for withdrawal from Saigon, but he manages to look vaguely irritated about the whole subject of Vietnam and has obviously been concentrating on other problems.

For personal and religious reasons, Henry Kissinger, the President's White House foreign-policy adviser, has not played a prominent part in either U.S. Middle East or German policy.

In fact, there is some evidence that Mr. Kissinger's support for West Germany's efforts to reach an accommodation with the Soviet Union is not pronounced, and while he was deeply involved in Middle East policy when Syria attacked Jordan, he has left the development of the Israeli-Egyptian negotiations primarily to Rogers and Assistant Secretary of State Joseph Sisco.

This has not been an easy assignment for Mr. Rogers and his colleagues at the State Department. Israeli officials, including Prime Minister Meir and Ambassador Rabin here in Washington, have been convinced for years that the State Department was full of Arabists, and they have done nothing to discourage the pro-Israeli lobby, which tends to be critical of Rogers every time he tries to work out a Middle East compromise.

The Israelis feel that Mr. Rogers has been so eager to produce a settlement in the Middle East—this being his main field of activity—that he has suggested terms which place Israel's security in danger and actually interfere, as they see it, with the chances for a compromise settlement.

Nevertheless, it is Rogers and Sisco who have kept pressing the Middle East question, who are largely responsible for the cease-fire, now in its ninth month, and who managed, through several unpublicized missions and messages to President Sadat in Cairo, to get Egyptian concessions the Israeli Government did not think possible.

Mr. Rogers has not been pleased with the efforts of Israeli officials to lobby with U.S. Senators against his policy and was actually forced to have a secret meeting of the Senate in order to counteract the influence of Israeli Foreign Minister Abba Eban, who held a large private meeting with United States legislators, but Mr. Rogers has kept insisting to President Nixon that now, if ever, is the time for a Middle East deal, and Mr. Nixon has finally authorized him to pursue his inquires personally in the Middle East.

For Secretary Rogers, this is a critical mission. According to his intimates, he would like to complete his work at the State Department of the end of Mr. Nixon's first term, or even before then, if a Supreme Court appointment were available to him.

He was more surprised than anybody else when he was offered the most prestigious post in the Cabinet, particularly since he took no part in Mr. Nixon's election campaign and was, in fact, engaged in some professional difference with Mr. Nixon before the election.

Also, the Secretary of State has not been amused by all the publicity about Mr. Kissinger's primary role in foreign affairs and knows what a mistake Dean Rusk made in staying at the State Department too long.

Meanwhile, however, he is using his restored influence with the President to turn the minds of his colleagues to the larger postwar questions—particularly the Middle East and China, where he thinks there is more room for constructive diplomacy than in Vietnam.

He does not duck the Vietnam question. He takes the George Aiken view of the situation: We have won the war and should come home. Also, he has managed better than most members of the Nixon Cabinet to maintain good relations with both chairman Fulbright of the Senate Foreign Relations Committee and Dr. Morgan, chairman of the House Foreign Affairs Committee.

In the coming year, Mr. Nixon will of course continue to be his own Foreign Secretary, with close personal ties to Mr. Kissinger, but the political campaign is bound to interfere with this, and Secretary Rogers will be freer to pursue his primary interests.

He is not presiding over a satisfied or happy Government department. The time is not right for that. The State Department has been in the shadows ever since Mr. Nixon entered the White House.

But Mr. Rogers now has a much clearer role and goal than when he came into the Cabinet. He is more comfortable in his job and more precise about the need to get Vietnam behind us and get on to larger and more vital questions beyond Vietnam.

ROGERS SCORES ON TWO FRONTS

(By Joseph C. Harsch)

William P. Rogers, who would be called foreign minister in any other country but the United States, can take well-earned satisfaction from the results during the last week of his contributions to American foreign policymaking.

He, largely from his own personal efforts in the team with those of his deputy for the Middle East, Joseph J. Sisco, extracted from Israel enough of a concession on the matter of reopening the Suez Canal to keep the dove of peace still circling in the air over what we call the cradle of civilization.

And he had the satisfaction of seeing his patient efforts to reopen communications between Washington and Peking to reach the stage of an exchange of ping-pong teams.

Of the two, perhaps the more remarkable was getting Israel to the point of agreeing, at least in principle, to a token withdrawal of its armed forces from the banks of the Suez Canal.

Granted, the agreement was hedged in by all sorts of safeguards for Israel. The Egyptians must not move a soldier across the canal into the vacated territory. Israel refuses to admit that going back by five miles or so might some day be a precedent for going back much farther. Sharm el Sheikh is being fortified, not abandoned.

But it was enough to keep going the talks about peace—someday. The UN's patient Ambassador, Gunnar V. Jarring, should now be justified in keeping at his rounds of the Mideast capitals. Israel has gone far enough, if only just to permit Mr. Rogers to be able to go back to the Egyptians and say that he has extracted a concession from Israel in return for the earlier concessions which he had, with equal difficulty, extracted from Cairo.

This, all along, has been the thorny moment.

When all this began, way last year, it was expected and expectable that the Egyptians could be persuaded to open the bargaining with a concession of substance. But would Israel respond with a similar concession of substance? Could the diplomatic tennis ball, once put into play, be kept in play?

Happily, the answer is yes, for at least one more round. But to get even one round is a long step forward. It means that Mr. Rogers is confirmed in his theory that a complete "package" settlement is not in sight or attainable but that a modest pilot project in peacemaking just might be brought off.

The target at the moment is the one simple thing of getting the Suez Canal open and operating again with the Egyptian and Israeli armed forces back far enough from the canal so that a ship steaming through it would not have to feel that it is moving through a no-man's-land of World War I vintage.

NEW GAME EXPECTABLE

The new game between Washington and Peking was more easily expectable than was the concession from Israel, although this does not belittle its dimensions. When countries have ignored and boycotted each other for 21 years the posture becomes a habit. In great-power relations the breaking of established habits is rarely achieved and then only with great wrenchings of vested interests built around the old habit. It is a substantial change.

But the times were ripe for it. After all, the Chinese have achieved something they have greatly wanted for a very long time. They have become masters in their own household.

They lost control of their own affairs way back in 1839. In that year they attempted to prevent British merchants from selling opium in China to the Chinese people. This was regarded by the British merchants of the time as an outrageous interference with their enterprise.

The British Government declared war on China over that issue. By 1842 the military issue had been decided. The Chinese were defeated. From that day to 1960 some foreign country or countries have been dominant in and over China.

The British in effect ran China from 1842 till the Japanese conquest of northern China in the 1930's. During World War II the Japanese conquered and ruled most of China. American victory in the Pacific in 1945 opened the American chapter of Chinese history. It lasted four years. In 1949 the Russians moved in behind the Chinese Communists. From then until 1960 Russians swanned around Peking and regarded themselves as the real and proper masters of China.

CHAPTER ENDS ABRUPTLY

The Russian chapter ended abruptly in 1960.

From then till now the Chinese have been getting used to owning and running, or misrunning, their own affairs. What mistakes they have made, and there have been many, were made by Chinese. Never since Marco Polo talked his way into China have the Chinese been so isolated from the outside world as during the last 10 years. But whatever else they did, they made China again their own.

Now, having regained mastery over their own affairs, they have looked around and noticed Mr. Rogers making signals to them from the ramparts of Washington. They have responded.

It is a most careful arm's-length affair so far, and is likely to continue to be so for a long time to come.

People who have been pushed around in their own household for 132 years by foreigners whom they regard as their cultural and intellectual inferiors are hardly likely to let any foreigners get deeply back inside their affairs.

The forecast is that Peking will keep Washington at arm's length just as it does Moscow; play one off against the other, and use both to consolidate that independence for China which has been Chairman Mao's goal since the day he captured China in 1949.

The Chinese have become very Chinese.

The interesting question is whether Peking or Washington will get most out of this remarkable change in world patterns.

That of course will depend on which of Peking and Washington plays the game ahead with the greater expertise.

Mr. MANSFIELD. Mr. President, let me say that, so far as the Reston article is concerned, which of course refers to Secretary Rogers, the following is quotable:

> He does not duck the Vietnam question. He takes the George Aiken view of the situation: We have won the war and should come home.

The article is well worth the attention of the Senate.

Again, I think I can say this for the Senate, that Secretary Rogers goes with our full trust and our full confidence, and that what applies to the Senate also applies to the people of this Nation as a whole.

The ACTING PRESIDENT pro tempore. Does the Senator from Michigan desire to be recognized at this time?

Mr. GRIFFIN. Mr. President, I want to commend the distinguished majority leader for his remarks. Once again, he has demonstrated that he is a statesman—as he demonstrates quite frequently.

I associate myself with his remarks as well as the remarks made by the dean on this side of the aisle, the distinguished Senator from Vermont (Mr. AIKEN), who in a few words has put the demonstrations as well as the Secretary's trip in perspective. Secretary Rogers does go with the support of Senators on both sides of the aisle. He leaves on a very important mission, and has our best wishes. Mr. Rogers is not only the Secretary of State in fact, but he is doing an excellent job.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order the Senator from Wisconsin is recognized for 15 minutes.

AMERICA'S PRIORITIES ARE UPSIDE DOWN

Mr. PROXMIRE. Mr. President, we are spending too much on the wrong things. America's priorities are upside down. In terms of its programs and policies, the Federal Government is making some very bad choices.

While we face the imminent collapse of our cities, the Pentagon is increasing the military budget.

While unemployment has reached the 6-percent level and while 5 million Americans who want to work are out of a job, the administration has frozen $12.7 billion of funds Congress has appropriated.

At the same time that our cities and States are starving for money to educate our children, provide health services for the sick, and care for the indigent, the administration is proposing to spend vast sums for space shuttles, the B–1 bomber, and foreign aid.

THE CRISIS OF THE CITIES

That the country is facing a vast emergency was made clear again only this week. The mayor of New York City warned that unless funds were restored to the city's budget, and unless the city's taxing power increased, he would have to eliminate some 90,000 city jobs and add those 90,000 to the unemployed.

The magnitude of the crisis and the enormity of the country's misplaced priorities are clear from a few facts.

If worse comes to worst, New York City will have to close eight municipal hospitals. It will have to stop all its remedial and other special education. No freshmen will be admitted at City University for next year. Some 4,200 sanitation workers will lose their jobs; 19,700 people now in the education system will be fired or not replaced through attrition. Over 35,000 jobs in health, hospital, and welfare services will end. New York City is facing the moment when it will be unable to provide fundamental and essential public services.

Meanwhile, in the Federal budget, the administration proposes to increase our strategic weapons beyond any reasonable need, to continue the duplication in developing close support aircraft, to fund duplicate antisubmarine weapons with an ultimate cost of over $23 billion, and to build new tanks, ships, planes, and missiles which—if the past is any guide to the future—will cost far more than estimated, will be delivered late, and will fail to perform according to specifications.

NEWARK'S CRISIS

New York City is not alone in its crisis. Recently the mayor of Newark testified before the Joint Economic Committee on the crisis in his city.

In Newark, manufacturing industry has declined by 25 percent in the last 20 years.

Newark has the highest crime rate in the Nation.

The per capita incidence of venereal disease and infant mortality is the highest in the United States.

The unemployment rate among young people from 16 to 22 at the beginning of 1971 was 34 percent.

Thirty percent of Newark's population in January 1971 received public assistance—30 percent on welfare.

Meantime, the city is broke. The anticipated deficit of $70 million for 1971 represents 43 percent of the operating budget.

Similar situations exist throughout the major cities of the country. These are not isolated incidents.

DETROIT IN TROUBLE

This year, Detroit faces a deficit of $43 million or 11 percent of its revenues.

Unemployment in that city for 1970 averaged 11.7 percent.

Of the pitifully small number—only 828—single-family homes built in that city during the entire year of 1970, almost all of them were financed through a Federal interest rate subsidy—section 235—or were factory built; that is, they were mobile homes. Only 33 new single-family homes built in the entire city of Detroit during 1970 were valued in excess of $25,000.

From July 1969 to October 1970, there was a 42-percent increase in Detroit's welfare caseload and a 67-percent increase in welfare payments.

According to Mayor Tate, "Philadelphia will lock up 26 playgrounds this summer because we do not have the funds for the people to run them."

These are just a few examples of the magnitude of the problem of the cities.

These problems have been accentuated by the economic downturn. A major part of the gap between income and expenses is the result of the present economic condition of high unemployment and continued inflation. Mayor Lindsay testified before the Joint Economic Committee last January 22 that—

> The recession will deny us about $150 million in revenue, while inflation is driving our costs $100 million higher.

Thus the combination of inflation and recession will cost New York City one quarter of a billion dollars this year.

Unfortunately, at the national level, these terrible fiscal problems have been met by actions which are counterproductive.

While the President steadfastly refuses to initiate a general incomes policy or wage-price guidelines, the problems of inflation and unemployment are greeted by glowing statements and optimistic interpretations of the facts.

Instead of helping to meet the problem of the cities through stronger Federal fiscal policies, the administration has frozen $12.7 billion in appropriated funds. This includes $942 million in funds for public housing, $583 million for model cities, and $200 million in water and sewer grants.

CITY FUNDS FROZEN—DEFENSE FUNDS BOOSTED

Meantime, while the cities are denied $1.7 billion in desperately needed funds, the administration has increased military spending. At the beginning of fiscal year 1971, the President estimated in his budget that military spending for the Department of Defense would amount to $71.2 bilion. But now that estimate has been revised upward. According to the fiscal year 1972 budget, military spending for 1971 will not be $71.2 billion, but will be $73.4 billion—or an increase of $2.2 billion.

Thus, while the executive froze $1.7 billion in desperately needed money for the cities, it boosted spending for the Pentagon by $2.2 billion. This is called reordering priorities. They reordered priorities by reordering them from the domestic economy to the military.

Other funds have been frozen as well. They include money for the economic opportunity program, salaries and expenses for the Peace Corps, REA loans, family housing, regional medical programs, higher education, facilties and equipment for the FAA, highway beautification, and farm credit, to name only a few.

Meantime, the administration is pressing for funds to begin a $9 billion space shuttle program which has no other function than as the precursor to a $100 billion manned flight to Mars. In any case, the tangible benefits of the space shuttle are almost impossible to define.

HOW TO MEET NEEDS WITH LIMITED RESOURCES

America's needs are very great. But America's resources are not unlimited. The amounts which the Federal Government can and should spend in any one year must be limited to sums which do not impose a confiscatory tax burden on the American people or promote additional inflation by continuous deficits.

How then can America's legitimate needs be met? How can we provide desperately needed funds for America's Newarks and Detroits and Milwaukees? How can we finance a jobs program to provide public service employment? Where are we to get the means to institute a broadly based health program which would lift our country to first place in the quality and quantity of medical care? Where are the funds to come from to relieve the cities and States of the most onerous burden they must now carry, namely, the burden of welfare which would cost the Federal Government at least an additional $7 billion a year if it were to carry that burden alone?

FIRST, REORDER PRIORITIES

There are two fundamental means by which these purposes can be achieved. The first is through a reordering of American priorities. We must cut unneeded programs and low priority programs and transfer those resources to programs the American people need. We must cut military spending and military waste. We should deny the money for the space shuttle. We should cut back on subsidies which go to the affluent and those who need them least of all. We should chop out inefficient public works projects and programs where the return is low or where private enterprise can function better.

The funds thus saved can then be used in part to revive the cities, provide desperately needed public services, build houses, educate children, prevent disease, cure the sick, and provide for the indigent and disabled. Any adverse effects from retrenchment in space or defense spending could be more than offset by the expansionary effects of funds spent to meet America's fundamental needs.

SECOND, GET THE ECONOMY MOVING AGAIN

The second means of providing funds for needed services is to get the economy moving again. If unemployment were reduced to 4 percent from the present 6 percent, the economy would be producing $60 billion a year more than it now produces. Federal tax receipts would grow by about $12 billion and State and local revenues by about $3 billion with no change in existing tax rates. Millions of men and women who are now jobless or who work only part time would become taxpayers rather than the recipients of unemployment compensation or welfare payments. Business would move from red ink to black ink, profits would rise, and industry would once again pay taxes instead of absorbing losses.

There are the ways to get America moving again.

We need expansion not retrenchment.

We need schools, houses, and hospitals, not new B–1 bombers, space shuttles, and SST's.

We need to spend money for cities and cut back on subsidies and frills.

We need deeds, not words; and action in the place of rhetoric.

As we cut military spending, space waste, and unnecessary programs, a portion of the cuts should be channeled into job producing, economically stimulating programs, especially housing.

A LOW-INCOME TAX CUT

A portion should also go to the hard-pressed taxpayer through cuts in his taxes. Two immediate steps should be taken. First, the increase in social security taxes now scheduled for January 1, 1972, should not be made retroactive to January 1, 1971, as the administration requests.

Second, the increases in deductions for dependents in the personal income tax now scheduled for 1972 and 1973 should be moved up into 1971.

These two actions would produce tax cuts this year of $7 billion below what taxes would otherwise be. As the cuts would go in large part to low and moderate income families, the funds would be spent. This would have a multiplier effect which would not only stimulate the economy but should increase the gross national product by about $20 billion over what it would otherwise be. That in turn would reduce unemployment, increase the revenues collected by all levels of government, help the cities and get the economy off dead center.

CONCLUSION

It is time to reorder priorities, put Americans back to work, and to put first things first.

It is time to choose schools over military waste, hospitals instead of space shuttles, and full employment instead of frozen funds.

We must put the needs of people on earth ahead of funds for the space shuttle.

Housing the poor must have a higher priority than billions for an excessive number of the weapons of destruction.

Cleaning the air is more important than boondoggling for the military.

Providing public transportation to get Americans to work must have a higher priority than billions for Lockheed bailouts.

Such a program is the way to provide real national security. That can only be gained by a balance between our military and our domestic needs, and by enhancing the strength of our people and the strength of our economy.

It is time to put our money where the need is.

TRANSACTION OF ROUTINE MORNING BUSINESS

The ACTING PRESIDENT pro tempore (Mr. STEVENSON). Under the previous order there will now be a period for the transaction of routine morning business, not to exceed 30 minutes, with statements therein limited to 3 minutes for each Senator recognized.

EVOLUTION OF CONCERN FOR HUMAN RIGHTS

Mr. PROXMIRE. Mr. President, treaties which deal with the rights of individuals within their own countries as a matter of international concern may be the proper exercise of the treatymaking power.

It seems almost anachronistic that this question continues to be raised in connection with the Genocide Convention. It is nearly 25 years since this country used the treaty power to become a party to the U.N. Charter. One of the charter's basic purposes is the promotion of human rights.

Chief Justice Warren once noted that—

> We as a nation should have been the first to ratify the Genocide Convention . . .

In 1968 a special committee of lawyers of the President's Commission for the observance of Human Rights Year, prepared a study of the treatymaking power of the United States in human rights matters.

The report points out that one of the most noteworthy developments in 20th century international law is the recognition of the human rights of the individual. Certainly in previous traditional law there was a recognition of the rights of the individual. But the denial of the human rights of an individual was seen only as an affront to the state of this individual. It was not considered a matter of "international concern." As the countries of the world became more interdependent, there was a simultaneous recognition for the need of increased international cooperation to secure fundamental human rights. This was a profound change from the doctrine that "there is a general agreement that, by virtue of its personal and territorial supremacy, a state can treat its own nationals according to discretion"—I. L. Oppenheim, International Law 279, 7th edition, H. Lauterpacht 1948.

This new concern originated in the Allied Powers' treaty of peace with Poland at the end of World War I. Poland was required to undertake the protection of "certain racial, religious, and linguistic minorities" within its own borders. The substantive obligations taken by Poland were recognized as "obligations of international concern." A Council of the League of Nations was given the responsibility of enforcement.

The effects of this change in the meaning of international law have led to the establishment of a European Commission of Human Rights and a European Court of Human Rights; a Commission of Human Rights drafted by the Organization of American States; and a vast number of international human rights convenants.

Mr. President, I ask unanimous consent that the report of the Special Committee of Lawyers of the President's Commission for the Observance of Human Rights Year 1968 be printed in the RECORD.

There being no objection, the report

was ordered to be printed in the RECORD, as follows:

A REPORT IN SUPPORT OF THE TREATYMAKING POWER OF THE UNITED STATES IN HUMAN RIGHTS MATTERS

(Prepared by the Special Committee of Lawyers of the President's Commission for the Observance of Human Rights Year 1968)

EVOLUTION OF CONCERN FOR HUMAN RIGHTS IN INTERNATIONAL LAW

Since the founding of the United Nations there has been a marked increase in concern about effective guarantees of human rights through a system of international treaties. This concern has raised a fundamental question for the United States: Are the rights of the individual inside his own country within the scope of the treatymaking power of the United States?

The second paragraph of the preamble to the Charter of the United Nations reaffirms "faith in fundamental human rights, in the dignity and worth of the human person. . . ." Article 55(c) of the Charter dedicates the United Nations to the promotion of universal respect for, and observance of, human rights and fundamental freedoms for all. Article 56 commits members to "joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55."

One of the most profound developments in 20th-century international law is the increasing recognition of the human rights of the individual in international law. That is not to say that individual status, or the individual as a person, went unrecognized in traditional international law.[1] But traditional international law dealt with human rights only indirectly, seeing mistreatment of the national of another state as an affront only to that state; the latter then could object to such mistreatment of its nationals as denied them "justice" or violated rights specifically promised for them by treaty. In view of that conceptual orientation, traditional customary law of course had nothing to say about a state's treatment of its own nationals, and traditional treaties ordinarily contained no undertakings by a state as to how it would treat its own nationals. A standard text on international law asserted, therefore, as late as 1948: "There is general agreement that, by virtue of its personal and territorial supremacy, a State can treat its own nationals according to discretion."[2]

On the other hand, treaties in which one state made promises to another as to how it would treat its own citizens in some respects were not unknown even before this century. Long ago the memory of religious wars emphasized the relation between international peace and religious toleration, and nations adhered to treaties in which they undertook to afford freedom of religion to their inhabitants, including their own nationals. The Berlin Treaty of 1878, for example, imposed on Turkey and the Balkan countries an obligation not to discriminate against religious minorities in their lands. When territory changed hands, too, the ceding states often required an undertaking by the new sovereign that it would give its new inhabitants the rights of citizenship or other protections; the United States included such provisions in its treaties acquiring territories in Louisiana, Florida, Mexico, and Alaska.

Contemporary concern for human rights, however, is broader and deeper, reflecting new political concerns in the international community and having its origins at the end of World War I. In the Allied Powers' treaty of peace with Poland,[3] that country undertook to protect certain racial, religious, and linguistic minorities within its boundaries. This was required of Poland as being relevant to friendly relations between nations: mistreatment of minorities by a state might antagonize its neighbors or other states, especially those which had ethnic, religious, or other identification with the minorities in question. But the treaty embodies some new notions respecting the status of individuals and their rights in international law. The first radical departure was the recognition that the substantive obligations undertaken by Poland were "obligations of international concern."[4]

Second, although the obligations undertaken by Poland were designed to secure protection of racial, religious, and linguistic minorities, it was nonetheless agreed that the protection was for "*persons* belonging to racial, religious or linguistic minorities." Finally, an international body, the Council of the League of Nations, was given the responsibility of enforcement. The cumulative effect of these new conceptions was to change the relationship between the designated minorities and their own government. No longer could Poland act toward them with uncontrolled discretion.

The pattern of the Polish Convention was followed in other peace treaties formally concluding the First World War and in several collateral declarations and conventions.[5] The responsibility for implementing the minorities treaties was lodged with the Council of the League of Nations. Japan proposed that the convenant creating the League should itself contain provisions prohibiting discrimination on the basis of nationality, race, or religion, but that proposal was rejected. Nonetheless, the work of the League of Nations system in the administration of minorities treaties, as well as the League's concern for humane treatment of the inhabitants of mandated territories, were important steps in the evolution of individual rights in international law. Nazi atrocities before and during World War II accelerated the evolution to make human rights everywhere a matter of general concern.

The origins of U.N. concern with individual human rights lie not only in the human rights activities of the League of Nations system, but also in the concerns of the Allied Powers during the course of World War II. After the German forces had overrun most of Europe, President Roosevelt and Prime Minister Churchill met in the North Atlantic. A joint statement was issued on August 14, 1941, which became known as the Atlantic Charter. This charter, among other things, asserted the guarantee of human rights as one of the peace aims of the Allies. The same principle was reaffirmed in the declaration of January 1, 1942, signed by the Allied Powers, styled the Grand Alliance, in Washington.

The Atlantic Charter and the New Year's Declaration of 1942 had a profound effect upon the deliberations which led to the creation of the United Nations. Panama and other Latin American countries advanced proposals to include an International Bill of Human Rights, in the charter itself. Although these specific proposals were rejected, there was a consensus that a priority task of the new United Nations would be the formulation of an International Bill of Human Rights. The Charter of the United Nations was written to include among the organization's purposes and principles:

"To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion;"

While this and several other provisions of the charter refer to the role of the United Nations in promoting universal respect for and observance of fundamental human rights and freedoms, the cornerstone of U.N. human rights treaties is a separate instrument, the Universal Declaration of Human Rights. The U.N. Commission on Human Rights, under the chairmanship of Eleanor Roosevelt, submitted the declaration to the General Assembly of the United Nations in 1948.[6]

While the declaration did not purport to impose legal obligations, in the years since adoption it has exerted a profound influence around the world. In the peace treaty with Japan signed in 1951 Japan promised to strive to realize the aims of the Universal Declaration of Human Rights. In 1954, Italy and Yugoslavia undertook to govern Trieste in accordance with the precepts of the Universal Declaration. Over 30 new countries have adopted sections of the declaration in their constitutions. It has also influenced the national laws and court decisions in many countries.[7]

The indirect influence of the declaration has been even greater. Nations in Western and central Europe, selecting portions of the declaration as their basis, established by treaty a European Commission on Human Rights as well as a European Court of Human Rights. The Organization of American States has adopted a Commission of Human Rights and drafted a full convention. A number of international conventions or treaties on human rights have been promulgated, including those on genocide, slavery, refugees, political rights of women, marriage, discrimination in education, elimination of all forms of racial discrimination, and the two definitive human rights convenants adopted by the U.N. General Assembly in 1966.

HUMAN RIGHTS MATTERS OF INTERNATIONAL CONCERN UNDER THE TREATYMAKING POWER

The Constitutional Structure

Four provisions of the Constitution deal expressly with treaties.[8] The repository of the power to make treaties is designated in article II, sec. 2, clause 2:

"He (the President) shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur."

The second principal provision, article IV, sec. 2, establishes the effect of treaties:

"This Constitution and the laws of the United States, which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land, . . ."

Article III, sec. 2 extends to treaties the judicial power of the United States. The states are prohibited by article I, sec. 10(1) from entering into "any treaty, alliance or confederation."

It is of course patent that the Constitution itself does not by express terms define the scope of the treatymaking power. Professor Louis Henkin has observed that "the framers knew what treaties were and, no doubt, did not see any need to define what was well known in international law and practice."[9] On the bare constitutional language, the treaty power of the United States would seem to be as broad as the range of subjects on which the Nation might wish to exchange obligations with other nations. However, it has been asserted that there is a separate constitutional criterion to be applied in determining the propriety of a particular treaty for U.S. adherence. The criterion has been called "international concern." This phrase was used in 1929 by Charles Evans Hughes, when he said that

Footnotes at end of article.

the U.S. had "power to deal with foreign nations with regard to matters of international concern. It is not a power intended to be exercised, it may be assumed, with respect to matters that have no relation to international concerns." [10] The limitation has been restated as follows: "An international agreement of the United States must relate to the external concerns of the nation as distinguished from matters of a purely internal nature." [11] A U.S. interest to be served by exchanging with other nations solemn obligations on human rights matters would satisfy this test. A sham agreement designed merely to circumvent the normal legislative process would fail the test.

Treating the test of "international concern" as a constitutional limitation, it is clear that no objection to ratification of all human rights treaties can be rested on this basis. This country, long ago and repeatedly, has recognized that human rights are of international concern, are relevant to American foreign relations, and are therefore within the scope of U.S. treatymaking power. Four decades ago, at President Coolidge's request and in the administration of President Hoover, the Senate approved the 1926 Slavery Convention, undertaking not only to abolish the slave trade but also, "in respect of the territory placed under its sovereignty . . . to bring about . . . the complete abolition of slavery in all its forms." The United States further agreed to "prevent compulsory or forced labor from developing into conditions analogous to slavery." [12] The treaty power in this instance was used to curb an evil practice both in commerce from state to state and within the boundaries of each member state.

After the Second World War we joined in the 1945 treaties with Italy (T.I.A.S. 1648), Romania (T.I.A.S. 1649), Bulgaria (T.I.A.S. 1650), and Hungary (T.I.A.S. 1651), which required measures to secure to all persons without distinction as to race, sex, language, or religion the enjoyment of such rights as freedom of expression, of press and publication, of religious worship, of political opinion, and of public meeting In the same year we helped in establishing a global organization, one of whose four purposes set forth in the first article of its charter is "to achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion." In the charter, too, we helped in writing what U.N. Secretary-General U Thant has called "perhaps the boldest innovation of the Charter—the unconditional and universal obligation in regard to human rights and fundamental freedoms." Three years later there followed the enumeration in the Universal Declaration of Human Rights, whose 20th anniversary we and most other nations celebrated as International Year for Human Rights 1968. The declaration demonstrates how wide a range of rights there is to which the treaty power might be applied.

The year after the adoption of the Universal Declaration, four treaties were concluded to protect, among others, the victims of domestic conflict. These were the Geneva Conventions of 1949, which were joined by many countries including the United States.[13] The fact that such victims, unlike the also protected victims of international wars, need not be involved beyond their own frontiers did not prevent the Senate from approving these conventions in their entirety.

A human rights treaty of broad reach, the 1956 Supplementary Slavery Convention, was approved by the Senate and ratified by the President in 1967, reconfirming that human rights can meet the test of "international concern." Besides reiterating the condemnation of slave trading already found in the 1926 Slavery Convention to which we had been a party nearly 40 years, article I of the 1956 convention obligates the United States and the other parties to abolish debt bondage, serfdom, and even practices whereby "a woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group . . ." or "a child or young person under the age of 18 years is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labor."

In presenting the Protocol Relating to the Status of Refugees to the Senate in October 1968, the State Department said that "the human rights which it covers for the refugees involved are of the most crucial and the most important type. They are literally the difference between life and death for many of them:" [14] The President's transmittal letter called the protocol "a comprehensive Bill of Rights for refugees fleeing their country because of persecution on account of their political views, race, religion, nationality, or social ties." [15] He made clear why this subject was of international concern; there was a U.S. purpose to be served by ratification, the raising of other countries' standards for treatment of this category of individuals: "United States accession should help advance acceptance of the Protocol and observance of its humane standards by States in which, presently guarantees and practices relating to protection and other rights for refugees are less liberal than in our own country." With this as background, the Senate gave unanimous consent.

Thus it appears not only that human rights are matters of international concern, but also that there is substantial U.S. precedent for the ratification of human rights treaties. If the President and Senate deem it desirable, the United States can, under the treaty power, ratify or adhere to any international human rights convention unless it contravenes a specific prohibition in the Constitution in a manner so fundamental that a reservation avoiding the conflict would be incompatible with the overall purpose of the treaty.

Inherent constitutional prohibition

Justice Story asserted that as a matter of logic, the treatymaking power must be subject to those provisions of the Constitution establishing the government and imposing express limitations on its powers. "A power given by the Constitution cannot be construed to authorize a destruction of other powers given in the same instrument. It must be construed, therefore, in subordination to it; and cannot supersede or interfere with any other of its fundamental provisions. Each is equally obligatory and of paramount authority within its scope; and no one embraces a right to annihilate any other." [16] The dicta of Justice Field in *Geofrey* v. *Riggs*, supra, p. 9, obviously rests upon Justice Story's rationale. Justice Field stated:

"The treaty power, as expressed in the Constitution, is in terms unlimited, except by those restraints which are found in that instrument against the action of the government, or of its departments, and those arising from the nature of government itself, and of that of the States." [17]

The most comprehensive statement of the "inherent constitutional limitations" asserts that a treaty or treaty provision would transcend the Constitution if the treaty: (1) Alters the form of government, (2) Alters the departmental structure of the Federal Government, (3) Alters the constitution of any of the branches of government, (4) Deprives the Federal Government of a delegated power, (5) Exercises a power confided to another branch of government, and, (6) Exercises a power prohibited to the Federal Government or reserved to the states.[18] Clearly, a proposed treaty which sought to abolish or reform the electoral college would be prohibited by the Constitution.

Examination of the provisions of the international human rights conventions and the covenants on human rights discloses that constitutional issues arise principally in regard to assertions relating to the absence of power in the Federal Government. Generally, it has been asserted that the treatymaking power does not extend to that which is forbidden to the Federal Government.[19] Consequently, it has been argued that matters exclusively within the domain of the several states cannot be properly the subject of treaties. But the argument begs the question. Matters within the scope of the treatymaking power cannot lie within the exclusive domain of the states. This doctrine has been clear from the very founding of the Republic. In *Ware* v. *Hylton*,[20] Justice Chase declared:

"If doubts would exist before the adoption of the present national government, they must be entirely removed by the 6th article of the constitution. . . . There can be no limitation on the power of the people of the United States. By their authority the state constitutions were made, and by their authority the constitution of the United States was established; and they had the power to change or abolish the state constitutions or make them yield to the general government and to treaties made by their authority. A treaty cannot be the supreme law of the land . . . if any act of state legislature can stand in its way. . . . It is the declared will of the people of the United States that every treaty made, by the authority of the United States, shall be superior to the constitution and laws of any individual state; and their will alone is to decide. If a law of a state contrary to a treaty is not void, but voidable only by a repeal, or nullification by a state legislature, this certain consequence follows, the will of a small part of the United States may control or defeat the will of the whole."

Chief Justice Marshall similarly ruled that the validity of a treaty could not be questioned on the grounds that the subject matter of the treaty was a matter within the competence of the state. In *Chirac* v. *Lessee of Chirac*,[21] the Court upheld that the defect of alienage under the law of Virginia was removed for French aliens by provisions of the Treaty of 1778 with France abrogating alien disabilities in real property succession *ad intestat*. The constitutional doctrine developed in the alienage cases found its full expression in the Supreme Court's decision in *Missouri* v. *Holland*.[22] In 1913 the Federal Migratory Bird Act had declared certain birds to be within the exclusive jurisdiction of the United States. For courts had held the act unconstitutional [23] by the time the United States concluded a treaty with Canada to protect certain ducks. The treaty also provided for mutual implementation through legislation. The validity of the treaty was directly challenged on the grounds of the 10th amendment. Justice Holmes held that the allocation of a matter to the competence of the state by the 10th amendment is not a limitation on the treatymaking power.

"The treaty in question does not contravene any prohibitory words to be found in the Constitution. The only question is whether it is forbidden by some invisible radiation from the general terms of the Tenth Amendment. . . . No doubt the great

Footnotes at end of article.

body of private relations usually falls within the control of the State, but a treaty may override its power. . . ." [24]

No support whatsoever can be found for the proposition that the 10th amendment is a limitation upon the scope of the treatymaking power.[25]

In some instances the argument that the 10th amendment is a limitation on the treaty-making power has been cast in terms of the power of Congress. The assertion is made that the treaty power is limited to those matters upon which Congress could legislate. Again, no support whatsoever can be found for such a proposition. As to this point Justice Holmes declared:

"Acts of Congress are the supreme law of the land only when made in pursuance of the Constitution, while treaties are declared to be so when made under the authority of the United States. It is open to question whether the authority of the United States means more than the formal acts prescribed to make the convention. We do not mean to imply that there are no qualifications to the treaty-making power; but they must be ascertained in a different way. It is obvious that there may be matters of the sharpest exigency for the national well being that an act of Congress could not deal with but that a treaty followed by such an act could, and it is not lightly to be assumed that, in matters requiring national action, "a power which must belong to and somewhere reside in every civilized government" is not to be found. . . ." [26]

The unbroken line of treaty decisions by the Supreme Court fully support the conclusion expressed by Justice Holmes.

The conclusion is compelled that objections to ratification of the human rights conventions and the covenants on human rights cannot be based upon the proposition that the treatymaking power is limited by the power reserved to the states pursuant to the 10th amendment.

Implementation of human rights treaties

For the United States, problems of implementing human rights treaties have two dimensions: the nature of the implementation procedure provided for in treaties themselves and the built in implementation procedure peculiar to the United States arising out of the fact that its treaties are the supreme law of the land.

The Nature of Implementation

The implementation provided for in human rights treaties is of three varieties: judicial proceedings, conciliation, and government reporting. Judicial proceedings in the International Court of Justice are available to governments on a voluntary *ad hoc* basis and are compulsory for governments committed in advance to accept the Court's jurisdiction either in general or as to particular treaties.[27] The United States general commitments to accept the Court's jurisdiction does not extend to "disputes with regard to matters which are essentially within the domestic jurisdiction of the United States as determined by the United States." Aside from the general commitment, we are bound by compulsory jurisdiction language in particular treaties. The following clause appears in the 1956 Slavery Convention, ratified by the United States in 1967:

"Article 10. Any dispute between States Parties to this Convention relating to its interpretation or application, which is not settled by negotiation, shall be referred to the International Court of Justice at the request of any one of the parties to the dispute, unless the parties concerned agree on another mode of settlement."

Another human rights treaty recently ratified by the United States, the Protocol Relating to the Status of Refugees, contains a similar provision:

"Any dispute between States Parties to the present Protocol which relates to its interpretation or application and which cannot be settled by other means shall be referred to the International Court of Justice at the request of any one of the parties to the dispute."

ILO conventions, to several of which the United States is a party, are subject to article 37 of the ILO Constitution, providing for reference to the ICJ of "any question or dispute relating to the interpretation . . . of any Convention." Never in the ILO's half century of experience, however, has ICJ jurisdiction been invoked by one ILO member against another, nor indeed in any other human rights cause except the 1966 South West Africa cases, brought by Ethiopia and Liberia under a post-World War I mandate agreement.

Enforcement of ICJ decisions by the U.N. Security Council is envisaged by the charter. Article 94(2) provides that the Council "may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment." These powers have never been invoked to secure compliance with a judgment.[28] The General Assembly as well can act, under charter article 10, to discuss noncompliance or make the recommendations.

The compulsory conciliation feature of the ILO's conventions, like their ICJ jurisdiction, arises from its constitution. Under articles 24 and 25, employers' or workers' organizations may represent to the ILO that "any of the members has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party." Article 26 allows a member state to file a complaint if it is not satisfied that another member "is securing the effective observance of any Convention which both have ratified." Complaints, like representations, may be sent by the ILO governing body to the accused government, or they may be sent to a commission of inquiry for findings and recommendations, to which the governments concerned are bound to reply. Only in two cases has a government used these procedures against another: Ghana accusing Portugal and Portugal accusing Liberia. In each case the charge involved was forced labor, and each time recommendations of a commission of inquiry were accepted by the parties avoiding ICJ appeals. The ILO has special and more detailed conciliation procedures for complaints concerning freedom of association, available even against states not parties to the relevant conventions.

Conciliation procedures have also been established by two recently effective instruments, the Protocol to the UNESCO Convention Against Discrimination in Education, parties to which include Denmark, the United Kingdom, and France, and the Convention on Elimination of All Forms of Racial Discrimination. In the latter case, where a state party has recognized the competence of a committee created by the treaty to receive individuals' complaints, the committee may make suggestions and recommendations, which are to be summarized in its annual report.

Government reporting as an implementation feature of the Racial Discrimination Convention is to cover periodically "legislative, judicial, administrative or other measures." The same committee "may make (to the General Assembly) suggestions and general recommendations based on the examination of the reports and information received from the States Parties." The ILO reporting system is more developed, being based on the obligation under the constitution (article 22) to report annually on measures taken to implement ratified conventions.[29]

The reports are examined and commented on by a Committee of Experts on the Application of Conventions and Recommendations, whose 19 members are, according to the ILO, "drawn mainly from the judiciary, from academic circles (professors of international or labor law), and from amongst persons with considerable experience in public administration." [30] Further discussion of the reports is conducted by a committee of the ILO conference, and by the conference plenary session, both of which are composed of government, employers', and workers' representatives.

Committee members

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Hon. John Minor Wisdom, U.S. Circuit Judge, U.S. Court of Appeals.

FOOTNOTES

[1] In traditional law there were indeed rules, practices, and conventions regarding individuals who were "foreigners" in a particular country. The entire system of passports and passport protection, for example, rests upon the recognition of an individual who, leaving his own country, becomes an alien in a foreign land. In addition to such matters as passports and the like, it was recognized that a state might intervene to protect its subjects when another state violated an obligation it owed to the first state. Moreover, in certain limited instances a right of "humanitarian intervention" has been recognized. Thus a state might take actions against a second state when the conduct of the second state toward its own citizens was thought to have become so oppressive that international morality required an intervention.

[2] 1 L. Oppenheim, International Law 279 (7th ed. H. Lauterpacht 1948). Seven years later, the 8th edition at page 288 added a footnote: "subject to Minority treaties and other international obligations, in particular the general obligations of the Charter of the United Nations relating to human rights and fundamental freedoms."

[3] *See* de Nova, *The International Protection of National Minorities and Human Rights*, 11 HOW. L.J. 275 (1965). The convention was signed but not ratified by the United States.

[4] Article 12 provided that:

Poland agrees that the stipulations in the foregoing Articles (where the substantive obligations are specified), so far as they affect persons belonging to racial, religious or linguistic minorities, constitute obligations of international concern and shall be placed under the guarantee of the League of Nations. They shall not be modified without the assent of a majority of the Council of the League of Nations. The United States, the British Empire, France, Italy, and Japan hereby agree not to withhold their assent from any modification in these Articles which is in due form assented to by a majority of the Council of the League of Nations.

Poland agrees that any Member of the Council of the League of Nations shall have

the right to bring to the attention of the Council any infraction of any of these obligations, and that the Council may thereupon take such action and give such direction as it may deem proper and effective in the circumstances.

[5] One scholar has concluded from an extensive analysis of all of the "minority treaties" that six fundamental human rights emerged as those enjoying the new treaty protection: 1. general protection of fundamental rights; 2. equality of treatment; 3. nondiscrimination; 4. free use of languages; 5. the right to establish charitable, religious, social, and educational institutions; 6. the right to an equitable appropriation of public funds for the educational, religious, or charitable institutions of minorities. M. Ganji, International Protection of Human Rights 46 (1962).

[6] The Universal Declaration of Human Rights, consisting of 30 articles, covers both civil and political rights, and economic, social, and cultural rights. Articles 1 and 2 are general articles stating that "all human beings are born free and equal in dignity and rights," and are entitled "to all the rights and freedoms set forth in the Declaration without distinction of any kind, such as race, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status." The rest of the articles spell out, in some detail, the rights which are standards of the modern world. These include the right of life, liberty and security of person, freedom from slavery, freedom from torture, equal protection of the law, the right to be presumed innocent until proved guilty, freedom from arbitrary arrest, the right to marry, the right to own property, and freedom of thought, conscience, and religion.

The Universal Declaration of Human Rights was adopted by the General Assembly on December 10, 1948. The United States and 47 other nations voted in favor of the declaration. The Union of Soviet Socialist Republics, five other Eastern European countries, Saudi Arabia, and the Union of South Africa abstained. There were no dissenting votes.

See Human Rights, A Compilation of International Instruments of the United Nations, U.N. Doc. A/CONF. 32/4 (1967).

[7] *See* section on influence of the Universal Declaration on national consitutions, municipal laws, and court decisions in Measures Taken Within the United Nations in the Field of Human Rights, U.N. Doc. A/CONF. 3/25 (1967), citing *inter alia* decisions in California and New York courts and in the U.S. Supreme Court.

[8] This report does not deal with the class of international pacts known as "executive agreements," only with those requiring formal approval by the Senate.

[9] Henkin, *The Constitution, Treaties, and International Human Rights*, 116 U. Pa. L. Rev. 1012, 1015 (1968).

[10] 23 Proceedings Am. Soc'y Int'l L. 194, 195–196 (1929). Hughes had been Secretary of State and was at the time Chief Justice Designate. He was speaking extemporaneously, probably relying on language on the treaty power scope in several Supreme Court opinions, such as: "any matter which is properly the subject of negotiation with a foreign country," *Geofrey* v. *Riggs*, 133 U.S. 258, 267 (1890); "all those objects which in the intercourse of nations, had usually been regarded as the proper subject of negotiation and treaty;" *Holden* v. *Joy*, 84 U.S. (17 Wall) 211, 243 (1872); "all those subjects, which in the ordinary intercourse of nations had usually been made subjects of negotiation and treaty," *Holmes* v. *Jennison*, 39 U.S. (14 Pet.) 540 (1890).

[11] Restatement (Second), Foreign Relations Law of the United States, §40, comment b at 117 (1965). The comment adds that, "usually matters of international concern have been both international and domestic effects, and the existence of the latter does not remove a matter from international concern."

[12] 46 Stat. 2183; T.S. 778. U.S. accession was accompanied by a reservation excluding language approving forced labor "for public purposes," in view of U.S. opposition to the practice "except as a punishment for crime of which the person concerned has been duly convicted." 46 Stat. 2183, 2198.

[13] Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, August 12, 1949, [1950] 6 U.S.T. 3114, T.I.A.S. 3362, 75 U.N.T.S. 31; Convention for the Amelioration of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, August 12, 1949, [1950] 6 U.S.T. 3217, T.I.A.S. 3363, 75 U.N.T.S. 85; Convention Relative to the Treatment of Prisoners of War, August 12, 1949, [1950] 6 U.S.T. 3316, T.I.A.S. 3364, 75 U.N.T.S. 135; Convention Relative to the Protection of Civilian Persons in Time of War, August 12, 1949, [1950] 6 U.S.T. 3516, T.I.A.S. 3365, 75 U.N.T.S. 287.

[14] Ex. Rept. 14 (90th Cong., 2d sess.) 4 (1968).

[15] *Id.* at 3.

[16] J. Story, Commentaries 1508 (1918).

[17] 133 U.S. 258, 297 (1890).

[18] Mikell, *Treaty Making Power*, 57 U. Pa. L. Rev. 435, 439–440 (1909).

[19] *United States* v. *Reid*, 73 F. 2d 153, *cert. denied* 299 U.S. 544 (1934).

[20] 3 U.S. (3 Dall.) 199, 236 (1794).

[21] 15 U.S. (2 Wheat.) 259 (1817).

[22] 252 U.S. 416 (1920).

[23] *State* v. *Sawyer*, 113 Me. 458 (1915); *State* v. *McCullagh*, 96 Kan. 786 (1915); *United States* v. *McCullagh*, 221 F. 288 (Kan. 1915); *United States* v. *Shauner*, 214 F. 154 (E.D. Ark. 1914).

[24] 252 U.S. 126, 133 (1919).

[25] *See Asakura* v. *Seattle*, 265 U.S. 332 (1924), *Santovincenzo* v. *Egan*, 284 U.S. 30 (1931), *United States* v. *Belmont*, 301 U.S. 324 (1937), *Clark* v. *Allen*, 331 U.S. 503 (1947). Moreover, examination of the constitutions and jurisprudence of every other federal nation-state, except for Canada, fails to disclose a limitation based upon reserved powers to the states or provinces constituting the federal union. Australia (Pt. V), 1 Peaslee, Constitutions of Nations 100 (1950); Brazil (Tit. One, c. I, Art. 85), 1 Peaslee 181; Colombia (Tit. XI, Art. 120, Para. 20), 1 Peaslee 485; Czechoslovakia (Pt. III, Sec. 74), 1 Peaslee 618; Germany (Basic Law, V, Art. 59 and VII, Art. 73) 3 Peaslee 609, 611; Mexico (Tit. III, c. II, Sec. III, Art 76 and Tit. III, c. III, Art. 89 and Tit. V, Art. 17) 2 Peaslee 439, 442, 452. ("Under no circumstances may a state (I) Enter into alliances, treaties or coalitions with another state or with foreign powers."); Switzerland (c. I, Art. 8) 3 Peaslee 123; Union of South Africa (South Africa Act, 1909, 9 Edw. 7, gives to Parliament full law-making power) 3 Peaslee 268. Despite constitutional difficulties arising out of the fact that the Canadian Constitution is in fact a statute, the Manitoba Court of Appeal flatly rejected the proposition that the treatymaking power of the Federation was limited by the power reserved to the provinces. *Rex.* v. *Stuart*, 1 D.L.R. 12 (Ct. App. Manitoba 1925). Subsequently, however, the Privy Council expressed the view that matters "peculiarly within the competence of the provinces" were not proper matters of Dominion concern. *Attorney General for Canada* v. *Attorney General for Ontario*, [1937] A.C. 326 (Privy Council).

[26] 252 U.S. 126, 133 (1919).

[27] Only states may be parties to contentious cases in the ICJ. The various bases of jurisdiction are set forth in the first two sections of article 36 of the Statute of the Court.

[28] In regard to the United Kingdom's invocation of article 94(2) in 1951 to secure compliance by Iran with interim measures of protection indicated by the Court to preserve the object of the Angelo-Iranian dispute, Schachter believes it "likely that the indecision of the Council was attributable to the doubts which several Members had regarding the competence of the Court on the merits of the case." Schachter, *The Enforcement of International Judicial and Arbitral Decisions*, 54 Am. J. Int'l L. 1, 23–24 (1960).

[29] When the ILO constitution was amended in 1946, the reporting requirement was extended to ILO recommendations and unratified conventions.

[30] U.N. Doc. E/4144 at 8 (1965).

*Secretary of State William P. Rogers terminated his active participation in the work of the Committee after he was designated Secretary of State by President-elect Nixon, December 12, 1968.

**Mr. Stevenson assumed his duties as Legal Adviser to the Department of State on July 14, 1969.

Mr. PROXMIRE. Mr. President, the concern for human rights and their preservation is something we must continually fight for. The Convention on the Prevention and Punishment of the Crime of Genocide is a great step forward in this fight. We can do no less than act quickly to ratify this convention.

QUORUM CALL

Mr. PROXMIRE. 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. CHURCH. 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.

(The remarks of Mr. CHURCH when he introduced S. 1645 are printed in the RECORD under Statements on Introduced Bills and Joint Resolutions.)

The ACTING PRESIDENT pro tempore. Is there further morning business?

QUORUM CALL

Mr. GRIFFIN. 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. MOSS. 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.

ROAD FUNDS RESCINDED

Mr. MOSS. Mr. President, several Members of the Senate and House of Representatives have pointed out the fact the President has frozen more than $12 billion in funds already appropriated by the Congress for various projects and programs throughout the Nation.

Today, I want to draw attention to just one of the specific acts of freezing funds which the Nixon administration has instituted. Beginning with fiscal year 1972, forest highways and public lands roads will no longer be financed by direct appropriation, but will instead be funded from the highway trust fund.

That action, while debatable because of the possible overextension of the highway trust fund, is not what I want to

discuss today. My purpose in speaking is to voice strong opposition to an accompanying move made by Mr. Nixon.

The President's current budget request asks that $38 million already appropriated by Congress for forest highways, and $26,637,000 already appropriated by Congress for public lands roads for fiscal 1971 be rescinded.

If Mr. Nixon wants to change the manner in which these roads are funded from direct appropriation to trust fund moneys, then the Congress should discuss that proposal with him.

But when the President arbitrarily rescinds funds for these purposes which the Congress has already appropriated and directed him to spend, then we are entering into another round of the executive, especially this executive, trying to usurp constitutional power of the Congress.

In my State of Utah, the construction of these forest and public lands roads is most urgent. Two-thirds of the land of our State is owned by the Federal Government, and most of it is either forest service land or BLM land. Roads over these lands are vitally needed.

By his action, Mr. Nixon is taking away from Utah $1,354,298 in forest highway construction funds and $1 million for public lands roads which has been appropriated to be spent in Utah. Now we have lost what we desperately need. All of our road plans have been set back by at least a year and we never will make up the gap in time.

Roads are literally lifestreams to vast sections of Utah. The slowness and failure of Federal departments and agencies to fulfill their promises to develop roads in national parks and on other Federal land has proven to be a great disappointment to the citizens of Utah.

Now, this action by the President to withdraw still more money which Congress has provided for these needed roads, further aggravates the situation.

No doubt the President has taken this action to staunch the drain on his unbalanced budget, but his cuts are made at the expense of Utah and other public land States. We need cuts in our bloated war expenditures; not our tiny but essential road funds.

THE VIETNAM WAR AND THE 1972 PRESIDENTIAL ELECTION

Mr. ALLEN. Mr. President, the President is doing some wishful thinking in feeling that the war is not going to be an issue in the 1972 presidential election. Early in his term the President said he was going to end the war, and that if he did not the people could blame him. I applaud this courageous position but believe the people are going to hold him to account for it.

I want to help the President and support his efforts to bring this war to an early end. Surely, no one is more anxious to accomplish this than the President himself. So my support and my prayers are for the President, but more than for him for our fighting men and their loved ones, for the widows and the orphans, and for all those for whom this dreadful war has been such a tragedy.

QUORUM CALL

Mr. MOSS. 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.

EXECUTIVE COMMUNICATIONS, ETC.

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

REPORT OF PROCUREMENT FROM SMALL AND OTHER BUSINESS FIRMS

A letter from the Assistant Secretary of Defense (Installations and Logistics), transmitting, pursuant to law, the report of Department of Defense Procurement from Small and Other Business Firms for July 1970 to January 1971 (with an accompanying report); to the Committee on Banking, Housing, and Urban Affairs.

REPORT OF THE MUTUAL DEFENSE ASSISTANCE CONTROL ACT, 1970

A letter from the Assistant Secretary of State for Economic Affairs, transmitting, pursuant to law, the 23d report on operations under the Mutual Defense Assistance Control Act of 1951 (Battle Act) (with an accompanying report); to the Committee on Foreign Relations.

PROPOSED LEGISLATION TO AMEND FURTHER THE PEACE CORPS ACT

A letter from the Office of the Director, Peace Corps, submitting a draft of proposed legislation to amend further the Peace Corps Act (75 Stat. 612), as amended (with accompanying papers); to the Committee on Foreign Relations.

PROPOSED LEGISLATION WITH RESPECT TO TENURE AND COMPULSORY RETIREMENT OF REFEREES IN BANKRUPTCY

A letter from the Director, Administrative Office of the United States Courts, submitting a draft of proposed legislation to amend the Bankruptcy Act and the Civil Service Retirement Law with respect to the tenure and compulsory retirement of referees in bankruptcy (with accompanying papers); to the Committee on the Judiciary.

PETITIONS

Petitions were laid before the Senate and referred as indicated:

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

A resolution of the House of Representatives of the State of Washington; to the Committee on Banking, Housing and Urban Affairs:

"RESOLUTION OF THE STATE OF WASHINGTON

"Whereas, Owing to recent events, such as defense and space cutbacks, concomitant with the depressed state of the national economy, economic conditions in the State of Washington are severe and disastrously low; and

"Whereas, There has resulted an enormously high rate of unemployment and as of February, 1971 there were 332,000 professional and technical workers on the unemployment rolls in the United States with a resulting high proportion of these workers in the State of Washington; and

"Whereas, This unemployment is in no way due to the fault of workers, but rather due to congressional action on funding of the SST program and to Boeing's cutbacks in other areas; and

"Whereas, We hope this situation to be temporary and are supporting all possible services both Federal and State to relieve the high rate of unemployment and to rescue the State's economy; and

"Whereas, People who have maintained their homes for many years are now losing them because they are unable to meet the mortgage payments;

"Now, therefore, be it resolved, By the House of Representatives, That members of the State of Washington congressional delegation, the national and regional offices of the Federal Housing Administration, the Congress and the President of the United States work out a moratorium whereby those persons who have been unemployed through no fault of their own shall have an extension of time to meet their mortgage payments; and

"Be it further resolved, That the Federal Housing Administration insure private loans to eligible unemployed or underemployed persons to permit them to keep up mortgage payments, with interest rates to be set by the Secretary of Housing and Urban Development, and loans to be repaid over a period of ten years.

"Be it further resolved, That a suitably inscribed copy of this Resolution be prepared and forwarded to the President of the United States and to the President of the Senate and the Speaker of the House of Representatives, and to members of the congressional delegation of the State of Washington and to the national and regional offices of the Federal Housing Administration."

A joint resolution of the Legislature of the State of Nevada; to the Committee on Commerce:

"RESOLUTION OF THE STATE OF NEVADA

"Whereas, The Department of Commerce advisory panel monitoring the current 3-year government study of metric conversion urges adoption of the metric system; and

"Whereas, Support for the metric system is surprisingly increasing at business and industrial levels; and

"Whereas, The British experience in converting from the English system to the metric system indicates favorable public support will be more readily achieved by concentrating such transition at the retail level rather than the industrial level; and

"Whereas, The proponents of a coordinate switch contend a voluntary transition would not be enough to trigger a real national transition; now, therefore, be it

"Resolved by the Assembly and Senate of of the State of Nevada, jointly, That the Congress of the United States is hereby memorialized to enact legislation adopting the metric system as the exclusive standard of measurement, effective no later than January 1, 1980, and requiring the use of the metric system in the retail trade as soon as possible; and be it further

"Resolved, That copies of this resolution be transmitted forthwith by the legislative counsel to the Speaker of the House of Representatives, the President of the Senate, the members of the Nevada congressional delegation and the Secretary of Commerce."

A concurrent resolution of the Legislative Assembly of the State of North Dakota; to the Committee on Commerce:

"SENATE CONCURRENT RESOLUTION NO. 4047 OF THE STATE OF NORTH DAKOTA

"A concurrent resolution urging reasonable freight rates for the transportation of North Dakota's agricultural products

"Whereas, North Dakota has an annual

transportation bill of over two hundred million dollars; and

"Whereas, North Dakota is primarily an agricultural State with the major burden of transportation expenses falling on the agricultural producers; and

"Whereas, North Dakota needs and must have a viable, efficient, reasonably priced transportation system to serve the people of the State of North Dakota; and

"Whereas, railroad freight rates on wheat, barley, and farm products are exorbitant, unreasonably high, and prejudicial not only to North Dakota's best interest, but to the very interest of the common carriers who impose them; and

"Whereas, North Dakota citizens pay out many millions of dollars in excess freight charges each year which could best be kept in the State to help strengthen existing industries and enhance the lives of its citizens;

"Now, therefore, be it resolved by the Senate of the State of North Dakota, the House of Representatives concurring therein:

"That the North Dakota Public Service Commission make every effort possible to obtain reasonable and fair cost pricing of freight rates as they affect North Dakota agriculture and agricultural products; and

"Be it further resolved, that copies of this resolution be forwarded by the Secretary of State to the Subcommittee on Surface Transportation of the Committee on Commerce; the United States Senate; the Interstate Commerce Commission; the North Dakota Congressional Delegation; the Governor of the State of North Dakota; and the North Dakota Public Service Commission; and

"Be it further resolved, that the Legislative Assembly urgently requests the Interstate Commerce Commission to take such remedial action as is needed to correct the railroad grain freight rate structure which affects North Dakota."

Two concurrent resolutions of the Legislative Assembly of the State of North Dakota; to the committee on the Judiciary:

"SENATE CONCURRENT RESOLUTION NO. 4015
OF THE STATE OF NORTH DAKOTA

"(A concurrent resolution urging Congress to enact legislation to provide for revenue sharing)

"Whereas, a resolution of our Nation's myriad and diverse problems is contingent upon a viable partnership between the Federal Government and strengthened State Governments; and

"Whereas, the Federal Government, by its extensive reliance on the graduated income tax as a revenue source, has virtually preempted the use of this source from State and local Governments, thereby creating a disabling fiscal imbalance between the Federal Government and the State and local Governments; and

"Whereas, increasing demands upon State and local Governments for essential public services have compelled the States to rely heavily on highly regressive and inelastic consumer taxes and property taxes; and

"Whereas, federal revenues based predominantly on income taxes increase significantly faster than economic growth, while state and local revenues based heavily on sales and property taxes do not keep pace with economic growth; and

"Whereas, the fiscal crisis at state and local levels has become the overriding problem of intergovernmental relations and of continuing a viable federal system; and

"Whereas, the evident solution to this problem is a meaningful sharing of federal income tax resources; and

"Whereas, the United States Congress, despite the immediate and imperative need therefor, has failed to enact acceptable revenue sharing legislation.

"Now, therefore, be it resolved by the Senate of the State of North Dakota, the House of Representatives concurring therein:

"That the Forty-second Legislative Assembly does hereby urge the Congress of the United States to act with all deliberate speed to enact legislation whereby States will be permitted to share in the revenue collected by the Federal Government; and

"Be it further resolved, that copies of this resolution be forwarded by the Secretary of State to the President of the Senate and Speaker of the House of Representatives of the United States, and to the North Dakota Congressional Delegation."

"SENATE CONCURRENT RESOLUTION NO. 4013
OF THE STATE OF NORTH DAKOTA

"(A concurrent resolution requesting Congress to call a convention to amend the Constitution of the United States to provide for revenue sharing)

"Whereas, a resolution of our Nation's myriad and diverse problems is contingent upon a viable partnership between the Federal Government and strengthened State Governments; and

"Whereas, the Federal Government, by its extensive reliance on the graduated income tax as a revenue source, has virtually preempted the use of this source from State and local Governments, thereby creating a disabling fiscal imbalance between the Federal Government and the State and local Governments; and

"Whereas, increasing demands upon State and local Governments for essential public services have compelled the States to rely heavily on highly regressive and inelastic consumer taxes and property taxes; and

"Whereas, federal revenues based predominantly on income taxes increase significantly faster than economic growth, while state and local revenues based heavily on sales and property taxes do not keep pace with economic growth; and

"Whereas, the fiscal crisis at state and local levels has become the overriding problem of intergovernmental relations and of continuing a viable federal system; and

"Whereas, the evident solution to this problem is a meaningful sharing of federal income tax resources; and

"Whereas, the United States Congress, despite the immediate and imperative need therefor, has failed to enact acceptable revenue sharing legislation; and

"Whereas, in the event of such congressional inaction, article V of the Constitution of the United States grants to the States the right to initiate constitutional change by applications from the legislatures of two-thirds of the several States to the Congress, calling for a constitutional convention; and

"Whereas, the Congress of the United States is required by the Constitution to call such a convention upon the receipt of application from the legislatures of two-thirds of the several States:

"Now, therefore, be it resolved by the Senate of the State of North Dakota, the House of Representatives concurring therein:

"That the Forty-second Legislative Assembly does hereby make application pursuant to article V of the United States Constitution to the Congress of the United States to call a convention for the sole and exclusive purpose of proposing to the several States a constitutional amendment which shall provide that a portion of the taxes on income levied by Congress pursuant to the sixteenth amendment of the United States Constitution shall be made available each year to State Governments and political subdivisions thereof, by means of direct allocation, tax credits, or both, without limiting directly or indirectly the use of such moneys for any purpose not inconsistent with any other provision of the Constitution of the United States; and

"Be it further resolved, that this application shall constitute a continuing application for such convention pursuant to article V until the legislatures of two-thirds of the States shall have made like applications and such convention shall have been called by the Congress of the United States, unless previously rescinded by the North Dakota Legislative Assembly; and

"Be it further resolved, that copies of this resolution be forwarded by the Secretary of State to the President of the Senate and the Speaker of the House of Representatives of the United States, to the North Dakota Congressional Delegation, and to the legislatures of each of the several States."

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HANSEN, from the Committee on Interior and Insular Affairs, without amendment:

S. 166. A bill to designate the Stratified Primitive Area as a part of the Washakie Wilderness, heretofore known as the South Absaroka Wilderness, Shoshone National Forest, in the State of Wyoming, and for other purposes (Rept. No. 92–80).

By Mr. LONG, from the Committee on Commerce, with amendments:

S. 699. A bill to require a radiotelephone on certain vessels while navigating upon specified waters of the United States (Rept. No. 92–78).

By Mr. ANDERSON, from the Committee on Interior and Insular Affairs, with an amendment:

S. 991. A bill to authorize the Secretary of the Interior to continue a program of research, development, and demonstration of processes for the conversion of saline and other chemically contaminated water for beneficial use and for the treatment of saline and other chemically contaminated waste water to maintain or improve the quality of natural waters, and for other purposes (Rept. No. 92–79).

BILLS AND JOINT RESOLUTIONS INTRODUCED

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. CHURCH:

S. 1645. A bill to amend title II of the Social Security Act to increase benefits thereunder, to provide a minimum monthly benefit of $120 for workers who have 20 or more years of coverage and to provide for future cost-of-living increases in benefits payable under such title; and to amend such Act so as to add thereto a new title XX under which aged individuals will be assured a minimum annual income sufficient to remove them from poverty. Referred to the Committee on Finance.

By Mr. MOSS:

S. 1646. A bill to facilitate the entry into the United States of aliens who are underground hard-rock miners, and for other purposes. Referred to the Committee on the Judiciary.

By Mr. TOWER:

S. 1647. A bill to restore the income tax credit for investment in certain depreciable property. Referred to the Committee on Finance.

By Mr. TAFT:

S. 1648. A bill to amend the Internal Revenue Code of 1954 to allow a credit against income tax to employers for the expenses of providing job training programs. Referred to the Committee on Finance.

By Mr. BIBLE (for himself, Mr. CANNON, Mr. HUMPHREY, Mr. MCGOVERN, Mr. NELSON, and Mr. SPARKMAN):

S. 1649. A bill to amend the Small Business

Act to authorize assistance to small business concerns in financing structural, operational, or other changes to meet standards required pursuant to certain Federal or State laws. Referred to the Committee on Banking, Housing and Urban Affairs.

By Mr. CHILES:

S. 1650. A bill for the relief of William A. Beach. Referred to the Committee on the Judiciary.

By Mr. FONG:

S. 1651. A bill for the relief of Hidemoto Kawai. Referred to the Committee on the Judiciary.

By Mr. EASTLAND:

S. 1652. A bill for the relief of George Edward Glover. Referred to the Committee on the Judiciary.

By Mr. BENNETT:

S. 1653. A bill to amend the Tariff Schedules of the United States to eliminate the duty on trinitrotoluene; and

S. 1654. A bill to increase the security and protection of imported merchandise and merchandise for export at ports of entry in the United States from loss or damage as a result of criminal and corrupt practices, and for other purposes. Referred to the Committee on Finance.

By Mr. SPARKMAN:

S. 1655. A bill to amend the Federal Aviation Act of 1958 to authorize free or reduced rate transportation for widows, widowers, and minor children of employees who have died while employed by an air carrier or foreign air carrier after 25 or more years of such employment. Referred to the Committee on Commerce.

By Mr. FULBRIGHT (by request):

S. 1656. A bill to authorize a new approach for furthering the economic and social development of friendly developing countries and areas, and for provision of humanitarian relief, and for other purposes; and

S. 1657. A bill to consolidate and revise the Foreign Assistance Act of 1961, as amended, and other legislation relating to international security assistance, and for other purposes. Referred to the Committee on Foreign Relations.

By Mr. INOUYE:

S. 1658. A bill for the relief of Sylvia Afante Foster. Referred to the Committee on the Judiciary.

By Mr. FANNIN:

S. 1659. A bill to amend the National Labor Relations Act to strengthen and reform certain provisions thereof. Referred to the Committee on Labor and Public Welfare.

By Mr. WILLIAMS:

S. 1660. A bill to amend the Public Health Service Act by adding a new title XI thereto which will establish a program to protect the general health by providing assistance in the establishment and operation of regional and community health protection centers for the detection of disease, by providing assistance for the training of personnel to operate such centers, and by providing assistance in the conduct of certain research related to such centers and their operation. Referred to the Committee on Labor and Public Welfare.

By Mr. FONG:

S. 1661. A bill for the relief of Leovegildo C. Petalver. Referred to the Committee on the Judiciary.

By Mr. INOUYE:

S. 1662. A bill to provide for the conveyance of the island of Kahoolawe to the State of Hawaii, and for other purposes. Referred to the Committee on Armed Services.

By Mr. MATHIAS:

S. 1663. A bill to amend chapter 17 of title 38, United States Code, so as to authorize continuation of certain medical care benefits provided for mentally retarded and physically handicapped dependents of members of the Armed Forces who die while serving on active duty. Referred to the Committee on Veterans' Affairs.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. CHURCH:

S. 1645. A bill to amend title II of the Social Security Act to increase benefits thereunder, to provide a minimum monthly benefit of $120 for workers who have 20 or more years of coverage and to provide for future cost-of-living increases in benefits payable under such title; and to amend such act so as to add thereto a new title XX under which aged individuals will be assured a minimum annual income sufficient to remove them from poverty. Referred to the Committee on Finance.

SOCIAL SECURITY REFORM ACT

Mr. CHURCH. Mr. President, I introduce for appropriate reference, a bill to make comprehensive reforms wthin the social security system and to authorize a new income supplement program to replace old-age assistance.

Almost 5 million older Americans now fall below the poverty line, about 1 out of every 4 persons 65 and older. Of this total, approximately 2.1 million presently receive old-age assistance. Nearly 3 million eligible individuals, however, do not apply for such help primarily because of the demeaning features of the existing system. In most cases these assistance payments are inadequate, averaging about $76 per month, although they vary markedly from State to State.

Quite clearly, a new approach is essential if we are to assure a life of dignity and self-respect for the elderly people of the United States. The bill that I introduce today would help to provide the framework for these urgent improvements by utilizing the Social Security Administration as the vehicle for accomplishing these vitally needed reforms.

First, my bill would help to strengthen the existing social security system for ployment by first, raising the minimum monthly benefit to $120, and second, providing higher percentage increases for retired individuals who now receive low benefits. For example, persons with average monthly lifetime earnings between $150 and $200 would be entitled to social security benefit increases averaging about 21 percent under my proposal. And individuals with creditable wages ranging from $200 to $300 would receive, on the average, approximately an 18-percent benefit raise. All social security recipients would be entitled to benefit increases, but these raises would be weighted to provide larger amounts for those who need it the most—individuals with low lifetime earnings. This is in recognition of the fact that persons receiving low social security benefits are less likely to have other resources than higher income beneficiaries. In the absence of adequate social security benefits, many will be forced to turn to public assistance to supplement their retirement income.

However, my bill can enable large numbers of elderly persons to move out of poverty without the necessity of resorting to welfare. Additionally, my proposal would authorize automatic adjustments in benefits to protect the elderly from long delays in enacting social security raises during a period of rampant inflation.

For aged individuals with income below the poverty index, this measure would establish a new income supplement program, to be administered by the Social Security Administration and financed from general revenues. Today approximately 1.2 million persons receive both old age assistance and social security benefits, nearly 57 percent of all OAA recipients. For these beneficiaries, this new administrative function for social security could provide an efficient, single-step service without the demeaning connotations associated with welfare. By affirming that their income is below the poverty threshold, these elderly people would be eligible for a supplementary payment, which would be included with their monthly social security check, and would be sufficient to help them out of poverty.

One advantage of this administrative framework is that there are more than 700 social security offices located throughout the country. For low-income elderly persons, these readily accessible offices do not carry the same stigma which is attached to welfare agencies. These security offices are also well staffed, and are accustomed to dealing with the special problem of the aged. Moreover, social security is practically a universal income insurance system regardless of an individual's economic status. More than 90 percent of all persons 65 and older receive or are eligible to receive social security benefits. From an administrative standpoint, this structure could also result in significant savings because the program would be handled by one well established and accepted system, in contrast with the highly proliferated method of doling out old age assistance, through so many differing welfare agencies.

In this richest of nations, it is unnecessary and unpardonable that 5 million older Americans should be forced to endure poverty. We have the capacity to end this dreadful condition. And we must do it.

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

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

S. 1645

A bill to amend title II of the Social Security Act to increase benefits thereunder, to provide a minimum monthly benefit of $120 for workers who have 20 or more years of coverage and to provide for future cost-of-living increases in benefits payable under such title; and to amend such Act so as to add thereto a new title XX under which aged individuals will be assured a minimum annual income sufficient to remove them from poverty

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

TITLE I—OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE PROGRAM

SHORT TITLE

SEC. 101. This title may be cited as the "Social Security Reform Act".

INCREASE IN OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE BENEFITS

SEC. 102. (a) Section 215(a) of the Social Security Act is amended by striking out the table and inserting in lieu thereof the following:

"TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS

"I (Primary insurance benefit under 1939 act, as modified)		II (Primary insurance amount under 1971 act)	III (Average monthly wage)		IV (Primary insurance amount)	V (Maximum family benefits)
If an individual's primary insurance benefit (as determined under subsec. (d)) is—		Or his primary insurance amount (as determined under subsec. (c)) is—	Or his average monthly wage (as determined under subsec. (b)) is—		The amount referred to in the preceding paragraphs of this subsection shall be—	And the maximum amount of benefits payable (as provided in sec. 203(a)) on the basis of his wages and self-employment income shall be—
At least—	But not more than—		At least—	But not more than—		
----------	$16.20	$70.40	----------	$76	$72.20	$108.30
$16.21	16.84	71.50	$77	78	74.10	111.30
16.85	17.60	73.10	79	80	76.00	114.10
17.61	18.40	74.50	81	81	77.00	115.60
18.41	19.24	75.80	82	83	78.90	118.40
19.25	20.00	77.40	84	85	80.80	121.20
20.01	20.64	78.80	86	87	82.70	124.10
20.65	21.28	80.10	88	89	84.60	127.00
21.29	21.88	81.70	90	90	85.50	128.30
21.89	22.28	83.10	91	92	87.40	131.20
22.29	22.68	84.50	93	94	89.30	134.00
22.69	23.08	85.80	95	96	91.20	136.80
23.09	23.44	87.40	97	97	92.20	138.30
23.45	23.76	88.90	98	99	94.10	141.20
23.77	24.20	90.60	100	101	96.00	144.00
24.21	24.60	91.90	102	102	96.90	145.40
24.61	25.00	93.40	103	104	98.80	148.20
25.01	25.48	95.10	105	106	100.70	151.20
25.49	25.92	96.60	107	107	101.70	152.60
25.93	26.40	98.20	108	109	103.60	155.40
26.41	26.94	99.70	110	113	106.60	160.00
26.95	27.46	101.10	114	118	110.10	165.20
27.47	28.00	102.70	119	122	112.90	169.40
28.01	28.68	104.20	123	127	116.40	174.60
28.69	29.25	105.90	128	132	119.90	180.00
29.26	29.68	107.30	133	136	122.70	184.10
29.69	30.36	108.70	137	141	126.20	189.40
30.37	30.92	110.40	142	146	129.70	194.60
30.93	31.36	111.90	147	150	132.50	198.90
31.37	32.00	113.30	151	155	135.00	202.60
32.01	32.60	115.00	156	160	137.50	206.30
32.61	33.20	116.40	161	164	139.50	209.30
33.21	33.88	118.00	165	169	142.00	213.00
33.89	34.50	119.50	170	174	144.50	216.90
34.51	35.00	121.00	175	178	146.50	219.80
35.01	35.80	122.60	179	183	149.00	223.50
35.81	36.40	124.00	184	188	151.50	227.30
36.41	37.08	125.70	189	193	154.00	231.10
37.09	37.60	127.20	194	197	156.00	234.00
37.61	38.20	128.60	198	202	158.10	237.20
38.21	39.12	130.30	203	207	159.60	239.50
39.13	39.68	131.60	208	211	160.80	241.20
39.69	40.33	133.10	212	216	162.30	243.60
40.34	41.12	134.80	217	221	163.80	245.70
41.13	41.76	136.30	222	225	165.00	247.60
41.77	42.44	137.90	226	230	166.50	249.90
42.45	43.20	139.40	231	235	168.00	252.10
43.21	43.76	141.10	236	239	169.20	253.90
43.77	44.44	142.50	240	244	170.70	257.40
44.45	44.88	143.90	245	249	172.20	262.40
44.89	45.60	145.60	250	253	173.40	265.30
		147.10	254	258	174.90	270.10
		148.40	259	263	176.40	275.20
		150.10	264	267	177.60	278.10
		151.60	268	272	179.10	282.90
		153.20	273	277	180.60	288.50
		154.70	278	281	181.80	290.70
		156.20	282	286	183.30	295.40
		157.90	287	291	184.80	299.80
		159.20	292	295	186.00	303.30
		160.90	296	300	187.50	307.70
		162.40	301	305	189.00	312.40
		163.80	306	309	190.20	315.90
		165.50	310	314	191.70	320.20
		166.90	315	319	193.20	325.10
		168.30	320	323	194.40	328.40
		170.00	324	328	195.90	332.70
		171.50	329	333	197.40	337.40
		173.20	334	337	198.60	340.20
		174.50	338	342	200.10	345.20
		176.00	343	347	201.60	349.90
		177.70	348	351	202.80	352.60
		179.10	352	356	204.30	357.40
		180.80	357	361	205.80	361.70
		182.20	362	365	207.00	365.00
		183.60	366	370	208.50	369.80
		185.30	371	375	210.00	374.00
		186.80	376	379	211.20	377.20
		188.50	380	384	212.70	381.40
		189.80	385	389	214.20	386.50
		191.30	390	393	215.40	389.50
		193.00	394	398	216.90	393.70
		194.40	399	403	218.40	398.60
		196.10	404	407	219.60	401.20
		197.40	408	412	221.10	406.20
		198.80	413	417	222.60	411.00
		200.20	418	421	223.80	414.20
		201.80	422	426	225.30	418.60
		203.10	427	431	226.80	423.60
		204.50	432	436	228.30	428.40
		206.10	437	440	229.50	429.30
		207.40	441	445	231.00	431.90
		208.80	446	450	232.50	434.20
		210.40	451	454	233.70	435.00
		211.70	455	459	235.20	437.60
		213.10	460	464	236.70	439.90
		214.50	465	468	237.90	441.20
		216.10	469	473	239.40	443.20
		217.40	474	478	240.90	445.70
		218.80	479	482	242.10	447.10
		220.40	483	487	243.60	449.00
		221.70	488	492	245.10	451.50
		223.10	493	496	246.30	452.80
		224.70	497	501	247.80	454.70
		226.00	502	506	249.30	457.30
		227.40	507	510	250.50	458.60
		228.80	511	515	252.00	461.00
		230.30	516	520	253.50	463.10
		231.70	521	524	254.70	464.40
		233.10	525	529	256.20	466.70
		234.70	530	534	257.70	468.70
		236.00	535	538	258.90	470.20
		237.40	539	543	260.40	472.60
		239.00	544	548	261.90	474.50
		240.30	549	553	263.40	477.10
		241.70	554	556	264.30	477.40
		242.90	557	560	265.50	479.10
		244.20	561	563	266.40	479.60
		245.50	564	567	267.60	481.20
		246.80	568	570	268.50	481.70
		248.00	571	574	269.70	483.30
		249.30	575	577	270.60	483.90
		250.50	578	581	271.80	485.60
		251.80	582	584	272.70	486.10
		253.00	585	588	273.90	487.90
		254.40	589	591	274.80	488.20
		255.60	592	595	276.00	490.00
		256.90	596	598	276.90	490.50
		258.10	599	602	278.10	492.20
		295.40	603	605	279.00	492.80
		260.60	606	609	280.20	494.40
		262.00	610	612	281.10	494.90
		263.20	613	616	282.30	496.60
		264.50	617	620	283.50	498.10
		265.70	621	623	284.40	498.90
		267.00	624	627	285.60	500.50
		268.20	628	630	286.50	501.50
		269.50	631	634	287.70	503.60
		270.80	635	637	288.60	505.10
		272.10	638	641	289.80	507.20
		273.30	642	644	290.70	508.80
		274.60	645	648	291.90	510.90
		275.80	649	652	239.10	513.00
		276.60	653	656	294.30	515.10
		277.40	657	660	295.50	517.20
		278.40	661	665	297.00	519.80
		279.40	666	670	298.50	522.50
		280.40	671	675	300.00	525.00
		281.40	676	680	301.50	527.70
		282.40	681	685	303.00	530.30
		283.40	686	690	304.50	533.00
		284.40	691	695	306.00	535.50
		285.40	696	700	307.50	538.20
		286.40	701	705	309.00	540.80
		287.40	706	710	310.50	543.50
		288.40	711	715	312.00	546.00
		289.40	716	720	313.50	548.70
		290.40	721	725	315.00	551.30
		291.40	726	730	316.50	554.00
		292.40	731	735	318.00	556.60
		293.40	736	740	319.50	559.20
		294.40	741	745	321.00	561.80
		295.40	746	750	322.50	564.50

(b) Notwithstanding any other provision of law, when two or more persons are entitled to monthly insurance benefits under title II of the Social Security Act for any month after 1969 on the basis of the wages and self-employment income of an insured individual (and at least one of such persons was so entitled for a month before January 1972 on the basis of an application filed before 1972), the total of the benefits to which such persons are entitled under such title for such month (after the application of sections 203(a) and 202(q) of such Act) shall be not less than the total of the monthly insurance benefits to which such persons would be entitled under such title for such month (after the application of such sections 203(a) and 202(q) without regard to the amendment made by subsection (a) of this section.

(c) Section 215(b)(4) of such Act is amended by striking out "December 1970" each time it appears and inserting in lieu thereof "December 1971".

(d) Section 215(c) of such Act is amended to read as follows:

"PRIMARY INSURANCE AMOUNT UNDER 1969 ACT

"(c)(1) For the purposes of column II of the table appearing in subsection (a) of this section, an individual's primary insurance amount shall be computed on the basis of the law in effect prior to the enactment of the Social Security Reform Act.

"(2) The provisions of this subsection shall be applicable only in the case of an individual who became entitled to benefits under section 202(a) or section 223 before January 1972, or who died before such month."

(e) The amendments made by this section shall apply with respect to monthly benefits under title II of the Social Security Act for months after December 1971 and with respect to lump-sum death payments under such title in the case of deaths occurring in and after the month in which this Act is enacted.

(f) If an individual was entitled to a disability insurance benefit under section 223 of the Social Security Act for December 1971 on the basis of an application filed in or after the month in which this Act is enacted, and became entitled to old-age insurance benefits under section 202(a) of such Act for January 1972, then, for purposes of section 215(a)(4) of the Social Security Act (if applicable), the amount in column IV of the table appearing in such section 215(c) for such individual shall be the amount in such column on the line on which in column II appears his primary insurance amount (as determined under section 215(c) of such Act) instead of the amount in column IV equal to the primary insurance amount on which his disability insurance benefit is based.

SPECIAL MINIMUM PRIMARY INSURANCE AMOUNT FOR WORKERS WITH 20 OR MORE YEARS OF COVERAGE

SEC. 103. (a)(1) The first sentence of section 215(a) of the Social Security Act is amended—

(A) by striking out "or" at the end of paragraph (3);

(B) by striking out the period at the end of paragraph (4), and inserting in lieu thereof ", or (if greater) the amount equal to his primary insurance amount upon which such disability insurance benefit is based if such primary insurance amount is determined under paragraph (5); or"; and

(C) by adding after paragraph (4) the following new paragraph:

"(5) An amount equal to $120, if he has 20 or more years of coverage.".

(2) Section 215(a) of such Act is further amended by adding immediately after the first sentence thereof the following new sentence: "For purposes of paragraph (5), an individual's 'years of coverage' is the number equal to the sum of (A) the number (not exceeding 14 and disregarding any fraction) determined by dividing the total of the wages credited to him for years after 1936 and before 1951 by $900, plus (B) the number equal to the number of years after 1950 each of which is a computation base year (within the meaning of subsection (b)(2)(C)) and in each of which he is credited with wages and self-employment income of not less than the smaller of $1,200 or 25 per centum of the maximum amount which, pursuant to subsection (e), may be counted for each such year.".

(b) Section 203(a) of such Act is amended by adding at the end thereof the following new sentence: "For purposes of this subsection, if the primary insurance amount of an individual does not appear in column IV of the table in section 215(a), the reference to the amount appearing in column V of such table shall be treated as referring to the amount on the line on which the next higher primary insurance amount appears.".

(c) Section 215(f)(2) of such Act is amended by striking out "(1) and (3)" and inserting in lieu thereof "(1), (3), and (5)".

(d) The amendments made by subsections (a), (b), and (c) shall apply with respect to monthly insurance benefits under title II of the Social Security Act for months after December 31, 1971, and with respect to lump-sum death payments under such title in the case of deaths occurring after such month.

COST-OF-LIVING INCREASES IN BENEFITS

SEC. 104. Title II of the Social Security Act is further amended by adding at the end thereof the following new section:

"COST-OF LIVING INCREASES IN BENEFITS

"SEC. 230. (a) As soon as possible after the beginning of each calendar quarter (commencing with the calendar quarter which begins on April 1, 1972), the Secretary shall determine the extent by which the price index in the preceding calendar quarter was higher than the price index in the applicable base period (as those terms are defined in subsection (e)). If he determines that the price index had risen by a percentage (of its level in the base period) equal to 3 per centum or more, the amount of each benefit otherwise payable under this title shall be increased by the same percentage (adjusted to the nearest one-tenth of 1 per centum), effective with respect to monthly insurance benefits under section 202 and section 223 and monthly benefits under section 228 for months after the quarter in which the determination is made and with respect to lump-sum death payments under section 202(i) in the case of deaths occurring after such quarter.

"(b) In the case of any individual who first becomes entitled to a monthly insurance benefit under section 202 or section 223 or a monthly benefit under section 228 (or, with respect to the lump-sum death payment under section 202 (i), who dies) in or after the month in which an increase becomes effective under subsection (a), the amount of the benefit payable to or with respect to him on the basis of such entitlement (or death) shall be determined by applying such increase (or, if more than one increase has become effective under subsection (a), by applying all such increases successively) to the amount of the benefit which would be payable under the provisions of this title without regard to this section.

"(c) Any increase under subsection (a) shall apply with respect to all benefits payable under this title during the period in which such increase is effective regardless of the provisions under which such benefits are payable or the manner in which the amounts payable are determined, but shall be applied with respect to the benefit payable to or with respect to any particular individual only after all of the other provisions of this title which relate to eligibility for and the amount of such benefit, and all prior increases made in such benefit under this section, have been applied; except that (1) the provisions of section 203 (b) through (l), section 222(b), and section 228(c) shall not be applied until after such increase is applied, and (2) in determinining the amount of any individual's monthly benefit for purposes of applying section 203(a), any amounts payable by reason of this section shall not be regarded as part of such benefit.

"(d) If the amount of the increase in any benefit under subsection (a) is not a multiple of $0.10, it shall be raised to the next higher multiple of $0.10 in the case of a multiple of $0.05 which is not a multiple of $0.10 or adjusted to the nearest multiple of $0.10 in any other case.

"(e) For purposes of this section—

"(1) the term 'price index' means the Consumer Price Index (all items, United States city average) published monthly by the Bureau of Labor Statistics; and the average level of the price index for the three months in any calendar quarter shall be deemed to be the level of the price index in such quarter; and

"(2) the term 'base period' means—

"(A) the calendar quarter commencing October 1, 1971, with respect to the first increase under subsection (a), and

"(B) the calendar quarter immediately preceding the quarter in which the determination constituting the basis of the most recent increase under subsection (a) was made, with respect to any increase under subsection (a) after the first such increase."

TITLE II—INCOME SUPPLEMENT BENEFITS FOR THE AGED

SHORT TITLE

SEC. 201. This title may be cited as the "Older Americans Income Supplement Act".

INCOME SUPPLEMENT BENEFITS FOR THE AGED

SEC. 202. (a) The Social Security Act is amended by adding after title XIX thereof a new title XX as follows:

"TITLE XX—INCOME SUPPLEMENT BENEFITS FOR THE AGED

"ELIGIBILITY FOR BENEFITS

"SEC. 2001. Every individual who—

"(1) has attained age 65,

"(2) is a resident of the United States (as defined in section 2011),

"(3) has an annual income (as determined pursuant to section 2004) of less than the applicable threshold for poverty level amount (as determined under section),

"(4) has filed application for benefits under this title, shall (subject to the succeeding provisions of this title) be entitled to income supplement benefits under this title.

"PAYMENT OF BENEFITS

"SEC. 2002. (a) Benefits under this title shall be paid on a monthly basis, except that, if the benefit payable to an individual for any month is less than $5, such benefit may be paid on such other basis (but not less often than semiannually) as the Secretary shall by regulations provide.

"(b) Benefits under this title shall be payable to any individual only for months (i) after the month in which his entitlement thereto is established pursuant to an application therefor filed under section 2001, and (ii) prior to the month in which such individual dies.

"(c) No married individual who is living with his spouse for any month shall be en-

titled to a payment under this title for such month if the spouse of such individual receives such a payment for such month.

"AMOUNT OF BENEFITS

"SEC. 2003. The amount of the monthly benefit of any individual under this title shall be equal to one-twelfth of the amount by which the applicable threshold for poverty amount exceeds the amount of such individual's annual income (as determined under section 2004) for such year.

"DETERMINATION OF ANNUAL INCOME

"SEC. 2004. (a) For the purposes of this title, the term 'annual income' means, in the case of an individual, the total amount of income (other than income derived by reason of benefit payments under this title) from all sources received in the calendar year with respect to which a determination of annual income is made; except that, in determining the annual income of any individual who, during the calendar year, engaged in any trade or business, there shall be deducted any expenses incurred in carrying on such trade or business, and except that, income derived from the sale or exchange of property shall be taken into account only to the extent of the gain derived therefrom.

"(b) In determining the amount of annual income, for purposes of this title, of any individual who is married and living with his spouse, the annual income of such individual shall be regarded as the sum of the annual income of such individual and of the spouse of such individual.

"REPORT ON INCOME TO SECRETARY

"SEC. 2005. (a) Any individual applying for benefits under this title shall submit with his application for such benefits and thereafter reports to the Secretary of his income and of any other matter which is relevant to his entitlement to receive, or the amount of, any benefit payable under this title. Such reports shall be filed at such time, in such form, and shall contain such information as the Secretary shall by regulations prescribe.

"(b) Benefits otherwise payable to an individual for any month shall be suspended until such time as any report required pursuant to subsection (a) to be filed prior to such month shall have been received and evaluated by the Secretary.

"SUSPENSION OF BENEFITS FOR MONTHS WHEN INDIVIDUAL IS ABSENT FROM THE UNITED STATES

"SEC. 2006. Any benefit otherwise payable to an individual under this title for any month shall not be paid if such individual is physically absent from the United States (as defined in section 2011) during all of such month, or if such individual is not, during all of such month, a resident of the United States (as so defined).

"OVERPAYMENTS AND UNDERPAYMENTS

"SEC. 2007. Whenever the Secretary finds that more or less than the correct amount of payment has been made to any individual under this title, proper adjustment or recovery shall be made in accordance with regulations of the Secretary patterned so as to conform, to the maximum extent feasible, to the provisions of section 204 (relating to overpayments and underpayments of benefits under title II).

"ESTABLISHMENT AND VERIFICATION OF ELIGIBILITY FOR BENEFITS

"SEC. 2008. Eligibility for benefits under this title shall be established by the filing, by the applicant, of a simplified statement prescribed by the Secretary. The Secretary shall establish adequate and effective methods of verification of eligibility of applicants and recipients of benefits under this title through the use of sampling and other scientific techniques.

"DETERMINATION OF THRESHOLD FOR POVERTY LEVEL AMOUNTS

"SEC. 2009. (a) The threshold for poverty level amount of an individual who is married and living with his spouse shall be an amount equal to the amount established as the Weighted Average Threshold for Poverty for a married couple, as published annually by the Bureau of the Census; and the threshold for poverty level amount for any other individual shall be an amount equal to the amount established as the Weighted Average Threshold for Poverty for a single individual, as so published.

"(b) The amounts referred to in subsection (a) shall for any calendar year be based on the amounts contained in the latest Weighted Average Threshold for Poverty, as published annually by the Bureau of the Census, as of the first day of such year, plus a per centum of each such amount equal to the per centum of increase, if any, of the cost-of-living which has occurred between the date of publication of such Weighted Average Threshold of Poverty and the period with respect to which the date used in such in such publication was assembled. The Secretary shall determine whether and the extent to which any such cost-of-living has occurred on the basis of the most current data available from the Department of Commerce.

"ADMINISTRATION

"SEC. 2010. The Secretary shall, for purposes of the administration of this title, utilize the organization and personnel engaged in the administration of title II.

"DEFINITION OF UNITED STATES

"SEC. 2011. For purposes of this title, the term 'United States' means the fifty States and the District of Columbia.

"AUTHORIZATION FOR APPROPRIATONS

"SEC. 2012. There are hereby authorized to be appropriated for each fiscal year such sums as may be necessary to carry out the provisions of this title.".

(b) Benefits payable under title XX of the Social Security Act (as added by subsection (a) of this section) shall first become payable with respect to months which begin after December 1971.

SEC. 203. (a) Notwithstanding any other provision of law, no payment may be made to any State under title I or XVI of the Social Security Act with respect to aid or assistance in the form of money payments furnished, for any period after December 31, 1971, to any individual who has attained age 65 and is a resident of the United States (as defined in section 2011 of such Act). The preceding sentence shall not apply with respect to payments to any State under title XVI of the Social Security Act with respect to aid in the form of money payments furnished to any individual who is blind.

(b) Whenever, in title XIX of the Social Security Act, reference is made to individuals receiving aid or assistance under State plans approved under title I or XVI of the Social Security Act, such reference shall be deemed to include individuals who are entitled to benefits under title XX of such Act.

By Mr. TOWER:

S. 1647. A bill to restore the income tax credit for investment in certain depreciable property. Referred to the Committee on Finance.

INVESTMENT TAX CREDIT

Mr. TOWER. Mr. President, I would like to introduce today a bill to restore the 7-percent investment tax credit which Congress repealed in 1969. While such a tax measure must originate in the House of Representatives, I believe, that the Congress must turn its attention to this important issue, and I believe that a Senate bill can serve as a focal point for discussion of the advantages of the reinstatement concept and various alternatives and modifications which are, have been, and will continue to be proposed. I note in this regard the introduction of S. 1262 by the Senator from Indiana (Mr. HARTKE) which would reinstate the investment tax credit and raise it from 7 to 10 precent. Without research and testimony by the administration, I feel that we do not have adequate information at this time to indicate the need for variation, either up or down, from the traditional 7-percent figure. For this reason, I wish to stay with the original credit until and unless administration findings indicate that a change is called for.

I favor the investment tax credit as perhaps the most direct incentive approach available to us to encourage business investment in new equipment; such investment is desperately needed to improve our productivity. Economically, we have not been growing as fast as we should have since the war because we have not given enough encouragement to plant and equipment replacement. Germany and Japan have moved forward very rapidly, largely because they have had to rebuild their industrial base after the war, and the productivity of their new plants and equipment has equaled and even exceeded our own, based as it is on substantial prewar and wartime plants and equipment.

The credit was originally enacted in 1962 upon recommendation of President Kennedy to stimulate the economy. It was suspended in 1966 upon recommendation of President Johnson, because it was felt that the demands upon credit in the economy were too heavy. It was reactivated in 1967 after credit demand eased, but was repealed again in 1969 to help lessen inflationary pressures. Although I have supported the Presidential recommendation in each case, I would prefer to rely on other tax and monetary actions to effect controls on excessive credit demand and inflationary pressures, rather than on this particular tax incentive concept. I think it is too directly determinative of our productivity for us to suspend it unless absolutely necessary, and I am reinforced in this view by the adverse developments in our trade posture over this decade.

We depend very much for our high standard of living on the capital-intensive, high-technology industries which have characterized our rapid economic growth in the post-war era. As other industrial countries develop advanced technologies, our trade advantages deteriorate because we are not putting enough of our resources into modernization to keep up our traditional technological superiority and productivity increases. Restoration of the investment tax credit would help put our country on

a course of modernization which will keep our economy productive and growing—thereby providing the wherewithal to solve our social and environmental concerns and to meet any defense needs that we may have in the future. I feel that enactment of this proposal is a necessary step for Congress to take this year.

Mr. President, I ask unanimous consent that the text of my bill be printed in the RECORD at the conclusion of my remarks.

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

S. 1647

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 "Investment Credit Act of 1971".

SEC. 2. (a) Subpart B of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1954 (relating to rules for computing credit for investment in certain depreciable property) is amended by adding at the end thereof the following new section:

"SEC. 50. RESTORATION OF CREDIT.

"Notwithstanding the provisions of section 49, for purposes of this subpart, the term 'section 38 property' includes property—

"(1) the physical construction, reconstruction, or erection of which is completed on or after the date of the enactment of the Investment Credit Act of 1971, or

"(2) which is acquired by the taxpayer on or after such date.

"In applying section 46(c)(1)(A) in the case of property described in paragraph (1) which, but for the provisions of this section, would not be section 38 property, there shall be taken into account only that portion of the basis which is properly attributable to construction, reconstruction, or erection on or after the date of the enactment of the Investment Credit Act of 1971."

(b) The table of sections for such subpart is amended by adding at the end thereof the following new item:

"Sec. 50. Restoration of credit."

(c) Section 46(b)(5) of the Internal Revenue Code of 1954 (relating to certain taxable years) is amended—

(1) by inserting after "The amount" in the matter preceding subparagraph (A) "attributable to property placed in service before the date of the enactment of the Investment Credit Act of 1971"; and

(2) by inserting after "taxable year" in subparagraph (A) "attributable to property placed in service before the date of the enactment of the Investment Credit Act of 1971".

(d) Section 47(a)(4) of such Code (relating to property destroyed by casualty, etc.) is amended by inserting before the period at the end thereof the following: ", and before the date of the enactment of the Investment Credit Act of 1971, unless on or after such date, section 38 property is placed in service by the taxpayer to replace the property described in subparagraph (A)".

(e) Section 47(a)(5) of such Code (relating to certain property replaced after April 18, 1969) is amended by striking out "property which" in subparagraph (B) and inserting in lieu thereof "property which is not section 38 property but which".

(f) Section 49(c) of such Code (relating to leased property) is amended by inserting ", and before the date of the enactment of the Investment Credit Act of 1971" after "April 18, 1969".

(g) Section 49(d) of such Code (relating to property placed in service after 1975) is repealed.

Sec. 3. The amendments made by this Act shall apply to taxable years ending on or after the date of the enactment of this Act.

By Mr. TAFT:

S. 1648. A bill to amend the Internal Revenue Code of 1954 to allow a credit against income tax to employers for the expense of providing job training programs. Referred to the Committee on Finance.

HUMAN INVESTMENT ACT OF 1971

Mr. TAFT. Mr. President, I am delighted that the Subcommittee on Employment, Manpower, and Poverty, of which I am a member, will undertake hearings on April 28 relative to the critical problems of unemployed youth. In March of this year the unemployment rate for young people 16- to 21-years-of-age was 15.4 percent; 1,600,000 young people were unemployed. For black youths the rate was 26 percent and among black teenagers the unemployment rate was 30.3 percent. In the poverty neighborhoods of our 100 largest cities the unemployment rate for black teenagers was a staggering 41.2 percent.

This critical situation deserves the special attention of each of us.

Rather than utilizing Job Corps training centers as the answer to this critical problem, I suggest that we consider undertaking a federally supported program of on-the-job training so that these young people may find their way quickly into the mainstream of permanent employment.

Job Corps training centers have created a new bureaucracy and with an average cost of $3,830 per trainee, and have been a costly and incomplete answer to this problem. In many cases, young people have been trained for jobs which do not exist. In my judgment, the only meaningful alternative to a vastly expanded welfare program would be the creation of on-the-job training opportunities.

For these young people who are out of work, jobs must be more than a hope and a promise; they must be a reality. American industry has the capacity and capability for training young men and women on the job. Such a program would not necessitate the creation of additional bureaucratic positions but would have the advantage of affording training opportunities by the foremen in the plant. This is the best and most cost-effective way in which we can solve this important problem.

It would be very easy indeed for us to set up additional Job Corps training centers and assume that this problem would be removed from view if these young men and women were shipped out for Federal training. The hard fact is that we must create permanent employment for them in the private sector. For this reason, I am today introducing for appropriate reference the Human Investment Act which would permit young people and others unemployed to be trained within the mainstream of the American economy.

This act would provide an incentive to American business to invest in the improvement of the Nation's human resources by hiring, training, and employing presently unemployed workers who lack needed job skills. It would also upgrade the job skills and provide new job opportunities for presently employed individuals.

The act would offer employers a tax credit of 10 percent of allowable training expenses with a maximum of $25,000 plus 10 percent of the taxpayers' liability in excess of that amount. Allowable employee training expenses would include first, wages and salaries of employees who are apprentices in an apprenticeship program registered with a State or Federal agency; second, wages and salaries of employees who are enrolled in an on-the-job training program; third, wages and salaries of employees who are participating in a cooperative education program involving alternate periods of academic study and employment in cooperation with a secondary school, college, university, business school, or vocational school; fourth, tuition and course fees paid by the employer for instruction of individuals by a college, university, business school, trade school or vocational school in job skills necessary for his employment; fifth, home study course fees; and sixth, other expenses of the employer for on-the-job training.

This act would not be a hand-out to private industry. It would instead be a realization of opportunity for millions of Americans who are now unemployed.

By Mr. BIBLE (for himself, Mr. CANNON, Mr. HUMPHREY, Mr. MCGOVERN, Mr. NELSON, and Mr. SPARKMAN):

S. 1649. A bill to amend the Small Business Act to authorize assistance to small business concerns in financing structural, operational, or other changes to meet standards required pursuant to certain Federal or State laws. Referred to the Committee on Banking, Housing and Urban Affairs.

RE-INTRODUCTION OF BILL

Mr. BIBLE. Mr. President, I introduce, for appropriate reference, a bill to assist small businesses into compliance with the ever-increasing series of new environmental and consumer laws. My proposal, originally offered in 1969 and enacted in part, would provide a unified approach to providing emergency loans to help small firms modify their plant and equipment under such statutes; as an alternative to attempting to amend the Small Business Act each time a new requirement is enacted by the Congress or a State legislature.

BACKGROUND

For the past half dozen years concern for the quality of life in the United States has been rising to a crest.

Beginning with the air and water quality legislation of the mid-1960's spearheaded by the Senator from Maine (Mr. MUSKIE), the Congress, I feel, has established an enviable record in attacking environmental pollution in its many and interrelated forms.

However, the basic underlying prob-

lems are that the growth of population and production—which bring more and more Americans a rising standard of living—may be out running our physical resources as well as the capacity of the air and water to purify themselves, and the ability of our human senses to tolerate the byproducts.

As I have said before, we need a balance between economic growth and the livability of the surroundings for our daily lives, if the future in the United States is to be at all pleasant for ourselves and our children and grandchildren.

A good summary of these considerations and their impact upon small business was continued in recent publications of the Chase Manhattan Bank and Greater Washington Investors Newsletter, as follows:

This is not to say that the task is easy or that it can be accomplished overnight. Technology must be developed or perfected. Government regulations must be informed, practical, consistent and predictable—features notably lacking in current practices. *Many companies may face significant financing problems in that heavy investments to control pollution will have to be made with little or no hope of increased earnings on such investment.* (italic added)

It is exactly these difficulties which are the subject of small business legislation introduced by myself and other Senators in recent years in order to resolve the dilemma.

In 1968, I introduced Senate Resolution 290, instructing the Small Business Administration to make a pilot survey of the costs and financing problems of 14,000 small businessmen facing compliance with one such new environmental and consumer law, the Wholesome Meat Act of 1967.

In April, 1969, I brought before the Senate S. 1750, a bill designed to provide general authority for emergency loan assistance, so small firms might fulfill their new legal obligations under the increasing multiplicity of Federal laws and regulations. The loans so authorized were to be fully repayable at an interest rate representing the cost of money to the Federal Government plus one-fourth of 1 percent. In this way, the small firms affected could go ahead and make their improvements with the assurance that they could fully repay the principal and interest back to the Government out of their future earnings.

Other Senators, including the Senator from Alabama (Mr. SPARKMAN) and the Senator from New Hampshire Mr. MCINTYRE), also proposed imaginative bills addressed to these problems.

LEGISLATIVE PROGRESS

It is gratifying to report that S. 1750 was incorporated in four pieces of legislation, three of which were enacted by the 91st Congress. I refer to the Coal Mine Health and Safety Act of 1969, the Occupational Health and Safety Act of 1970, and the Egg Products Inspection Act of 1970—which applied this provision to firms under the Wholesome Meat Act and Wholesome Poultry Products Act, as well as the Egg Products Inspection Act. I believe these were wise and far-reaching decisions on the part of the Congress. They chart a course whereby small business can be the full partners in progress rather than its imminent victims.[1]

Since December, we in the Congress have been working to have these statutes speedily implemented by the Executive Branch. We have pressed for both regulations and requests for funding so that a maximum number of small and independent firms can survive to further serve the public in future years.

THE REMAINING TASK

However, the legislation of the 91st Congress has not yet finished the job. I feel that there remain some gaps under the current law. These gaps affect the ability of the Government to do substantial justice to small businesses which sincerely desire to comply fully with new environmental requirements, but cannot obtain financing for these facilities from conventional lenders. Since these controls add to the costs of doing business and are not productive of any profits in the commercial sense to offset these costs, environmental requirements pose acute problems for smaller firms. A steady stream of correspondence with our committee, as exemplified by a letter from the National Institute of Locker-Freezer Provisioners shows this.

Some problem areas, at this point, seem to me as follows:

The need to include specific language covering air and water pollution statutes and regulations at all governmental levels which are based on Federal requirements. These have a direct and immediate impact on thousands of small firms and small business industries. Senator MCINTYRE has taken the initiative on this point, which I supported in the 91st Congress and look forward to supporting just as strongly in this Congress.

There are particular industries that contain trouble spots, such as the small oil refiners that face compliance with special types of environmental controls such as the removal of lead from gasoline by fixed deadline dates.

There are also localized problems, such as are created by the presence of mercury contamination as to which the Senator from Alabama (Mr. SPARKMAN) has submitted legislation, which I have fully supported.

There is an accompanying need for considering an overall view in the statute which would give the Federal Government wide adaptability to deal with existing and emerging problems under requirements created for business by these and emerging mandatory standards.

For the purpose of once again raising the latter issue squarely before the Congress, I am today presenting again S. 1750 in substantially its original form.

This will give the committees of both Houses, as well as the general membership of Congress, an opportunity to fully explore this comprehensive approach to governmental equity for the small business community.

FEATURES OF THIS BILL

If the bill is enacted in this form, it seems to me that it should be constructed to encompass the existing provisions of section 7(b) of the Small Business Act pertaining to coal mine safety, occupational health and safety, and agribusiness. In my mind, this umbrella legislation should carry a reasonable cost-of-money formula, so that the loan assistance would clearly be a compensatory loan and not a subsidy in any respect.

During the 91st Congress, the Senate Committee on Banking gave prompt and thorough consideration to small business environmental legislation. In their hearings of July 1969 and June 1970, these issues were discussed by industry and Government witnesses. The composite bill, S. 4316 (reported S. Rept. 91-1158), which passed the Senate on September 18, included the essential language of S. 1750 as limited to the meatpacking industry as well as the essence of Senators MCINTYRE and SPARKMAN'S bills. However, S. 4316 did not make progress in the other body.

The reintroduction of my overall bill will serve to make this question once again a current one for the Congress. It has also been my hope that the Small Business Administration study of the meatpacking industry will also be available for consideration in this connection.

Mr. President, I urge that the appropriate committees consider the small business questions raised by my bill in order to keep the law of the land in tune with the rapidly developing environmental and consumer requirements being imposed every day by all levels of government.

In this way Congress can contribute to a healthy and viable small business community which can help make the environment more livable and make life more pleasant for all of our citizens.

I ask unanimous consent that the article from the Greater Washington Newsletter, as well as the letter from the National Institute of Locker and Freezer Provisioners, together with the text of the bill, be included in the RECORD following my remarks for the information of all concerned.

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

[Greater Washington Investors, Inc. Newsletter, February 1971]

IMPROVING THE QUALITY OF LIFE

It has been stated, perhaps not unfairly, that the fastest rising type of pollution in the land is all the talk about pollution. Indeed, the legal and physical actions needed to combat the problem sadly lag their verbal counterpart, which seems to lack both direction and conviction.

A notable exception, we feel, was the first installment of a series of articles entitled "Improving the Quality of Life," carried in the "Business in Brief" publication of the Chase Manhattan Bank. In it, the bank's Economic Research Division analyzes the

[1] For further background, see "91st Congress Action Gives Historic Recognition to Small Business in Environmental and Consumer Era," remarks by Seator Bible, *Cong. Rec.*, vol. 116, pt. 31, P. 42187.

problem from the standpoint of its very root, growth, and further suggests that the two can (and should) co-exist happily. As both pollution and growth are primary concerns of Greater Washington, its portfolio companies and its shareholders, we thought you might enjoy the following excerpts from that excellent article:

As is the case with most other problems that suddenly burst into the public consciousness . . . concern over the environment has given rise to a host of demands for quick and drastic action. Legislative bodies are beset, if not overwhelmed, by proposals to launch crash programs to deal with this or that form of pollution. In the process, a great many misguided ideas have been proposed as to what can and should be done to make America once again a decent and attractive place in which to live. There is a real danger that hasty decisions will be made which will turn out to be not only extremely costly, but positively detrimental in terms of the genuine objective of improving the environment.

As a first step in understanding the complex problems of the environment, it is useful to consider why the problems seem to have suddenly descended upon us. For eons of time, pollution was not viewed as a widespread problem. Until quite recently, most people were unaware of any general deterioration in the environment.

One reason for this lack of concern was that the air and the water have amazing capabilities for absorbing what we regard as pollutants and transforming them into healthy and decent forms. A large and rapidly flowing river can take in and purify large quantities of waste matter. So can the air.

But there are limits to the absorptive capacity of the air and the water . . .

Up to a decade or so ago, the amount of pollution in most parts of the U.S. did not exceed levels which could be tolerated by the vast absorptive capacities of the air and the water. But this is no longer the case. The past decade has been marked by an increase in levels of pollution in many areas of the nation which go beyond the ability of nature to deal with them.

The reasons for this are simple—the growth in population and production along with the steady move to urbanization (or suburbanization). Economic growth and congestion add to pollution. If growth in population and production were to slow or stop, problems of dealing with waste matter would cease to grow.

But the trends of the past decade, and the most probable trends for at least another decade, point precisely in the direction which will magnify problems of creating a proper environment.

Population has grown from 181 million in 1960 to 205 million now, and even under low projections, it will reach 228 million by 1980

Over half of the population is crowded into only one percent of the nation's land space, and two-thirds occupy 9% of the land. This trend towards concentration in metropolitan areas is likely to continue short of drastic new public policies.

Production in real terms (GNP in constant prices) has increased about 50% in the past decade, and probably will go up another 50% in the decade of the 1970's unless sharp policy changes are made, which seems unlikely.

These growth magnitudes may seem mundane. Yet they explain why we suddenly have major problems of pollution, and why these problems will become more pressing. If, as seems a reasonable judgment, the nation was close to the absorptive capacity of the air and the water ten years ago, the addition of 24 million more people and 50% more real GNP in the past decade pushed us well over the edge. In absolute terms, the increase in real GNP in the past decade was about equal to that in the two preceding decades. And the absolute increase in the decade of the 1970's could exceed the nation's total real production in 1950.

If growth is the villain, why not stop growth?

In technical terms, it would be perfectly possible to check growth. Population could be stabilized by family planning programs plus, if necessary, tax arrangements to hold the average family size at a level consistent with zero growth in total population. The volume of total production (real GNP) could be held level by taxes or direct controls.

Hours of work would have to decline. Because of children already born, the labor force would continue to increase for some two decades even if population growth leveled. Output per man-hour would continue to rise unless technological advance were to be completely stifled. This could mean a decline in the average work week to as little as 26 hours by 1980.

The average level of living as measured in conventional terms would also decline because of the costs of dealing with existing pollution and maintaining acceptable levels. With no growth, these costs would have to come out of existing standards of living. Any improvement in the lot of those now living at poverty levels could come only at the expense of those with higher levels of incomes. This sort of income redistribution would entail in considerable part increased taxation of income groups in the $8,000 to $15,000 range.

There would be other implications of no-growth. To cite only two:

The nation's international posture and power would be diminished, raising questions as to our ability to survive under a democratic form of government.

The entire fabric of our society could be affected in unpredictable ways.

Nonetheless, it is clear that if a goodly majority of the American people should decide to stop growth, this could be done.

At the moment, it is abundantly clear that no more than a tiny minority of the public would support no-growth. Nor are there any visible signs that this minority will gain sufficient strength in the foreseeable future.

Indeed, the vast majority of the public wants continuing progress along conventional lines *plus* a healthy and decent environment. Again, there are no basic economic, financial or technological reasons why these objectives cannot be achieved. The problem is to so re-order our national priorities as to attain such goals over a reasonable period of time. This process is well underway.

This is not to say that the task is easy or that it can be accomplished overnight. Technology must be developed or perfected. Government regulations must be informed, practical, consistent and predictable—features notably lacking in current practices. Many companies may face significant financing problems in that heavy investments to control pollution will have to be made with little or no hope of increased earnings on such investment.

Finally, the contrast between no-growth and normal growth can be illustrated with some rough approximations of basic magnitudes:

Normal growth (4¼% per annum in constant dollars) would add $225 billion to GNP by 1975.

What may be a high estimate of the added costs of dealing with environmental problems comes up to $50 billion over the next five years. We are now spending about $5 billion a year, as against an estimated need of $14 billion a year.

With growth, we can handle environmental problems by allocating a bit more than one-fifth of the *growth* in GNP to this effort. Real living standards as conventionally measured would grow a little more slowly than they otherwise could. But the benefits in terms of a clean environment would appear to far outweigh the costs.

Economic growth may help resolve the pollution problem, while making it less burdensome economically and financially. It is often the older industrial equipment which pollutes most objectionably, and older automobiles which lack emission control devices. Thus the introduction of new technologically advanced equipment could foster pollution abatement. And new plants are often more profitable, compensating for some of the cost of pollution control.

The difference in the year 1975 between normal growth and no-growth, after allowing for added environmental expenditures, is a cool $225 billion, or about $1,000 per person.

The conclusion seems inescapable. The challenge is to support continued or accelerated economic growth, to invest part of the proceeds in creating a cleaner, healthier, more enjoyable environment, and to evaluate the "product" of the clean-up process as a component of economic growth. Only in this manner can we hope to enhance the quality of life in America.

NATIONAL INSTITUTE OF
LOCKER & FREEZER PROVISIONERS,
Elizabethtown, Pa., April 16, 1971.

Hon. ALAN BIBLE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR BIBLE: Is there anything we can do to help get Congress to appropriate funds so that small meat processors can obtain disaster-type loans from the Small Business Administration for upgrading their facilities as required by the Wholesome Meat Act? We know that many locker and freezer provisioners are in an exceedingly tight financial situation with meat inspection pressure on one hand and unavailable of reasonably priced financing on the other.

A recent study conducted among our members reveals that the average cost of upgrading facilities to meet meat inspection requirements of the 277 firms that replied is over $28,000. Although this may not seem to the casual observer to be a lot of money, it represents a real problem for small meat processors. This isn't the kind of investment that a businessman makes in remodeling or expanding through which he anticipates an increased return because of added capacity or more efficient operation. Instead, it represents an additional investment in facilities simply to remain in business. The businessman in this kind of situation cannot afford to pay high interest rates on borrowed money. Although we are in sympathy with the objectives of the Wholesome Meat Act, we do not think it is fair for Congress to pass a law that forces a segment on the small business community to upgrade facilities to retain the right to remain in business without, at the same time, providing adequate financial assistance.

Speaking for the 7,000 locker and freezer provisioners throughout the nation, we greatly appreciate the personal interest you have consistently shown in this matter. But, we need to know what we can do right now to assist these small meat processors in meeting the financial challenge of this crisis.

Sincerely,

ROBERT L. MADEIRA,
Executive Director.

S. 1649

A bill—To amend the Small Business Act to authorize assistance to small business concerns in financing structural, operational, or other changes to meet standards required pursuant to certain Federal or State laws

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the first sentence of section 7(b) of the Small Business Act is amended by striking out all that follows paragraph (4) and inserting in lieu thereof a new paragraph as follows:

"(5) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary or appropriate to assist any small business concern in effecting additions to or alterations in its plant, facilities, or methods of operation to meet requirements imposed by any Federal law, any State law enacted in conformity therewith, or any regulation or order of a duly authorized State or regional agency issued in conformity with such Federal law, if the Administration determines that such concern is likely to suffer substantial economic injury without assistance under this paragraph."

(b) The third sentence of section 7(b) of such Act is amended by striking out "(5) or (6)" and inserting in lieu thereof "or (5)".

(c) Section 4(c)(1) of such Act is amended by striking out "7(b)(6),".

SEC. 2. Section 28(d) of the Occupational Safety and Health Act of 1970 (Public Law 91-596) is amended by striking out "7(b)(6)" and inserting in lieu thereof "7(b)(5)".

TAX RELIEF FOR SMALL BUSINESS

Mr. HUMPHREY. Mr. President, one of the abiding satisfactions of being in the Senate over the years is to see ideas which were ahead of their time eventually come of age. An example is the small business tax relief bill just introduced by the chairman of the Small Business Committee (Mr. BIBLE) which I am pleased to cosponsor and support.

It was gracious of the Senator from Alabama (Mr. SPARKMAN) to mention the hard labor which we performed on the Small Business Committee in 1952 when we held seven field hearings throughout the country, taking testimony from over 100 witnesses on small business tax problems. Our report in 1953—Senate Report No. 442, 83d Congress—focused on several of the questions vital to the creation and growth of new business, the profitability of existing firms, and the preservation of business independents which are all the more difficult today.

It is commendable that this work has been carried forward and enhanced under the chairmanship of the Senator from Nevada (Mr. BIBLE), first as chairman of the tax subcommittee and then as chairman of the full Select Committee since 1969.

The bill that resulted seems to me to be a modern charter of small business tax equities. It gives Congress a comprehensive and searching set of proposals through which we can address the fundamental and interrelated issues of taxation that affect the operation of the free enterprise system.

WILL AID THE ECONOMY

We also have a timely reminder of the necessity for stimulating the economy and a proposal for doing so in a way that does not involve the expenditure of billions of dollars.

The economic figures for the first quarter prove to most observers that our economy is running below and perhaps substantially below targets set by the present administration. The Washington Post of April 16 reported:

Both (Walter) Heller and (Pierre) Rinfret said the results (of the first quarter) confirm their belief that the economy needs a new fiscal thrust. "We must have a personal and corporate tax cut," Rinfret said.

This advice was echoed by Chairman Arthur Burns of the Federal Reserve Board in his recent west coast speech and appearance before the Senate Banking Committee on March 10.

This bill is responsible in its revenue balance and also in its longrun sound approach to improving the tax structure for all forms of business enterprise and the economy. There can surely be improvements, and I will be glad to participate in developing them. But I feel that the formulation and introduction of a small business tax reform bill constitutes an important step toward basic tax equity for all our citizens and a more dynamic job- and tax-producing economy.

By Mr. BENNETT:

S. 1653. A bill to amend the Tariff Schedules of the United States to eliminate the duty on trinitrotoluene. Referred to the Committee on Finance.

AMEND THE TARIFF SCHEDULE

Mr. BENNETT. Mr. President, because of the large number of mining interests in my State of Utah, I have watched with concern the problems that have been encountered by the mines as they attempted to obtain TNT necessary for mining operations. The situation was acceptable and there were no problems as long as the domestic producers continued to supply an adequate amount of TNT. With the recent announcement that the Du Pont Co., in Wisconsin will no longer be producing TNT, the mining interests in this country are facing a difficult situation. With the elimination of the domestic production of TNT they will be forced to import TNT from outside the country. At the present time there is an existing duty of 3.5 cents per pound plus 22½ percent of the ad valorem value, all of which increase the total delivered cost by 30 percent.

When this additional cost is combined with the fact that many of the smaller mining operations in this country are operating on a small margin of profit, it is clear that something should be done to alleviate the problem before it becomes critical.

In order to assist in the continued development of the mining interests in this country, I am introducing this bill, which would eliminate the duty that has previously been applied to TNT coming into this country. As I mentioned, Mr. President, the only commercial producer of TNT in the United States has stated that they will no longer produce TNT after March 31. This means that there is no longer a domestic market to be protected by this tariff. I feel that it is in the best interest of this country to promptly eliminate the duty attached to TNT.

By Mr. BENNETT:

S. 1654. A bill to increase the security and protection of imported merchandise and merchandise for export at ports of entry in the United States from loss or damage as a result of criminal and corrupt practices, and for other purposes. Referred to the Committee on Finance.

CUSTOMS-PORT SECURITY ACT OF 1971

Mr. BENNETT. Mr. President, this afternoon I am introducing, for the administration, a measure that is designed to fill a great need in our shipping industry. The Customs-Port Security Act of 1971 will increase the security and protection of merchandise at ports of entry in the United States from loss or damage as a result of criminal and corrupt practices.

The theft and pilferage of cargo have reached such proportions that it has become necessary to take stern protective measures. These measures outlined in this bill are designed to insure the security and safety of international cargo from the time of unloading to the time of delivery to the consignee or his agent.

The bill deals with the areas where cargo is handled and stored and establishes criminal penalties to the illegal removal of cargo from areas under Customs control. It also directs the Secretary of the Treasury to establish national standards for the physical security of terminal facilities and gives additional power to the Secretary to prohibit the unloading or loading of merchandise at any terminal that does not conform to the standards prescribed.

The bill also establishes the machinery to take additional steps to protect the cargo if the security standards do not reduce the thievery. The first step will be the designating of certain areas as "freight-risk areas," and access to them will be severely restricted.

By the implementation of these security measures, I think we will see increased protection, not only against the theft of cargo, but also against the smuggling of narcotics, dangerous drugs, and other contraband.

For this reason, I am happy to introduce this bill.

I ask unanimous consent that an analysis of the bill be printed at this point in my remarks.

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

ANALYSIS

The proposed bill is designed to meet the ever-growing problem of theft and pilferage at our nation's ports of entry.

Cargo security is the responsibility of the carrier or the terminal operator. However, as indicated in the report of the Select Committee on Small Business of the United States Senate investigating the effect of cargo loss and theft in the air commerce industry (Report of the Select Committee on Small Business, United States Senate on Effect of Cargo Loss and Theft in Air Commerce Based on Hearings Before the Committee, May 23 and July 22, 1969, Report No. 91-612, Part II, 91st Congress, 1st Session, pp. 13, 14), the carriers' and terminal operators' failure to provide adequate cargo

security arrangements has contributed significantly to the rising rate of theft and pilferage with which local police have been unable to cope. The Committee noted such deficiencies in cargo security as inadequate fencing of cargo areas, and in some cases no fences at all; general employee parking directly adjacent to cargo terminals and warehouses; an absence of any employee identification system to prevent entry into cargo handling areas by unauthorized personnel; and unlimited access to cargo terminals and warehouses. This last security deficiency has not only resulted in greater theft and pilferage at the terminals, but has also simplified information gathering for those who would hijack an entire shipment after it is released for transportation to the premises of the consignee.

The experience of the Department of the Treasury indicates that these findings are equally applicable to terminals for ships, trucks, and trains, as well as airplanes, at many of our ports of entry. The Department, operating through the Bureau of Customs, has, as part of its program to curtail theft and pilferage, proposed certain additional measures to be applied nationwide by changes in the Customs Regulations.

One of these proposals would establish a nationwide uniform method of accounting for manifested merchandise and treatment of quantity discrepancies of imported merchandise and treatment of quantity discrepancies of imported merchandise. The first public notice of this proposal appeared in the Federal Register for June 6, 1970 (35 F.R. 8829) and a second notice embodying certain additional proposed changes, based on public comments received, appeared in the Federal Register for December 1, 1970 (35 F.R. 18284). The final regulation was published in the Federal Register on January 22, 1971 (36 F.R. 1056) to become effective April 1, 1971.

The other proposal deals with certain physical security requirements for cargo. Public notice of this proposal was given in the Federal Register of June 26, 1970 (35 F.R. 10463–5). Portions of this proposal were published in final form on February 3, 1971 (36 F.R. 1891). The other details of this measure are being reconsidered in the light of the comments received.

Despite the security measures already taken under these regulations, it has become apparent that a comprehensive national approach to the physical security of terminals and terminal facilities, with special measures for high risk areas, is necessary and requires legislative action if the rising rate of theft and pilferage at ports of entry throughout the United States is to be halted. The report of the Select Committee on Small Business has estimated that annual loss of imported cargo due to such activities exceeds $100,000,000 and the total loss of cargo may approach 1.5 billion dollars. Businessmen frequently absorb such losses and refuse to disclose their scope in order to prevent drastic increases in insurance costs, or outright cancellation. Statements made at committee hearings dealing with losses by individual industries, the growth of the air freight industry, and the rise in cargo insurance rates nonetheless evidence the seriousness of the problem.

Persons who have been involved in or have perpetrated theft or pilferage include seamen, flight personnel, longshoremen, marine clerks, terminal operators' employees, air cargo handlers, airline employees, truck drivers, railroadmen, and, in fact, anyone who has access to areas where imported cargo or cargo for export is handled or stored. Theft and pilferage occurs at every stage of the transit process, from the lading on board a carrier to the release of the merchandise to the ultimate consignee. It may be accomplished by an individual acting alone or by highly sophisticated criminal conspirators. Nothing appears to be too large, to heavy, too difficult or too complicated for the determined thief. Where containerization has been adopted as a counter-measure designed to reduce pilferage, it has often resulted in increased hijacking of the entire truckload after the container has been released by Customs.

A mounting dollar loss, in and itself, is obviously important to the economy of the entire nation. In addition to the actual dollar loss, however, the economy is affected in other ways. Manufacturing schedules may be delayed or not met, employees of manufacturers may be laid off because of lack of raw materials, seasonal markets may be lost, cargo insurance premiums skyrocket, stolen merchandise may be put into the stream of commerce by the underworld to compete with legitimate business in direct competition with the original importer, and duties often are not collected on merchandise which has been stolen.

The proposed bill attempts to stem the growth of this multimillion dollar criminal activity at our nation's ports of entry by prescribing national standards for the physical security of areas where cargo is handled and stored; by screening those persons who seek access to high-risk cargo areas in order to eliminate undesirable persons; and by restructuring the criminal penalties relating to unlawful removal of goods from these areas to provide greater punishments in certain instances and reduced punishments in others.

It is contemplated that additional manpower will be required to implement this legislation. However, the exact numbers and costs are undetermined principally because of uncertainties at this time as to the number and size of the customs-security areas to be designated, number of businesses to be licensed, and requirements for ensuring compliance with standards.

Section 1 provides that the Act shall be known as the "Customs-Port Security Act of 1971."

Section 2 sets forth definitions of terms used in the bill. Section 2(a) defines the term "Secretary" as the Secretary of the Treasury. Section 2(b) defines the term "United States" as including the several states, the District of Columbia and Puerto Rico. Section 2(c) defines the term "customs-security area" as an area designated by the Secretary of the Treasury within the limits of a United States port of entry. Section 2(d) defines the term "person" as an individual. Since the bill provides for the issuance of identification cards to living persons, it is believed necessary to limit the scope of the term. Section 2(e) defines the term "terminal" as a place within a port of entry at which imported merchandise is unladen from, or merchandise for export is laden upon, a carrier engaged in foreign commerce, and may include dock and lighterage facilities, receiving and handling facilities such as airports, truck terminals, container stations, piers, wharves, warehouses, and other storage areas, management offices and passenger area. The breadth of this definition indicates the tremendous variety of facilities engaged in the handling and storage of cargo, each containing a different security problem.

Section 3 provides for national standards for cargo protection. To achieve acceptable physical security of terminals there is a need for applying minimum national standards to existing and new facilities.

Section 3(a) authorizes the Secretary of the Treasury to establish by regulation such national standards which would relate to such illustrative matters as adequate cargo storage space, special storage areas for high-value items, areas for separate storage of imported and domestic merchandise, lighting, fencing, alarm systems, patrols and guards, entrances, exits, central receiving areas, central loading areas and separate private parking areas. There may be several different classes of standards, depending, for example, upon the degree of risk of theft or pilferage of cargo, the kinds of cargo handled, and the physical structure of existing facilities; however, every terminal and port will be required to comply substantially with the national standards applicable to its category. The standards prescribed may be performance standards or detailed specification-type standards, thus permitting flexibility in administering the law. Performance standards authorized by the Foreign Trade Zones Act (Act of June 18, 1934, c. 590, 48 Stat. 998) have been developed in regulations under the Act (15 CFR, part 400).

Section 3(b) will enable the Secretary to enforce these national standards by authorizing him to prohibit the unlading of imported merchandise or the lading of merchandise for export at any terminal which does not conform to applicable standards.

Section 3(c) provides that the national standards shall become effective six months after the date of the enactment of this Act or 30 days after publication in the Federal Register of final regulations establishing such standards, whichever is later. This will give to the Secretary sufficient time to prescribe the national standards and terminal operators will have sufficient advance notice to permit compliance with those standards. The Secretary is authorized to grant additional time, where necessary, to ensure compliance.

Section 4 provides for the creation of "customs-security areas". In spite of the fact that national standards for cargo protection will have been established and all terminals required to conform to those standards, it is contemplated that there will be ports or areas within a port at which imported merchandise or merchandise for export is subject to an unusual risk of theft or pilferage. When the Secretary makes such finding and designates that port or area within that port to be a "freight-risk area", he is directed to establish a "customs-security area" and imported cargo or cargo for export may be laden or unladen within that freight-risk area only in such places as qualify as "customs-security areas". The establishment of a customs-security area will subject cargo facilities within that area to even tighter security measures than exist under the national standards. Such measures may include, for example, additional fencing and alarm systems or segregated areas for imported cargo and cargo for export if not already required. Access to customs-security areas would be restricted and under the control of customs officers.

Section 4(b) permits the Secretary to remove the additional restrictions imposed pursuant to subsection (a), if he finds that the circumstances requiring a customs security area no longer exist.

Section 5 authorizes the Secretary to prescribe rules and regulations relating to the establishment of a licensing procedure for businesses whose employees have access to a customs-security area and an identification card procedure for persons seeking access to customs-security areas.

Section 5(a) provides that any business whose employees have access to a customs-security area shall be licensed under standards and in accordance with such procedures as the Secretary may prescribe in regulations.

Section 5(b) provides that, if a customs-security area has been established, any persons seeking access to such area must carry and display an identification card approved by the customs officer in charge of a port under rules and regulations prescribed by the Secretary of the Treasury governing the issuance of an identification card to persons of good moral character by an employer or other approved issuer. The regulations may require, as a condition for issuing such a card the showing of such facts as may be necessary or advisable to protect merchandise in customs-security areas. It is also provided that access to the area shall be denied to any person not displaying his identification card.

It is contemplated that at most ports there would be no restriction on access to a terminal, other than that established by the carrier or terminal operator in order to comply with the national standards. However, if a customs-security area is established, all persons will be required to carry and prominently display the identification card. Access to the area will be controlled by a customs officer who will deny access to any person not displaying his identification card.

Section 5(c) authorizes the customs officer in charge of a port to suspend or revoke an identification card approved pursuant to this Act if the holder of such card misuses or knowingly permits the misuse of the identification card issued to him or makes a copy or facsimile thereof. In addition, the identification card may be suspended or revoked if the holder of the card otherwise fails to comply with the rules and regulations prescribed by the Secretary for the use and display of the card and for the conduct of those holding such a card.

Section 5(d) sets forth procedures for denying an application for a license or suspending or revoking a license or an identification card. An applicant whose license has been denied or a holder whose license or card has been suspended or revoked will receive notice in writing stating the reason for such action. A copy of a notice revoking or suspending an identification card will be sent concurrently to the holder's employer, and to the issuer of the identification card if other than the employer. The denial, suspension or revocation is final unless within 10 days thereafter the applicant or holder files a written petition with the customs officer who made the initial decision setting forth his response to the customs action. The applicant or holder may request an oral hearing within the same 10 day period. Such a hearing must be held within 30 days following its request and before a hearing officer. The applicant may be represented by counsel at such a hearing, and has the right to be presented with the substantiation of the charges against him; both parties may cross examine witnesses; and a stenographic record shall be made. The customs officer in charge of the port is required to submit all papers and, in the case of an oral hearing, the stenographic record, with his recommendation, to the Secretary or his designee. The final decision, with reasons therefor, will thereafter be served on the holder or applicant.

This subsection further states that the procedural requirements set forth herein shall be in lieu of procedures set forth in sections 556, 557, and 558 of title 5, United States Code. However, a party whose appeal has been denied by the Commissioner of Customs may seek further review in a United States district court by invoking remedies available under existing law.

Section 5(e) permits the customs officer in charge of a port to issue a temporary identification card to a person who does not have a card and who has reason to require access to a customs-security area. If he determines that the presence of such person would jeopardize the security of merchandise within the area, he may refuse to issue the card.

Section 6 amends two sections of title 18. Section 6(a) amends section 496 of title 18, which deals with the counterfeiting of documents relating to customs matters, and divides it into two subsections. Subsection (a) amends the language of the present section by adding to the criminal acts enumerated therein a reference to the alteration, counterfeiting, or forgery of the identification card authorized to be issued pursuant to the Customs Port Security Act of 1971. Subsection (b) is new and penalizes the knowing and willful making of a false, fictitious or fraudulent statement or representation in obtaining an identification card or, having been issued an identification card, knowingly and willfully permitting another person to use such identification card to gain access to a customs-security area. The amendments in this section are necessary to enforce the restrictions that are established by this Act.

Section 6(b) amends section 549 of title 18, which deals with the removal of goods from customs custody. The section is revised to include two new subsections. Subsection (a) penalizes the unlawful entry of a customs-security area or the attempted unlawful removal of goods from such area, and imposes a fine of not more than $1,000 and imprisonment for no longer than 1 year, or both, for such crimes. It also penalizes the unlawful removal, receipt or transportation of goods taken from a customs-security area, and imposes a fine of not more than $5,000 or imprisonment for no longer than 10 years, or both, if the value of the goods exceeds $250. A fine of not more than $1,000 and no more than 1 year in jail, or both, is imposed if the value of the goods does not exceed $250.

Subsection (b) includes the volations provided for in the existing law for breaking a customs seal, fastening or mark affixing a false seal, fastening or mark, and maliciously entering any bonded warehouse, or any vessel or vehicle laden with or containing bonded merchandise with intent unlawfully to remove therefrom any merchandise. The penalty for these crimes has been reduced from not more than $5,000 and no more than 2 years in jail, or both, to not more than $1,000 and no more than 1 year in jail, or both, to permit prosecution for such violations before a United States Magistrate under the recently enacted Magistrate's Act (28 U.S.C. 631 et seq., 18 U.S.C. 3401).

The penalties provided in subsection (c) for the unlawful removal, receipt or transportation of goods taken from a bonded warehouse, or of any vessel or vehicle containing bonded merchandise are modified to conform to those provided in subsection (a) for the unlawful removal, receipt and transportation of goods from a customs-security area. By including a penalty of not more than $1,000 and no more than 1 year in jail, or both, minor thefts could be prosecuted before a United States Magistrate. In many such small cases United States attorneys prefer not to prosecute in a United States district course because of overburdened calendars and the high penalties on low-valued thefts.

Section 7 amends the analysis of chapter 27, title 18, United States Code by striking item 549 and inserting in lieu thereof, "549. Customs-security area; unlawful removal of goods; breaking seals."

Section 8 provides general authority to issue rules and regulations necessary to carry out the provisions of this Act.

Section 9 provides that if any part or provision of this Act or the application thereof to any person or circumstances be adjudged invalid by any court of competent jursdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of the Act or the application thereof to other persons or circumstances.

Section 10 authorizes the appropriation of such sums as may be necessary to accomplish the purposes of the legislation.

By Mr. FULBRIGHT (by request):

S. 1656. A bill to authorize a new approach for furthering the economic and social development of friendly developing countries and areas, and for provision of humanitarian relief, and for other purposes. Referred to the Committee on Foreign Relations.

THE INTERNATIONAL DEVELOPMENT AND HUMANITARIAN ASSISTANCE ACT OF 1971

Mr. FULBRIGHT. Mr. President, by request, I introduce for appropriate reference a bill to authorize a new approach for furthering the economic and social development of friendlly developing countries and areas, and for provision of humanitarian relief, and for other purposes.

The bill has been requested by the President of the United States and I am introducing it in order that there may be a specific bill to which Members of the Senate and the public may direct their attention and comments.

I reserve my right to support or oppose this bill, as well as any suggested amendments to it, when the matter is considered by the Committee on Foreign Relations.

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

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

S. 1656

A bill to authorize a new approach for furthering the economic and social development of friendly developing countries and areas, and for provision of humanitarian relief, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the International Development and Humanitarian Assistance Act of 1971 (hereinafter referred to as the "Act").

PART I

CHAPTER 1—POLICY

SEC. 101. STATEMENT OF POLICY.—The Congress declares the creation of a peaceful world to be a basic national goal of the people of the United States. Prospects for such a peaceful world depend on the opportunities of the developing nations to build self-reliant and productive societies in which people at all levels can realize their aspirations for justice, dignity and a better life. The Congress, therefore, declares that the United States has a profound national interest in cooperating with developing countries in their efforts to acquire the knowledge and resources essential for development and to build the economic, social and political institutions required to apply effectively this knowledge and these re-

sources to the task of improving the conditions of life in their societies.

The Congress recognizes that all peoples, rich and poor alike, have common interests in peace, in the alleviation of poverty, human suffering and disease, in a healthful environment, and in higher standards of living. It should, therefore, be a cardinal aim of United States foreign policy to help build an equitable political and economic order, based on mutual cooperation, in which the world's people, their governments and private institutions can effectively share resources and knowledge.

The Congress recognizes the vital role of free enterprise in achieving rising levels of production and standards of living essential to economic progress and development. Accordingly, the Congress declares that efforts should be made in providing assistance under this Act to encourage and facilitate participation by private enterprise in the development process.

The Congress recognizes that development assistance should be carried out in consonance with the international trade, investment and financial policies of the United States.

The Congress further declares that United States development assistance should be provided in accordance with the following principles:

First, the developing countries themselves should stand at the center of the international development effort, establishing their own priorities and receiving assistance in relation to the efforts they are making in their own behalf. Assistance from the United States shall be used in support of, rather than substitution for, self-help efforts.

Second, United States direct assistance should concentrate on problems the solution of which will make developing countries more productive and self-reliant and enable their people to share more fully in the benefits of technological and economic advance.

Third, the United States should help to make development a truly international effort, by supporting multilateral institutions and by coordinating United States direct assistance, wherever feasible, with that of other countries and with assistance provided through multilateral institutions.

Fourth, United States assistance shall be responsive to and facilitate regional cooperation by developing countries in the solution of common problems.

Fifth, United States international development policies should seek to widen the use of private initiative, private skills and private resources in developing countries.

Sixth, United States assistance must proceed from the recognition that development is more than economic growth and includes the building of such social, labor and civic institutions as may be needed to assure wide participation in the development process and dispersion of the benefits of economic advancement.

CHAPTER 2—DEVELOPMENT ASSISTANCE

TITLE I—TECHNICAL COOPERATION

SEC. 201. STATEMENT OF PURPOSE.—The Congress declares that to assist the developing nations in increasing their capacities to meet their aspirations for justice, dignity and a better life is a proper and necessary purpose of government. It, therefore, authorizes this new program of technical cooperation among the people of the United States, the developing nations and the international community, so that advances in science and technology may more effectively meet the needs of improving the quality of human life through the world. The Congress further declares that this program should seek to concentrate on a limited number of key problem areas impeding development in which the U.S. has the capacity to respond most effectively. In providing technical cooperation and assistance under this Act the United States should—

apply U.S. research competence in the social and physical sciences to the task of development emphasizing the solution of specific problems and increasing research competence in the developing countries;

help build institutions in both the public and private sectors of developing countries which deal effectively with the countries' own problems and carry out a wide range of development functions on a self-sustaining basis;

provide training to developing country personnel, designed to upgrade their skills, strengthen their professional competence and enhance their capacity to manage their own development programs and accelerate their economic growth;

provide skilled technical personnel to meet critical shortages which limit the capacity of developing countries, especially those least developed, to formulate and implement development programs.

It is the sense of the Congress that, while every nation is and should be free to determine its own policies and procedures with respect to problems of population growth and family planning within its own boundaries, nevertheless, voluntary family planning programs to provide individual couples with the knowledge and medical facilities to plan their family size in accordance with their own moral convictions and the latest medical information can make a substantial contribution to improved health, family stability, greater individual opportunity, economic development, a sufficiency of food, and a higher standard of living.

SEC. 202. OPERATING PRINCIPLES.—Technical cooperation shall be conducted in accordance with the following principles:

(a) The President shall look to the developing countries themselves to determine their development priorities requiring an external contribution, to initiate requests for U.S. technical assistance, and to take the necessary actions which can make external assistance effective including the provision of adequate funds for programs receiving United States support.

(b) In carrying out programs under this title, the President shall use, wherever feasible, the private sector, including foundations, universities, and private firms.

(c) The President shall coordinate technical cooperation activities with those of the international development organizations, seeking ways of increasing the planning and coordination role of these organizations.

(d) Consideration should be given to the effect on the environment of activities financed under this title.

(e) The President should limit the functions of overseas staff to those which cannot be effectively performed in the United States.

SEC. 203. GENERAL AUTHORITIES.—(a) In order to carry out these purposes, the President is authorized to furnish assistance, on such terms and conditions as he may determine, in order to promote the development of friendly developing countries and areas through programs of technical assistance and cooperation, bilaterally or through regional, multilateral, or private entities. Such assistance and cooperation may include applied research into the critical problems of the development process in order to make advances in science and technology of greatest benefit to the developing countries and may also include the raising of developing countries' competence in research and in the planning and management of their own programs of development. As a part of the program authorized by this title, the President shall conduct a continuing evaluation of past and current development activities in order to increase the future effectiveness of such programs and may provide assistance to research and educational institutions within the United States for the purpose of strengthening their capacity to develop and carry out programs concerned with the economic and social development of developing countries.

(b) The President is authorized to establish a program providing technical services and commodities on an advance of funds or reimbursement basis which shall make available to other countries, international organizations and private agencies technical services and commodities from both public and private sources in the United States, including any agency of the United States Government. Advances and those reimbursements received under this section after the close of the fiscal year in which such services are rendered may be credited to the current applicable appropriation, account, or fund of the agency furnishing the services or commodities concerned and shall be available for the purposes for which such appropriation, account, or fund is authorized to be used.

(c) The President is authorized to provide assistance for programs relating to population growth in foreign countries and areas, on such terms and conditions as he shall determine, to foreign governments, the United Nations, its specialized agencies, and other international organizations and programs, United States and foreign nonprofit organizations, universities, hospitals, accredited health institutions, and voluntary health or other qualified organizations.

As used herein, the term "programs relating to population growth" includes but is not limited to demographic studies, medical, psychological, and sociological research and voluntary family planning programs including personnel training, the construction and staffing of clinics and health centers, specialized training of doctors and paramedical personnel, the manufacture of medical supplies, the dissemination of family planning information, and provision of medical assistance and supplies. In carrying out programs authorized in this section, the President shall establish reasonable procedures to insure, whenever family planning assistance from the United States is involved, that no individual will be coerced to practice methods of family planning inconsistent with his or her moral, philosophical, or religious beliefs.

SEC. 204. AMERICAN SCHOOLS AND HOSPITALS ABROAD.—The President is authorized to furnish assistance, on such terms and conditions as he may determine, notwithstanding any provision of this Act or of the Mutual Defense Assistance Control Act of 1951 (22 U.S.C. 1611, et seq.), to schools outside the United States serving as study and demonstration centers for ideas and practices of the United States and to hospital centers for medical education and research outside the United States, where such institutions are founded or sponsored by the United States citizens.

SEC. 205. AUTHORIZATION.—(a) There is hereby authorized to be appropriated to the President for the purpose of carrying out this title, other than section 204, $1,275,000,000 for the period from July 1, 1971, through June 30, 1974, which amounts shall remain available until expended.

(b) There is hereby authorized to be appropriated to the President for the purpose of carrying out section 204 $35,000,000 for the period from July 1, 1971, through June 30, 1974, which amounts shall remain available until expended.

TITLE II—DEVELOPMENT LENDING

SEC. 206. STATEMENT OF PURPOSE.—The Congress affirms that a basic goal of this country is the creation of a peaceful world and restates its belief that this goal is served in a fundamental and lasting way by a national policy of assisting the development of self-reliant, productive societies in friendly developing countries. It is, therefore, the policy of the United States to support multilateral institutions because they play a constructive role in the international development process and to extend bilateral economic assistance where such direct assistance from the United States can effectively contribute to that process.

The Congress expresses its conviction that, in order to be effective, development assistance must be responsive to the needs and priorities of developing countries and must be administered on a mature and business-like basis consistent with the capabilities of the United States and of the country assisted.

The Congress determines that in the furnishing of assistance under this title, the President shall take into account:

(i) whether the government of a country to which assistance is furnished has nationalized or expropriated or seized ownership or control of property owned by United States citizens; has taken steps to repudiate or nullify existing contracts or agreements with any United States citizen; has imposed or enforced discriminatory taxes or other exactions, or restrictive maintenance or operational conditions having the effect of nationalizing, expropriating or otherwise seizing ownership or control of property so owned without taking appropriate steps to discharge its obligations under international law toward such citizens;

(ii) whether a country has taken appropriate steps to prevent narcotic drugs produced or processed within such country from entering the United States unlawfully;

(iii) the extent to which a country is diverting its resources from economic development to military purposes, particularly taking into account amounts spent on sophisticated weapons systems.

SEC. 207. OPERATING PRINCIPLES.—Operations under this title shall be conducted in accordance with the following principles:

(a) In considering an application for a loan, due regard shall be given to the ability of the borrower to obtain financing elsewhere on terms and conditions reasonable for the recipient, taking into account all pertinent factors.

(b) Before a loan is approved the applicant shall have submitted an adequate loan proposal.

(c) In making a loan, consideration shall be given to whether (1) the borrower will be in a position to meet its obligations under the loan agreement, and (2) the borrower has or will obtain adequate resources to supervise, monitor and report on the activities financed by the loan.

(d) Development lending under this title shall be conducted in such a manner as to promote economy and efficiency in operations to obtain the maximum possible effectiveness for each dollar loaned.

(e) Appropriate measures shall be taken to assure that the borrower accepts his responsibility for efficient implementation of projects and activities for which assistance is provided.

(f) Consideration should be given to the effect on the environment of activities financed under this title.

(g) The functions of overseas staff should be limited to those which cannot be effectively performed in the United States.

SEC. 208. GENERAL AUTHORITIES.—(a) Development Loans.—In order to carry out the purposes of this Act, the President is authorized to make loans to promote the economic and social development of friendly developing countries and areas, repayable as to principal and interest in United States dollars on such terms and conditions as the President may determine. The President shall determine the interest payable on any loan, taking into consideration the cost of borrowed funds, the economic circumstances of the borrower and other relevant factors, but the interest on loans shall be at least 1 per cent per annum.

(b) TECHNICAL SERVICES.—In carrying out the purposes of this title, the President is authorized to furnish technical services on such terms and conditions as he may determine. The purposes of these technical services will be to assist in the identification of and the preparation for loans proposals and to provide assistance directly related to loans which the President has approved or which the President is administering under this Act.

(c) SHIPPING DIFFERENTIALS.—The President may make grants to loan recipients to pay any differential between United States and foreign flag vessel charter or freight rates with respect to commodities financed by loans made or administered under this Act.

SEC. 209. AUTHORIZATIONS.—(a) There is hereby authorized to be appropriated to the President for the purpose of carrying out this title $1,500,000,000, for the period from July 1, 1971 through June 30, 1974, of which not to exceed $40,000,000 shall be used for grants made under section 208(c), such amounts to remain available until expended.

(b) Dollar receipts from loans made pursuant to this title, loans made under the Foreign Assistance Act of 1961, as amended, and loans made under predecessor legislation to the Foreign Assistance Act of 1961, as amended, as defined in section 410, are authorized to be made available to the President for the period July 1, 1971, through June 30, 1974. When any payment of interest or principal of such loans is made in foreign currencies, the Secretary of the Treasury is authorized to sell for dollars such foreign currency repayment proceeds to United States Government agencies for their use. The United States dollars received from the sale of such foreign currencies shall be deposited to the account of the revolving fund established by section 210. Receipts and other funds made available under this subsection shall remain available until expended.

(c) As may hereafter be provided in annual appropriation acts, the President is authorized to borrow from whatever source he deems appropriate, up to $1,000,000,000 during the period July 1, 1971 through June 30, 1974 and to issue and sell such obligations as he determines necessary to carry out the purposes of this title. The dates of issuance, the maximum rate of interest and other terms and conditions of the obligations issued under this subsection will be determined by the Secretary of the Treasury with the approval of the President. Obligations issued under the authority of this section shall be obligations of the Government of the United States of America, and the full faith and credit of the United States of America is hereby pledged to the full payment of principal and interest thereon.

(d) For the purpose of any purchase of the obligations issued under this title, the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as now or hereafter in force, and purposes for which securities may be issued under the Second Liberty Bond Act, as now or hereafter in force, are extended to include any purchases of the obligations issued under this title. The Secretary of the Treasury may, at any time, sell any of the obligations acquired by him under this section. All redemptions, purchases, and sales by the Secretary of such obligations shall be treated as public debt transactions of the United States.

SEC. 210. REVOLVING FUND.—(a) The President is authorized to establish in the Treasury of the United States a revolving fund, which shall be available without fiscal year limitation, to carry out the purposes, functions and powers authorized by this title.

(b) There shall be established in the revolving fund a capital account in which shall be deposited, subject to withdrawal by the President—

(1) Amounts appropriated for use under this title;

(2) amounts received from obligations issued by the President under the authority of section 209(c);

(3) principal repayments of loans made under the authority of this title and of other dollar repayable loans which are administered pursuant to section 404, including dollars received pursuant to section 209(b) from the sale of local currency repayments;

(4) proceeds from the sale or other disposition of loans or obligations made under the authority of this title and of other loans or obligations which are administered under this Act;

(5) undisbursed amounts previously appropriated for use under the authority of sections 202(a), 203, 252(a) and 253 of the Foreign Assistance Act of 1961, as amended;

(6) excess income and revenues transferred to the capital account pursuant to subsection (d)(3) of this section.

(c) There shall be established in the revolving fund an income account into which shall be deposited, subject to withdrawal by the President, income, revenues, and other moneys transferred to, earned, or received by the President in carrying out the purposes of this title, from whatever source derived, including interest earned from loans made and obligations acquired under the authority of this title and interest on all other dollar repayable loans and obligations which are administered under this Act.

(d)(1) Capital of the revolving fund shall be available only for shipping differentials, for development loans authorized by subsection 208(a) and for the repayment of principal borrowed pursuant to section 209.

(2) Income and revenues of the revolving fund shall be available only for administrative and operating expenses connected with this title, including expenses authorized by section 208(b), and for servicing the interest on the debt incurred by the President in connection with this title.

(3) Excess income and revenues may be transferred to the capital account of the fund.

(e) If moneys of the revolving fund are in excess of current needs, proceeds of obligations issued under the authority of section 209(c) may be invested in obligations of, or obligations guaranteed by, the Government of the United States which are determined to be appropriate for such investment by the Secretary of the Treasury or in such other obligations or securities as the Secretary of the Treasury determines to be appropriate. Any interest or other receipts derived from such investments will be credited to the revolving fund. Before making any such investments, such moneys, other than moneys borrowed from the United States Treasury, shall be used to repay any outstanding borrowings from the United States Treasury and pay any outstanding interest due in connection therewith.

TITLE III—HOUSING GUARANTIES

SEC. 211. GUARANTY AUTHORITY.—(a) In order to encourage the participation of pri-

vate enterprise in the task of alleviating the shortage of middle- and low-income housing in friendly developing countries and areas, the President is authorized to issue guaranties to eligible investors, on such terms and conditions as he shall determine, insuring against loss of loan investments in:

(1) housing projects in friendly developing countries and areas; and

(2) credit institutions in friendly developing countries and areas engaged directly or indirectly in the financing of home mortgages.

(b) The President shall charge a fee for each guaranty issued in such amount as he determines.

(c) The President is authorized to amend, implement and administer all housing guaranties issued pursuant to housing guaranty authority contained in the Foreign Assistance Act of 1961, as amended.

(d) The total face amount of guaranties issued hereunder, or heretofore under housing guaranty authority contained in the Foreign Assistance Act of 1961, as amended, outstanding at any one time, shall not exceed $810,000,000.

SEC. 212. AUTHORIZATION.—There is hereby authorized to be appropriated to the President such amounts, to remain available until expended, as may be necessary from time to time to carry out the purposes of this title.

SEC. 213. REVOLVING FUND.—(a) There is authorized to be established in the Treasury of the United States a revolving fund in which there shall be deposited:

(1) All fees collected in connection with housing guaranties issued under this section;

(2) All fees collected hereafter with respect to housing guaranty authority contained in the Foreign Assistance Act of 1961, as amended;

(3) All unexpended fees made available by section 223(b) of the Foreign Assistance Act of 1961, as amended;

(4) All funds realized from the sale of currencies or other assets acquired in connection with any payment made to discharge liabilities under guaranties issued under this section or heretofore under housing guaranty authorities contained in the Foreign Assistance Act of 1961, as amended; and

(5) All funds made available pursuant to section 212 of this title.

(b) All amounts in the revolving fund created by this section shall be available to the President without fiscal year limitation for—

(1) meeting necessary administrative and operating expenses of carrying out the provisions of this section; and

(2) to the exclusion of any other funds, expenditures in discharge of liabilities under guaranties issued under this section, or heretofore under housing guaranty authorities contained in the Foreign Assistance Act of 1961, as amended.

SEC. 214. FULL FAITH AND CREDIT.—All guaranties issued under this title or heretofore under housing guaranty authority contained in the Foreign Assistance Act of 1961, as amended, shall constitute obligations, in accordance with the terms of such guaranties, of the United States of America and the full faith and credit of the United States of America is hereby pledged for the full payment and performance of such obligations.

SEC. 215. ARBITRATION.—Claims arising as a result of housing guaranty operations may be settled, and disputes arising as a result thereof may be arbitrated with the consent of the parties, on such terms and conditions as the President may determine. Payment made pursuant to any such settlement, or as a result of an arbitration award, shall be final and conclusive notwithstanding any other provision of the law.

TITLE IV—INTERNATIONAL ORGANIZATIONS AND PROGRAMS

SEC. 216. STATEMENT OF PURPOSE.—It is the sense of Congress that international organizations and programs should play a primary role in the creation and implementation of effective and truly international assistance programs, and it is in the interests of the people of the United States that such international organizations assume strengthened leadership in forging a new partnership among nations. The support and promotion of the activities of worldwide and regional organizations will directly assist such international organizations in meeting this goal.

SEC. 217. GENERAL AUTHORITIES.—(a) To support the programs of international organizations the President is authorized to make voluntary contributions on a grant basis to international organizations and to programs administered by such organizations, and, in the case of the Indus Basin Development Fund administered by the International Bank for Reconstruction and Development, to make grants, and to make loans repayable as to principal and interest in United States dollars, on such terms and conditions as he may determine, in order to further the purposes of this title.

(b) Contributions to the United Nations Development Program may not exceed 40 percent of the total amount contributed for such purpose (including assessed and audited local costs) for each year. The President shall seek to assure that no contribution to the United Nations Development Program authorized by this Act shall be used for projects for economic or technical assistance to the Government of Cuba, so long as Cuba is governed by the Castro regime.

(c) In any case in which a fund established solely by United States contributions under this or any other Act is administered by an international organization under the terms of an agreement between the United States and such international organization, such agreement shall provide that the Comptroller General of the United States shall conduct such audits as are necessary to assure that such fund is administered in accordance with such agreement.

SEC. 218. AUTHORIZATION.—(a) There is hereby authorized to be appropriated to the President for grants to carry out the purposes of this title, in addition to funds available under this or any other title for such purposes, $141,000,000 for the fiscal year 1972. Such amounts are authorized to remain available until expended.

(b)(1) There is hereby authorized to be appropriated to the President for loans for Indus Basin Development, in addition to any other funds available for such purposes, for use beginning in the fiscal year 1972, $33,000,000. Such amounts are authorized to remain available until expended.

(2) There is hereby authorized to be appropriated to the President for grants for Indus Basin Development, in addition to any other funds available for such purposes, for use beginning in the fiscal year 1972, $72,000,000. Such amounts are authorized to remain available until expended.

SEC. 219. INDUS BASIN DEVELOPMENT.—In the event that funds made available under this Act are used by or under the supervision of the International Bank for Reconstruction and Development in futherance of the development of the Indus Basin through programs of cooperation designed to promote economic growth and political stability in South Asia, such funds may be used in accordance wtih requirements, standards, or procedures established by the Bank concerning completion of plans and cost estimates and determination of feasibility, rather than with requirements, standards, or procedures concerning such matters set forth in this or other acts; and such funds may also be used without regard to the provision of section 901(b) of the Merchant Marine Act of 1936, as amended (46 U.S.C. 1241), whenever the President determines that such provisions cannot be fully satisfied without seriously impeding or preventing accomplishment of the purposes of such programs.

CHAPTER 3—HUMANITARIAN ASSISTANCE

SEC. 301. STATEMENT OF PURPOSE.—It is the policy of the United States to seek to alleviate human suffering by: responding swiftly and effectively to calls for relief of famine and disaster; and by providing humanitarian assistance to refugees and migrants.

The purpose of this chapter is to further this policy and to establish the basis for coordination within the United States Government of programs of disaster relief and humanitarian assistance including the support of voluntary agencies and international organizations which further this policy.

SEC. 302. DISASTER AND REFUGEE RELIEF.—Notwithstanding the provisions of this or any other Act, the President is authorized to furnish assistance abroad on such terms and conditions as he may determine: (a) for famine and disaster relief and refugee and migration assistance; (b) for reconstruction or rehabilitation assistance for victims of famine and disasters; and (c) for aid in the preparation for, or prevention of, the effects of imminent threatened famine or disasters. Assistance under (a) and (b) shall be furnished no later than one year after the disaster or famine has ended. The President's Foreign Assistance Contingency Fund shall be available for the purpose of this section.

SEC. 303. SUPPORT OF VOLUNTARY ASSISTANCE.—The President is authorized to pay transportation charges from United States ports, or in the case of excess or surplus property supplied by the United States, from foreign ports, on shipments by the American Red Cross and United States voluntary nonprofit organizations registered with and approved by an advisory committee on voluntary foreign aid in order to further the efficient use of United States voluntary contributions for relief and rehabilitation. Where practicable, the President shall make arrangements with the receiving country for free entry of such shipments and for the making available by that country of local currencies to defray the transportation cost of such shipments from the port of entry of the receiving country or area to the designated shipping point of the consignee.

SEC. 304. AUTHORIZATION.—There is hereby authorized to be appropriated to the President for the purposes of this chapter, including administrative expenses, such amounts as may be necessary therefor, such amounts to remain available until expended.

PART II

CHAPTER 1—GENERAL AND ADMINISTRATIVE PROVISIONS

SEC. 401. EMPLOYMENT OF PERSONNEL.—(a) Any agency or officer of the United States Government carrying out functions under this Act is authorized to employ such personnel as the President deems necessary to carry out the provisions and purposes of this Act.

(b) The President may appoint, by and with the advice and consent of the Senate, fifteen officers to be responsible for carrying out functions of this Act, of whom one shall be compensated at level II of the Executive Schedule (5 U.S.C. 5313), three at level III of the Executive Schedule (5 U.S.C. 5314), seven at level IV of the Executive Schedule (5 U.S.C. 5315) and four at level V of the Executive Schedule (5 U.S.C. 5316). Appropriate titles and the order of succession

among such officers may be designated by the President.

(c) Of the personnel employed in the United States to carry out functions under this Act, not to exceed thirty may be appointed, compensated or removed without regard to the provisions of any law, of whom not to exceed fifteen may be compensated at rates higher than those provided for grade 15 of the general schedule established by section 5332 of title 5, United States Code, but not in excess of the highest rate of grade 18 of such general schedule: *Provided,* That under such regulations as the President may prescribe, officers and employees of the United States Government who are appointed to any of the above positions may be entitled, upon removal from such position, to reinstatement to a position occupied at the time of appointment or to a position of comparable grade and salary. Such positions shall be in addition to those authorized by law to be filled by Presidential appointment and in addition to the number authorized by section 5108 of title 5, United States Code.

(d) For the performance of functions under this Act and in accordance with such regulations as he may prescribe, the President may:

(1) Utilize such authority contained in the Foreign Service Act of 1946, as amended, relating to Foreign Service Reserve officers, Foreign Service Staff officers and employees, and alien clerks and employees as he deems necessary to carry out functions under this Act: *Provided,* That section 15 of Public Law 90-494 shall not apply to Foreign Reserve officers serving pursuant to this subsection.

(2) Appoint as a Foreign Service Reserve officer with unlimited tenure any Foreign Service Reserve officer who has completed at least 3 years of continuous and satisfactory service under this subsection or in the Department of State, the United States Information Agency or the Agency for International Development. The provisions of sections 633 and 634 of the Foreign Service Act of 1946, as amended, shall apply to any Foreign Service Reserve officer with unlimited tenure serving pursuant to this section.

(e) In accordance with such regulations as the President may prescribe, Foreign Service Reserve officers with unlimited tenure appointed pursuant to this section and Foreign Service Staff officers and employees who have completed 10 years of continuous service as such officers or employees under this section shall become participants in the Foreign Service Retirement and Disability System and shall make a special contribution to the Foreign Service Retirement and Disability Fund in accordance with the provisions of section 852 of the Foreign Service Act of 1946, as amended.

(f) Experts and consultants or organizations thereof may, as authorized by section 3109 of title 5 of the United States Code, be employed for the performance of functions under this Act and individuals so employed may be compensated at rates not to exceed the per diem equivalent of the rate for grade 18 of the general schedule established by section 5332 of title 5 of the United States Code. Such contracts may be renewed from time to time without limitation. Service of an individual as an expert or consultant under this subsection shall not be considered as employment or holding of office or position bringing such individual within the provisions of section 3323(a) and 8344 of title 5 of the United States Code, section 872 of the Foreign Service Act of 1946, as amended, or any other law limiting the reemployment of retired officers or employees or governing the simultaneous receipt of compensation and retired pay or annuities, subject to section 5532 of title 5 of the United States Code.

(g) The President may appoint or assign a United States citizen to serve as Chairman of the Development Assistance Committee or any successor committee thereto of the Organization for Economic Cooperation and Development upon election thereto by members of said Committee, and, in his discretion, may terminate such appointment or assignment, notwithstanding any other provision of law. Such person may receive such compensation and allowances as are authorized by the Foreign Service Act of 1946, as amended, not to exceed those authorized for a chief of mission, class 2, within the meaning of said Act, as the President may determine. Such persons may also, in the President's discretion, receive any other benefits and perquisites available under the International Security Assistance Act of 1971 to chiefs of special missions or staffs outside the United States established under that Act.

(h) The President may appoint or assign a United States citizen to be representative of the United States to the Inter-American Committee on the Alliance for Progress and, in his discretion, may terminate such appointment or assignment, notwithstanding any other provision of law. Such person may be compensated at a rate not to exceed that authorized for a chief of mission, class 2, within the meaning of the Foreign Service Act of 1946, as amended.

SEC. 402. DETAIL AND ASSIGNMENT OF PERSONNEL.—(a) Whenever the President determines it to be in furtherance of the purposes of this Act, he is authorized to detail, assign or otherwise make available any officer or employee of the United States Government to any office or position with, or to render advice or service to, any foreign government, foreign government agency or international or regional organization, where acceptance of such office or position does not involve the taking of an oath of allegiance to another government or the acceptance of compensation or other benefits from any foreign country or international or regional organization by such officer or employee.

(b) Details or assignments made under this section may be made with or without reimbursement, in whole or in part, by the foreign government, international or regional organization, and any reimbursement made (including foreign currencies) shall be available for the purposes of this Act.

SEC. 403. STATUS OF PERSONNEL DETAILED.—(a) Any officer or employee, while assigned, detailed or serving under section 402 of this Act, shall be considered, for the purpose of preserving his allowances, privileges, rights, seniority and other benefits as such, an officer or employee of the agency from which assigned and he shall continue to receive compensation, allowances, and benefits from funds made available under this Act.

(b) Any officer or employee assigned, detailed or serving under section 402 of this Act is authorized to receive, under such regulations as the President may prescribe, representation allowances similar to those allowed under section 901 of the Foreign Service Act of 1946, as amended (22 U.S.C. 1131). The authorization of such allowances and other benefits and the payment thereof out of any appropriations available therefor shall be considered as meeting all the requirements of section 5536 of title 5 of the United States Code.

SEC. 404. EXERCISE OF FUNCTIONS.—(a) In carrying out the purposes of this Act, the President may utilize such agencies, departments, officers, corporations, or other instrumentalities of the United States as he may determine to be necessary to perform the functions and exercise the powers and authorities conferred upon him by this Act, whether or not such agencies, departments, officers, corporations, or other instrumentalities are existing at the time of the enactment of this Act. The President is authorized to cause a federally chartered corporation or corporations to be created for carrying out the purposes of this Act. Agencies, departments, officers, corporations, or other instrumentalities performing functions under this Act may from time to time promulgate such rules and regulations as may be necessary to carry out such functions, and may delegate authority to perform any such function, including the authority successively to redelegate any of such functions to any subordinates.

(b) The President may appoint a Board of Directors or a Board of Trustees, of any corporation or instrumentality carrying out the provisions of this Act. Any director or trustee who is not an official or employee of the United States Government shall be appointed by the President, by and with the advice and consent of the Senate, and may be compensated at a rate equivalent to that of Level IV of the Executive Schedule (5 U.S.C. 5315) when actually engaged in the business of serving as a member of the Board.

(c) All loans and housing guaranties made under the Foreign Assistance Act of 1961, as amended, and loans made under predecessor legislation shall be administered by the President of the United States.

SEC. 405. GENERAL POWERS AND PROVISIONS ON USE OF FUNDS.—(a) In carrying out the purposes of this Act, the President may establish offices in the District of Columbia, or elsewhere, within or without the United States.

(b) Any corporation established by the President pursuant to section 404 shall be subject to the applicable provisions of the Government Corporation Control Act, except as otherwise provided in this Act, and shall have the power to adopt and use a corporate seal, which shall be judicially noticed, and to sue and to be sued in its corporate name.

(c) Any agency, corporation, department, officer or other instrumentality carrying out the purposes of this Act is authorized to exercise the following powers:

(1) to acquire (including acquisition by gift, devise, bequest, grant or otherwise), hold, use, or dispose of, upon such terms and conditions as the President may determine, any property, real, personal or mixed, tangible or intangible (including any instrument evidencing indebtedness or ownership) or any interest therein, whether within the United States or without (including real property within the District of Columbia); to receive services of any kind by gift or otherwise;

(2) to issue letters of credit and letters of commitment;

(3) to make advances, and to make, amend and carry out such bilateral contracts, grants and other agreements and enter into such other transactions as assist the conduct of its business, with any person, corporation, organization or other body of persons, any government or agency of any government whether local, state, or national, whether within or without the United States and with any international or regional organization, which agreements (except for loans and housing guarantees), may not extend at any time for more than five years;

(4) to exercise the priority of the Government of the United States in collecting debts from bankrupts, insolvents, or decedents' estates;

(5) to determine the character of and the necessity for its obligations and expenditures, and the manner in which they shall be incurred, allowed and paid, subject, if a corporation, to provisions of law specifically applicable to government corporations; and

(6) to take such other actions as may be

necessary or appropriate to carry out the purposes of this Act.

(d) The President may collect, compromise, amend or alter any obligations assigned to, held or administered by, and any legal or equitable rights accruing to, such agencies, corporations, departments, offices, or instrumentalities carrying out the purposes of this Act, and as he may determine, refer any such obligations or rights to the Attorney General for suit or collection: *Provided,* That in no case may any recipient of a loan made or administered under this Act be relieved of liability for the repayment of the principal of such loan.

(e) Funds made available for carrying out the purposes of this Act may be utilized for the following:

(1) expenses of attendance at meetings concerned with purposes of this Act, including (notwithstanding the provisions of section 9 of Public Law 60–328 (31 U.S.C. 673)) expenses in connection with meetings of persons whose employment is authorized by section 401(f);

(2) contracting with individuals for personal services abroad: *Provided,* That such individuals shall not be regarded as employees of the United States Government for the purpose of any law administered by the Civil Service Commission;

(3) the purchase and hire of motor vehicles abroad, and the purchase and/or hire of passenger motor vehicles for official use without regard to the limitations contained in 31 U.S.C. 638(c)(2) and 31 U.S.C. 638c;

(4) entertainment (not to exceed $20,000 per year except as may otherwise be provided in an appropriation or other Act);

(5) use in accordance with authorities of the Foreign Service Act of 1946, as amended (22 U.S.C. 801 et seq.), not otherwise provided for;

(6) insurance of official motor vehicles and aircraft acquired for use in foreign countries;

(7) purchase, maintenance, operation, and hire of aircraft;

(8) expenses of preparing and transporting to their former homes, or, with respect to foreign participants engaged in any program under this Act, to their former homes or places of burial, and of care and disposition of, the remains of persons or members of the families of persons who may die while such persons are away from their homes participating in any program under this Act;

(9) payment of per diem in lieu of subsistence to foreign participants engaged in any program under this Act, while such participants are away from their homes in countries other than the United States, at rates not in excess of those prescribed by the standardized Government travel regulations, notwithstanding any other provision of law;

(10) payment of the cost of health and accident insurance for foreign participants engaged in any program under this Act, while such participants are absent from their homes for the purpose of participation in such program;

(11) payment of the cost of health and accident insurance for foreign employees engaged in any program under this Act while those employees are absent from their place of employment abroad for purposes of training or other official duties;

(12) expenses in connection with travel of personnel outside the United States, including travel expenses of dependents (including expenses during necessary stopovers while engaged in such travel), and transportation of personal effects, household goods, and automobiles of such personnel when any part of such travel or transportation begins in one fiscal year pursuant to travel orders issued in that fiscal year, notwithstanding the fact that such travel or transportation may not be completed during the same fiscal year, and cost of transporting automobiles to and from a place of storage, and the cost of storing automobiles of such personnel when it is in the public interest or more economical to authorize storage; and

(13) expending funds for printing and binding without regard to the provisions of any other law, and for expenditures for the procurement of supplies and services, and for administrative and operating purposes (other than compensation of personnel) without regard to such laws and regulations governing the performance, amendment or modification of contracts, and the obligation and expenditure of funds of the United States Government, as the President may determine to be appropriate to accomplish the purposes of this Act.

(f) Any cost-type contract or agreement (including grants) entered into with a university, college, or other educational institution for the purpose of carrying out programs authorized by this Act may provide for the payment of the reimbursable indirect costs of said university, college, or other educational institution on the basis of predetermined fixed-percentage rates applied to the total, or an element thereof, or the reimbursable direct costs incurred.

(g) The provisions of section 955 of title 18 of the United States Code shall not apply to prevent any person, including any individual, partnership, corporation, or association, from acting for, or participating in, any operation or transaction arising under this Act, or from acquiring any obligation issued in connection with any operation or transaction arising under this Act.

(h) In furnishing assistance under this or any other Act in or to any country in which the United States owns foreign currencies determined by the United States Treasury to be excess to the needs of the United States Government, except those currencies generated under the Agricultural Trade Development and Assistance Act of 1954, as amended, the President is authorized to utilize such currencies to the extent agreed upon with the government of such country to carry out purposes for which new funds authorized by this Act would be available; and, notwithstanding the requirements of section 1415 of the Supplemental Appropriation Act, 1953, such funds may be used for such purposes.

SEC. 406. SPECIAL AUTHORITIES.—(a) The President may allocate or transfer to any agency of the United States Government any part of any funds available for carrying out the purposes of this Act, including any advance to the United States Government by any country or international organization for the procurement of commodities or services. Such funds shall be available for obligation and expenditure for the purposes for which authorized, in accordance with authority granted in this Act or under authority governing the activities of the agencies of the United States Government to which such funds are allocated or transferred.

(b) Any officer of the United States Government, in carrying out functions under this Act, may utilize the services and facilities of, or procure commodities from, any agency of the United States Government with the consent of the head of such agency, and funds allocated pursuant to this section to any such agency may be established in separate appropriation accounts on the books of the Treasury.

(c) In furnishing assistance under this Act, accounts may be established on the books of any agency of the United States Government or, on terms and conditions approved by the Secretary of the Treasury, in banking institutions in the United States, (1) against which letters of commitment may be issued which shall constitute recordable obligations of the United States Government, and moneys due or to become due under such letters of commitment shall be assignable under the Assignment of Claims Act of 1940, as amended (second, third paragraphs of 31 U.S.C. 203 and 41 U.S.C. 15), and (2) from which disbursement may be made to, or withdrawals may be made by, recipient countries or agencies, organizations or persons upon presentation of contracts, invoices or other appropriate documentation. Expenditure of funds which have been made available through accounts so established shall be accounted for on standard documentation required for expenditure of funds of the United States Government: *Provided,* That such expenditures for commodities, services or facilities procured outside the United States may be accounted for exclusively on such certification as may be prescribed in regulations approved by the Comptroller General of the United States.

(d) Funds provided for in agreements with foreign countries for the furnishing of services under this Act with respect to specific projects shall be deemed to be obligated for the services of personnel employed by agencies of the United States Government as well as personnel not employed by the United States Government.

(e) Alien participants engaged in any program under this Act may be admitted to the United States, if otherwise qualified as nonimmigrants under section 101(a) of the Immigration and Nationality Act, as amended (8 U.S.C. 1001(a)(15)), for such time and under such conditions as may be prescribed by regulations promulgated by the Secretary of State and the Attorney General.

SEC. 407. SMALL BUSINESS.—Insofar as practicable and to the maximum extent consistent with the accomplishment of the purposes of this Act, the President shall assist American small business to participate equitably in the furnishing of commodities, and services financed with funds made available under this Act.

SEC. 408. COORDINATION.—(a) The President shall establish a system for coordination of the programs authorized by this Act, the activities of the Overseas Private Investment Corporation and the programs of the Inter-American Foundation.

(b) The President shall prescribe appropriate procedures to assure coordination among representatives of the United States Government in each country, under the direction of the Chief of the United States Diplomatic Mission.

(c) Programs authorized by this Act shall be undertaken with the foreign policy guidance of the Secretary of State.

SEC. 409. AUDIT AND REPORTS.—(a) The President shall provide for adequate financial control including auditing for any agency, department, corporation or instrumentality carrying out functions under this Act.

(b) An annual report on the fiscal year operations or activities of each agency, department, corporation or instrumentality carrying out functions under this Act shall be submitted to the Congress.

SEC. 410. DEFINITIONS.—(a) The term "friendly developing countries and areas" shall not include countries or areas (1) which are dominated or controlled by the Union of Soviet Socialist Republics or the Peoples Republic of China, (2) which furnish assistance to Cuba or which fail to take appropriate steps to prevent ships or aircraft under their registry from transporting to or from Cuba (other than United States installations in Cuba) any equipment, materials or commodities as long as Cuba is governed by the Castro regime, (3) which sell or furnish to North Vietnam or which permit ships

or aircraft under their registries to transport to or from North Vietnam, any equipment, materials, or commodities as long as the regime in North Vietnam gives support to hostilities in South Vietnam, or (4) with which diplomatic relations with the United States have been severed: *Provided, however,* That the President of the United States is authorized to furnish assistance to countries or areas which would otherwise be ineligible for assistance under the foregoing definition whenever he determines the furnishing of such assistance to be important to the national interest.

(b) The term "predecessor legislation to the Foreign Assistance Act of 1961" means:

(1) Section 3 of the Latin American Development Act, as amended;

(2) the Mutual Security Act of 1954, as amended;

(3) the Mutual Security Act of 1953;

(4) the Mutual Security Act of 1951, as amended;

(5) the India Emergency Food Aid Act of 1951;

(6) the Mutual Defense Assistance Act of 1949, as amended; and

(7) the Economic Cooperation Act of 1948, as amended.

(c) The term "eligible investor" means: (1) United States citizens, (2) corporations, partnerships or other associations, including nonprofit associations, created under the laws of the United States or any State or territory thereof and substantially beneficially owned by United States citizens, corporations, partnerships or other associations; and (3) foreign corporations, partnerships or other associations wholly owned by one or more such United States citizens, corporations, partnerships or other associations: *Provided, however,* That the eligibility of any foreign corporation shall be determined without regard to any shares, in aggregate less than five per centum of the total of issued and subscribed share capital, required by law to be held by other than the United States owners.

SEC. 411. UNEXPENDED BALANCES.—Unexpended balances of funds made available pursuant to this Act, the Foreign Assistance Act of 1961, as amended, the Mutual Security Act of 1954, as amended, and the Latin American Development Act, as amended, are hereby authorized to be continued available for the general purposes for which appropriated, and may at any time be consolidated, and, in addition, may be consolidated with appropriations made available for the same general purposes under the authority of this Act.

SEC. 412. SAVING PROVISIONS.—(a) Except as may be expressly provided to the contrary in this Act, all determinations, authorizations, regulations, orders, contracts, agreements, and other actions issued, undertaken, or entered into under authority of the Foreign Assistance Act of 1961, as amended, shall continue in full force and effect until modified by appropriate authority.

(b) Funds made available under the authority of the Foreign Assistance Act of 1961, as amended, shall, unless otherwise authorized or provided by law, remain available for purposes authorized by this Act, or for their original purposes in accordance with the provisions of law originally applicable thereto, or in accordance with the provisions of law currently applicable to those purposes.

(c) If any provision of this Act or the application of any provision to any circumstances or persons shall be held invalid, the validity of the remainder of this Act, and of the applicability of such provision to other circumstances or persons shall not be affected thereby.

SEC. 413. EFFECTIVE DATE.—This Act shall take effect on the date of its enactment.

SEC. 414. STATUTES REPEALED.—(a) There is hereby repealed all of part I of the Foreign Assistance Act of 1961, except title IV of chapter 2 which is hereafter entitled the Overseas Private Investment Corporation Act, chapter 4 and chapter 5 of part I.

(b) References in law to the provisions of the Foreign Assistance Act of 1961, as amended, repealed by subsection (a) of this section, shall hereafter be deemed to be references to appropriate provisions of this Act.

CHAPTER 2—TRANSITION PROVISIONS AND AMENDMENTS TO OTHER ACTS

SEC. 501. TRANSFER OF FUNCTIONS.—(a) The President of the United States shall transfer, at such time as he may determine, to any officer, agency, corporation, department, or other instrumentality of the United States carrying out the provisions of this Act, such obligations, assets, property, records, personnel, functions, rights and responsibilities of the Agency for International Development as may be necessary for the performance of functions under this Act. Until such transfer is completed, the Agency for International Development shall, notwithstanding the provisions of sections 413 and 414 of this Act, continue to administer such assets and obligations, and to carry out such programs and activities under the authorities heretofore available under the Foreign Assistance Act of 1961, as amended, or under the authorities of this Act as may be determined by the President.

(b) Personnel transferred pursuant to this section may continue to be employed under the appointments in which they were serving immediately prior to the date of such transfer, or may, in the discretion of the head of the agency to which they are transferred (or upon his recommendation) be converted to a personnel status authorized by this Act or by other law, including status as Foreign Service Reserve officers with unlimited tenure.

(c) The President is authorized to prescribe by regulation, standards and other criteria for maintaining adequate performance levels for Foreign Service Reserve officers transferred pursuant to this section who are serving under unlimited appointments at the time of such transfer. Notwithstanding any other law, any Foreign Service Reserve officer so transferred who fails to meet the standard of performance required of officers of his class shall be retired from the Service and receive benefits in the same amount as provided in section 634(b)(1) of the Foreign Service Act of 1946, as amended, unless he is eligible at the time of his separation for (i) an immediate annuity under subchapter III of chapter 83 of title 5, United States Code, or (ii) compensation under subchapter I of chapter 81 of title 5, United States Code, other than compensation payable concurrently with salary or on account of the death of another individual.

(d) Any Foreign Service Reserve officer transferred pursuant to this section, whose services meet the standards required for the efficient conduct of the work of the Service, shall receive an increase in salary to the next higher rate for the class in which he is serving on the first day of the first fiscal year following enactment of this Act, and thereafter, the provisions of section 625 of the Foreign Service Act of 1946, as amended, shall apply.

(e) Foreign Service staff officers and employees transferred pursuant to this section who have completed ten years of continuous service as Foreign Service staff officers or employees with the Agency for International Development or Department of State, exclusive of military service, shall become participants in the Foreign Service Retirement and Disability System in accordance with such regulations and subject to such conditions as the President may prescribe.

(f) Any person who becomes a participant in the Foreign Service Retirement and Disability System pursuant to this section shall make a special contribution to the Foreign Service Retirement and Disability Fund in accordance with section 852 of the Foreign Service Act of 1946, as amended. Any such person who is age 57 or over, one year after the effective date of this Act may retire voluntarily at any time after becoming a participant and before mandatory retirement for age and receive retirement benefits under section 821 of the Foreign Service Act of 1946, as amended.

(g) Any Foreign Service staff officer or employee who becomes a participant in the Foreign Service Retirement and Disability System under paragraph (e) and any person who is appointed as a Foreign Service Reserve officer with unlimited tenure under paragraph (b) shall be mandatorily retired for age during the third year after the date of enactment of this Act if he attains age sixty-four or if he is over age sixty-four; during the fifth year at age sixty-two; during the sixth year at age sixty-one, and thereafter at age sixty.

(h)(1) A person serving in the Agency for International Development in a position to which he was appointed by the President, whether with or without the advice and consent of the Senate, shall become a participant in the Foreign Service Retirement and Disability System, provided that, prior to such appointment, such person was serving in employment subject to section 625(d)(2) or section 631(b) of the Foreign Assistance Act of 1961, as amended. Such person shall make a special contribution to the Foreign Service Retirement and Disability Fund in accordance with the provisions of section 852 of the Foreign Service Act of 1946, as amended.

(2) The provisions of sections 519,571 and 632 of the Foreign Service Act of 1946, as amended, shall apply to a person subject to part (1) of this subsection.

(3) A person who, following an appointment by the President from a position subject to section 625(d)(2) or section 631(b) of the Foreign Assistance Act of 1961, as amended, was appointed by the President, whether with or without the consent of the Senate, to another position in the Agency for International Development, shall be deemed to have met the eligibility requirements of part (1) of this subsection.

SEC. 502. AMENDMENTS TO OTHER ACTS.—(a) Title IV of chapter 2, part I of the Foreign Assistance Act of 1961, as amended, is amended as follows:

(1) The title of title IV is deleted and the following is substituted therefor: "Overseas Private Investment Corporation Act".

(2) All sections of such Act are amended by striking out the word "title" wherever it appears and substituting therefor the word "Act".

(3) Wherever the words "less developed friendly countries and areas", "less developed country governments", "less developed countries and areas", "less developed friendly country or area" or "less developed countries" appear in such Act, strike them out and substitute therefor the words "friendly developing countries and areas".

(4) In section 231(j) of such Act strike out the language "the activities of the agency primarily responsible for administering Part I and".

(5) In section 233(b) of such Act strike out the sentence "The Administrator of the Agency for International Development shall be the Chairman of the Board, ex officio." and substitute therefor the sentence "The Chair-

man of the board shall be an official of the Government of the United States designated by the President of the United States.".

(6) In section 233 of such Act add a new subsection (e) which shall read as follows:

"(e) Experts, Consultants, and Retired Officers. Experts and consultants or organizations thereof may, as authorized by section 3109 of title 5 of the United States Code, be employed for the performance of functions under this title, and individuals so employed may be compensated at rates not to exceed the per diem equivalent of the rate for grade 18 of the general schedule established by section 5332 of title 5 of the United States Code. Such contracts may be renewed from time to time without limitation. Service of an individual as an expert or consultant under this subsection shall not be considered as employment or holding of office or position bringing such individual within the provisions of section 3323(a) and 8344 of title 5 of the United States Code, section 872 of the Foreign Service Act of 1946, as amended, or any other law limiting the reemployment of retired officers or employees or governing the simultaneous receipt of compensation and retired pay or annuities, subject to section 5532 of title 5 of the United States Code."

(7) In section 234(e) of such Act strike out the phrase "under the authority of section 632(a)" in the last sentence and insert in lieu thereof the phrase "from other agencies of the United States.".

(8) In section 235(c) of such Act, strike out the figures "234(e)" and insert in lieu thereof "235(e)".

(9) Section 236 of such Act is deleted and the following inserted in lieu thereof:

"Sec. 236. Income and Revenues. (a) In order to carry out the purposes of the Corporation, all revenues and income transferred to or earned by the Corporation, from whatever source derived, shall be held by the Corporation and shall be available to carry out its purposes, including without limitation—

(1) payment of all expenses of the Corporation, including expenses of the following:

(A) attendance at meetings concerned with the purposes of this Act, including (notwithstanding the provisions of section 9 of Public Law 60–328 (31 U.S.C. 673)) expenses in connection with meetings of persons whose employment is authorized by section 233(e);

(B) contracting with individuals for personal services abroad: *Provided*, That such individuals shall not be regarded as employees of the United States Government for the purpose of any law administered by the Civil Service Commission; (C) the purchase and/or hire of passenger motor vehicles for official use without regard to the limitations contained in 31 U.S.C. 638a(c)(2) and 31 U.S.C. 638c;

(D) use in accordance with authorities of the Foreign Service Act of 1946, as amended (22 U.S.C. 801 et seq), not otherwise provided for;

(E) entertainment (not to exceed $10,000 in any fiscal year except as may otherwise be provided in an appropriation or other Act); and

(F) Investment promotion.

(2) transfers and additions to the insurance or guaranty reserves, the Direct Investment Fund established pursuant to section 235, and such other funds or reserves as the Corporation may establish at such time and in such amounts as the Board may determine; and

(3) payment of dividends on capital stock, which shall consist of and be paid from net earnings of the Corporation after payments, transfers, and additions under subsections (1) and (2) hereof.

(b) The Corporation may expend funds for printing and binding without regard to the provisions of any other law, and for expenditures for the procurement of supplies and services and for administrative and operating purposes (other than compensation of personnel) without regard to such laws and regulations governing the performance, amendment or modification of contracts, and the obligation and expenditure of funds of the United States Government, as may be appropriate to accomplish the purposes of the Corporation."

(10) Subsection 238 of such Act is amended by adding a new subsection (e) which shall read as follows:

"(e) The term 'friendly developing countries and areas' shall not include countries or areas (1) which are dominated or controlled by the Union of Soviet Socialist Republics or the Peoples Republic of China. (2) which furnish assistance to Cuba or which fail to take appropriate steps to prevent ships or aircraft under their registry from transporting to or from Cuba (other than United States installations in Cuba) any equipment, materials or commodities as long as Cuba is governed by the Castro regime, (3) which sell or furnish to North Vietnam, or which permit ships or aircraft under their registries to transport to or from North Vietnam, any equipment, materials, or commodities as long as the regime in North Vietnam gives support to hostilities in South Vietnam, or (4) with which diplomatic relations with the United States have been severed: *Provided, however*, That the President of the United States may authorize the Corporation to operate its investment incentive programs in countries or areas which would otherwise be ineligible under the foregoing definition whenever he determines the furnishing of such investment incentives to be important to the national interest."

(11) Section 239(d) of such Act is amended by inserting after the word "acquire" which follows the second semicolon the following: "(including acquisition by gift, devise, bequest, grant or otherwise)," by inserting after the word "therein" the words ", including real property within the District of Columbia" and by inserting after the next to last semicolon the following phrase: "to collect or compromise any obligations assigned to or held by the Corporation including any legal or equitable rights accruing to the Corporation;".

(12) Section 239(e) of such Act is amended to read as follows: "(e) The Board shall provide for adequate internal financial control, including internal auditing."

(13) Section 239 of such Act is amended by adding new subsections (g) and (h) which shall read as follows:

"(g) To carry out the purposes of this Act the Corporation may utilize the services and facilities of, or procure commodities from, any agency of the United States Government with the consent of the head of such agency, and funds allocated pursuant to this subsection to any such agency may be established in separate appropriation accounts on the books of the Treasury. In the case of any commodity, service, or facility procured from any agency of the United States Government to carry out this Act, reimbursement or payment shall be made to such agency from funds available to carry out such part."

"(h) In carrying out functions under this Act accounts may be established on the books of any agency of the United States Government or, on terms and conditions approved by the Secretary of the Treasury, in banking institutions in the United States, (1) against which letters of commitment may be issued which shall constitute recordable obligations of the United States Government, and moneys due or to become due under such letters of commitment shall be assignable under the Assignment of Claims Act of 1940, as amended (second and third paragraphs of 31 U.S.C. 203 and 41 U.S.C. 15), and (2) from which disbursement may be made to, or withdrawals may be made by, recipient countries or agencies, organizations, or persons upon presentation of contracts, invoices, or other appropriate documentation. Expenditures of funds which have been made available through accounts so established shall be accounted for on standard documentation required for expenditure of funds of the United States Government: *Provided*, That such expenditures for commodities, services, or facilities procured outside the United States may be accounted for exclusively on such certification as may be prescribed in regulations approved by the Comptroller General of the United States."

(14) Section 231 of such Act is hereby renumbered Section 1 and all subsequent sections of such Act are similarly renumbered 2 through 11, consecutively. References in this or any other Act to such sections prior to renumbering shall be deemed references to such sections as renumbered herein.

(b) Part IV of the Foreign Assistance Act of 1969 is amended as follows:

(1) The title of such part is deleted and the following substituted therefor: "The Inter-American Foundation Act.".

(2) The title of section 401 is deleted and the following substituted therefor: "Inter-American Foundation".

(3) Section 401 is amended throughout by striking the word "Institute" wherever it appears, and substituting therefor the word "Foundation".

(4) Section 401(a) is amended to read as follows:

"(a) There is created as an agency of the United States of America a body corporate to be known as the Inter-American Foundation (hereafter in this section referred to as the 'Foundation').".

(5) Section 401(d)(4) is amended to read as follows:

"(4) shall determine and prescribe the manner in which its obligations shall be incurred and its expenses, including expenses for entertainment (not to exceed $10,000 in any fiscal year), allowed and paid;".

(6) Section 401(1) is amended to read as follows:

"(1) Officers, staff, and compensation.

"(1) The chief executive officer of the Foundation shall be a President who shall be appointed by the Board of Directors on such terms as the Board may determine. The President shall receive compensation at the rate provided for Level IV of the Executive Schedule under section 5315 of title 5, United States Code.

"(2) Of the persons employed by the Foundation, not to exceed 12 may be appointed, compensated, or removed without regard to the civil service laws and regulations. Such persons may be compensated at rates no higher than the highest rate provided for grade 15 of the general schedule established by section 5332 of title 5 of the United States Code: *Provided*, That, under such regulations as the President of the United States may prescribe, officers and employees of the United States Government who are appointed to any of the above positions may be entitled, upon removal from such position, except for cause, to reinstatement to the position occupied at the end of appointment or to a position of comparable grade and salary.

"(3) (A) Experts and consultants, or organizations thereof, may be employed, as authorized by section 3109 of title 5 of the United States Code, and may be compensated at rates not to exceed the per diem equivalent of the rate of grade 18 of the general

schedule established by section 5332 of title 5 of the United States Code.

"(B) Services of an individual as an expert or consultant under this subsection shall be considered as employment or holding office or position bringing such individual within the provisions of sections 3323(a) and 8344 of title 5 of the United States Code, section 872 of the Foreign Service Act of 1946, as amended, or any other law limiting the re-employment of retired officers or employees or governing the simultaneous receipt of compensation and retired pay or annuities, subject to section 5332 of title 5 of the United States Code."

(c) Section 1 of the Act of May 26, 1949, as amended (22 U.S.C. 2652), is amended by striking out "eleven" and substituting therefor "twelve".

(d) The Migration and Refugee Assistance Act of 1962 (22 U.S.C. 2601) is amended as follows:

(1) In section 2(c), strike out "Foreign Assistance Act of 1961, as amended" and substitute therefor "The President's Foreign Assistance Contingency Fund.".

(2) Delete section 7.

(e) Title 5, United States Code is amended as follows:

(1) In section 5108(a) strike out "2,754" and substitute therefor "2,762".

(2) In section 5315, relating to positions at Level IV of the Executive Schedule, strike out "(22) Assistant Secretaries of State (11)" and substitute therefor "(22) Assistant Secretaries of State (12)".

(f) Section 103(b) of the Agricultural Trade Development and Assistance Act of 1954, as amended, is amended by striking out the words "section 201 of the Foreign Assistance Act of 1961, as amended" and substituting therefor the words "section 208 of the International Development and Humanitarian Assistance Act of 1971".

By Mr. FULBRIGHT (by request):

S. 1657. A bill to consolidate and revise the Foreign Assistance Act of 1961, as amended, and other legislation relating to international security assistance, and for other purposes. Referred to the Committee on Foreign Relations.

A BILL TO CONSOLIDATE AND REVISE THE FOREIGN ASSISTANCE ACT OF 1961, AS AMENDED

Mr. FULBRIGHT. Mr. President, by request, I introduce for appropriate reference a bill to consolidate and revise the Foreign Assistance Act of 1961, as amended, and other legislation relating to international security assistance, and for other purposes.

The bill has been requested by the President of the United States and I am introducing it in order that there may be a specific bill to which Members of the Senate and the public may direct their attention and comments.

I reserve my right to support or oppose this bill, as well as any suggested amendments to it, when the matter is considered by the Committee on Foreign Relations.

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

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

S. 1657

A bill to consolidate and revise the Foreign Assistance Act of 1961, as amended, and other legislation relating to international security assistance, and for other purposes

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

TITLE I—INTERNATIONAL SECURITY ASSISTANCE

CHAPTER 1—FOREIGN AND NATIONAL SECURITY POLICY OBJECTIVES, COORDINATION, AND DEFINITIONS

SEC. 1. SHORT TITLE.—Title I of this Act may be cited as the International Security Assistance Act of 1971. References in Title I to this "Act" shall be deemed to be references solely to the provisions of Title I.

SEC. 2. STATEMENT OF POLICY.—

The Congress, recognizing the importance to world peace and stability of defense cooperation among free and friendly nations in accordance with the principles of the Charter of the United Nations, and recognizing further that security is an essential precondition for economic and social development, declares it to be the policy of the United States:

That, in recognition that the capacity for the achievement of self-sufficiency in defense matters varies widely among the allied and friendly nations, it is the intent of this Act to insure the national security of the United States and contribute to the continuing security of our allies while permitting the selective reduction of United States forces abroad;

That in providing assistance under this Act, priority shall be given to the enhancement of the capacity of the recipient nations to assume their own defense burden, including their contributions to regional defense arrangements, and to assisting them effectively to harness their own resources in furtherance of these ends;

That in the establishment of programs of assistance under this Act, appropriate emphasis shall also be given to the need to help bring about the conditions of economic and political stability necessary for economic growth and development.

It is the sense of the Congress that security assistance shall not be provided to military regimes that deny the growth of fundamental rights or social progress to their own people.

The Congress reaffirms the policy of the United States to continue to exert maximum effort to achieve the control and reduction of armaments worldwide, under adequate safeguards. In furtherance of this goal, it remains the policy of the United States to encourage regional arms control and disarmament agreements and to discourage arms races. In particular, the President should take such actions as may be appropriate to bring about multilateral agreements to control the worldwide trade in conventional arms.

The Congress also reaffirms that the cause of international order can be served by maintaining and strengthening the peacekeeping capacity of the United Nations and other international organizations. Consequently, it behooves the United States to provide appropriate support to these peacekeeping efforts.

SEC. 3. COORDINATION.—

(a) Nothing contained in this Act shall be construed to infringe upon the powers or functions of the Secretary of State.

(b) Under the direction of the President, the Secretary of State shall be responsible for the continuous supervision and general direction of international security assistance programs, including determining whether there shall be a military assistance (including civic action) program or an economic supporting assistance program for a country and the value thereof, and a military sale to a country and the amount thereof, to the end that the programs of security assistance are effectively integrated both at home and abroad and the foreign policy of the United States is best served thereby.

(c) The President shall prescribe appropriate procedures to assure coordination among representatives of the United States Government in each country, under the leadership of the Chief of the U.S. Diplomatic Mission. The Chief of the Diplomatic Mission shall make sure that recommendations of such representatives pertaining to programs of military assistance and sales are coordinated with political and economic considerations, and his comments shall accompany such recommendations if he so desires.

(d)(1) With respect to military assistance, foreign military sales credits and guarantees, and foreign military cash sales, under this Act, the Secretary of Defense shall, under the direction of the President, have primary responsibility for—

(A) the determination of defense article requirements;

(B) the procurement of defense articles in a manner which permits their integration with service programs;

(C) the supervision of grant defense article use by the recipient countries;

(D) the supervision of the training of foreign military personnel;

(E) the movement and delivery of defense articles; and

(F) within the Department of Defense, the performance of any other functions with respect to the furnishing of security assistance.

(2) The establishment of priorities in the procurement, delivery and allocation of defense articles shall be determined by the Secretary of Defense.

SEC. 4. DEFINITIONS.—As used in this Act—

(a) "Agency of the United States Government" includes any agency, department, board, wholly or partly owned corporation, instrumentality, commission, or establishment of the United States Government.

(b) "Armed Forces" of the United States means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

(c) "Commodity" includes any material, article, supply, goods, or equipment furnished for non-military purposes.

(d) "Defense article" includes—

(1) any weapon, weapons system, munition, aircraft, vessel, boat, or other implement of war;

(2) any property, installation, commodity, material, equipment, supply, or goods furnished for military purposes;

(3) any machinery, facility, tool, material, supply, or other item necessary for the manufacture, production, processing, repair, servicing, storage, construction, transportation, operation, or use of any article listed in this subsection; or

(4) any component or part of any article listed in this subsection; but shall not include merchant vessels or, as defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011), source material, by-product material, special nuclear material, production facilities, utilization facilities, or atomic weapons or articles involving Restricted Data.

(e) "Defense information" includes any document, writing, sketch, photograph, plan, model, specification, design, prototype, or other recorded or oral information relating to any defense article or defense service but shall not include Restricted Data as defined by the Atomic Energy Act of 1954, as amended, and data removed from the Restricted Data category under section 142d of that Act.

(f) "Defense service" includes any service, test, inspection, repair, training, publication, or technical or other assistance, or defense information furnished for military purposes. "Training" includes formal or informal instruction of foreign students in the United States or overseas by officers or employees of the United States, contract technicians, contractors (including instruction at civilian institutions), or by correspondence courses, technical, educational, or information publications and media of all kinds, training aid, orientation, training exercise, and military advice to foreign military units and forces.

(g) "Excess defense articles" means the quantity of defense articles owned by the United States Government, and not pro-

cured in anticipation of military assistance or sales requirements, or pursuant to a military assistance or sales order, which is in excess of the mobilization reserve at the time such articles are dropped from inventory by the supplying agency for delivery to countries or international organizations under this Act.

(h) "Function" includes any duty, obligation, power, authority, responsibility, right, privilege, discretion, or activity.

(i) "Mobilization reserve" means the quantity of defense articles determined to be required under regulations prescribed by the Secretary of Defense to support mobilization of the Armed Forces of the United States Government in the event of war or national emergency.

(j) "Officer or employee" means civilian personnel and members of the Armed Forces of the United States Government.

(k) "Services" include any service, repair, training of personnel, or technical or other assistance or information furnished for nonmilitary purposes.

(l) "Surplus agricultural commodity" means any agricultural commodity or product thereof, class, kind, type, or other specification thereof, produced in the United States, either publicly or privately owned, which is in excess of domestic requirements, adequate carry-over, and anticipated exports for the United States dollars, as determined by the Secretary of Agriculture.

(m) "Value" means—

(1) with respect to excess defense articles: as to military assistance, the gross cost incurred by the United States Government in repairing, rehabilitating, or modifying such articles, and, as to foreign military sales, the acquisition cost to the United States Government adjusted as appropriate for condition and market value;

(2) with respect to nonexcess defense articles delivered from inventory to countries or international organizations under this Act, the standard price in effect at the time such articles are dropped from inventory by the supplying agency: *Provided,* That, with respect to foreign military sales, sales may be made at the standard price in effect at the time the supplying agency issues a formal offer of sale to the purchaser. Such standard price shall be the same price (including authorized reduced prices) used for transfers or sales of such articles in or between the Armed Forces of the United States Government, or, where such articles are not transferred or sold in or between the Armed Forces of the United States, the acquisition cost to the United States Government adjusted as appropriate for condition and market value; and

(3) with respect to non-excess defense articles delivered from new procurement to countries or international organizations under this Act, the contract or production costs of such articles.

Military assistance programs and orders shall be based upon the best estimates of stock status and prevailing prices; reimbursements to the supplying agency shall be made on the basis of the stock status and prices determined pursuant to this section. Notwithstanding the foregoing provisions of this section, the Secretary of Defense may prescribe regulations authorizing reimbursements to the supplying agency based on negotiated prices for aircraft, ships, plant equipment, and such other major items as he may specify: *Provided,* That such articles are not excess at the time such prices are negotiated: *Provided further,* That such prices are negotiated at the time firm orders are placed with the supplying agency.

CHAPTER 2—GENERAL AUTHORIZATIONS AND FUNDING

SEC. 21. GENERAL AUTHORIZATION TO FURNISH SECURITY ASSISTANCE.—

The President may furnish security assistance to foreign countries, international organizations, and bodies eligible to receive assistance under this Act by such means and on such terms and conditions consistent with this Act as he may determine. Subject to the limitations of this Act, an eligible recipient may be provided any of the following kinds of security assistance:

(1) military assistance;

(2) economic supporting assistance;

(3) foreign military sales credits and guarantees; and

(4) foreign military cash sales.

SEC. 22. FUNDING.—

(a) Not to exceed the following amounts may be appropriated to the President for the fiscal year 1972 for assistance authorized by section 21 of this Act:

(1) $705,000,000 for military assistance;

(2) $778,000,000 for economic supporting assistance; and

(3) $510,000,000 for foreign military sales credits and guarantees.

(b) (1) Notwithstanding any provision of law enacted before the date of enactment of this Act, no money appropriated for security assistance shall be available for obligation or expenditure (except to the extent provided for in a Joint Resolution making continuing appropriations)—

(i) unless the appropriation thereof has been previously authorized by law; or

(ii) in excess of an amount previously prescribed by law.

(2) To the extent that legislation enacted after the making of an appropriation for security assistance authorizes the obligation or expenditure thereof, the limitation contained in subsection (b) (1) shall have no effect.

(3) The provisions of this subsection shall not be superseded except by a provision of law enacted after the date of enactment of this subsection which specifically repeals or modifies the provisions of this subsection.

SEC. 23. SPECIAL MILITARY ASSISTANCE AUTHORITY.—(a) During any fiscal year the President may, if he determines it to be vital to the security of the United States, order defense articles from the stocks of the Department of Defense and defense services for military assistant purposes, subject to subsequent reimbursement therefor from subsequent appropriations available for military assistance. The value of such orders under this subsection in any fiscal year shall not exceed $300,000,000.

(b) The Department of Defense is authorized to incur, in applicable appropriations, obligations in anticipation of reimbursements in amounts equivalent to the value of such orders under subsection (a) of this section. Appropriations to the President of such sums as may be necessary to reimburse the applicable apropriation, fund, or account for such orders are hereby authorized.

SEC. 24. PROGRAMING AND BUDGETING.—

(a) In order to ensure that security assistance serves effectively the purposes for which it is designed, the President shall establish procedures for programing and budgeting so that programs of security assistance are carefully formulated and reviewed with full consideration for the foreign policy and security interests of the United States and the economic and financial capability of the recipient country. Where appropriate, programs of military assistance shall be brought into competition for financial support with other activities and programs of the Department of Defense. Particular regard shall be given to a proper balancing of military assistance, economic supporting assistance, foreign military sales credits and cash sales.

(b) Whenever the President determines it to be necessary for the purposes of this Act, not to exceed 20 per centum of the funds made available for any kind of security assistance authorized by section 21 may be transferred to, and consolidated with, the funds made available for any other kind of security assistance authorized by that section, and any worldwide ceiling prescribed in Chapter 4 on the amount of the kind of assistance to which such funds are transferred shall be increased by the dollar amount transferred.

CHAPTER 3—SCOPE OF SECURITY ASSISTANCE AUTHORIZED

SEC. 31. GENERAL CONDITIONS OF ELIGIBILITY.—

(a) Security assistance may be furnished only to a foreign country, international organization, or body the assistance of which the President determines will be in the national interest of the United States. In addition, security assistance other than economic supporting assistance may be furnished only to a foreign country or international organization the assistance of which the President determines will strengthen the security of the United States and promote world peace.

(b) No defense articles may be furnished to any foreign country pursuant to any provision of this Act unless it shall have agreed that—

(1) it will not, without the consent of the President—

(A) permit any use of such articles by anyone not an officer, employee, or agent of that country,

(B) transfer, or permit any officer, employee, or agent of that country to transfer such articles by gift, sale, or otherwise, or

(C) use or permit the use of such articles for purposes other than those for which furnished; and

(2) it will maintain the security of such articles, and will provide substantially the same degree of security protection afforded to such articles by the United States Government.

In considering a request for approval of any transfer of a defense article to another country, the President shall not give his consent to the transfer unless the United States itself would transfer the defense article under consideration to that country. The President shall not give his consent to the transfer of any significant defense articles on the United States Munitions List unless (1) the foreign country requesting consent to transfer agrees to demilitarize such defense articles prior to transfer, or (2) the proposed recipient foreign country provides a commitment in writing to the United States Government that it will not transfer such defense articles, if not demilitarized, to any other foreign country or person without first obtaining the consent of the President.

SEC. 32. SPECIFIC PURPOSES FOR WHICH SECURITY ASSISTANCE MAY BE FURNISHED.—

(a) Assistance to any foreign country under this Act shall be furnished solely for one or more of the following purposes:

(1) to promote internal security;

(2) for legitimate self-defense;

(3) to support or promote economic or political stability;

(4) to permit the recipient to participate in regional or collective arrangements or measures consistent with the Charter of the United Nations;

(5) to permit the recipient to participate in collective measures requested by the United Nations for the purpose of maintaining or restoring international peace and security; or

(6) to assist, along with any other available assistance, foreign military forces in less developed friendly countries to construct public works and to engage in other activities which support the economic and social development of such friendly countries. It is the sense of the Congress that such foreign military forces should not be maintained or established solely for civic action activities and that such civic action activities not significantly detract from the capability of the military forces to perform their military missions and be coordinated with and form part of the total economic and social development effort.

(b) Military assistance to countries in the Western Hemisphere and in Africa shall place primary emphasis on internal security and civic action requirements.

(c) Security assistance decisions shall take into account whether the assistance will:

(1) contribute to an arms race;

(2) increase the possibility of outbreak or escalation of conflict; or

(3) prejudice the development of bilateral or multilateral arms control arrangements.

SEC. 33. USE OF UNITED STATES ARMED FORCES.—

The furnishing of security assistance under this Act shall not be construed as creating a new commitment or as affecting any existing commitment to use Armed Forces of the United States for the defense of any foreign country.

SEC. 34.—MILITARY ASSISTANCE.—

(a) Defense articles and defense services may be acquired from any source and provided to any eligible recipient on a grant, loan, or barter basis. *Provided,* That members of the Armed Forces of the United States and other personnel of the Department of Defense may be assigned or detailed to perform duties only of a noncombatant nature.

(b) No defense articles may be furnished to any foreign country on a grant or loan basis under this Act unless it shall have agreed that—

(1) it will, as the President may require, permit continuous observation and review by, and furnish necessary information to, representatives of the United States Government with regard to the use of such articles; and

(2) unless the President consents to other disposition, it will return to the United States Government for such use or disposition as the President considers in the best interests of the United States, such articles which are no longer needed for the purposes for which furnished.

(c) In addition, no defense articles may be furnished on a grant or loan basis to any country at a cost in excess of $3,000,000 in any fiscal year unless the President determines—

(1) that such country conforms to the purposes and principles of the Charter of the United Nations;

(2) that such defense articles will be utilized by such country for the maintenance of its own defensive strength; and

(3) that such country is taking all reasonable measures, consistent with its political and economic stability, which may be needed to develop its defense capacities.

(d) Military assistance provided on a grant or loan basis under this Act (other than training in the United States) may not be furnished to more than forty countries in any fiscal year.

(e) The President shall regularly reduce and, with such deliberate speed as orderly procedure and other relevant considerations, including prior commitments, will permit, shall terminate all further grants and loans of defense articles to any country having sufficient wealth to enable it, in the judgment of the President, to maintain and equip its own military forces at adequate strength, without undue burden to its economy. Towards this end, progressive use should be made of foreign military sales on a credit and cash basis.

(f) (1) Subject to the provisions of subparagraph (2), a surcharge equal to 33⅓ per centum of the acquisition cost of any excess defense article granted to a foreign country or international organization under this Act shall be considered as an expenditure made from funds made available for military assistance under this Act. When an order is placed under the military assistance program with a military department for a defense article the stock status of which is excess at the time ordered, a sum equal to 33⅓ per centum of the acquisition cost shall (i) be reserved and transferred to a suspense account, (ii) remain in the suspense account until the excess defense article is either delivered to a foreign country or international organization or the order therefor is cancelled, and (iii) be transferred from the suspense account to (A) the general fund of the Treasury upon delivery of such article or (B) to the military assistance appropriation for the current fiscal year upon cancellation of the order. Such sum shall be transferred to the military assistance appropriation for the current fiscal year upon delivery of such article if at the time of delivery the stock status of the article is determined, in accordance with sections 4(g) and (m), to be nonexcess.

(2) The provisions of subparagraph (1) shall apply during any fiscal year only to the extent that the aggregate acquisition cost of excess defense articles ordered during that year exceeds the amount fixed by law for that year. For the fiscal year 1972 that amount is $660,000,000.

(g) (1). Except as provided in subparagraph (2), no defense article having a value in excess of $100,000 shall hereafter be furnished to any country or international organization on a grant or loan basis unless the chief of appropriate military assistance advisory group representing the United States with respect to defense articles used by such country or international organization or the head of any other group representing the United States with respect to defense articles used by such country or international organization has certified in writing within six months prior to delivery that the country or international organization has the capability to utilize effectively such article in carrying out the purposes of this Act.

(2) Defense articles included in approved military assistance programs may be furnished to any country or international organization for which the certification required by subparagraph (1) of this subsection cannot be made when determined necessary and specifically approved in advance by the Secretary of State and the Secretary of Defense.

(h) Military assistance to any country which hereafter uses defense articles or defense services furnished such country under this Act, or any predecessor Act, in substantial violation of the provisions of this chapter or any agreements entered into pursuant to any of such Acts shall be immediately suspended until such time as the President determines that such violation has ceased and the country concerned has given assurances satisfactory to the President that such violation will not reoccur.

(i) No military assistance shall be provided to any country to which surplus agricultural commodity sales are made under title I of the Agricultural Trade Development and Assistance Act of 1954 until such country has entered into an agreement to permit the use of foreign currencies accruing to the United States under such title I to procure defense articles and defense services for the common defense, including internal security, in accordance with the provisions of section 104 (c) of such title I.

SEC. 35.—ECONOMIC SUPPORTING ASSISTANCE.—

(a) Assistance may be furnished to any eligible recipient on such terms and conditions as the President may determine in order to support or promote economic or political stability. Among the bases on which such assistance may be furnished are grant, loan, guaranty, barter, and reimbursement (including cash, credit, and foreign currency repayment terms). Assistance under this section may include the provision of public safety programs.

(b) Economic supporting assistance (other than public safety programs) may not be furnished to more than twelve countries in any fiscal year.

(c) (1) In cases where any commodity is to be furnished on a grant basis under arrangements which will result in the accrual of proceeds to the recipient country from the sale thereof, the President shall require the recipient country to establish a special account, and

(i) deposit in the special account, under such terms and conditions as may be agreed upon, currency of the recipient country in amounts equal to such proceeds;

(ii) make available to the United States Government such portion of the special account as may be determined by the President to be necessary for the requirements of the United States Government: *Provided,* That such portion shall not be less than 10 per centum in the case of any country to which such minimum requirement has been applicable under any Act repealed by this Act; and

(iii) utilize the remainder of the special account for programs agreed to by the United States Government to carry out the purposes for which new funds authorized by this Act would themselves be available: *Provided,* That whenever funds from such special account are used by a country to make loans, all funds received in repayment of such loans prior to termination of assistance to such country shall be reused only for such purposes as shall have been agreed to between the country and the United States Government.

(2) Any unencumbered balances of funds which remain in the account upon termination of assistance to such country under this Act shall be disposed of for such purposes as may, subject to approval by Act of the Congress, be agreed to between such country and the United States Government.

(d) United States dollar advances or reimbursements received under this section after the close of the fiscal year in which commodities or services are delivered may be credited to the economic supporting assistance appropriation for the current fiscal year. In anticipation of such reimbursements, obligations are authorized to be incurred, in the currently applicable appropriation for economic security assistance, in amounts equal to such anticipated reimbursements.

(e) In providing economic supporting assistance, the President—

(1) may issue letters of credit and letters of commitment;

(2) may collect or compromise any obligations assigned to, or held by, and any legal or equitable rights accruing to him, and as he may determine, refer any such obligations or rights to the Attorney General for suit or collection; and

(3) may acquire and dispose of, upon such terms and conditions as he may determine, any property, including any instrument evidencing indebtedness or ownership (provided that equity securities may not be acquired by other means such as by exercise of conversion rights or through enforcement of liens or pledges or otherwise to satisfy a previously incurred indebtedness), and guarantee payment against any such instrument.

SEC. 36. FOREIGN MILITARY SALES CREDITS AND GUARANTEES.—(a) (1) Purchases by eligible foreign countries and international organizations of defense articles and defense services may be financed or refinanced on terms of repayment to the United States Government in United States dollars.

(2) Interest shall be charged for credit extended under this subsection at a rate not less than the cost of money to the United

States Government; *Provided*, That, where a sales transaction involves a combination of private credit and credit extended under the Act, the interest rate charged on credit extended under the Act may be appropriately adjusted so that the effective rate of interest charged the borrower on the combined credits is not less than the cost of money to the United States Government. Interest shall commence not later than the date on which funds are initially disbursed, and payments of interest shall be scheduled to commence not later than one year after such date. Repayments of principal shall be scheduled to be completed not later than ten years after the date on which funds are initially disbursed: *Provided however*, That the President may authorize a concessionary rate of interest of not less than three per centum per annum and/or a maturity period of up to 20 years after the date on which funds are initially disbursed when he finds that such authorization is in the national interest: *Provided further*, That, when the President determines it to be in the national interest, he may alter the terms and conditions of any outstanding credit extended under this subsection or predecessor legislation, but in no case may the maturity period be extended beyond the maximum period authorized in this subsection or the rate of interest set below the minimum rate of interest specified in this subsection.

(3) Subject to the limitations in paragraph (2) of this subsection, the President shall establish standards and criteria for credit and guaranty transactions consistent with the foreign, national security, and financial policies of the United States.

(4) Notwithstanding any other provision of law, no funds or borrowing authority available to the Export-Import Bank of the United States shall be used by such Bank to participate in any extension of credit in connection with any agreement to sell defense articles and defense services entered into with any economically less developed country after June 30, 1968.

(b) (1) Guarantees may be issued to any individual, corporation, partnership, or other juridical entity (excluding United States Government agencies) against political and credit risks of nonpayment arising out of their financing of credit sales of defense articles and defense services to foreign countries and international organizations. Fees shall be charged for such guarantees.

(2) Promissory notes issued by foreign countries and international organizations as evidence of their obligations to make repayments to the United States on account of credits extended under subsection (a) may be sold to any individual, corporation, partnership, or other juridical entity (excluding United States Government agencies) and payment thereof may be guaranteed.

(3) Funds made available to carry out this section shall be obligated in an amount equal to 25 per centum of the contractual liability related to any guaranty issued under this subsection, and all the funds so obligated shall constitute a single reserve for the payment of claims under such guarantees. Any funds so obligated which are deobligated from time to time during any current fiscal year as being in excess of the amount necessary to maintain a fractional reserve of 25 per centum of the contractual liability under outstanding guarantees shall be transferred to the general fund of the Treasury. Any guarantees issued hereunder shall be backed by the full faith and credit of the United States.

(c) Amounts received from foreign countries and international organizations as repayments for credits extended pursuant to subsection (a); amounts received from the sale of instruments evidencing indebtedness under subsection (b) (2) (excluding such portion of the sales proceeds as may be required at the time of sale to be obligated as a reserve for payment of claims under guarantees issued pursuant to subsection (b) (2), which sums are hereby made available for such obligations); and other collections (including fees and interest) shall be transferred to the general fund of the Treasury.

(d) For the purpose of this section, "defense article" means a "United States end product" as defined in the Armed Services Procurement Regulation. *Provided*, That, whenever the President determines it to be necessary to carry out the purposes of this Act, not to exceed ten per centum of the aggregate value of any foreign military sale financed or guaranteed under this section may be foreign end products.

SEC. 37. FOREIGN MILITARY CASH SALES.—(a) Defense articles from the stocks of the Department of Defense and defense services of the Department of Defense may be sold to any eligible foreign country or international organization if such country or international organization agrees to pay the value thereof in United States dollars. Payment shall be made in advance or, as determined by the President to be in the best interest of the United States, within a reasonable period not to exceed one hundred and twenty days after the delivery of the defense articles or the rendering of the defense services.

(b) (1) Without requirement for charge to any appropriation or contract authorization otherwise provided, contracts may be made with suppliers for the procurement of defense articles or defense services for sale for United States dollars to any eligible foreign country or international organization if such country or international organization provides the United States Government with a dependable undertaking (A) to pay the full amount of the final contract price and (B) to make funds available in such amounts and at such times as may be required to meet the payments required by the contract, and for any damages and costs that may accrue from the cancellation of such contract, in advance of the time such payments, damages, or costs are due: *Provided*, That the President may, when he determines it to be in the national interest, accept a dependable undertaking to make full payment within one hundred and twenty days after delivery of the defense articles, or the rendering of the defense services, and appropriations available to the Department of Defense may be used to meet the payments required by the contracts and shall be reimbursed by the amounts subsequently received from the country or international organization: *Provided further*, That the President may, when he determines it to be in the national interest, enter into sales agreements with purchasing countries or international organizations which fix prices to be paid by the purchasing countries or international organizations for the defense articles or defense services ordered. Funds made available for foreign military sales credits under section 36 shall be used to reimburse the applicable appropriations in the amounts required by the contracts which exceed the price so fixed except that such reimbursement shall not be required upon determination by the President that the continued production of the defense article being sold is advantageous to the Armed Forces of the United States. Payments by purchasing countries or international organizations which exceed the amounts required by such contracts shall be transferred to the general fund of the Treasury. To the maximum extent possible, prices fixed under any such sales agreement shall be sufficient to reimburse the United States for the cost of defense articles or defense services ordered.

(2) No sales of unclassified defense articles shall be made to the government of any economically developed nation under the provisions of this subsection unless such articles are not generally available for purchase by such nations from commercial sources in the United States: *Provided, however*, That the President may waive the provisions of this sentence when he determines that the waiver of such provisions is in the national interest: *Provided further*, That in determining whether a sale should be made pursuant to this subsection, there shall be taken into consideration the extent to which the proposed sale may damage the interests of United States entities which have granted licenses for the manufacture of the defense articles selected by the purchasing country to entities located in friendly foreign countries, where (A) such licenses result in financial returns to the United States, and (B) a substantial portion of the defense articles so manufactured under license is of United States origin.

(c) Cash payments received under this section and advances received under section 36 shall be available solely for payments to suppliers (including the military departments) and refunds to purchasers and shall not be available for financing credits and guarantees.

CHAPTER 4—GENERAL RESTRICTIONS ON ASSISTANCE

SEC. 41. APPLICATION OF RESTRICTIONS.—Except as otherwise specified in this Chapter, the provisions of this Chapter do not apply to foreign military cash sales.

SEC. 42. SPECIAL CONDITIONS OF ELIGIBILITY.—(a) No assistance under this Act (including foreign military cash sales) shall be furnished to the government of any country unless the President determines that such country is not dominated or controlled by the Union of Soviet Socialist Republics or by the Peoples Republic of China.

(b) No assistance shall be furnished on a grant basis under this Act to any economically developed nation capable of sustaining its own defense effort and economic growth, except training during each fiscal year in an amount not to exceed $500,000 for each such country.

(c) (1) No assistance shall be furnished under this Act to any country which sells or furnishes to, or which permits ships or aircraft under its registry to transport to or from, North Vietnam any commodities or defense articles so long as the regime in North Vietnam gives support to hostilities in South Vietnam.

(2) No assistance under this Act shall be furnished to any country which furnishes assistance to Cuba, or which has failed to take appropriate steps to prevent ships or aircraft under its registry from transporting to or from Cuba any commodities or defense articles so long as Cuba is governed by the Castro regime, unless the President finds that such assistance is important to the national interest of the United States.

(d) No assistance under this Act (including foreign military cash sales) shall be furnished to any country which has severed or hereafter severs diplomatic relations with the United States or with which the United States has severed or hereafter severs diplomatic relations until diplomatic relations have been resumed with such country, unless the President finds such assistance is important to the national interest of the United States.

(e) In order to restrain arms races and proliferation of sophisticated weapons, and to ensure that resources intended for economic development are not diverted to military purposes—

(1) When the President finds that any economically less developed country is diverting development assistance furnished to it by the United States or sales under the Agricultural Trade Development and Assistance Act of 1954, as amended, to military expenditures, or is diverting its own resources to unnecessary military expenditures, to a degree which materially interferes with

ts development, such country shall be immediately ineligible for new credits, guarantees, and sales under sections 36 and 37 until the President is assured that such diversion will no longer take place.

(2) No sophisticated weapons system shall be furnished, or financed, under any provision of this Act (including foreign military cash sales) to any less developed country (other than the Republic of China, Israel, Greece, Republic of Korea, the Philippines, Thailand, Turkey, and Republic of Vietnam), unless the President determines that the furnishing, or financing, of such weapons system is important to the national security of the United States.

(f) No assistance under this Act (including foreign military cash sales) shall be furnished to any country during a period of one year after such country seizes or fines an American fishing vessel for engaging in fishing more than twelve miles from the coast of that country unless the President determines during such one year period that the country concerned is prepared to take appropriate steps toward a solution of the controversy. The President may waive the provisions of this subsection when he determines it to be important to the security of the United States or he receives reasonable assurances from the country involved that future violations will not occur. The provisions of this subsection shall not be applicable in any case governed by an international agreement to which the United States is a party.

(g) In furnishing assistance under this Act to any country, the President shall take into account whether such country has taken appropriate steps to prevent narcotic drugs produced or processed within such country from entering the United States unlawfully.

SEC. 43. AGGREGATE CEILING ON FOREIGN MILITARY SALES CREDITS AND GUARANTEES.—The aggregate total of credits, or participations in credits, extended pursuant to section 36(a) and of the face amount of guarantees issued pursuant to section 36(b)(1) during the fiscal year 1972 shall not exceed $582,000,000.

SEC. 44. REGIONAL CEILINGS.—

(a) The aggregate of the total amount of military assistance, of cash sales pursuant to section 37, of credits, or participations in credits, financed pursuant to section 36(a), of the face amount of contracts of guaranty issued pursuant to section 36(b)(1), and of loans and sales in accordance with section 2307 of title 10, United States Code, shall, excluding training, not exceed in any fiscal year $150,000,000 for Latin American countries and $60,000,000 for African countries.

(b) The value of defense articles programmed as military assistance in any fiscal year shall not exceed $25,000,000 for Latin American countries and shall not exceed $25,000,000 for African countries.

SEC. 45. INTERNATIONAL FIGHTER AIRCRAFT.—The International Fighter aircraft may not be sold, granted, loaned, or otherwise transferred by the United States to any foreign country (or agency thereof) other than South Vietnam unless such sale, grant, loan, or transfer is made under the authority of this Act. For purposes of this section, "International Fighter aircraft" means the fighter aircraft developed pursuant to the authority contained in the proviso of the second paragraph of section 101 of Public Law 91-121 (relating to military procurement for fiscal year 1970 and other matters.)

CHAPTER 5—REPORTING REQUIREMENTS

SEC. 51. CONGRESSIONAL PRESENTATION DOCUMENT.—There shall be included in the presentation materials submitted to the Congress during its consideration of amendments to this Act, or of any Act appropriating funds pursuant to authorizations contained in this Act—

(a)(1) a table showing for the next fiscal year on a country-by-country basis the aggregate dollar value of each category of United States assistance planned or expected for each such country under this Act, military assistance under any other Act (including the funding levels of military assistance to South Vietnam, Thailand, and Laos), and sales under the Agricultural Trade Development and Assistance Act of 1954, as amended, to countries receiving assistance under this Act;

(2) details of proposed contributions pursuant to this Act by the United States to international organizations for the next fiscal year; and

(3) a statement of sales of defense articles on a country-by-county basis for which financing was supplied during the last fiscal year through the Export-Import Bank to countries receiving assistance under this Act.

(b) a comparison of the current fiscal year economic supporting and military assistance programs and activities under this Act with those presented to the Congress in the previous year, and an explanation of any substantial changes.

SEC. 52. PROMPT NOTIFICATION OF DETERMINATIONS.— (a) The President shall notify the Congress within thirty days of any determination, finding, waiver, or certification made under sections 23(a), 24(b), 31(a), 34(c), 34(g)(2), 34(h), 36(a)(2) (Second and Third Provisos), 42(a), 42(c), 42(d), 42(e)(1), 42(e)(2), 42(f), 63(a), (b), (c), (d), and (e), 64(a), 64(f), and 69(b).

(b) The President shall notify the Congress within thirty days of each decision to furnish on a grant basis to any country excess defense articles which are major weapons systems if such major weapons system was not included in the presentation materials previously submitted to the Congress.

(c) Whenever a fixed price sales agreement is made pursuant to section 37(b)(1) under which the aggregate cost to the United States exceeds the aggregate amount required to be paid by the purchasing country or international organization, the President shall submit a detailed report within thirty days thereafter.

SEC. 53. SEMIANNUAL REPORTS.—The President shall transmit to the Congress semiannual reports of—

(1) All exports during the preceding six months of significant defense articles on the United States munitions list to any foreign government, international organization, or other foreign recipient or purchaser by any individual, corporation, partnership, or other association doing business in the United States. Such reports shall include, but not be limited to, full information as to the particular defense articles so exported, the particular recipient or purchaser, the terms of the export, including its selling price, if any, and such other information as may be appropriate to enable the Congress to evaluate the distribution of United States defense articles abroad;

(2) The repayment status, as of June 30 and December 31 of each year, of each financial loan (including foreign military sales credit) made under authority of this Act, any part of the principal or interest of which remains unpaid on the date of the report; and

(3) All consents granted during the preceding six months pursuant to section 31(b).

SEC. 54. ANNUAL REPORTS.—The President shall, while funds made available for the purposes of the Act remain available for obligation, transmit to the Congress after the close of each fiscal year a report concerning operations in that fiscal year under this Act, which shall make public all information concerning operations under this Act not deemed by him to be incompatible with the security of the United States.

SEC. 55. ACCESS TO INFORMATION.—None of the funds made available pursuant to the provisions of this Act shall be used to carry out any provision of this Act in any country or with respect to any project or activity, after the expiration of the thirty-five day period which begins on the date the General Accounting Office or any committee of the Congress charged with considering legislation, appropriations or expenditures under this Act, has delivered to the office of the head of any agency carrying out such provision, a written request that it be furnished any document, paper, communication, audit, review, finding, recommendation, report, or other material in its custody or control relating to the administration of such provision in such country or with respect to such project or activity, unless and until there has been furnished to the General Accounting Office, or to such committee, as the case may be, (1) the document, paper, communication, audit, review, finding, recommendation, report, or other material so requested, or (2) a certification by the President that he has forbidden the furnishing thereof pursuant to request and his reason for so doing.

CHAPTER 6—GENERAL PROVISIONS

SEC. 61. ALLOCATION AND REIMBURSEMENT AMONG AGENCIES.—(a) The President may allocate or transfer to any agency of the United States Government any part of any funds available for carrying out the purposes of this Act, including any advance to the United States Government by any country or international organization for the procurement of commodities, defense articles, or services (including defense services). Such funds shall be available for obligation and expenditure for the purposes for which authorized, in accordance with authority granted in this Act or under authority governing the activities of the agencies of the United States Government to which such funds are allocated or transferred.

(b) Any officer of the United States Government carrying out functions under this Act may utilize the services (including defense services) and facilities of, or procure commodities and defense articles from, any agency of the United States Government as the President shall direct, or with the consent of the head of such agency, and funds allocated pursuant to this subsection to any such agency may be established in separate appropriation accounts on the books of the Treasury.

(c) In the case of any commodity, service, or facility procured from any agency of the United States Government to carry out economic supporting assistance, reimbursement or payment shall be made to such agency from funds available to carry out economic supporting assistance. Such reimbursement or payment shall be at replacement cost, or, if required by law, at actual cost, or at any other price authorized by law and agreed to by the owning or disposing agency. The amount of any such reimbursement of payment shall be credited to current applicable appropriations, funds, or accounts, from which there may be procured replacements of similar commodities, services, or facilities, except that where such appropriations, funds, or accounts are not reimbursable except by reason of this subsection, and when the owning or disposing agency determines that such replacement is not necessary, any funds received in payment therefor shall be deposited into the Treasury as miscellaneous receipts.

(d) Except as otherwise provided in section 23, reimbursement shall be made to any United States Government agency, from funds available for military assistance and foreign military sales credits, for any defense articles and defense services furnished by, or through such agency under military assistance and foreign military sales on a credit basis. Such reimbursement shall be in an amount equal to the value (as defined in section 4(m)) of the defense articles or of the defense services (other than salaries of members of the Armed Forces of the United

States), or other assistance furnished, plus expenses arising from or incident to such operations. The amount of such reimbursement shall be credited to the current applicable appropriations, funds, or accounts of such agency.

(e) In furnishing assistance under this Act, accounts may be established on the books of any agency of the United States Government or, in terms and conditions approved by the Secretary of the Treasury, in banking institutions in the United States, (1) against which letters of commitment may be used which shall constitute recordable obligations of the United States Government, and moneys due or to become due under such letters of commitment shall be assignable under the Assignment of Claims Act of 1940, as amended (second and third paragraphs of 31 U.S.C. 203 and 41 U.S.C. 15), and (2) from which disbursements may be made to, or withdrawals may be made by, recipient countries or agencies, organizations, or persons upon presentation of contracts, invoices, or other appropriate documentation. Expenditure of funds which have been made available through accounts so established shall be accounted for on standard documentation required for expenditure of funds of the United States Government: *Provided*, That such expenditures for commodities, defense articles, services (including defense services), or facilities procured outside of the United States may be accounted for exclusively on such certification as may be prescribed in regulations approved by the Comptroller General of the United States.

SEC. 62. GENERAL AUTHORITIES.—(a) Except as otherwise provided in this Act, the President may make loans, advances, and grants to, make and perform agreements and contracts with, or enter into other transactions with, any individual, corporation, or other body of persons, friendly government or government agency, whether within or without the United States and international organizations in furtherance of the purposes and within the limitations of this Act.

(b) The President may accept and use in furtherance of the purposes of this Act, money, funds, property, and services of any kind made available by gift, devise, bequest, grant, or otherwise for such purpose.

(c) A contract or agreement which entails commitments for the expenditure of funds available under this Act for the grant of services (including defense services) may, subject to any future action of the Congress, extend at any time for not more than five years.

(d) The provisions of section 955 of title 18 of the United States Code shall not apply to prevent any person, including any individual, partnership, corporation, or association, from acting for, or participating in, any operation or transaction arising under this Act, or from acquiring any obligation issued in connection with any operation or transaction arising under this Act.

(e) Any cost-type contract or agreement (including grants) entered into with a university, college, or other educational institution for the purpose of carrying out security assistance may provide for the payment of the reimbursable indirect costs of said university, college, or other educational institution on the basis of pre-determined fixed-percentage rates applied to the total, or an element thereof, of the reimbursable direct costs incurred.

(f) In furtherance of the purposes of this Act, the President may—

(1) acquire and sell defense articles at not less than the value thereof to any United States prime contractor for incorporation into an end item (including concurrent support) to be sold commercially by the prime contractor to a friendly country or international organization, if the defense articles would have been supplied to the prime contractor as Government Furnished Equipment or Materials if the United States were procuring the end item for its own use or for military assistance.

(2) sell on a negotiated contract basis to any United States supplier such spare parts from the stocks of the Department of Defense which (i) are no longer required for use by the Armed Forces of the United States, (ii) are still required by friendly countries or international organizations to support defense articles acquired from United States sources and (iii) cannot be economically maintained and stored by the Department of Defense: *Provided*, That the purchasing United States supplier agrees to maintain an inventory of such spare parts, for a period of time satisfactory to the President, to meet the requirements of friendly countries and international organizations.

SEC. 63. SPECIAL AUTHORITIES.—(a) The President may authorize in each fiscal year the use of funds made available for use under this Act and the furnishing of assistance under sections 23 and 37 in a total amount not to exceed $250,000,000 and the use of not to exceed $100,000,000 of foreign currencies accruing under this Act or any other law, without regard to the requirements of this Act, any law relating to receipts and credits accruing to the United States, any Act appropriating funds for use under this Act, or the Mutual Defense Assistance Control Act of 1951 (22 U.S.C. 1611 et seq.), in furtherance of any of the purposes of such Acts, when the President determines that such authorization is important to the security of the United States. Not more than $50,000,000 of the funds authorized for use under this subsection may be allocated to any one country in any fiscal year. The limitation contained in the preceding sentence shall not apply to any country which is a victim of active Communist or Communist-supported aggression.

(b) Whenever the President determines it to be important to the national interest, he may use funds available for the purposes of economic supporting assistance in order to meet responsibilities or objectives of the United States with respect to Berlin, and without regard to such provisions of law as he determines should be disregarded to achieve this purpose.

(c) The President is authorized to use amounts not to exceed $50,000,000 of the funds made available under this Act pursuant to his certification that it is inadvisable to specify the nature of the use of such funds, which certification shall be deemed to be a sufficient voucher for such amounts.

(d) Whenever the President determines it to be in furtherance of the purposes of this Act, the functions authorized under this Act may be performed without regard to such provisions of law (other than the Renegotiation Act of 1951, as amended (50 U.S.C. App. 1211 et seq.)), regulating the making, performance, amendment, or modification of contracts and the expenditure of funds of the United States Government as the President may specify.

(e) The functions authorized by this Act may be performed without regard to such provisions as the President may specify of the point resolution of November 4, 1939 (54 Stat. 4), as amended.

SEC. 64. PROCUREMENT.—(a) Funds made available under this Act for military assistance and economic supporting assistance may be used for procurement outside the United States only if the President determines that such procurement will not result in adverse effects upon the economy of the United States or the industrial mobilization base, with special reference to any areas of labor surplus or to the net position of the United States in its balance of payments with the rest of the world, which outweigh the economic or other advantages to the United States of less costly procurement outside the United States, and only if the price of any commodity procured in bulk is lower than the market price prevailing in the United States at the time of procurement, adjusted for differences in the cost of transportation to destination, quality, and terms of payment.

(b) In providing for the procurement of any agricultural commodity or product thereof available for disposition under the Agricultural Trade Development and Assistance Act of 1954, as amended, for transfer by grant under this Act to any recipient country in accordance with its requirements, the President shall, insofar as practicable and when in furtherance of the purposes of this Act, authorize the procurement of such agricultural commodity only within the United States except to the extent that such agricultural commodity is not available in the United States in sufficient quantities to supply emergency requirements of recipients under this Act. No funds made available under this Act shall be used for the procurement of any agricultural commodity or product thereof outside the United States when the domestic price of such commodity is less than parity except commodities which are net imports into the United States.

(c) In providing assistance in the procurement of commodities in the United States, United States dollars shall be made available for marine insurance on such commodities where such insurance is placed on a competitive basis in accordance with normal trade practice prevailing prior to the outbreak of World War II: *Provided*, That in the event a participating country, by statute, decree, rule, or regulation, discriminates against any marine insurance company authorized to do business in any State of the United States, then commodities purchased with funds provided hereunder and destined for such country shall be insured in the United States against marine risk with a company or companies authorized to do a marine insurance business in any State of the United States.

(d) No funds authorized to be made available to carry out economic supporting assistance shall be used under any commodity import program to make any payment to a supplier unless the supplier has certified to the agency primarily responsible for administering economic supporting assistance, such information as such agency shall by regulation prescribe, including but not limited to, a description of the commodity supplied by him and its condition, and, on the basis of such information such agency shall have approved such commodity as eligible and suitable for financing under this Act.

(e) The President shall take all appropriate steps to assure that, to the maximum extent possible, United States-owned foreign currencies are utilized in lieu of dollars. Dollar funds made available pursuant to this Act shall not be expended for goods and services when United States-owned foreign currencies are available for such purposes unless the administrative official approving the voucher certifies as to the reason for the use of dollars in each case. The President shall also take all appropriate steps to assure that, to the maximum extent possible, countries receiving assistance under this Act contribute local currencies to meet the cost of contractual and other services rendered in conjunction with such programs.

(f) Notwithstanding any other provision of this Act, none of the funds made available to carry out this Act shall be used to finance the purchase, sale, long-term lease, exchange, or guaranty of a sale of motor vehicles unless such motor vehicles are manufactured in the United States: *Provided*, That where special circumstances exist the President is authorized to waive the provisions of this section in order to carry out the purposes of this Act.

SEC. 65. RETENTION AND USE OF CERTAIN ITEMS AND FUNDS.—

(a) Any commodities and defense articles procured to carry out this Act shall be retained by, or upon reimbursement, trans-

ferred to, and for the use of such agency of the United States Government as the President may determine in lieu of being disposed of to a foreign country or international organization, whenever in the judgment of the President the best interests of the United States will be served thereby. Any commodities or defense articles so retained may be disposed of without regard to provisions of law relating to the disposal of property owned by the United States Government, when necessary to prevent spoilage or wastage of such commodities or defense articles or to conserve the usefulness thereof. Funds realized from any disposal or transfer shall revert to the respective appropriation, fund or account used to procure such commodities or defense articles or to the appropriation, fund, or account currently available for the same general purpose.

(b) Whenever defense articles, commodities, and services (including defense services) are transferred to the United States Government as repayment of barter assistance under this Act, such items and services may be used in furtherance of the purposes and within the limitations of this Act.

(c) Funds realized as a result of any failure of a transaction financed under economic supporting assistance to conform to the requirements of this Act, or to applicable rules and regulations of the United States Government, or to the terms of any agreement of contract entered into under economic supporting assistance shall revert to the respective appropriation, fund, or account used to finance such transaction or to the appropriation, fund, or account currently available for the same purpose.

(d) Funds realized by the United States Government from the sale, transfer, or disposal of defense articles returned to the United States Government by a recipient country or international organization as no longer needed for the purpose for which furnished shall be credited to the respective appropriation, fund, or account used to procure such defense articles or to the appropriation, fund, or account currently available for the same general purpose.

SEC. 66. EXCESS PROPERTY.—(a) It is the sense of the Congress that in furnishing military assistance and economic security assistance, excess personal property should be utilized wherever practicable in lieu of the procurement of new items.

(b) The President is authorized to maintain in a separate account, which shall, notwithstanding section 1210 of the General Appropriation Act, 1951 (64 Stat. 765), be free from fiscal year limitations, $5,000,000 of funds made available under economic supporting assistance which may be used to pay costs (including personnel costs) of acquisition, storage, renovation and rehabilitation, packing, crating, handling, transportation, and related costs of property classified as domestic or foreign excess property pursuant to the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 et seq.), or other property, in advance of known requirements therefor for use in furtherance of the purposes of economic supporting assistance: *Provided*, That the amount of property classified as domestic excess property pursuant to the preceding sentence may be furnished (1) pursuant to any provision for which funds are authorized for the furnishing of economic security assistance, in which case the separate account established pursuant to this section shall be repaid from funds made available for such provision for all costs incurred, or (2) pursuant to section 35(c), in which case such separate account shall be repaid in accordance with the provisions of that section for all costs incurred.

SEC. 67. SMALL BUSINESS.—Insofar as practicable and to the maximum extent consistent with the accomplishment of the purposes of this Act, the President shall assist American small business to participate equitably in the furnishing of commodities, defense articles, and services (including defense services) financed with funds made available under this Act by causing to be made available to suppliers in the Untied States, and particularly to small independent enterprises, information, as far in advance as possible, with respect to purchases proposed to be financed with such funds.

SEC. 68. SHIPPING ON UNITED STATES VESSELS.—The ocean transportation between foreign countries of commodities and defense articles purchased with foreign currencies made available or derived from funds made available under this Act or the Agricultural Trade Development and Assistance Act of 1954, as amended (7 U.S.C. 1691 et seq.), shall not be governed by the provisions of section 901(b) of the Merchant Marine Act of 1936, as amended (46 U.S.C. 1241), or any other law relating to the ocean transportation of commodities on United States flag vessels.

SEC. 69. TERMINATION OF ASSISTANCE.—(a) Funds made available under this Act shall remain available for a period not to exceed twelve months from the date of suspension or termination of assistance under this Act for the necessary expenses of winding up programs related thereto. If as a result of the suspension or termination, pursuant to any requirement of this Act or because of considerations of foreign policy, of deliveries of defense articles or the provision of defense services sold under section 37, an out-of-pocket loss is sustained by any United States Government agency, reimbursement may be made to such agency in an amount equal to such loss from funds available under this Act for military assistance or foreign military sales credits.

(b) Notwithstanding any other provision of law, the President may direct the cessation of any monitoring or auditing activities of any agency with respect to any terminated or suspended assistance authorized pursuant to this Act or any predecessor legislation when he determines that the residual United States Government interest in such assistance no longer warrants such activities.

CHAPTER 7—ADMINISTRATIVE PROVISIONS

SEC. 71. DELEGATION OF FUNCTIONS.—(a) The President may exercise any function conferred upon him by this Act through such agency or officer of the United States Government as he shall direct. The head of any such agency or such officer may from time to time promulgate such rules and regulations as may be necessary to carry out such functions, and may delegate authority to perform any such functions, including, if he shall so specify, the authority successively to redelegate any of such functions to any of his subordinates.

SEC. 72. EMPLOYMENT OF PERSONNEL.—(a) Any Agency or officer of the United States Government carrying out functions under this Act is authorized to employ such personnel as the President deems necessary to carry out the provisions and purposes of this Act.

(b) The President may appoint, by and with the advice and consent of the Senate, three officers responsible for carrying out functions under this Act, one of whom shall be compensated, at level III of the Executive Schedule established by section 5314 of title 5, United States Code, and two of whom shall be compensated at level IV of the Executive Schedule established by section 5315 of title 5, United States Code. Appropriate titles and ranks of such officers, and the order of succession among them, may be designated by the President.

(c) Of the personnel employed in the United States to carry out economic supporting assistance and the functions of the Secretary of State under section 3, not to exceed twenty-five may be appointed, compensated or removed without regard to the provisions of any law, of whom not to exceed ten may be compensated at rates higher than those provided for in Grade 15 of the General Schedule established by section 5332 of title 5, United States Code, but not in excess of the highest rate of Grade 18 of such General Schedule: *Provided*, that under such regulations as the President may prescribe, officers and employees of the United States Government who are appointed to any of the above positions may be entitled, upon removal from such position, to reinstatement to a position occupied at the time of appointment or to a position of comparable grade and salary. Such positions shall be in addition to those authorized by law to be filled by Presidential appointment and in addition to the number authorized by section 5108 of title 5, United States Code.

(d) Of the personnel employed in the United States to carry out military assistance and sales, not to exceed eight may be compensated at rates higher than those provided for Grade 15 of the General Schedule established by section 5332 of title 5 of the United States Code, but not in excess of the highest rate of Grade 18 of such General Schedule. Such positions shall be in addition to those authorized by law to be filled by Presidential appointment and in addition to the number authorized by section 5108 of title 5 of the United States Code.

(e) For the purpose of performing functions under this Act outside the United States the President may employ or assign persons, or authorize the employment or assignment of officers or employees by agencies of the United States Government, who may receive compensation at any of the rates provided for the Foreign Service Reserve and Staff by the Foreign Service Act of 1946, as amended (22 U.S.C. 801 et seq.), as well as allowances and benefits thereunder; and persons so employed or assigned shall be entitled, except to the extent that the President may specify otherwise in cases in which the period of employment or assignment exceeds thirty months, to the same benefits as are provided by section 528 of that Act for persons appointed to the Foreign Service Reserve.

(f) For the performance of functions under this Act and in accordance with such regulations as he may prescribe, the President may:

(1) Utilize such authority contained in the Foreign Service Act of 1946, as amended, relating to Foreign Service Reserve officers as may be necessary in the performance of functions under this Act: *Provided, however*, That the provisions of the final clause of section 522(3) of the Foreign Service Act of 1946, as amended, and Section 15 of Public Law 90-494 shall not apply to Foreign Service Reserve officers serving pursuant to this subsection.

(2) Appoint as a Foreign Service Reserve officer with unlimited tenure any Foreign Service Reserve officer who has completed at least 3 years of continuous and satisfactory service under this subsection or in the Department of State, the United States Information Agency or the Agency for International Development. The provisions of section 633 and 634 of the Foreign Service Act of 1946, as amended, shall apply to any Foreign Service Reserve officer with unlimited tenure appointed pursuant to this subsection.

(g) In accordance with such regulations as the President may prescribe, Foreign Service Reserve officers with unlimited tenure appointed pursuant to this section shall become participants in the Foreign Service Retirement and Disability System and shall make a special contribution to the Foreign Service Retirement and Disability Fund in accordance with the provisions of Section 852 of the Foreign Service Act of 1946, as amended.

(h) Funds provided for in agreements with foreign countries for the furnishing of services under this Act with respect to specific projects shall be deemed to be obligated for the services of personnel employed by agencies of the United States Government (other than the agencies primarily responsible for administering this Act) as well as personnel not employed by the United States Government.

(i) Notwithstanding any other provision of law, officers and employees of the United States Government performing functions under this Act shall not accept from any foreign country any compensation or other benefits. Arrangements may be made by the President with such countries for reimbursement to the United States Government or other sharing of the cost of performing such functions.

(j) Notwithstanding the provisions of sections 3544(b) and 8544(b) of title 10 of the United States Code, personnel of the Department of Defense may be assigned or detailed to any civil office to carry out this Act.

(k) Payments or contributions in connection with training of officers and employees of the Foreign Service assigned under the provisions of section 573(b) of the Foreign Service Act of 1946, as amended, may, if deemed appropriate by the head of the agency authorizing such training, be made by private or public sources and be accepted by a trainee or may be accepted by and credited to the current applicable appropriation of such agency: *Provided*, however, that any such payments to any officer or employee in the nature of compensation shall be in lieu, or in reduction, of compensation received from the United States Government.

SEC. 73. EXPERTS, CONSULTANTS, AND RETIRED OFFICERS.—Experts and consultants or organizations thereof may, as authorized by section 3109 of title 5 of the United States Code, be employed for the performance of functions under this Act and individuals so employed may be compensated on a per diem basis at rates not in excess of that provided for GS–18 of the Executive Schedule (5 U.S.C. 5335). Such contracts may be renewed from time to time without limitation. Service of an individual as an expert or consultant under this section shall not be considered as employment or holding of office or position bringing such individual within the provisions of section 3323(a) and 8344 of title 5 of the United States Code, section 872 of the Foreign Service Act of 1946, as amended, or any other law limiting the reemployment of retired officers or employees or governing the simultaneous receipt of compensation and retired pay or annuities, subject to section 5532 of title 5 of the United States Code.

SEC. 74. DETAIL OR ASSIGNMENT OF PERSONNEL TO FOREIGN GOVERNMENT.—(a) Whenever the President determines it to be in furtherance of the purposes of this Act, the head of any agency of the United States Government is authorized to detail or assign any officer or employee of his agency to any office or position with any foreign government or foreign government agency, where acceptance of such office or position does not involve the taking of an oath of allegiance to another government or the acceptance of compensation or other benefits from any foreign country by such officer or employee.

(b) Any officer or employee, while assigned or detailed under this section shall be considered, for the purpose of preserving his allowances, privileges, rights, seniority, and other benefits as such, an officer or employee of the United States Government and of the agency of the United States Government from which detailed or assigned and he shall continue to receive compensation, allowances, and benefits from funds appropriated to that agency or made available to that agency under this Act.

(c) Any officer or employee assigned, detailed, or appointed under this section is authorized to receive under such regulations as the President may prescribe, representation allowances similar to those allowed under section 901 of the Foreign Service Act of 1946, as amended (22 U.S.C. 1131). The authorization of such allowances and other benefits and the payment thereof out of any appropriations available therefor shall be considered as meeting all the requirements of section 5536 of title 5 of the United States Code.

SEC. 75. TERMS OF DETAIL OR ASSIGNMENT.—Details or assignments may be made under section 74—

(1) without reimbursement of the United States Government by the foreign government;

(2) upon agreement by the foreign government to reimburse the United States Government for compensation, travel expenses, benefits and allowances, or any part thereof, payable to the officer or employee concerned during the period of assignment or detail; and such reimbursements (including foreign currencies) shall be credited to the appropriation, fund, or account utilized for paying such compensation, travel expenses, benefits or allowances, or to the appropriation, fund, or account currently available for such purposes; or

(3) upon an advance of funds, property, or services by the foreign government to the United States Government accepted with the approval of the President for specified uses in furtherance of the purposes of this Act; and funds so advanced may be established as a separate fund in the Treasury of the United States Government, to be available for the specified uses, and to be used for reimbursement of appropriations or direct expenditure subject to the provisions of this Act, any expended balance of such account to be returned to the foreign government.

SEC. 76. MISSIONS AND STAFFS ABROAD.—(a) The President may maintain special missions or staffs outside the United States in such countries and for such periods of time as may be necessary to carry out the purposes of this Act. Each such special mission or staff shall be under the direction of a chief.

(b) The chief and his deputy of each special mission or staff carrying out economic supporting assistance shall be appointed by the President, and may, notwithstanding any other law, be removed by the President at his discretion. Such chief shall be entitled to receive—

(1) in cases approved by the President, the same compensation and allowances as a chief of mission, class 3, or a chief of mission, class 4, within the meaning of the Foreign Service Act of 1946, as amended, or

(2) compensation and allowances at one of the rates payable to Foreign Service Reserve officers under section 414(b) of the Foreign Service Act of 1946, as amended, as the President shall determine to be appropriate. Except in cases within the purview of clause (1) of the preceding sentence, any officer or employee of the Foreign Service appointed under this subsection shall serve without any salary differential notwithstanding the provisions of section 571(c) of the Foreign Service Act, as amended.

(c) Wherever practicable, especially in the case of the smaller programs, assistance under this Act shall be administered under the direction of the Chief of the United States Diplomatic Mission by a civilian officer of the mission in the case of economic supporting assistance and by the senior military officer of the mission in the case of military assistance and sales.

SEC. 77. PROVISIONS ON USES OF FUNDS.—(a) Appropriations made available for economic supporting assistance shall be available for:

(1) rent of buildings and space in buildings in the United States, and for repair, alteration, and improvement of such lease properties;

(2) expenses of attendance at meeting concerned with the purposes of such appropriations or of this Act, including (notwithstanding the provisions of section 9 of Public Law 60–328 (31 U.S.C. 673)) expenses in connection with meetings of persons whose employment is authorized by section 73;

(3) contracting with individuals for personal services abroad: *Provided*, That such individuals shall not be regarded as employees of the United States Government for the purpose of any law administered by the Civil Service Commission;

(4) purchase, maintenance, operation, hire and insurance of aircraft: *Provided*, That aircraft for administrative purposes may be purchased only as specifically provided for in an appropriation or other Act;

(5) purchase and hire of passenger motor vehicles: *Provided*, That, except as may otherwise be provided in an appropriation or other Act, passenger motor vehicles for administrative purposes outside the United States may be purchased for replacement only, and such vehicles may be exchanged or sold and replaced by an equal number of such vehicles, and the cost, including exchange allowance, of each such replacement shall not exceed $3,800 in the case of an automobile for the chief of any special mission or staff outside the United States established under section 76: *Provided further*, That passenger motor vehicles may be purchased for use in the United States only as may be specifically provided in an appropriation or other Act;

(6) expenses of preparing and transporting to their former homes, or, with respect to foreign participants engaged in any program under economic security assistance, to their former homes or places of burial, and of care and disposition of, the remains of persons or members of the families of persons who may die while such persons are away from their homes participating in activities carried out with funds covered by this subsection;

(7) payment of per diem in lieu of subsistence to foreign participants engaged in any program under economic supporting security assistance while such participants are away from their homes in countries other than the United States, at rates not in excess of those prescribed by the standardized Government travel regulations, notwithstanding any other provision of law;

(8) payment of the cost of transporting automobiles of personnel to and from a place of storage, and the cost of storing such automobiles when it is in the public interest or more economical to authorize storage;

(9) entertainment (not to exceed $10,000 in any fiscal year except as may otherwise be provided in an appropriation or other Act); and

(10) use in accordance with authorities of the Foreign Service Act of 1946, as amended (22 U.S.C. 801 et seq.), not otherwise provided for.

(b) Funds made available for military assistance shall be available for—

(1) administrative, extraordinary (not to exceed $300,000 in any fiscal year), and operating expenses incurred in furnishing defense articles and defense services on a grant or sales basis by the agency primarily responsible for administering military assistance and sales;

(2) reimbursement of actual expenses of military officers detailed or assigned as tour directors in connection with orientation visits of foreign military personnel, in accordance with the provisions of section 5702(c) of title 5 of the United States Code applicable to civilian officers and employees;

(3) maintenance, repair, alteration, and furnishing of United States-owned facilities in the District of Columbia or elsewhere

for the training of foreign military personnel, without regard to the provisions of section 3733 of the Revised Statutes (41 U.S.C. 12) or other provisions of law requiring a specific authorization or specific appropriation for such public contracts; and

(4) insurance of official motor vehicles acquired for use in foreign countries by the agency primarily responsible for administering military assistance and sales.

(c) Funds made available for the purposes of this Act may be used for compensation, allowances, and travel of personnel including Foreign Service personnel whose services are utilized primarily for the purposes of this Act, for printing and binding without regard to the provisions of any other law, and for expenditures outside the United States for the procurement of supplies and services and for other administrative and operating purposes (other than compensation of personnel) without regard to such laws and regulations governing the obligation and expenditures of funds of the United States Government as may be necessary to accomplish the purposes of this Act.

(d) Notwithstanding any other law, not to exceed $3,000,000 of the funds available for assistance under this Act may be used in any fiscal year (in addition to funds available for such use under other authorities this Act) to construct or otherwise acquire outside the United States (1) essential living quarters, office space, and necessary supporting facilities for use of personnel carrying out activities authorized by this Act, and (2) schools (including dormitories and boarding facilities) and hospitals for use of personnel carrying out activities authorized by this Act, United States Government personnel, and their dependents. In addition, funds made available for assistance under this Act may be used, notwithstanding any other law, to equip, staff, operate, and maintain such schools and hospitals.

(e) Not to exceed $2,500,000 of the funds available for assistance under this Act may be used in any fiscal year to provide assistance on such terms and conditions as are deemed appropriate to schools outside the United States whenever it is determined that such action would be more economical or would best serve the interest of the United States in providing for the education of dependents of other personnel carrying out programs of the United States Government overseas, in lieu of acquisition or construction pursuant to subsection (d) of this section.

(f) (1) Any agency of the United States Government is authorized to pay the cost of health and accident insurance for foreign participants in any program of furnishing technical information and assistance administered by such agency while such participants are absent from their homes for the purpose of participation in such program.

(2) Any agency of the United States Government is authorized to pay the cost of health and accident insurance for foreign employees of that agency while those employees are absent from their place of employment abroad for purposes of training or other official duties.

(g) Alien participants in any program of furnishing technical information and assistance under this Act may be admitted to the United States if otherwise qualified as nonimmigrants under section 101(a)(15) of the Immigration and Nationality Act, as amended (8 U.S.C. 1001(a)(15)), for such time and under such conditions as may be prescribed by regulations promulgated by the Secretary of State and the Attorney General.

SEC. 78. ADMINISTRATIVE EXPENSES OF DEPARTMENT OF STATE.—There is hereby authorized to be appropriated such amounts as may be necessary from time to time for administrative expenses which are incurred for functions of the Department of State under this Act and unrepealed provisions of the Mutual Security Act of 1954, as amended, or for normal functions of the Department of State which relate to such functions.

SEC. 79. UNEXPENDED BALANCES.—Unexpended balances of funds made available pursuant to this Act, or the Foreign Assistance Act of 1961, as amended, are hereby authorized to be continued available for the general purposes for which appropriated, and may at any time be consolidated, and, in addition, may be consolidated with appropriations made available for the same general purposes under the authority of this Act.

CHAPTER 8—MISCELLANEOUS PROVISIONS

SEC. 81. EFFECTIVE DATE.—This Act shall take effect on the date of its enactment.

SEC. 82. STATUTES REPEALED.—(a) There are hereby repealed—

(1) Chapters 4 and 5 of part I of the Foreign Assistance Act of 1961, as amended;

(2) Part II (except section 524) and part III (except sections 613, 620(e)(2), and 648) of the Foreign Assistance Act of 1961, as amended;

(3) The Foreign Military Sales Act (Public Law 90–629), as amended;

(4) Public Law 91–672, an Act to amend the Foreign Military Sales Act, and for other purposes (except sections 3, 6, and 12);

(5) The Special Foreign Assistance Act of 1971 (except sections 3 and 7, and section 4 insofar as it pertains to section 3); and

(6) The first proviso of section 108 of the Mutual Security Appropriations Act, 1956, as amended.

(b) References in law to the Acts, or provisions of such Acts, repealed by subsection (a) of this section shall hereafter be deemed to be references to this Act or appropriate provisions of this Act.

(c) The repeal of the Acts listed in subsection (a) of this section shall not be deemed to affect amendments contained in such Acts to Acts not named in that subsection.

SEC. 83. SAVING PROVISIONS.—(a) Except as may be expressly provided to the contrary in this Act, all determinations, authorizations, regulations, orders, contracts, agreements, and other actions issued, undertaken, or entered into under authority of any provision of law repealed by section 82 shall continue in full force and effect until modified by appropriate authority.

(b) Wherever provisions of this Act establish conditions which must be complied with before use may be made of authority contained in, or funds authorized by, this Act, compliance with, or satisfaction of, substantially similar conditions under Acts listed in section 82 or Acts repealed by those Acts shall be deemed to constitute compliance with the conditions established by this Act.

(c) Funds made available pursuant to provisions of law repealed by section 82 shall, unless otherwise authorized or provided by law, remain available for their original purposes in accordance wtih the provisions of law originally applicable thereto, or in accordance with the provisions of law currently applicable to those purposes.

SEC. 84. CONSTRUCTION.—(a) If any provision of this Act, or the application of any provision to any circumstances or persons shall be held invalid; the validity of the remainder of this Act, and of the applicability of such provision to other circumstances or persons shall not be affected thereby.

(b) No provision of this Act shall be construed as modifying in any way the provisions of the Atomic Energy Act of 1954, as amended, or section 7307 of title 10 of the United States Code.

(c) No provision of this Act shall be construed to prohibit assistance to any country for famine or disaster relief.

TITLE II—PRESIDENT'S FOREIGN ASSISTANCE CONTINGENCY FUND

SEC. 1. (a) Not to exceed $100,000,000 is authorized to be appropriated in the fiscal year 1972 for use by the President for—

(1) assistance authorized by the International Security Assistance Act of 1971, in accordance with the provisions of that Act;

(2) famine and disaster relief and refugee and migration assistance on such terms and conditions as the President may determine; and

(3) for other functions authorized by the International Development and Humanitarian Assistance Act of 1971 in accordance with the provisions of that Act.

(b) Amounts appropriated pursuant to this section are authorized to be made available until expended.

SEC. 2. REPORTS.—The President shall provide quarterly reports to the Congress on his use of the funds appropriated pursuant to section 1.

TITLE III—TRANSITION PROVISIONS AND AMENDMENTS TO OTHER LAWS

SEC. 1. (a) TRANSFER OF FUNCTIONS.—The President shall transfer, at such time as he may determine, to any officer, agency, corporation, department, or other instrumentality of the United States carrying out the provisions of this Act, such obligations, assets, property, records, personnel, functions, rights and responsibilities of the Agency for International Development as may be necessary for the performance of functions under this Act. Until such transfer is completed, the Agency for International Development shall, notwithstanding the provisions of section 81 and 82 of title I, continue to administer such assets and obligations, and to carry out such programs and activities under the authorities heretofore available under the Foreign Assistance Act of 1961, as amended, or under the authorities of this Act as may be determined by the President.

(b) Personnel transferred pursuant to this section may continue to be employed under the appointments in which they were serving immediately prior to the date of such transfer, or may, in the discretion of the head of the agency to which they are transferred (or upon his recommendation) be converted to a personnel status authorized by this Act or by other law, including status as Foreign Service Reserve officers with unlimited tenure.

(c) The President is authorized to prescribe by regulation standards and other criteria for maintaining adequate performance levels for Foreign Service Reserve officers transferred pursuant to this section who are serving under unlimited appointments at the time of such transfer. Notwithstanding any other law, any Foreign Service Reserve officer so transferred who fails to meet the standard of performance required of officers of his class shall be retired from the Service and receive benefits in the same amount as provided in section 634(b)(1) of the Foreign Service Act of 1946, as amended, unless he is eligible at the time of his separation for (i) an immediate annuity under subchapter III of chapter 83 of title 5, United States Code, or (ii) compensation under subchapter I of chapter 81 of title 5, United States Code, other than compensation payable concurrently with salary or on account of the death of another individual.

(d) Any Foreign Service Reserve officer transferred pursuant to this section, whose services meet the standards required for the efficient conduct of the work of the Service, shall receive an increase in salary to the next higher rate for the class in which he is serving on the first day of the first fiscal year following enactment of this Act, and thereafter, the provisions of section 625 of the

Foreign Service Act of 1946, as amended, shall apply.

(e) Foreign Service staff officers and employees transferred pursuant to this section who have completed ten years of continuous service as Foreign Service staff officers or employees with the Agency for International Development or the Department of State, exclusive of military service, shall become participants in the Foreign Service retirement and disability system in accordance with such regulations and subject to such conditions as the President may prescribe.

(f) Any person who becomes a participant in the Foreign Service retirement and disability system pursuant to this section shall make a special contribution to the Foreign Service retirement and disability fund in accordance with section 852 of the Foreign Service Act of 1946, as amended. Any such person who is age 57 or over one year after the effective date of this Act may retire voluntarily at any time after becoming a participant and before mandatory retirement for age and receive retirement benefits under section 821 of the Foreign Service Act of 1946, as amended.

(g) Any Foreign Service staff officer or employee who becomes a participant in the Foreign Service retirement and disability system under paragraph (e) and any person who is appointed as a Foreign Service Reserve officer with unlimited tenure under paragraph (b) shall be mandatorily retired for age during the third year after the date of enactment of this Act if he attains age sixty-four or if he is over age sixty-four; during the fourth year at age sixty-three; during the fifth year at age sixty-two; during the sixth year at age sixty-one; and thereafter at age sixty.

SEC. 2. AMENDMENTS TO OTHER LAWS.—

(a) Section 5315 of title 5, United States Code, relating to level IV of the Executive Schedule, is amended

(1) by deleting paragraph (52) and by inserting in lieu thereof:

"(52) Inspector General, Foreign Operations."

(2) by deleting paragraph (53).

(b) Section 681 of the Foreign Service Act of 1946, is hereby amended to read as follows:

"SEC. 681. (a) The Secretary of State (acting by or through the Inspector General, Foreign Operations) is authorized:

"(1) to arrange for, direct, or conduct such reviews, inspections, and audits of all programs and activities under his foreign policy guidance and for which he has been assigned coordinating responsibilities by the President or the Congress, including programs and activities under the Agricultural Trade Development and Assistance Act of 1954, as amended, as deemed necessary for the purpose of ascertaining the efficiency and economy of their administration, their consonance with the foreign policy of the United States, and the attainment of their objectives;

"(2) to arrange for, direct, or conduct such reviews, inspections, and audits of the domestic units and functions of the Department of State for the purpose of ascertaining their effectiveness and economy of administration;

"(3) to maintain continuous observation and review of programs and activities described in this section for the purpose of—

"(A) determining the extent to which such programs and activities are in compliance with applicable laws and regulations;

"(B) making recommendations for the correction of deficiencies in or for improving the organization, plans, or procedures of such programs and activities;

"(C) evaluating the effectiveness of implementation of such programs and activities in attaining United States foreign policy objectives and reporting to the Secretary of State with respect thereto; and

"(D) insuring that such programs and activities are being conducted in conformance with established policies and decisions.

"(b) For the purpose of aiding in carrying out his duties under this Act, the Secretary of State (acting by or through the Inspector General, Foreign Operations) shall have access to all records, reports, audits, reviews, documents, papers, recommendations or other material of the agencies of the United States Government administering programs and activities under his foreign policy guidance and for which he has been assigned coordinating responsibilities by the President or the Congress, including programs and activities under the Agricultural Trade Development and Assistance Act of 1954, as amended.

"(c) Expenses of the Secretary of State under this section shall, as determined by the Secretary of State, be charged to the appropriations made to carry out such programs and activities being reviewed, inspected and audited, and with respect to programs under the Agricultural Trade Development and Assistance Act of 1954, as amended, shall be charged to funds available under the authority of the International Development and Humanitarian Assistance Act of 1971. The Secretary of State may make expenditures (not in excess of $3,000 in any fiscal year) of a confidential nature when he finds that such expenditures are in aid of inspections, audits or reviews under this section. A certificate of the amount of each such expenditure, the nature of which it is considered inadvisable to specify, shall be made by the Secretary of State, and every such certificate shall be deemed a sufficient voucher for the amount therein specified.

"(d) Whenever the Secretary of State has reason to believe that the business of a Foreign Service establishment is not being properly conducted and that it is necessary in the public interest, he may authorize any inspector performing functions under this section to suspend the principal officer of a consular establishment or any subordinate officer and to administer the office in the place of the principal officer for a period not exceeding ninety days. The Secretary may also authorize such an inspector to suspend any diplomatic officer expect a chief of mission and to suspend any other officer or employee of the Foreign Service."

(c) Section 2 of the Act of May 26, 1949 (69 Stat. 536), as amended, is hereby further amended by adding thereto the following new subsection:

"(c) There shall be in the Department of State an Inspector General, Foreign Operations, who shall be appointed by the President, by and with the advice and consent of the Senate. In addition, there shall be a Deputy Inspector General, Foreign Operations, who shall be appointed by the President notwithstanding any other provision of law."

By Mr. FANNIN:

S. 1659. A bill to amend the National Labor Relations Act to strengthen and reform certain provisions thereof. Referred to the Committee on Labor and Public Welfare.

NATIONAL LABOR RELATIONS AMENDMENTS OF 1971

Mr. FANNIN. Mr. President, I introduce for appropriate reference a bill which would make four changes in the National Labor Relations Act. Each of these changes affects an area of that act under the jurisdiction of the National Labor Relations Board.

The four topics covered by this bill are among the most important confronting labor and management today. Yet, they are somewhat obscure, do not tend to create headlines, and their significance is not well known beyond the specialists who must contend with the problems they do generate. So it is my hope, Mr. President, that the introduction of this bill and the committee hearings which I hope will soon follow, will turn the spotlight on the conditions this bill is designed to correct.

The first provision encompassed by this legislation would protect an innocent purchaser of a business from the obligation to remedy the unfair labor practices committed by those who owned the business before him. As in so many other areas of our labor-management relations laws, Mr. President, we find that legislation is required because the National Labor Relations Board has failed to follow either the letter of the law or the intent of Congress.

The Taft-Hartley law makes unfair labor practices the personal responsibility of those who commit them. In the 1948 Milburn case—78 NLRB 747—the Board sought to impose on a purchaser of a business the responsibility for remedying the unfair labor practices committed by the previous owner. The Milburn case did not receive judicial approval, and in 1954 the Board in the Symns Grocer case—109 NLRB 346—held that it lacked power to impose remedial orders on bona fide purchasers of a business. For 14 years that area of the law remained stable. Then in the 1968 Perma-Vinyl case—164 NLRB 119—the Board reversed itself and held that a bona fide purchaser of a business would be jointly liable with a predecessor owner who had committed unfair labor practices.

Mr. President, the amendment offered here would correct that situation insofar as a bona fide purchaser is concerned. It would certainly not relieve of responsibility anyone who is a mere shadow purchaser, or an alter ego for someone who committed the unfair practices. Furthermore, it would not deprive those employees who were the victims of unfair labor practices of their rights under the law. The employer who actually committed the unfair labor practices would continue under this amendment, as he would under the Symns case, to be responsible for reimbursing his workers for any wages they may have lost. And, in addition, if the bona fide purchasers takes over the business with essentially the same work force he will be obliged to recognize and bargain with the union of those employees.

While the next amendment in this bill, Mr. President, relates to section 301 of the Taft-Hartley Act, it, like the others, nevertheless bears on the manner in which the National Labor Relations Board—and in this case particularly its General Counsel—discharges the obligations imposed on that agency by the Congress. This amendment amends section 301(a) of the act to provide that no collective bargaining contract will be enforceable against any employer or against any labor union that has not agreed to be bound by it.

The need for this legislation stems from a series of cases, the most notable of which is *Wylie* v. *Livingston* (376 U.S. 543). There the Supreme Court in 1964

held that if someone buys a business which is unionized, then the union under section 301 can file suit and force the purchaser to arbitrate the extent to which the seller's union contract will be binding on that purchaser. Later cases, particularly *Wackenhut Corp.* v. *Plant Guards* (332 F. 2d 954), expanded the coverage of the Supreme Court's Wylie decision, holding that if a buyer operates the business substantially as his predecessor did and carries it on with substantially the same employees, then he is bound to observe all of the prior owner's collective-bargaining contract—not merely the arbitration provisions. The General Counsel for the NLRB went even further. He decided that the buyer of a business must honor those terms of the previous owner's collective-bargaining contract which are "not unreasonable or inequitable."

Presumably the General Counsel feels more competent than the Congress, since he proposes to tell employers what provisions of contracts are reasonable and equitable—a job Congress neither authorized him to undertake nor attempted to do itself. As pointed out earlier, Mr. President, this amendment will make certain that no collective-bargaining contract shall be enforceable against any employer or labor organization that has not agreed to be bound by it. And here again I want to emphasize that this amendment does not alter the existing obligation of a buyer to bargain with an incumbent union if he operates the business essentially unchanged, using the prior owner's employees.

The third amendment covered in this bill, Mr. President, deals with the very important matter of arbitration—what is subject to arbitration, who interprets the contract to decide whether the parties have agreed to arbitrate certain items, a provision to avoid the arbitration of claims that clearly have no merit, and making certain that arbitration awards will be enforced only when the arbitrators have acted within the scope of their authority.

This amendment to section 301 is made necessary by a series of Supreme Court decisions generally referred to as the Warrior & Gulf trilogy—see 363 U.S. 574 and related cases. Those cases held in substance that any dispute arising under a collective bargaining agreement is subject to arbitration, unless the agreement clearly and in express terms excludes that particular dispute from arbitration. Under the holdings in these same cases the Supreme Court allows an arbitrator to decide what his own jurisdiction shall be. It also reversed the long-established rule that a frivolous and baseless claim is not sufficient to raise an arbitrable issue. In thus holding that virtually all disputes are arbitrable—excluding only those which are expressly excluded in the contract itself—the Court has all but eliminated the right of a party to attack an arbitrator's award on the ground that he exceeded his jurisdiction in making that award.

The amendment proposed here, Mr. President, would change section 301 of the Taft-Hartley law to correct all these enumerated evils which flow from the Supreme Court decisions in the Warrior & Gulf cases. The enactment of these changes is very long past due.

The final amendment in this bill, Mr. President, would add a new subsection to section 10 of the Labor-Management Relations Act. This change would clarify the matter of employers' standing to file suit in Court where the NLRB, in representation decisions, has clearly exceeded its statutory authority or clearly departed from the requirements of the statute insofar as these representation decisions are concerned. This amendment would reinforce the doctrine enunciated by the Supreme Court in the case of *Leedom* v. *Kyne* (358 U.S. 184). There the Supreme Court said equitable relief should be available in the district courts—and the parties should not have to wait for the NLRB General Counsel to issue a refusal to bargain charge in order to obtain a judicial review where the Board had clearly exceeded its statutory authority as to representation.

I want to emphasize here, Mr. President, that it is not intended that this amendment provide for a general judicial review of Labor Board actions in representation matters. It is necessary, however, to reinforce the Supreme Court's decision in Leedom against Kyne, because after that decision some circuit courts of appeal held that while labor organizations are entitled to injunctive relief, employers are not. See *General Cable Corp.* v. *Leedom* (278 F.2d 44). Other circuit courts of appeal have recognized that both employers and labor unions are entitled to the same remedies in district courts under the rule of Leedom against Kyne. See *Boire* v. *Miami Herald* (343 F.2d 17). This amendment, Mr. President, would clarify the confusion which exists in the light of these conflicting approaches by various U.S. circuit courts of appeal. The amendment simply makes it clear that insofar as equitable relief in U.S. district courts is concerned, employers and unions have equal standing to sue—where the NLRB in representation cases has clearly acted in excess of its statutory authority, or clearly departed from the requirements laid down in the statute.

Mr. President, I commend this bill to the early attention of the Senate. Its enactment will bring a much-needed measure of clarity and stability in areas of labor-management relations which might be said to be primarily procedural in nature—but which in their effect on employees, labor unions, employers and the public have great substantive impact.

By Mr. WILLIAMS:

S. 1660. A bill to amend the Public Health Service Act by adding a new title XI thereto which will establish a program to protect the general health by providing assistance in the establishment and operation of regional and community health protection centers for the detection of disease, by providing assistance for the training of personnel to operate such centers, and by providing assistance in the conduct of certain research related to such centers and their operation. Referred to the Committee on Labor and Public Welfare.

HEALTH PROTECTION ACT OF 1971

Mr. WILLIAMS. Mr. President, I introduce for appropriate reference a bill to establish health screening programs in regional and community centers equipped with the latest in instrumentation and communications systems. The service would be free and voluntary for all individuals and it could become the cornerstone for a genuine national effort to prevent or reduce disease by detecting it in its early stages.

No national goal could be more urgent.

According to the latest statistics compiled by the National Health Education Committee, over 71 million Americans are afflicted with a disabling disease. And this does not include the 20 million Americans who suffer from emotional and mental disorders.

National health expenditures in 1968 totaled $53.1 billion. And there were 259 million man-days lost from work because of acute illness by persons 17 years and over at a cost of $6.2 billion in lost wages and uncounted millions of dollars in lost income and exise taxes.

But we do very little to prevent these illnesses. Instead, we treat disease when it occurs. We give disease a head start and then we run to catch up with it after it has already begun to cause damage.

In a recent article in the New York Times, Secretary of Health, Education, and Welfare Elliot L. Richardson, made the point most succinctly when he said:

> Prevention is a more satisfactory solution than cure. It can be demonstrated that significant improvements in our health status will come about more through prevention of accidents and chronic disease than through improvements in curative medicine.

This gives rise to some important questions which we must ask ourselves if we are truly committed to finding solutions to the health care crisis in the United States.

Would prevention not be better than an almost total reliance on treatment?

Why must we pay out money for hospital care of illness that might have been held at bay if caught in time?

With the institution of medicare, do we not have one more compelling economic reason to prevent chronic diseases? And why do we not turn our attention to ideas and actions that will reduce illness and the cost of treating illness?

And why, in a Nation capable of deep compassion, have we not concerned ourselves more effectively with the people who are weakened, crippled, and killed by chronic illness?

Treatment, no matter how excellent and efficient, is fundamentally a defeat. It is the attempt to repair damage already done.

But we must do more. We must take positive preventive action while it is still early enough to make a difference.

The bill I submit today would, I am convinced, give us some of the resources we need to be most effective, most strategically.

This bill could lead us to a new national standard of health maintenance. Early detection of disease could become as much a part of our lives as vaccination against smallpox, blood tests before

marriage, or even brushing our teeth every morning.

This bill would authorize the Surgeon General to make grants to medical schools, community hospitals, health departments, and other public or nonprofit agencies to establish and operate health protections centers.

The regional health protection centers would provide a series of basic tests to detect abnormalities in the cardiovascular, respiratory, gastrointestinal, genitourinary and musculoskeletal systems, as well as defects in metabolism and organs of special sense. Specific diseases or conditions to be tested for might include first, hypertension, heart muscle enlargement, and disease; second, mouth, lung, breast, cervical, and other cancer; third, diabetes; fourth, kidney disease; fifth, glaucoma; sixth, tuberculosis; seventh, rheumatoid arthritis; eighth, gastrointestinal bleeding; ninth, anemia; 10th, obesity; 11th respiratory insufficiency; 12th, vision impairment; 13th, hearing impairment; 14th, hypercholesterolemia; and 15th, gout.

The tests would be administered by technicians, nurses, and medical specialists using automated or semiautomated equipment which has already been proven to give swift, accurate, and reliable results. The results of these tests along with data provided by the person undergoing the health appraisal, would be fed into a computer. It is estimated that the battery of tests could be administered within 2½ hours—and with today's advanced technology, in even less time.

The results of the tests, summarized by the computer, would be referred to the private physician of the person tested. In cases where the person either did not have a private physician or was medically indigent, the test would be referred to a physician in accordance with local practice.

The regional health protection centers are intended to provide an efficient means for the detection of abnormalities or indications of disease. They would not replace full examinations. Their purpose is to place in the hands of the examining physician a summary of basic data and to place promptly under a physician's care a person with indications of possible disease.

The centers would be under the supervision of physicians, but they would be principally staffed by technical personnel. Health counselors would be on the staffs of the centers to explain the purpose of the tests, to insure proper referral and to follow up those cases where prompt medical treatment was indicated by the tests.

Health appraisals and disease detection tests would be available to any person on a voluntary basis.

The regional health protection centers would conduct training programs in the operation of technical disease detection procedures and would research and develop new disease detection tests and equipment. Additional grants to the regional centers would be authorized for operational research and for the establishment of internships to give on-the-job training to physicians, nurses, social workers, and technical personnel. The centers would also conduct community education programs on preventive health care.

The availability of these testing services would be intended to encourage all Americans to take regular health examinations and to facilitate the giving of full examinations by practicing physicians.

The Surgeon General would be authorized to make grants to medical schools, community hospitals, and other community health service agencies for the establishment of community health protection centers. They would be linked by data transmission lines to the regional centers and could use the more sophisticated electronic equipment and other facilities of the regional centers for the evaluation of some tests.

One of the criteria for the awarding of grants to regional centers would be their ability to provide services to the small community centers. Although the community centers would be directly connected to the regional centers, they would not necessarily be operated by the same institutions which ran the regional centers. One purpose of the community centers would be to make the services of the regional centers more widely available to a greater number of people. Special facilities might be developed to meet particular needs. For example, mobile units might be used in rural areas.

A 12-man Advisory Council on Health Protection would be established to advise and assist the Surgeon General in the administration of this program.

The Surgeon General would be authorized to contract with educational institutions or other appropriate organizations for the conduct of educational programs. He would also be authorized to contract with profit and nonprofit organizations for the research and development of equipment, systems, or processes which would improve disease detection procedures.

Let me emphasize—this point bears emphasis—that the centers would not be treatment centers. They would not be diagnostic centers. They would be laboratories which give data to physicians, who would interpret that data and deal directly with patients when consultation would be needed.

The bill I am introducing requires that in every case the results of the screening test be given to a practicing physician. The health protection centers would not be equipped or intended to provide treatment, although the staff of the centers would be expected to follow up cases and to make sure that a participant was promptly brought under a doctor's care if treatment was indicated by the tests. Even should the screening tests show no indications of possible disease, the data would provide basic information to a physician on his patient which would be extremely helpful for a full physical examination by a doctor or as baseline data in future examinations.

Doctors would thus be given more time to perform the executive, expert functions that only they can perform. They would be given more time and more facts to help more people.

As the population continues to increase, physicians and others in the health professions will need all the time they can get.

Mr. President, I have introduced similar legislation in the last Congress and before. Unfortunately there have not been enough hours in the busy agenda of the Congress for full consideration of this important aspect of health care. While in previous years this proposal was limited to programs for persons aged 50 and older, I feel that the time has come when we must view this as a vital part of the health care system for all Americans.

We are well aware of the numerous pieces of legislation which have been introduced in this Congress designed to provide comprehensive health services and adequate financing mechanisms for health care. In every bill there has been some provision made to satisfy the need for the prevention of disease. But I am concerned that we have really only paid lip service to the concept. And we must do more.

Much of what I am proposing today can be incorporated into the institution of the Health Maintenance Organization which has gained the support of virtually everyone who has seen the need to reform the present system. Yet, rather than assume that HMO's will necessarily perform this function I feel that the enactment of my bill will guarantee that the people of the United States can avail themselves of this important service along with the treatment which may be necessary if an illness is detected.

Mr. President, in the past the legislation which I have introduced today has acquired the nickname "preventicare." Frankly, I do not think that this title fully and adequately sums up the objectives of this program. For what we would be doing with the establishment of such a system is not preventing health care. Rather we would be assuring that every individual in the Nation could seek and secure the kind of initial care which would protect against the further progress of disease. Therefore, I would like to take the liberty of calling this program "protecticare." That is what I am seeking to accomplish. And that is what we all have determined to be our goal.

We are now at a turning point in the Federal commitment to make adequate health services available to everyone, as well as to bring about major improvements in the manner of delivering personal health care services. At this time, therefore, we have to make certain that our thinking about the future is not made in a partial vacuum as it will be if we do not make a commitment to programs which help protect against disease.

Mr. President, I ask unanimous consent that the text of my bill be printed at the close of these remarks.

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

S. 1660

A bill to amend the Public Health Service Act by adding a new title XI thereto which will establish a program to protect the general health by providing assistance in the establishment and operation of regional and community health protection centers for the detection of disease, by providing assistance for the training of personnel to operate such centers, and by providing assistance in the conduct of certain research related to such centers and their operation

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 "Health Protection Act of 1971".

SEC. 2. The Public Health Service Act is amended by adding at the end thereof the following new title:

"TITLE XI—DETECTION OF DISEASES THROUGH FACILITIES PROVIDED BY REGIONAL COMMUNITY HEALTH PROTECTION CENTERS

"FINDINGS OF FACT

"SEC. 1101. The Congress hereby finds and declares that—

"(1) the Federal Government has a duty to assist the population of the United States in protecting, maintaining, and improving their health;

"(2) utilization by individuals on a regular basis of a health appraisal program, which makes full use of appropriate technical facilities in its disease detection procedures, can lead to the prevention of illness and chronic disorders which they would otherwise suffer;

"(3) the early detection of disease is essential to the prompt and effective treatment thereof;

"(4) there presently exist modern equipment and techniques which make possible the efficient and rapid appraisal of large numbers of individuals for indications of many common chronic diseases, including heart and vascular diseases, cancer, diabetes, tuberculosis, glaucoma, and kidney diseases;

"(5) the rapid appraisal, by use of such equipment and techniques, of large numbers of individuals for indications of common chronic diseases in no way constitutes medical treatment nor in any way replaces or obviates the need for regular physical examinations by physicians;

"(6) the making available to physicians caring for individuals who have undergone such an appraisal of properly documented findings resulting therefrom will assist such physicians in conducting, more rapidly and efficiently, complete medical examinations of such individuals; and

"(7) the expansion of facilities providing for the appraisal, by use of modern equipment and techniques, of large numbers of individuals for indications of common chronic diseases, together with the making available to appropriate physicians of the documented findings resulting from the appraisals conducted by such facilities, will assist the medical profession in employing to the fullest extent their knowledge, training, and abilities in preventing illness and in healing the sick.

"DECLARATION OF PURPOSE

"SEC. 1102. It is the purpose of this title—

"(a) to encourage and assist, through grants, in the planning, establishment, and operation of regional health protection centers each of which will provide health appraisal and disease detection services, on a periodic basis, to any individual who requests such services, if he resides within the immediate geographic area, as prescribed by the Surgeon General, within which such center is located, and each of which will assist and support any community health protection centers, which may be located within the geographic area served by it, in carrying out their functions;

"(b) to encourage and assist, through grants, in the planning, establishment, and operation of community health protection centers, which will provide health appraisal and disease detection services, on a periodic basis, to any individual who requests such services, if he resides within the geographic area served by the center from which he requests such services;

"(c)(1) to provide grants to regional health protection centers (and, under certain circumstances, to community health protection centers), which have received grants under this title to carry out the purposes of subsection (a) or (b), to enable them to provide, specialized training in the various functions and activities of such centers, through working relationships in such centers, for physicians, nurses, health counselors, referral specialists, medical technicians, and other professional or technical health personnel; and (2) to enable the Surgeon General to enter into contracts with educational institutions and other appropriate organizations for the development and carrying out of educational programs designed to improve or enhance the effectiveness of professional or technical personnel engaged in (or interested in engaging in) activities involved in the operation of health protection centers; and

"(d)(1) to provide grants to regional health protection centers (and, under certain circumstances, to community health protection centers), which have received grants under this title to carry out the purposes of subsection (a) or (b), to enable them to conduct operational research designed to secure information leading to the improvement of systems, methods, processes, or procedures to be employed by such centers in carrying out their functions, including systems, methods, processes, or procedures relating to the development of counseling, informational referral, and other activities related to the carrying out of such functions, and (2) to enable the Surgeon General to enter into contracts with profitmaking and nonprofitmaking organizations for the conduct of research designed to improve the operations of health protection centers.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 1103. (a) In order to carry out the purposes of this Act, there are hereby authorized to be appropriated such sums as the Congress deems necessary for each of the fiscal years ending June 30, 1972, June 30, 1973, and June 30, 1974,

"(b) Any sums appropriated under subsection (a) for any fiscal year shall, if not expended prior to the end of such year, remain available for the purpose for which they were appropriated until expended.

"DEFINITIONS

"SEC. 1104. As used in this title—

"(1) the term 'Council' means the National Advisory Council on Health Protection established by section 1111; and

"(2) the term 'nonprofit institution' means an institution owned and operated by one or more corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

"PURPOSE OF REGIONAL AND COMMUNITY HEALTH PROTECTION CENTERS

"SEC. 1105. (a)(1) It shall be the purpose of any regional health protection center to provide, in accordance with the succeeding provisions of this subsection, a health appraisal program for which all individuals living within the immediate geographic area, as prescribed by the Surgeon General, within which such center is located will be eligible to participate.

"(2) Such health appraisal program—

"(A) shall be designed to detect, in the most rapid and efficient manner possible, indications, in individuals participating in the program, of common chronic diseases and conditions such as heart and vascular disease, cancer, diabetes, tuberculosis, glaucoma, and kidney disease, and abnormalities or defects in metabolism, organs of special sense, and in the cardiovascular, respiratory, gastrointestinal, genitourinary, and musculoskeletal systems;

"(B) shall include the full and proper use, in its disease, abnormality, and physical defect detection functions, of the most efficient procedures and technical equipment;

"(C) may include the training of professional and technical personnel in the operation of technical disease detection procedures and related functions of health protection centers;

"(D) shall include the carrying out of educational and informational activities for the benefit of the general public and of professional health personnel in concepts of health protection and maintenance; and

"(E) may include the conduct of research into new means of disease detection and into the development of new diagnostic equipment.

"(b) In addition to providing (in accordance with the preceding requirements of this section) a health appraisal for the residents within the immediate geographic area in which it is located, it shall be the duty and function of any regional health protection center to provide support and assistance to such community health protection centers as may be established in neighboring geographic areas or which can be feasibly related to such regional health protection center. In carrying out such duty and function, each regional health protection center shall maintain a direct working relationship with each such community health protection center, and shall disseminate appropriate information among, and shall coordinate the effort of, such community health protection centers. Each regional health protection center shall have and maintain a full and adequate supply of automated and other equipment so as to be able to process tests for and otherwise assist all community protection centers which it is to serve.

"(c)(1) It shall be the purpose of any community health protection center to establish a health appraisal program in accordance with the provision of subsection (a), and to cooperate with the regional health protection center serving the geographic area in which such community health protection center is located.

"(2) In order that the foregoing purpose may effectively be carried out, each community health protection center shall be designed to serve the people of a well-defined geographic area, as prescribed by the Surgeon General, and shall be designed so as to facilitate the convenient utilization of its services by the greatest possible number of people residing within such area.

"GRANTS FOR REGIONAL HEALTH PROTECTION CENTERS

"SEC. 1106. (a) The Surgeon General is authorized to make grants to medical schools, community hospitals, health departments, and other appropriate public or nonprofit agencies or institutions to assist them in the planning, establishment, and operation of regional health protection centers.

"(b) Grants under this section may be made only upon application therefor approved by the Surgeon General. Any such application may be approved only if it contains or is supported by reasonable assurances that—

"(1) any regional health protection center, the planning, establishment, or operation of

which is assisted by any such grant will be one which, when it is in operation, will fulfill the purposes of regional protection centers as set forth in section 1105 and will comply with the requirements prescribed for any agreement under section 1108;

"(2) Federal funds paid pursuant to any such grant will be used only for the purposes for which paid and in accordance with the applicable provisions of this title and the regulations thereunder;

"(3) the applicant for a grant will provide for such fiscal control and fund accounting procedures as are required by the Surgeon General to assure proper disbursement and accounting for such Federal funds;

"(4) the applicant for such grant will make such reports, in such form and containing such information as the Surgeon General may from time to time reasonably require, and will keep such records and afford such access thereto as the Surgeon General may find necessary to assure the correctness and verification of such reports; and

"(5) any laborer or mechanic employed by any contractor or subcontractor in the performance of work on any construction aided by payments pursuant to any grant under this section will be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a-5); and the Secretary of Labor shall have, with respect to the labor standards specified in this paragraph, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176) and section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c).

"GRANTS FOR COMMUNITY HEALTH PROTECTION CENTERS

"SEC. 1107. (a) The Surgeon General is authorized to make grants to medical schools, community hospitals, health departments, and other appropriate public or nonprofit agencies or institutions to assist them in the planning, establishment, and operation of community health protection centers.

"(b) Grants under this section may be made only upon application therefor approved by the Surgeon General. Any such application may be approved only if it contains or is supported by reasonable assurances that—

"(1) any community health protection center, the planning, establishment, or operation of which is assisted by any such grant will be one which, when it is in operation, will fulfill the purposes of community health protection centers as set forth in section 1105 and will comply with the requirements prescribed for any agreement under section 1108;

"(2) Federal funds paid pursuant to any such grant will be used only for the purposes for which paid and in accordance with the applicable provisions of this title and the regulations thereunder;

"(3) the applicant for such grant will provide for such fiscal control and fund accounting procedures as are required by the Surgeon General to assure proper disbursement of and accounting for such Federal funds;

"(4) the applicant for such grant will make such reports, in such form and containing such information as the Surgeon General may from time to time reasonably require, and will keep such records and afford such access thereto as the Surgeon General may find necessary to assure the correctness and verification of such reports; and

"(5) any laborer or mechanic employed by any contractor or subcontractor in the performance of work on any construction aided by payments pursuant to any grant under this section will be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a-5); and the Secretary of Labor shall have with respect to the labor standards specified in this paragraph, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176) and section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c).

"HEALTH PROTECTION CENTERS—FINDINGS OF HEALTH APPRAISALS TO BE REFERRED TO PRIVATE PHYSICIANS

"SEC. 1108. (a) Each grant made under this title to any health protection center shall be conditioned upon an agreement that such center will refer any and all findings resulting from any health appraisal, test, or examination provided by it for any individual to the private or other physician who is charged with the health care of such individual.

"(b) The Surgeon General shall promulgate regulations specifying the particulars to be included in any agreement referred to in subsection (a) and such regulations shall provide that, in the event an individual, who undergoes a health appraisal, test, or examination provided by a health protection center, does not have a private physician who is charged with the health care of such individual, the findings resulting from any such appraisal, test, or examination of such individual shall be referred in accordance with the practice of local medical groups in the community where such individual resides, or, if such individual is medically indigent, shall be referred in accordance with local practice in such community with respect to medically indigent individuals.

"(c) Any agreement referred to in subsection (a) shall provide that any findings resulting from any health appraisal, test, or examination provided by a health protection center for any individual, or any research or study involving such findings, shall be treated with commonly accepted standards of confidentiality in the medical and health field.

"(d) Any health protection center which has entered into an agreement referred to in subsection (a) shall not be eligible to receive any grant or part of a grant under this title during any period with respect to which the Surgeon General finds that such center has failed substantially to comply with such agreement.

"TECHNICAL TRAINING OF PERSONNEL FOR HEALTH PROTECTION CENTERS

"Grants to Health Protection Centers

"SEC. 1109. (a) The Surgeon General may make grants to regional health protection centers, which have received grants under section 1106 (and, when the Suregon General determines that the purpose of section 1102(c) can best be carried out thereby, to community health protection centers which have received grants under section 1107), to enable such centers to establish and operate working internship programs under which physicians, nurses, health counselors, referral specialists, medical technicians, and other professional or technical personnel will receive training in performing the activities of health protection centers. No such grant shall be used to make any such program available to any individual for a period greater than two years, and no such grant shall be made to any health protection center with respect to any period for which such center is not a recipient of a grant under section 1106 or section 1107.

"Contracts With Institutions and Organizations

"(b) The Surgeon General may enter into contracts with educational institutions or other appropriate organizations for the development and carrying out of educational programs designed to improve or enhance the effectiveness of professional or technical personnel engaged in (or interested in engaging in) activities involved in the operation of health protecton centers.

"OPERATIONAL RESEARCH

"Grants to Health Protection Centers

"SEC. 1110. (a) The Surgeon General may make grants to regional health protection centers, which have received grants under section 1106 (and, when the Surgeon General determines that the purpose of section 1102 (d) can best be carried out thereby, to community health protection centers which have received grants under section 1107), to enable such centers to conduct operational research designed to secure information leading to the improvement of systems, methods, processes, or procedures employed in the detection of disease, in the providing of counseling, informational, referral, and other services, and in other activities of such centers. No grant under this section shall be made to any health protection center prior to the first full year in which such center has been in operation.

"Contracts With Organizations

"(b) The Surgeon General may enter into contracts with appropriate profitmaking or nonprofit organizations for the purpose of the development or alteration of equipment, communications, processes, systems, or procedures designed (singly or in combination) to improve the effectiveness or efficiency of health protection centers in carrying on the activities for which they were established.

"NATIONAL ADVISORY COUNCIL ON HEALTH PROTECTION

"SEC. 1111. (a) The Surgeon General, with the approval of the Secretary, may appoint, without regard to the civil service laws, a National Advisory Council on Health Protection. The Council shall consist of the Surgeon General, who shall be Chairman, and twelve members, not otherwise in the regular full-time employ of the United States, who are leaders in the fields of medicine, dentistry, optometry, preventive medicine, public health, public welfare, or are representatives of national organizations concerned with the interests of the aging, and shall include one or more national leaders known for their dedication to the national interest and the welfare of the Nation's citizens.

"(b) Each appointed member of the Council shall hold office for a term of four years, except that any member appointed to fill a vacancy prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and except that the terms of office of the members first taking office shall expire, as designated by the Surgeon General at the time of appointment, four at the end of the first year, four at the end of the second year, and four at the end of the third year after the date of appointment. An appointed member shall not be eligible to serve continuously for more than two terms.

"(c) Appointed members of the Council, while attending meetings or conferences thereof or otherwise serving on business of the Council, shall be entitled to receive compensation at rates fixed by the Secretary, but not exceeding $100 per day, including travel-time, and while so serving away from their homes or regular place of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

"(d) The Council shall advise and assist the Surgeon General in the preparation of regulations for, and as to policy matters arising with respect to, the administration of this title.

"REGULATIONS

"SEC. 1112. The Surgeon General, after consultation with the Advisory Council, shall prescribe general regulations covering the terms and conditions for approving applica-

tions for grants under this title and the coordination of programs assisted under this title with the programs, having related purposes, which are authorized under other titles of this Act or other Acts of Congress.

"RECORDS AND AUDIT

"SEC. 1113. (a) Each recipient of a grant under this title shall keep such records as the Surgeon General may prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such grant, the total cost of the project or undertaking in connection with which such grant is made or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such records as will facilitate an effective audit.

(b) The Secretary of Health, Education, and Welfare, and the Comptroller General of the United States or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient of any grant under this title which are pertinent to any such grant.

SEC. 3. (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'."

By Mr. INOUYE:

S. 1662. A bill to provide for the conveyance of the Island of Kahoolawe to the State of Hawaii, and for other purposes. Referred to the Committee on Armed Services.

CONVEYANCE OF ISLAND OF KAHOOLAWE TO THE STATE OF HAWAII

Mr. INOUYE. Mr. President, Kahoolawe is the smallest island of the eight major Hawaiian islands. It is approximately 45 miles square and is located approximately 8 miles off the coast of the island of Maui.

Kahoolawe is also the site of an aerial bombing target and a shore bombardment area. In many respects it is similar to Culebra, which was the subject of Senate debate in the last Congress. In fact, as a result of the activities conducted by the Navy, Kahoolawe has the dubious distinction of being one of the most bombed islands in the Pacific.

While it is true that there are other areas within the territorial boundaries of the United States used for similar purposes, Kahoolawe is different from these locales. The State of Hawaii retains residual rights over Kahoolawe since it had formerly owned the island, subject only to "temporary" military exigencies enumerated in the Executive order reserving use of the island to the U.S. Government. Furthermore, Kahoolawe is located near populated areas on the island of Maui, and the people of Haui have long complained of the effects of aerial and shore bombardment. Finally, Kahoolawe was once usable for other purposes. It is now rapidly being destroyed and rendered unfit for human habitation. This erosion is an unforgivable waste of resources in a State where land is at a premium.

The Island of Kahoolawe is an integral part of the Hawaiian Archipelago and has always been considered so in the past. Unlike the other major islands, Kahoolawe is presently uninhabited. As a result of naval and air bombardment, the State of Hawaii is currently deprived of Kahoolawe's scenic resources and agricultural space.

However, Kahoolawe has uses other than as a target for aerial and naval bombardment. There still is potential for development as a resort area, with its beaches, valleys, cliffs, and ravines. It was previously used for ranching, and there is reason to believe that the island can again be used for this purpose with proper care. It has also been proposed that Kahoolawe be utilized as a site for a central thermonuclear powerplant and aqua agricultural development. At least one company has expressed great interest in conducting a salvage operation on the island to recover casings and unexploded ordnance.

Mr. President, I am reviewing these facts at length in response to the oftenmade Navy allegation that the island is a "hell hole," unfit for any use except for target practice. It is true that it is becoming unfit for anything except bombardment unless we reverse Navy policies of neglect and destruction.

Kahoolawe was not always the victim of defense demands. Through most of our history as a territory. Kahoolawe was owned by the territorial government and leased to private parties for grazing. In 1919 and again in 1933, the territory leased most of the island to a private ranch. In 1940, the Navy obtained a sublease to the island. Then in 1952 the original lease was canceled by the territory. In 1953 the area that was not being used for a lighthouse, which was already Federal property, was taken by the United States under the controversial Presidential Executive Order 10436.

Under the terms of the Executive order, when the Navy decided that the area was no longer needed, the island would be rendered reasonably safe for human habitation without cost to Hawaii and returned to the latter's jurisdiction. Moreover, the Navy was to either eradicate all goats from the island or strictly control their number. Finally, the Navy was to permit the then territory to enter and inspect the island and take appropriate measures to conduct a program of soil conservation.

What has happened in the years since the Navy security control of the island? Kahoolawe is rapidly deteriorating between the Navy's bombardment and the animals that are stripping away the natural covering. In an era of environmental concern, Kahoolawe stands as mute testimony to the failure of the Federal Government to practice what it preaches. Soon, between the animals and the Navy, Hawaii will be left with nothing except outcroppings of rock from the Pacific.

Kahoolawe was and remains an integral part of Hawaii. Under the terms of the Admission Act, all lands reserved to the United States remained Federal property. However, the Executive order reserved only use, and the order's drafters clearly foresaw eventual return to the State. Thus title remains vested in Hawaii, which has granted the Federal Government use of the island.

The people of Hawaii have shown remarkably good faith and tolerance for the Navy's activities. We have recognized the fact that security requirements can demand a sacrifice on our part. However, the limits of our tolerance have long been exceeded, and the Navy has failed to prove that our defense posture will be undermined by the cessation of the bombardment of Kahoolawe.

Aside from the actual physical ruin of Kahoolawe itself, which is proceeding apace, the bombing constitutes a serious danger to the people of Maui. In September 1969 unexploded ordnance was discovered buried in the pasture of the mayor of the County of Maui. After an investigation, the Navy determined that the bomb had been dropped in 1966 but was in no danger of detonating.

However, this has not been the only incident. Residents have often complained about the noise from aircraft utilizing Kahoolawe. Because the population of Maui is expanding and the use of Kahoolawe is very heavy, the odds of an accidental bombing of Maui are very high. In the interest of the safety and comfort of the citizens of Maui, the policies of the Navy must be reversed.

For several years I have been concerned about the dangers presented by the Navy's bombing of Kahoolawe. I have made several discreet inquiries with the Navy to reach an accommodation that would insure the safety of Hawaii's citizens while meeting any national security needs. Unfortunately, these efforts have been fruitless.

In a letter to me dated December 11, 1969, Rear Adm. D. C. Davis, Commander, Hawaiian Sea Frontier, reached the following conclusions: First, he stated that the Navy has taken and will take all possible precautions to prevent undue harassment of the citizens of Maui because of the bombardment.

Second, he alleged that—

> The ravages of over a quarter of a century of air and surface bombardment have probably irrevocably eliminated the possibility of future safe, domestic use of the island.

He continued:

> This element has not been realistically faced in years past.

In his response to my inquiry, Admiral Davis added—

> The time has come to inform the local public that Kahoolawe should remain for the indefinite future an uninhabited monument to the requirements of our national security.

Admiral Davis should be commended for his frankness in stating that Navy utilization has rendered Kahoolawe barren and useless, but this candor was long overdue. I cannot believe that this discovery was suddenly made in 1969 only at my urging. Where was this candor during the previous 29 years of Navy use?

The Navy has claimed that there are no alternate sites available, but no one in the civilian sector really knows what efforts have been made to locate a less objectionable location. In fact the Navy already uses the uninhabited island of Kaula, which is farther away from population centers and which is totally useless for any future development.

Furthermore, Mr. President, what are the people of Hawaii to make of the

Executive order which promised to return Kahoolawe to the State after it was no longer required and to provide conservation programs for the island? The Navy Department obviously is saying in effect that it may some day return this ravaged "uninhabited monument" after it renders it sterile, but there is no indication when, if ever, we can expect this action.

We hear much about the credibility gap, and it is precisely this kind of callous disregard for the safety of civilians that contributes to the growing alienation of civilians from the Armed Forces. Regrettably this is not the only instance or example of indifference which the Navy has exhibited toward the interests of the citizens of Hawaii. Prior to dropping its lease last year, it also insisted on using the South Kona bombing range, which lies adjacent to the fishing village of Miolii, off the Island of Hawaii. Even if we were to assume—which I am not—that Kahoolawe were absolutely necessary to the defense requirements of our country, the Navy should have consolidated its training by restricting aerial bombardment to Kahoolawe. However, it obstinately refused to take this sensible step.

Throughout this entire episode, the Navy has been extremely evasive in facing its responsibilities to the people of Hawaii. Nothing has contributed more to the deteriorating confidence in the Navy than its stubbornness. Indeed, some of Hawaii's citizens feel that its response has been the "height of arrogance."

Therefore, I am introducing today a bill that would require the Department of the Navy to convey the Island of Kahoolawe to the State of Hawaii by the end of the current calendar year. The bill also authorizes the expenditure of necessary funds in fiscal year 1972 to help clear the island surface of an estimated 10,000 tons of unexploded ordnance.

Mr. President, the people of Hawaii have been patient with the Navy's use of Kahoolawe for 31 years, but that patience has worn thin. I believe that we are entitled to a return of this land, which is so greatly limited in Hawaii, and to security in our homes. I strongly urge that Congress pass this bill as soon as possible.

By Mr. MATHIAS:

S. 1663. A bill to amend chapter 17 of title 38, United States Code, so as to authorize continuation of certain medical care benefits provided for mentally retarded and physically handicapped dependents of members of the Armed Forces who die while serving on active duty. Referred to the Committee on Veterans' Affairs.

Mr. MATHIAS. Mr. President, we pride our society on our willing and humane acceptance of responsibility for each other, and especially for the small children who enter our world with some serious handicap. Unlike many past civilizations, we care for these children and cherish them. This compassion entails a great commitment by the parents and, often, expensive special medical care. Whenever possible, it has been the policy of our various levels of government to help in providing that care.

Last year I attempted to correct the distressing situation whereby the current law deprives the dependents of a serviceman killed in action of the benefits of special remedial and handicapped medical aid as provided for in title 10 of the United States Code. This particular section—section 1079—authorizes the diagnosis, treatment, training, rehabilitation, special education, and institutional care of such special dependents while a serviceman is on active duty. The existing law does not include in its coverage the dependents of servicemen who have given their lives in defense of their country. As a result of this tragic paradox when sudden violent death occurs during combat on a battlefield thousands of miles away from home, this necessary and compassionate assistance terminates at midnight of the same day. Such a callous oversight in the letter of the law which denies the spirit of the law is unconscionable if left unredressed.

I feel that it would be in accordance, not only with the overall purpose of the present program, but also with the moral obligation of our society for youngsters orphaned by war, to extend this program to include the families of those servicemen who never return home. There is presently no area in veterans benefits which provides for this special medical and health care.

Today I am introducing a new bill which will authorize continuation of these benefits. It does so by adding a new subchapter to chapter 17 of title 38, United States Code. The bill maintains the same benefits, the same cost-sharing arrangements, and the same requirement that the dependents use public facilities as they are determined to be available and adequate. There is no essential change in these provisions as they relate to section 1079, title 10.

To fully implement the spirit of the existing law, however, the bill goes one step further. It directs the Administrator to provide transportation for the dependents of veterans to and from any health-care facility if the Administrator determines that such transportation is necessary to carry out the provisions of the bill. Thus eligible dependents will not be denied their entitled benefits due to the inadequacy or unavailability of public facilities. By this provision the Administrator is empowered to take whatever action is necessary to insure that the dependents do, in fact, receive aid—even if such action entails the use of other than public facilities.

The effective date of the bill is January 1, 1967 which is in accordance with that of the existing law.

I urge Senators to act quickly in support of this legislation. When a soldier and husband is suddenly lost, the medical burdens of his family can increase by as much as $150 a month, just to maintain the most minimal level of care. This hardship only compounds the painful readjustments which must be made. We have an obligation and mandate to correct these past inequities and to insure that they will never occur again.

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 377

At the request of Mr. TOWER, the Senator from Washington (Mr. MAGNUSON) was added as a cosponsor of S. 377, a bill to equalize military retirement pay.

S. 635

At the request of Mr. ALLOTT, the Senator from Montana (Mr. MANSFIELD) was added as a cosponsor of S. 635, a bill to amend the National Mining and Minerals Policy Act of 1970.

S. 806

Mr. BYRD of West Virginia. Mr. President, at the request of the Senator from Washington (Mr. JACKSON), I ask unanimous consent that, at its next printing, the name of the Senator from Texas (Mr. TOWER) be added as a cosponsor of S. 806, a bill to authorize additional medical and dental care for reservists and members of the National Guard.

The ACTING PRESIDENT pro tempore (Mr. TUNNEY). Without objection, it is so ordered.

S. 882

At the request of Mr. WILLIAMS, the Senator from California (Mr. CRANSTON) was added as a cosponsor of S. 882, a bill authorizing payment under medicare for services performed by a household aide.

S. 883

At the request of Mr. WILLIAMS, the Senator from California (Mr. CRANSTON) was added as a cosponsor of S. 883, a bill to establish an Institute on Retirement Income.

S. 975

At the request of Mr. BAYH, the Senator from New Jersey (Mr. WILLIAMS) and the Senator from South Carolina (Mr. HOLLINGS) were added as cosponsors of S. 975, a bill to protect the constitutional right of privacy of citizens.

S. 1017

At the request of Mr. MONDALE, the Senator from Illinois (Mr. STEVENSON) was added as a cosponsor of S. 1017, the Clean Lakes Act of 1971.

S. 1018

At the request of Mr. CHURCH, the Senators from Montana (Mr. MANSFIELD and Mr. METCALF) were added as cosponsors of S. 1018, a bill to require the Secretary of Transportation to designate rail passenger service to at least one major population center in each of the contiguous 48 States under the National Rail Passenger Network.

S. 1127

At the request of Mr. BAYH, the Senator from Minnesota (Mr. HUMPHREY) and the Senator from New Jersey (Mr. WILLIAMS) were added as cosponsors of S. 1127, a bill to revise the Uniform Code of Military Justice, and for other purposes.

S. 1245

At the request of Mr. Moss, the Senator from Tennessee (Mr. BROCK) was added as a cosponsor of S. 1245, a bill relating to the preservation of historical and archeological data.

S. 1291

At the request of Mr. CASE, the Senator from Rhode Island (Mr. PELL) was added as a cosponsor of S. 1291, a bill to further amend the act of October 4, 1961, amended by the act of July 19, 1966, to facilitate the efficient preservation and protection of certain lands in Prince Georges and Charles Counties, Md., and for other purposes.

S. 1305

At the request of Mr. MONDALE, the Senator from Alaska (Mr. GRAVEL) was added as cosponsor of S. 1305, a bill to establish a National Legal Services Corporation.

S. 1383

At the request of Mr. WILLIAMS, the Senator from Utah (Mr. BENNETT), the Senator from New York (Mr. BUCKLEY), the Senator from West Virginia (Mr. BYRD), the Senator from Nevada (Mr. CANNON), the Senator from New Jersey (Mr. CASE), the Senator from Idaho (Mr. CHURCH), the Senator from Mississippi (Mr. EASTLAND), the Senator from Florida (Mr. GURNEY), the Senator from Michigan (Mr. HART), the Senator from South Carolina (Mr. HOLLINGS), the Senator from New York (Mr. JAVITS), the Senator from Rhode Island (Mr. PELL), the Senator from Georgia (Mr. TALMADGE), and the Senator from South Carolina (Mr. THURMOND) were added as cosponsors of S. 1383, a bill to prohibit flight in interstate or foreign commerce to avoid prosecution for the killing of a policeman or fireman.

S. 1410

Mr. HUMPHREY. Mr. President, I ask unanimous consent that the Senator from Alaska (Mr. GRAVEL) and the Senator from Illinois (Mr. PERCY) be added as cosponsors of S. 1410, a bill to amend the Higher Education Act of 1965 to establish a student internship program to offer students practical political involvement with elected officials on the local, State and Federal levels of government.

This bill, the "Interns for Political Leadership Act," has met with a very favorable response from young people and educators as well as colleagues and constituents.

The ACTING PRESIDENT pro tempore (Mr. STEVENSON). Without objection, it is so ordered.

Mr. HUMPHREY. Mr. President, I ask unanimous consent to have printed in the RECORD a letter on this subject I recently received from Professor Roger H. Davidson, scholar in residence with the National Manpower Policy Task Force.

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

NATIONAL MANPOWER POLICY
TASK FORCE,
Washington, D.C., Apr. 7, 1971.

Hon. HUBERT H. HUMPHREY,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HUMPHREY: I am a professor of political science on leave from the University of California at Santa Barbara. In my years of teaching both at Dartmouth College and at the University of California, I have had occasion to serve as advisor for various groups of college students serving as interns in Washington.

I want to commend you and your colleagues for introducing S. 1410, which would offer assistance to student interns serving with local, state, and federal officials. It is extremely important for politically interested young people to have ample opportunities to learn about, and try to exert influence within, "the system." Most of the young people who serve in such internships gain far greater understanding of the complex processes of governing than they could in even the most sophisticated classroom; and most of these students also come away from their experience with a glowing enthusiasm for plunging into governmental affairs and trying to make changes in a constructive fashion. The assistance which the House of Representatives offered back in the mid-1960s to Members hiring these interns was laudable, but concern over student activism on the Hill caused this program to be terminated. I thought at the time that it was an unfortunate development, and in the long run detrimental to the objective of encouraging responsible student activism.

Again, from my experience selecting and advising scores of interns over the past eight years, I know what a valuable experience this can be, and how limited are the financial resources for these young people. I certainly appreciate what you and your colleagues are trying to do, and if I may be of any assistance, please feel free to call on me.

Sincerely yours,

ROGER H. DAVIDSON,
Scholar in Residence (Professor of Political Science on leave from the University of California, Santa Barbara).

S. 1435

At the request of Mr. STEVENSON, the Senator from West Virginia (Mr. RANDOLPH) was added as a cosponsor of S. 1435, a bill to amend the Communications Act of 1934 to ban sports from closed-circuit television.

S. 1442, S. 1443, AND S. 1444

At the request of Mr. Moss, the Senator from Oklahoma (Mr. HARRIS), the Senator from Alabama (Mr. SPARKMAN), and the Senator from Virginia (Mr. SPONG) were added as cosponsors of S. 1442, to amend the Internal Revenue Code of 1954 to provide that the first $3,000 received as civil service retirement annuity from the United States or any agency thereof shall be excluded from gross income; S. 1443, a bill to amend chapter 83 of title 5, United States Code, to eliminate the survivorship reduction during periods of non-marriage of retired employees and Members, and for other purposes; and S. 1444, a bill to increase the contribution by the Federal Government to the costs of employees' health benefits insurance.

S. 1445

At the request of Mr. Moss, the Senator from Oklahoma (Mr. HARRIS), the Senator from Idaho (Mr. CHURCH), and the Senator from Alabama (Mr. SPARKMAN) were added as cosponsors of S. 1445, a bill to provide increases in certain annuities payable under chapter 83 of title 5, United States Code, and for other purposes.

S. 1532

At the request of Mr. BAYTH, the Senator from Minnesota (Mr. HUMPHREY) and the Senator from West Virginia (Mr. RANDOLPH) were added as cosponsors of S. 1532, a bill relating to the allowance of a depreciation deduction.

S. 1534

At the request of Mr. HUMPHREY, the Senator from Utah (Mr. BENNETT), the Senator from Nevada (Mr. BIBLE), the Senator from Minnesota (Mr. MONDALE), the Senator from New Jersey (Mr. WILLIAMS), and the Senator from Hawaii (Mr. INOUYE) were added as cosponsors of S. 1534, a bill to amend title 10, United States Code, to prescribe additional health benefits for certain dependents.

S. 1554

At the request of Mr. HUMPHREY, the Senator from Nevada (Mr. BIBLE), the Senator from Rhode Island (Mr. PELL), and the Senator from New Jersey (Mr. WILLIAMS) were added as cosponsors of S. 1554, a bill to amend the Federal Aviation Act of 1958 in order to authorize free or reduced rate transportation to handicapped persons and persons who are seventy years of age or older, and to amend the Interstate Commerce Act to authorize free or reduced rate transportation for persons who are seventy years of age or older.

S. 1608

At the request of Mr. SPARKMAN, the Senator from New York (Mr. JAVITS), the Senator from Idaho (Mr. JORDAN), the Senator from Utah (Mr. Moss), the Senator from Oregon (Mr. PACKWOOD), the Senator from Rhode Island (Mr. PELL), the Senator from Utah (Mr. BENNETT), and the Senator from California (Mr. TUNNEY) were added as cosponsors of S. 1608, a bill to designate certain lands on the Bankhead National Forest in Alabama as wilderness under the Wilderness Act of 1964.

S. 1649

HELP FOR THE SMALL BUSINESSMAN

Mr. SPARKMAN. Mr. President, I am happy to join the Senator from Nevada (Mr. BIBLE), chairman of the Small Business Committee, in sponsoring S. 1649, a bill that will help small business firms in Alabama and throughout the country in financing structural, operational, or other changes to meet standards required by Federal environmental and consumer laws.

Under our bill, the Small Business Administration will be empowered to make loans directly or in cooperation with banks or other lending institutions to assist small businesses in effecting additions or alterations to facilities to meet Federal requirements if the small concern will suffer economic injury through compliance.

Last year we introduced S. 1750, which was enacted in part, authorizing loans to small businesses for the purpose of complying with the specific Federal standards under dated deadlines, such as contained in the Wholesome Meat Act, for example. The emergency, compliance-type loans are not subsidized, but carry an interest rate equal to the cost of money to the Federal Government plus one-quarter percent.

In Alabama, 122 meatpacking plants can now apply for loans under this legislation. Forty poultry processing plants and a large number of egg processors are eligible to apply for low-interest emer-

gency loans from SBA with the assurance that they may be repaid out of their future earnings.

These firms are important to the economy of our Nation for they account not only for more than $20 million in wages on a yearly basis, but they are an important source of food products for Alabama and the Southeast.

It is evident that they are also vital to the life of our cities and smaller communities for they supply work, training and leadership in other community activities.

These small businessmen have been threatened with severe hardship by the series of Federal environmental and consumer laws placed by Congress on the statute books during the last 5 years. They simply do not have the capital necessary to meet the requirements of these new laws.

I expressed my concern over the effects of these statutes as long ago as 1969 when I warned at that time that the continued existence of hundreds of smaller firms was threatened unless the Congress took remedial action.

Last year's legislation did a part of the job; now I feel that we must go on and complete it. That is precisely what our bill will do.

SENATE JOINT RESOLUTION 1

At the request of Mr. BAYH, the Senator from Washington (Mr. MAGNUSON) and the Senator from California (Mr. TUNNEY) were added as cosponsors of Senate Joint Resolution 1, proposing an amendment to the Constitution providing for the direct popular election of the President and Vice President.

SENATE JOINT RESOLUTION 5

At the request of Mr. BROOKE, the name of the Senator from Ohio (Mr. TAFT) was added as a cosponsor of Senate Joint Resolution 5, designating January 15 of each year as 'Martin Luther King Day."

SENATE JOINT RESOLUTION 75

At the request of Mr. MONDALE, the Senator from Missouri (Mr. EAGLETON) and the Senator from California (Mr. CRANSTON) were added as cosponsors of Senate Joint Resolution 75, a joint resolution to establish a National Advisory Commission on Health Science and Society.

SENATE JOINT RESOLUTION 88

At the request of Mr. TAFT, the Senator from Maryland (Mr. MATHIAS) was added as a cosponsor of Senate Joint Resolution 8, a joint resolution authorizing additional appropriations to the Secretary of Transportation for the purpose of providing urgently needed intercity rail passenger service around the Nation and for the purpose of research and development in the field of high-speed ground transportation, and for other purposes.

SENATE RESOLUTION 104—SUBMISSION OF A RESOLUTION CONCERNING THE BILL (S. 1650) FOR THE RELIEF OF WILLIAM A. BEACH

Mr. CHILES submitted the following resolution (S. Res. 104), which was referred to the Committee on the Judiciary:

S. RES. 104

Resolved, That the bill (S. 1650) entitled "A bill for the relief of William A. Beach", now pending in the Senate, together with all the accompanying papers, is hereby referred to the chief commissioner of the United States Court of Claims. The chief commissioner shall proceed with the same in accordance with the provisions of sections 1492 and 2509 of title 28, United States Code, and report thereon to the Senate, at the earliest practicable date, giving such findings of fact and conclusions thereon as shall be sufficient to inform the Congress of the nature and character of the demand as a claim, legal or equitable, against the United States or a gratuity and the amount if any, legally or equitably due from the United States to the claimant. Such report shall specify what portion of the amount to be due to the said William A. Beach is the maximum reasonable attorney's fees that should be paid from such amount.

SENATE RESOLUTION 105—ORIGINAL RESOLUTION REPORTED INCREASING LIMIT OF EXPENDITURES FOR HEARINGS BEFORE THE COMMITTEE ON ARMED SERVICES

Mr. STENNIS, from the Committee on Armed Services, reported the following original resolution (S. Res. 105), which was referred to the Committee on Rules and Administration:

S. RES. 105

Resolved, That the Committee on Armed Services hereby is authorized to expend from the contingent fund of the Senate, during the Ninety-second Congress, $20,000 in addition to the amount, and for the same purposes, specified in section 134(a) of the Legislative Reorganization Act, approved August 2, 1946, as amended.

SENATE RESOLUTION 107—ORIGINAL RESOLUTION REPORTED AUTHORIZING SUPPLEMENTAL EXPENDITURES BY THE COMMITTEE ON GOVERNMENT OPERATIONS

Mr. McCLELLAN, from the Committee on Government Operations, reported the following original resolution (S. Res. 107), which was referred to the Committee on Rules and Administration:

S. RES. 107

Resolved, That the Committee on Government Operations is authorized to expend, through February 29, 1972, from the contingent fund of the Senate not to exceed the sum of $50,000 (in addition to the amount provided in section 9 of Senate Resolution 31, Ninety-second Congress, agreed to March 1, 1971), such sum having not been included in that resolution because at the time at which that resolution was considered there was insufficient information to determine the total amount of expenditures the committee would incur in conducting its inquiries and investigations. Such sum shall be expended for the purposes specified in sections 134 (a) and 136 of the Legislative Reorganization Act of 1946, as amended, in accordance with the committee's jurisdiction under rule XXV of the Standing Rules of the Senate.

SENATE RESOLUTION 108—SUBMISSION OF A RESOLUTION TO DISAPPROVE REORGANIZATION PLAN NO. 1

Mr. WILLIAMS submitted the following resolution (S. Res. 108), which was referred to the Committee on Government Operations:

S. RES. 108

Resolved, That the Senate does not favor the reorganization plan Number 1 transmitted to Congress by the President on March 24, 1971.

SENATE RESOLUTION 109—SUBMISSION OF A RESOLUTION AUTHORIZING SPECIAL SUPPLEMENTARY EXPENDITURES BY THE COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS FOR AN INQUIRY AND INVESTIGATION PERTAINING TO THE SECURITIES INDUSTRY

Mr. WILLIAMS (for himself, Mr. SPARKMAN, Mr. MCINTYRE, Mr. PROXMIRE, and Mr. CRANSTON), submitted the following resolution (S. Res. 109) which was referred to the Committee on Banking, Housing and Urban Affairs:

S. RES. 109

Resolved, That, in holding hearings, reporting such hearings, and making investigations as authorized by section 134(a) and 136 of the Legislative Reorganization Act of 1946, as amended, in accordance with its jurisdiction under rule XXV of the Standing Rules of the Senate, the Committee on Banking, Housing and Urban Affairs, or any subcommittee thereof, is authorized from the date this resolution is agreed to, through February 29, 1972, for the purpose stated and within the limitations imposed by the following sections, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel of any such department or agency.

SEC. 2. The Committee on Banking, Housing and Urban Affairs, or any subcommittee thereof, is authorized from such date through February 29, 1972, to expend not to exceed $333,240 to examine, investigate, and make a complete study of any and all matters pertaining to the securities industry and the securities markets of the United States and such committee having been unable to offer an annual authorization resolution within the period of time prescribed by Section 133(g) of the Legislative Reorganization Act of 1946 because the committee had not been able to determine by the end of that period the scope of, and the total amount of expeditures required by, such study. Of such $333,240, not to exceed $33,240 may be expended for the procurement of individual consultants or organizations thereof.

SEC. 3. The committee shall report its finding, together with such recommendations for legislation as it deems advisable with respect to the study or investigation for which expenditure is authorized by this resolution to the Senate at the earliest practicable date, but not later than February 29, 1972.

SEC. 4. Expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee.

ADDITIONAL COSPONSORS OF RESOLUTIONS AND CONCURRENT RESOLUTIONS

SENATE RESOLUTION 73

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that, at the next printing, the names of the Senator from Alaska (Mr. GRAVEL) and the Senator from Indiana (Mr. HARTKE) be added as cosponsors of Senate Resolution 73, to amend rule XVI of the Standing Rules of the Senate.

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

SENATE RESOLUTION 87

At the request of Mr. HUMPHREY, the Senator from Illinois (Mr. PERCY) was added as a cosponsor of Senate Resolution 87, relating to armament limitations.

SENATE RESOLUTION 91

At the request of Mr. Moss, the Senator from Nevada (Mr. BIBLE) was added as a cosponsor of Senate Resolution 91, a resolution concerning the conviction of Lt. William L. Calley, Jr.

SENATE RESOLUTION 98

At the request of Mr. BAYH, the Senator from Minnesota (Mr. HUMPHREY) and the Senator from West Virginia (Mr. RANDOLPH) were added as cosponsors of S. Res. 98, a resolution relating to proposed asset depreciation range system.

SENATE CONCURRENT RESOLUTION 5

At the request of Mr. BROOKE, the Senator from Colorado (Mr. ALLOTT) was added as a cosponsor of S. Con. Res. 5, to establish a joint committee to investigate the treatment of prisoners of war in Vietnam.

SENATE CONCURRENT RESOLUTION 21

At the request of Mr. MONDALE, the Senator from Missouri (Mr. EAGLETON), the Senator from Iowa (Mr. HUGHES), the Senator from Wisconsin (Mr. PROXMIRE), and the Senator from Illinois (Mr. STEVENSON) were added as cosponsors of S. Con. Res. 21, calling for the suspension of military and military aid to Pakistan until the conflict in East Pakistan is resolved; and

At the request of Mr. CASE, the Senator from Illinois (Mr. STEVENSON) and the Senator from Wisconsin (Mr. PROXMIRE) were added as cosponsors of Senate Concurrent Resolution 21, calling for supension of military assistance to Pakistan until the present conflict in that country is resolved.

MILITARY SELECTIVE SERVICE ACT—AMENDMENT

AMENDMENT NO. 61

Mr. WILLIAMS submitted an amendment intended to be proposed by him to the bill (H.R. 6531) an Act to amend the Military Selective Service Act of 1967; to increase military pay; to authorize military active duty strengths for fiscal year 1972; and for other purposes, which was received, ordered to be printed, and referred to the Committee on Armed Services.

NOTICE OF HEARINGS ON JUVENILE CONFINEMENT INSTITUTIONS AND CORRECTIONAL SYSTEMS

Mr. BAYH. Mr. President, as chairman of the Subcommittee to Investigate Juvenile Delinquency, I wish to announce hearings on juvenile confinement institutions and correctional systems. The initial set of hearings will be held on May 3, 4, and 5, 1971 in the caucus room 318 Old Senate Office Building. They are scheduled to begin at 10 a.m.

These hearings will focus on the effectiveness of institutionalization in corrections and on conditions in our Nation's juvenile correctional institutions.

In addition, the subcommittee will examine the procedures through which neglected children and minors in need of supervision are handled in our juvenile courts, in detention facilities and in post-adjudication institutions.

The subcommittee will also evaluate the effectiveness of community-based treatment in group homes and residential treatment centers as alternatives to institutionalization of youth, and of other programs for reintegrating delinquents back into the community.

I have invited witnesses to testify about the conditions in youth offender institutions in their respective States. In addition, we will hear from representatives of major private organizations concerned with rehabilitation and from juveniles who have been, or are presently confined in institutions.

ADDITIONAL STATEMENTS

THOMAS M. O'NEILL; THE BEST

Mr. MANSFIELD. Mr. President, Thomas M. O'Neill died on April 12. I was deeply saddened. The highest principle and outstanding professional skill: these were Tom O'Neill's trademarks. In applying these virtues he was unexceeded.

First and foremost, he was a newspaperman. In that profession his death has created a vacuum that can be filled only when another appears with the same high standards, deep dedication, and superb competence. In most endeavors, one of these characteristics is usually sufficient for success. Tom O'Neill possessed all three. His kind is rare, however.

Too infrequently do men of his quality and caliber come along. I am certain the Sun newspapers, for which he worked for nearly half a century, recognize this all too well. But just as his employers will miss him, so, too, will the countless thousands of his associates in the newspaper business, his loyal readers, and his devoted friends.

The breadth and depth of Tom O'Neill's political thought were gained from first-hand experience both in this Nation and abroad. They were expressed always with a skillful and very able pen. With his pen and with the many, many friends he leaves behind, Tom O'Neill has built a memorial of lasting duration. I am glad I had the opportunity to read Tom O'Neill. I am proud, indeed, that I could call him a friend. I will miss him deeply.

Mr. President, I ask unanimous consent that a number of newspaper articles and commentaries about Thomas M. O'Neill be printed in the RECORD.

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

THOMAS M. O'NEILL, COLUMNIST, DIES

Thomas M. O'Neill, veteran *Sunpapers* reporter, was correspondent and political columnist, died today at Union Memorial Hospital after a short illness.

Mr. O'Neill was 66. His death brought to an end a 47-year career in journalism, 44 years of which were spent on the *Sunpapers*.

Since 1953, Mr. O'Neill was the author of a political column "Politics and People," which appeared three times a week on the editorial page of *The Sun*.

GREW UP IN FLORIDA

He was born in Norfolk, December 26, 1904, the son of a barber and his wife, who had paused there during a migration from New England to Florida.

Young O'Neill grew up in Florida, attending public and parochial schools. After his schooling, he left home for a series of short term newspaper jobs in various parts of the country.

In Maryland, he worked briefly for the Hagerstown Herald and the Baltimore Post before joining *The Evening Sun* in 1927.

Within a year of joining the *Sunpapers* he was made a political writer, covering every session of the General Assembly until 1943.

He became known in Annapolis for these characteristics associated with the "hard bitten" school of newspapering. An energetic, aggressive young reporter, he became as familiar with the night life of the capital city as with its political life.

His appearance, however, sharply contrasted with the newspaper reporter stereotype that Hollywood cultivated in the 30's. Far from being slovenly or careless in his dress, Mr. O'Neill epitomized neatness.

Annapolis oldtimers remember him as a dapper dresser who was fastidiously clean, sometimes taking two or three showers a day.

KEEN POLITICAL INSTINCTS

He was a slightly built man with sharp eyes and distinctly Irish features, who was given to the telling on anecdotes and the heavy use of epigrams.

Professionally, both as reporter and, later, as a columnist, his colleagues deeply respected him for his keen political instincts.

"He just lived politics," one colleague said. "And he wasn't just a reporter. He was part of the show. He knew what motivated people and what made them tick."

Mr. O'Neill's political insights were not limited to the Maryland scene, but were, as soon as the occasion arose, adapted with ease to grander arenas.

In 1943, he was reassigned from Annapolis to the London bureau of *The Sun*. Within days he had put the provincialism of Annapolis behind him and was reporting from the British capital with the sureness of a seasoned parliamentary correspondent.

ASSIGNMENTS IN EUROPE

Mr. O'Neill covered the 1945 British elections and did a series of articles on conditions in Greece, Austria, Italy, Germany and France before being assigned to the Washington bureau in 1946.

In the postwar years, he covered a variety of assignments in Washington, among the most memorable of which were probably his distinguished reports on the Alger Hiss case.

When he became a political columnist in 1953, he gave up conventional news reporting.

But he continued to be a well known journalistic figure at the national party conventions, which he had attended faithfully since 1936 with the exception of the war years.

KNEW LOCAL POLITICS

At the conventions, "Tom could tell you which way the delegations were going when others couldn't read the signs. He had an encyclopedic knowledge of local politics and personalities," a colleague remembers.

Although he lacked a college degree, his political columns never lacked a learned tone. He was an omniverous reader who was conversant in political philosophy ranging from the Greeks to the English and French and the American colonials.

His own philosophy, however, was decidedly American. A moderate liberal, he found his own principles in the New Deal of Franklin Delano Roosevelt and the Fair Deal of Harry S. Truman.

These he expressed in what a friend described as "a highly polished style which, for all its emphasis on preciseness and restraint, often "packed a wallop."

Mr. O'Neill is survived by his wife, the former Jolanda F. E. DiGiorgio whom he married in 1933, and a son, Thomas M. O'Neill, Jr. Mr. and Mrs. O'Neill lived at 4209 Tuscany court, in North Baltimore.

Funeral arrangements were incomplete.

THOMAS M. O'NEILL

SIR: Thomas O'Neill was a great reporter. He despised self-serving hand-outs, and preferred to dig out his own stories.

I remember when he brought to public attention the sordid attempt of a politician to keep a milk dairy open when the commissioner of health sought to close it because of existing unsanitary conditions.

On another occasion a group opposed the incumbent judges who were seeking election. These opponents sought to palm off as legitimate a radio "town-meeting of the air." He exposed it for what it was—a fake, rehearsed, paid-for skit by a group of professional actors.

Another time he attended a "closed" meeting that sought political support for a candidate on the ground that this would insure a governor's pardon for one of their members. He gleefully brought the whole mess to light.

He was a courageous, lucid writer on the local, national and international scene. He will be sorely missed.

JOSEPH SHERBOW.

Baltimore.

THOMAS O'NEILL SERVICES SET THURSDAY

A requiem mass for Thomas M. O'Neill, a writer, war correspondent and columnist for the *Sunpapers* for more than 44 years, will be offered at 10 A.M. Thursday at SS. Philip and James Catholic Church, Charles and 29th streets.

Mr. O'Neill, 66, died yesterday at Union Memorial Hospital after a brief illness.

Burial will be in the New Cathedral Cemetery.

Mr. O'Neill, a native of Norfolk, joined *The Evening Sun* in 1927 and during the years ran up a long list of accomplishments.

Since 1953 he had written a political column—"Politics and People"—which appeared in other newspapers in addition to *The Sun*.

THOMAS O'NEILL

For most of half a century the *Sunpapers* were privileged to publish the work of Thomas O'Neill, and we venture to say that through that time no readers of any newspaper have had a clearer, more masterly, more impeccably-principled source of political information and opinion. The principles came first, and it was this, along with superb professional skill, that enabled him to treat with equal trenchancy and political scene, whether local or state or national or foreign.

Some thought him cynical. He was not. It was just that his standards of public morality were so high that not many could measure up to them. Looking always for honest men, he found but a few in public life whose motives were not those of self-serving expediency; and he said so. That politicians often quailed under his gaze was no wonder, for the gaze was piercing. The late John W. Owens, Thomas O'Neill's predecessor as political reporter and commentator, once said that O'Neill had a gift of illuminating corners you didn't even know were there.

The bases of his judgment were in fact quite simple. He believed that the Constitution of the United States was by no means so hard to interpret as many would make it seem: he believed the Constitution meant what it said. The Declaration of Independence also, he believed, had meaning, and the meaning was in what it said: his yearly Independence Day columns were statements of faith in the nation's origins and its future.

In his own work he was a perfectionist. He disdained tricking anyone into reading him, but there it was to read, in a style of flowing crystal clarity, with a precision in choice of words that was almost absolute.

We have tried here to see Thomas O'Neill as he would have wished, in terms of his work, but we cannot let him go without saying that we will treasure above all the memory of him as a friend whose affection, once given, was given wholly and without condition, never to waver.

NOTES AND COMMENT

When Tom O'Neill died on Monday after 4½ decades with the *Sunpapers* he left a thousand memories behind him. Here are but a few of them, sketchy and random to be sure, and in some cases blurred a bit in their details by the passage of time, which is to say that perhaps not all of us are as flawlessly in command of precise fact as O'Neill was.

It was true, as the news obituary reported, that he so valued the privileges of citizenship that he would travel any distance, under any circumstances to cast his vote. Much as he understood and sympathized with most human frailty he could not comprehend a failure, through apathy or any other cause, to vote in any election, at whatever level.

In one instance his vote had an added point. He and Mrs. O'Neill, both with minds of their own, had been unable to agree on a presidential candidate. O'Neill was covering a presidential candidate who wound up his campaign in New York, let's say Thomas E. Dewey. Pressed hard for time in his coverage, he came by train to Baltimore, took a taxi to the polling place, cast his vote (cancelling Mrs. O'Neill's), took a taxi back to the station—no time even to stop by the home in which his life centered—and went back to work in New York.

O'Neill disliked commas more than anybody we have ever known. Commas to him were to be used only when absolutely needed for the sense and rhythm of a sentence. The sloppy habit of peppering a piece of writing with commas setting off this and setting off that and setting off the other, was a sign of disorganized thinking. We have known him to rewrite an entire column just to get rid of commas. He never quite wrote a piece with no commas at all, but he never stopped trying.

This story comes by heresay, but has the ring of truth:

One time, one hot summer, O'Neill found himself in Tehran. It must have been during the Truman administration, for Averell Harriman also passed through Tehran and Harriman was a roving ambassador for Truman, wasn't he?

On a miserable Sunday the small corps of foreign correspondents in Tehran decided to have a picnic in the mountains, and had made all the arrangements when a phone call came from Harriman, who said he would be pleased to receive the press that afternoon. Picnic cancelled.

After a taxi ride through the heat and dust and flies of Tehran the correspondents reached a palace in the hills (undoubtedly with cool fountains and great bowls of fresh fruit, including pomegranates) and were welcomed by Harriman with: "Well, gentlemen, I really have nothing in particular to say."

O'Neill, according to trustworthy accounts, stood up. "Then," he said, "what the hell are we doing here?" and walked out.

Among one colleague's most vivid memories of World War II is the recollection of lunch with O'Neill on Shrove Tuesday of 1944, in London, where he was *The Sun's* bureau chief.

It was a sunny day. The winter was over. It had been a grim winter: the winter of the "Little Blitz" which came closer finally to breaking the British spirit than anybody outside Britain ever knew.

O'Neill had a pub he liked, back of Salisbury Square, and they'd told him at the pub to be sure to come for lunch on Shrove Tuesday. There were pancakes, made of course with dried egg powder but dusted with sugar. And alongside the pancakes. . . .

Bear in mind that the hunger for citrus is a real hunger, and that for years fresh citrus had been unknown in Britain, except for one shipload of Spanish oranges that had come in during that winter, enough oranges for each child in Britain to have just one: lucky adults could nibble at the peelings.

Alongside the pancakes, on each plate, lay a tiny brilliant slice of real lemon. It was like a piece of the sun.

O'Neill spent many nights of the Little Blitz—they came over only at night then—playing poker in the London Press Club. Some foreign correspondents in London in those nasty weeks would take a break now and then and go for a few days to Ireland, where there were lights and fresh eggs and no bombers. O'Neill didn't. The people of London could not get out of it with a break in Ireland, and if the people of London couldn't neither would he.

THOMAS M. O'NEILL

Thomas M. O'Neill was never tentative, never an on-this-hand, on-the-other sort of political writer. He burned with a hard cold glitter, secure in the conviction that it is a newspaperman's duty to afflict the comfortable and to comfort the afflicted. So strong were his beliefs, yet so classically restrained his literary style, that his columns in *The Sun* cut like a surgeon's scapel—precise, but lethal. A hot-air balloon punctured by Tom O'Neill seldom rose again. No politician lied to him twice.

Annapolis knew him first as *The Evening Sun's* legislative reporter, gifted with darting insight into the political pressures at play, also with words that made facts leap with life. His World War II correspondence from London deepened him and, in the course of covering Britain's postwar Labor government, he grew broader. But it was Washington and, beyond that, the whole spectrum of American politics which Tom O'Neill made his own.

Politicians of every stamp recognized in him a touch for political movement at least as sensitive as that of any political professional. He was welcomed and trusted in political centers from the old Emerson Hotel in Baltimore to the Blackstone in Chicago to San Francisco's St. Francis. He could draw

freely and at first hand from political wellsprings throughout the country. The result was a mastery of detail which, when filtered through his own luminous prose, gave Tom O'Neill his authority and his distinction.

A newspaper has its peculiarly personal side, and the loss of a colleague commonly leaves survivors feeling diminished. In Tom O'Neill's case, the feeling is different. His memory here makes us not smaller but larger, aware that a man of the first rank has passed our way.

THOMAS M. O'NEILL DIES; SUN WRITER AND COLUMNIST

A requiem mass for Thomas M. O'Neill, who died yesterday in Union Memorial Hospital after a career of more than 44 years as a writer, war correspondent and political columnist for the Sunpapers, will be offered Thursday at 10 a.m. in SS. Philip and James Catholic Church, Charles and 29th streets.

Mr. O'Neill was, successively:

A top political writer, whose probity and professional skill gave his readers rare insights into what really was going on in the precincts, wards—and State House.

The Sun's correspondent in London at the height of World War II.

A foreign correspondent who made studies of postwar conditions in Greece, Italy, Austria, Germany, France and the Low Countries.

A national reporter whose coverage of presidential campaigns, political conventions and of an America embarking on a new, uncharted course set standards that professionals acclaimed as excellent. For example, Alistair Cooke, in his preface to "A Generation on Trial," his account of the Alger Hiss trials, termed Mr. O'Neill's reporting on them "incomparable."

And finally, since 1953, Mr. O'Neill was the writer of a national political column, "Politics and People," that appeared regularly first in The Evening Sun and then in The Sun, and other newspapers. The column sometimes infuriated many of his readers, but it was considered by most political and journalistic insiders to be a model of its kind.

Thomas Matthews O'Neill was born December 26, 1904, in Norfolk, the son of New England parents who had paused there in a flight from Northeastern winters and who, when he was a few months old, moved on to Tampa, Fla.

FLORIDA-EDUCATED

He was educated in parochial and public schools in Florida and studied later at the Johns Hopkins University.

Mr. O'Neill's third-person memo in 1950 to Charles H. Dorsey, Jr., his close friend and the managing editor of *The Sun*, explains how he became a newspaperman:

"His path into the newspaper business was the route of the migratory fruit workers who follow the growing season from Florida's oranges to Georgia's peaches, California canteloupes, and back again.

"At every stop, city editors were offered the services of a hopeful recruit. After a shorthanded city room was finally found, O'Neill got into the business to stay. . . ."

VAGUE ABOUT HIS START

He was vague about his first newspaper job, but let his official employment record start with a stint in 1925 with the Hagerstown *Herald*. In 1926, he moved on to the old Baltimore *Post*.

One year later, he came to the *Sunpapers* to stay, initially as a reporter for *The Evening Sun*.

He caught on quickly, and got his first taste of national politics in 1928, when he covered Alfred E. Smith's Eastern campaign.

His list of newspaper credit is a long one—at least 16 national political conventions, a long series of Maryland and out-of-state political campaigns, the Alger Hiss trials, a British general election, crises in the Middle East, the Teapot Dome scandal, White House correspondent, the Legislature and Congress. He ran the gamut.

As Edwin P. Young, one of his former city editors put it, Mr. O'Neill was a master craftsman who organized his articles so well that "when you began to cut them, you were cutting ideas."

Mr. Young is now vice president and assistant publisher of the Providence (R.I.) *Journal Bulletin*.

OBSESSED BY FACTS

Mr. O'Neill was obsessed by facts, soaked them up like a blotter, remembered them forever and used them as needed. He was a student of the Constitution who despised those who tried to pervert it for their own ends. And he took his own duties as a citizen so seriously that he was known to have traveled thousands of miles in order to exercise his franchise at the polls.

Personally, he could be convivial one day and a recluse the next. But he was as intensely loyal to his friends as he was disdainful of those he spotted as phonies.

Mr. O'Neill is survived by his wife, the former Jolanda F. E. DiGiorgio, whom he married in 1933, and a son, Thomas M. O'Neill Jr. Mr. and Mrs. O'Neill lived at 4209 Tuscany court, in North Baltimore.

A brief service preceding the requiem mass at SS. Philip and James will be held at the Henry W. Jenkins funeral establishment, in the 4900 block of York road.

Burial will be in the New Cathedral Cemetery.

A COMMEMORATIVE STAMP TO HONOR PHARMACY

Mr. GRIFFIN. Mr. President, a little more than 3 years ago, I took to the Senate floor to speak up in defense of the corner drugstore.

My remarks were in response to a statement by one Federal official who advocated that the corner drugstore should be abolished.

That particular official has long since departed from the official Potomac scene.

Happily, the corner drugstore—and, indeed, pharmacy in general—have continued to play a vital role in American life.

If anything, pharmacy—as an institution and an honored profession—has grown in strength and vitality. Every day, an estimated 17 million Americans visit the more than 50,000 retail pharmacies located in cities and towns across the Nation.

From personal experience, I know something about the important role of the retail pharmacist in his neighborhood and community. While still a student in school, I worked for 7 years as a drugstore clerk, as many others have done.

Throughout the Nation's history, the pharmacist has been an integral part of the American scene, its culture, and its folklore.

In cities and towns throughout the country, the pharmacist has done more than dispense drugs and the sundry items one finds so conveniently in the community drugstore. In many communities, the drugstore serves as a meeting place, often a social center of sorts, and sometimes even a political forum.

As professional people go, pharmacists have particularly close—and abiding—ties with the people of America.

In addition to serving the Nation in community drugstores, pharmacists practice their profession in hospitals; in Federal, State, and city governments; in the manufacture of medicines; in research, and in pharmaceutical education.

Americans place their trust in pharmacists over 2 billion times a year. That figure represents the number of prescriptions pharmacists fill annually.

Mr. President, because of their many contributions to the Nation's health and welfare—contributions made without publicity and fanfare I believe it would be altogether appropriate for the U.S. Post Office Department to issue a commemorative stamp honoring the pharmacists of America.

Consider these facts:

The United States has never issued a stamp honoring pharmacy.

Other professions have been honored by the issuance of commemorative stamps; such professions as those including physicians, dentists, lawyers, architects, journalists, railroad engineers, civil engineers, schoolteachers, and nurses.

A number of foreign countries have issued stamps honoring pharmacy. I refer to such countries as France, Poland, Norway, Costa Rica, Sweden, Republic of Cuba, Germany, Russia, and Rumania.

Finally, I believe it is important to call attention to the fact that for many, many years Americans have been able to buy postage stamps at most corner drugstores. By making stamps available, local pharmacies have relieved—and are relieving—the U.S. postal service of a tremendous and costly burden.

Mr. President, under the law the Postmaster General, acting with the counsel of an advisory group, may authorize the issuance of commemorative stamps.

I have written and I have personally contacted the Nation's distinguished Postmaster General, the Honorable Winton Blount, urging that a commemorative stamp honoring the Nation's pharmacists be authorized.

As pharmacists continue to contribute in so many important ways to the health and welfare of the people, I believe it would be appropriate to recognize their services over the years through the issuance of such a commemorative stamp in their honor.

Mr. President, I ask unanimous consent that text of the letter which I have written to the Postmaster General be printed in the RECORD.

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

APRIL 13, 1971.

HON. WINTON M. BLOUNT,
Postmaster General, U.S. Postal Service, Washington, D.C.

DEAR MR. POSTMASTER GENERAL: The purpose of this letter is to express my strong hope that the U.S. Postal Service will issue a commemorative stamp honoring the Nation's pharmacists.

I have long been interested in this profession, having worked as a drugstore clerk before attending college.

Enclosed for your information is a copy of some remarks prepared for delivery on the Senate Floor which outline my reasons for recommending the issuance of such a commemorative stamp.

With best personal regards, I am

Sincerely,

ROBERT P. GRIFFIN,
U.S. Senator.

RURAL DEVELOPMENT IN AMERICA

Mr. HUMPHREY. Mr. President, the critical needs confronting our people in America's rural areas demand priority attention in Washington. Basically, we need to develop a new way of thinking about the problems of rural America. We must achieve a national understanding that in restoring the economy and the living environment of our nonmetropolitan areas, we will be applying desperately needed preventive medicine to what could otherwise well become the terminal illness of our cities.

The hard fact is that both the city dweller and the rural family are being denied a basic human right—the freedom to choose where they will live and work and bring up their children. This means we must establish a firm national growth policy that commits us to achieving a sound balance between rural and urban America, greatly expanding the geographical distribution of job opportunities and creating a decent living environment with effective public services in both our cities and our smaller communities.

Right now, more than half of our people live within 50 miles of our east and west coasts, and it is expected that by the end of the century almost 90 percent of our greatly expanded population will be concentrated in a few urban areas. Twenty million Americans left their farms over the past 30 years—last year the pace of this rural exodus was four times that of the entire past decade. Meanwhile, our rural areas contain two-thirds of America's substandard housing and one-half of its poor people.

As chairman of the recently established Senate Agriculture Subcommittee on Rural Development, I am determined to focus the attention of the Federal Government on these critical problems. We must work intensively to develop effective Federal assistance programs for comprehensive regional economic development, the substantial upgrading of community facilities, decent housing, and the provision of quality health, education, and other public services.

We must also recognize the central role of a strong agricultural economy in bringing stability and growth not only to rural areas but to the Nation itself. We must assure the farmer a fair return on his hard work and extensive investment and provide him with essential financial help to meet his high and rising production costs.

It is my intention to obtain a first-hand account of the problems confronting our rural families and their communities, in the course of hearings to be undertaken shortly by the Subcommittee on Rural Development in Washington and across the Nation. These hearings will focus on the causes and the total impact of our rural outmigration, and on the present inadequacies of Government services to rural America. We must develop new concepts and new approaches without delay to bring about the revitalization of our rural areas. Unless we do this, the continued acceleration of metropolitan sprawl and congestion, coupled with the decline in population and the rise in poverty in our rural areas, will have a devastating impact upon our health and welfare, our environment, our economy, our government, and our social order.

IMPLICATIONS OF FOREIGN POLICY—ADDRESS BY SENATOR SCOTT

Mr. DOLE. Mr. President, today at Kansas State University in Manhattan, Kans., the distinguished Senator from Pennsylvania, HUGH SCOTT, delivered a significant foreign policy address. Senator SCOTT was at Kansas State University to deliver a Landon lecture—a program intended to honor former Governor, and a distinguished American Republican, Alfred M. London.

Senator SCOTT's remarks clearly indicate the progress, foreign and domestic, being made by President Richard Nixon and his administration.

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

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

IMPLICATIONS OF FOREIGN POLICY

(Address by U.S. Senator HUGH SCOTT)

When Richard M. Nixon became President of the United States on January 20th, 1969, the picture of our position in the world was painted in dismal colors:

We were stalemated in a quagmire war in Southeast Asia.

Our dealings with the Soviet Union were tense, at times close to crisis-point.

Our only contact with the Communist Chinese was a back-room operation in Warsaw, Poland.

America's European Allies were pulling away from us—and from each other.

An unresolved, seemingly insoluble military confrontation in the Middle East threatened total world war.

The world over, it had been a long winter with no thaw in sight. Almost universally the blame for these fragmented and divisive situations was placed squarely on the United States.

It was the kind of situation that required courage even to face, much less to try to solve.

Yet, solutions must be had. A certain degree of daring had to be used. For the world situation was so fraught with danger that we could not, as a Nation and a member of the family of nations allow it to continue along the same course.

The United States was not so much standing at crossroads that winter two years ago as it was sliding ominously downhill.

Reversing that slide has been a slow and painful process. It has caused domestic dislocations.

It has caused economic slowdown with accompanying increase in unemployment.

It has caused unrest, uncertainty and some upheaval.

These uncertainties, unrest, upheavals, were caused not so much by the policies adopted as by reaction to those policies.

A Nation slow to question our role in Vietnam suddenly became over-quick to react to efforts at extricating ourselves from Vietnam.

A Nation that had accepted almost without question the premises upon which the policy of escalation had been based, would not stop to reason when policies were adopted designed to bring us out of the quagmire.

The President announced a policy of withdrawing troops, of lowering draft calls, ultimately to eliminate them, and a general lowering of our profile in Southeast Asia.

When he took action to implement these policies there was a knee-jerk reaction in the press and Congress that sparked and fanned unrest on campuses and in the streets.

But the simple fact is that the policy in Vietnam is succeeding.

We are pulling out of Vietnam. Much more rapidly than we had dared hope a year and a half ago. It hasn't been an instant, kerchunk cut-off. But it has been a logical, reasoned and fairly rapid withdrawal. We can now say with absolute assurance that the end is in sight. To quote a McNamara statement of 1966, there is, at least, light at the end of the tunnel. Only now the McNamara candle has become a Nixon spotlight.

For nearly a generation, thoughtful and concerned people in the United States have been saying something to the effect of, "How wonderful it would be if we could sit down with the Russians and discuss seriously an end to the nuclear arms race."

It took courage and foresight and a considerable degree of diplomatic skill to get us to the conference table. And it has taken courage and patience to keep us there. But the S.A.L.T. negotiations are still going on. I am willing to hazard the thought they are making very rational progress. Again, we cannot hope for a sudden, final, all-embracing solution next week. But we can hope—and expect—a pragmatic, reasoned lowering of the arms race tempo and an eventual, meaningful solution.

For the past twenty-two years, Americans have been wondering and asking how the Bamboo Curtain could be opened and reasonable relations established with Mainland China. For all of those twenty-two years it was political dynamite even to suggest such a thing could happen.

But there is now a small dent in the Bamboo Curtain. There are the tiny beginnings of an interchange of people between our two countries.

Ping pong, even when it's called table tennis isn't the stuff of which you expect history to be made. But let's face it, nobody would ever have heard of Robert Jenkins if the Spanish Coast Guardsman hadn't chopped off his ear. It was from that small cut that the great wound known as the War of Austrian Succession grew.

From ping pong to diplomatic intercourse is a possibility, and one we may have to nurture carefully. But it is a possibility.

Again, let me say it took courage, dedication, and patience to bring about even this small a start toward normalizing relations with the Peoples' Republic of China while maintaining our good relations with Nationalist China. There was and still is vocal, powerful and dedicated opposition to such normalization.

But President Nixon has done what no other President for the past twenty-two years has been able to do, and that is take the needed steps in the right direction.

In the Middle East long years of military confrontation have been eased—if not erased. Again, it was President Nixon and his able Secretary of State, William Rogers, who made the initial proposals and who have kept alive the chances for eventual peaceful settlement.

Middle Eastern tensions could easily have developed into a world-wide explosion. They did not. And Americans can be proud of their Government for making possible this easing of tensions and at least this temporary end to constant blood-letting.

Throughout the world the Nixon Administration has struggled to create the kind of climate in which peace can grow. It has succeeded, and succeeded remarkably well.

It has not been an easy task. Nor has it been accomplished as quickly as we might have wished. Nor has the task been completed.

All of this I grant you.

But the fact remains: The task has begun. It progresses well. I believe the finished

product will be peace. Not only for ourselves, but for much of mankind as well.

This has not been done without some dislocation, some discomfort, some disturbance here at home.

Again, however, let me remind you that in 1968 this Nation was wracked by dissension and was fragmented, with generation set against generation, class against class, color against color.

The economic downturn which accompanied the dual effort at gaining peace in Vietnam and curbing inflation has eased. Every signal is green. Every sign is positive.

Inflation is being curbed. The economy has survived the belt-tightening and has marshaled its forces to move forward again at a brisk pace.

First-quarter economic growth was the largest ever recorded in the Nation's history. April car sales were the largest ever recorded in a two-week period in our history. Housing starts have climbed rapidly. New construction is up.

Everything indicates a boomlet has started that will grow into a full swell of economic activity and prosperity.

Again, this has not been done without tremendous effort. It has taken courage. Courage to say "no" to business and courage to say "no" to labor.

But the Administration has had the fortitude to make the unpleasant decisions that needed making. It has had the patience and fortitude to weather the storms of criticism. And its program is working.

In one other major area President Nixon has moved with courage and foresight—and that involves his great effort to restore Government to the people, and reawaken the interest of people in their Government.

His tripartite program—revenue sharing—welfare reform—and reorganization of the Government—displayed imagination, sensitivity, and a deep awareness of what people want and need.

The President's concern was not only that people had lost contact, and was losing faith in people.

Government tended to provide solutions to problems without consulting people, or considering people. Government was growing big, but not necessarily strong. At least not strong enough to solve problems. Government was becoming a burden, and not a help.

To change the direction Government has been taking the President proposed the three-step program.

The three go together. Welfare reform will not work without the other two. Revenue sharing without reform and reorganization would simply heap more layers of Government on that which we have. Reorganization without the needed local-level funding and reforms would not accomplish the desired goal.

It is a package. If enacted as a package, it will work. There is a real chance to bring Government back to the people, to restore in Government, and to restore Government's ability to discharge its responsibilities and thus deserve that faith.

CONCLUSION

Since the beginning of this century there has not been a time when Americans were not born to the sound of distant guns or the rumble of marching feet.

Too many millions of Americans have fought, have died, or have been wounded in the furtherance of what has been the eternal American hope—peace with justice in this world.

Americans deserve a rest from the battlefield.

The only course open to us if we are to get that respite and achieve that restoration, is peace.

Not just peace for now. But peace for a generation.

And maybe if an entire generation grows to manhood in peace, it will become a habit.

And that's the one great hope of this Administration. The one great promise we offer.

It is the one most glowing line we could inscribe upon our page of history—that, at last, through good will, we brought peace in our time.

REMARKS BY SENATOR STROM THURMOND AT SENATE PRAYER BREAKFAST MEETING ON APRIL 21, 1971

Mr. STENNIS. Mr. President, on April 21, at the Senate Prayer Breakfast, the distinguished Senator from South Carolina, (Mr. THURMOND) was the speaker. His remarks stressed the need for faith and prayer in dealing with the difficult and frustrating problems in our country today.

He pointed out that although the will exists to solve the problems, to find the way is extremely difficult, and guidance must be obtained by using the power of prayer. He said that as a people we have a great need for the basic training and the habitual practice of turning to prayer to obtain the unfailing inner resources that come from it, and that faith, nurtured by prayer, will show the way.

Senator THURMOND's remarks were enlightening and inspiring. I ask unanimous consent that they be printed in the RECORD.

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

AN UNFAILING INWARD COMPANIONSHIP

(Remarks by Senator STROM THURMOND)

"The Lord's Prayer," wrote Martin Luther, "is the prayer above all prayers. It is a prayer which the most high Master taught us, wherein are comprehended all spiritual and temporal blessings, and the strongest comforts in all trials, temptations, and troubles, even in the hour of death."

While deeply Christian in spirit, it epitomizes the message of the Gospel in profound simplicity. In its heartfelt appeal to God as our common Father, it is a prayer we all can pray.

Something of that spirit of prayer which fills the pages of the Bible is reflected in a great modern prayer widely attributed to Reinhold Niebunr, a prayer which serves as my text today, a prayer familiar to many.

The prayer reads: "God grant me the courage to change things that can be changed, the serenity to accept the things that cannot be changed, and the wisdom to know one from the other." We might amend that eloquent petition to read "to change the things that ought to be changed" since not all possible change is necessarily good or desirable.

This prayer is a worthy guidepost to those of us here in the Senate as we discharge our duties in our offices, in Committee, and on the Senate floor.

The theme of this prayer—"Not my will, but thine"—strengthens us in meeting the trials and challenges of a changing nation.

Looking at the national scene it appears that if we had to choose one word to describe the mood of our people today, that word might be "frustration."

Frustration is purpose minus power; a frustrated person is one who has the will, but cannot find the way. Today, frustration is something of a national epidemic. People want things that cannot be brought to pass. We want to keep our cities clean, safe, and habitable, but to a large extent we cannot. We have tried—and are trying—but the obstacles are great. We want to stop violence, the crime in our cities and, yes, in our villages and towns; we want to control the drug traffic. We try, we use every means, but too often we are frustrated.

Some escape this national epidemic, either because they do not care or because they are able to soar above it. Still others are able to exploit and profit from it. But for most of us who do care, who are involved, and who will not exploit, we are to some degree frustrated: we have the will, but cannot seem to find the way—at least, not as a Nation.

It is just this plight which compels us to turn to religion and, above all, to prayer. There is a remarkable incident in Scripture which sheds light on our condition and helps to point our way. (St. Matthew 17:14–21, and St. Mark 9:14–29.)

Jesus and his friends had just come down from the hills; they had been through one of those experiences that come only once in a lifetime, the experience we call the Transfiguration. After it was over, they came down from the hills. Ordinarily, to say that someone is "going downhill" is to make a detrimental remark. But, in the case of Jesus, it is true that in one sense he was always going downhill from the mountain tops of exhilaration, transfiguration, and vision into the valleys where people were suffering and where human need was greatest. Something like this is characteristic of those who live a life of prayer and communicate it to their fellowmen.

Immediately, on descending from the hills, Jesus encountered a crowd of agitated men, including most of His disciples, all involved in a heated discussion regarding an epileptic boy. The father of that boy, seeking and hoping to heal him, had brought him to the disciples believing that they could effect the cure. But they couldn't, and they didn't.

Then, the father appeals directly to Jesus, and his reply, in the familiar words of the King James translation, is known to us all: "Lord, I believe; help thou mine unbelief." These words were in response to the counsel of Jesus that all things are possible to him who believes. Jesus does act, He cures the boy, and then the disciples ask why they were unable to heal. To which they are told, "This kind cannot be driven out by anything but prayer."

I take this healing-story as a parable of our human condition, with special relevance for America today. Two facts stand out: First, the disciples were frustrated. Second, the reason they were frustrated is that they lacked the power of prayer, meaning not the ability to *say* prayers but the unfailing inner resources that come to those who turn in faith and hope to God.

This incident says something to all of us today. It says that many of the things that we want and the things we want to do, require a basic training that we do not have. Not as individuals, but as a people, we do not have either the basic training or the habitual practice without which we cannot do these things.

Having reached the United States Senate, no one has to tell us that to achieve anything that amounts to much, a certain basic training is an absolute requirement. On the other hand, none of us could go to the moon today simply because none of us has the basic training required.

We lack the basic training in accepting what he have been given before we take it back and try to change it; our body, our temperament, and our nervous system. We should respect life, beginning with our own body—knowing that it is one of the most wonderful, mysterious, beautiful things that God ever made, and that there are only three things one can do with it: worship it, wreck it, or respect it. Also, we should respect all other growing things—every plant and flower, every bird and beast, every star and shell, and all other growing people.

We lack the basic training in giving up some things for the sake of greater things. No one ever had his heart set on something great who didn't know that in order to achieve it, he would have to close many doors along the way.

Living under authority, the authority of the moral order of God, knowing that you cannot do everything that you want to do—that's another required item in the basic training of every human being. This includes learning how to care and not to care, how to sit still, learning how to be quiet inside, when everything is racing full steam ahead outside you. Also you know that if you do nothing, nothing will happen, and if you do something, what happens will not necessarily be the result of what you do.

We have to think that over. It is one of the things I am more sure of than almost anything else in the world; that if I sit around and do nothing, nothing will happen. If I do the things that I can do, something will happen, but nine times out of ten what happens is not the direct result of what I was doing; it is something else. In other words, there is something beyond me that is bringing things to pass.

And the last thing on my list is basic training in knowing when to give in. "The courage to change the things that can be changed; and the serenity to accept the things that cannot be changed; and the wisdom to know one from the other."

In conclusion, let me direct your attention to two things suggested by the Gospel story which I have taken as my text.

The first is that Jesus answered his frustrated disciples by telling them that they did not have what was needed, but also by assuring them that they could have it—that basic training, that habitual practice, that inner strength—to work wonders. Later the disciples *did* perform miracles!

The second is that this message ties in all too aptly to our situation in America today—it's a very modern parable! Generally speaking, we haven't the basic training needed to do wonders.

We can do financial wonders because we have lived for so many years so close to money; we know every one of its tricks. We can do scientific wonders because we have lived for so long so close to technology. We can do mechanical wonders because we have lived for so long so close to machines. But when it comes to moral, spiritual wonders we haven't been living as close to God as we should.

It is *faith*, made visible in act, nurtured and sustained by *prayer*, which *alone* can bestow upon our people the will, the power, and the way. It is this which makes our gathering here today so significant as together we open ourselves to that power, not only in our personal lives but in the common life of our Nation in these troubled times.

Just one final illustration to suggest what we, with the disciples, lack. Dr. Harry Emerson Fosdick once told about a woman in her early middle years. She was left a widow with five children and very little money. One of her sons said that never once did he see her distraught to the point of giving up. This mother saw all her children through college. One son was the president of a great railway system. Another was the president of a state university. Another was distinguished in medical research. And the two daughters were happily married. At her funeral, at the age of ninety-six, the son who was the president of the university said to Dr. Fosdick, "No one could understand her who did not understand her prayer-life. It was a strong, sustaining force. Her resource came from an unfailing, inward companionship."

That is what Jesus was talking about when he said that the things we need to accomplish today can be done only by that kind of inner companionship with God.

In the words of an old prayer:

"Fix thou our steps, O Lord, that we stagger not at the uneven motion of the world, but go steadily on our way, neither censuring our journey for the weather we meet, nor turning aside for anything that befalls us." Amen.

VERMONT GREEN-UP DAY

Mr. AIKEN. Mr. President, it is with pride that once again I call to the Senate's attention the character and activities of the people of the State of Vermont.

Vermonters from all walks of life will join together this Saturday, May 1, to participate in Green-Up Day.

The object of Green-Up Day is to clean up the litter and other refuse that has been discarded on the State highways and roadsides during the long winter months.

Last year some 70,000 Vermonters took part in this historic effort to do more than just talk about the need to conserve the State's natural beauty.

I am told that this year's activities are expected to attract even more Vermonters and that out-of-State travelers entering Vermont will receive bags and be urged to participate in Green-Up Day.

Green-Up Day activities are scheduled in almost all of the State's 246 towns and cities.

Vermonters have always shown a special concern for their natural surroundings.

In the 1930's Vermont was a pioneer in controlling billboards as a way to keep the State scenic.

The love of Vermont's mountains and valleys is not something that one learns in Vermont, rather one is born with this pride.

That is why throughout the years, the people of Vermont have been leaders in keeping their natural surroundings clean for others to enjoy.

Green-Up Day is a part of this drive that once again demonstrates why Vermont and Vermonters are just a little bit different.

Mr. President, I ask unanimous consent that Governor Deane C. Davis' executive order designating May 1 as "Green-Up Day" and a joint resolution approved by the Vermont General Assembly pertaining to Green-Up Day be printed in the RECORD.

There being no objection, the proclamation and joint resolution were ordered to be printed in the RECORD, as follows:

A PROCLAMATION

Whereas, Vermont is presently engaged in a historical effort to preserve and protect its environment through legislation, education, citizen involvement, conservation groups and student, business, labor and industrial committees; and

Whereas, continued interest in the environment should be fostered by practical involvement of students and citizens in projects that promote ecological understanding and appreciation; and

Whereas, Vermonters are concerned about the maintenance and perpetuation of roadside beautification, marred each spring with the melting snows by the unsightly accumulation of trash and refuse; and

Whereas, awareness of this problem will be dramatically and uniquely fostered on Green Up Day, Vermont's statewide clean-up day involving a massive coordinating effort between state, civil and local agencies and the utilization of a volunteer army of thousands of citizens in every town in the State;

Now, therefore, I Deane C. Davis, Governor of the State of Vermont, do hereby proclaim May 1, 1971, as: "Green Up Day" in Vermont and urge all citizens to observe the day by volunteering two hours of their time to rid the highways of litter and to green up their neighborhoods.

JOINT RESOLUTION

Whereas, Governor Deane C. Davis has proclaimed May 1, 1971, as Green-Up Day in the State of Vermont and urged all citizens to observe the day by volunteering two hours of their time to rid the highways of litter and to green up their neighborhoods; and

Whereas, Vermont is presently engaged in an historical effort to preserve and protect its environment through legislation, education, citizen involvement, conservation groups and student business, labor and industrial committees; and

Whereas, continued interest in the environment should be fostered by practical involvement of students and citizens in projects that promote ecological understanding and appreciation; and

Whereas, Vermonters are concerned about the maintenance and perpetuation of roadside beautification, marred each spring by the unsightly accumulation of trash and refuse; and

Whereas, awareness of this problem will be dramatically and uniquely fostered on Green Up Day, now therefore be it Resolved by the Senate and House of Representatives:

That all Vermonters be urged to join forces in a massive Green-Up campaign on May 1, 1971, to remove highway litter, thereby beautifying Vermont roadsides and helping preserve and conserve Vermont's precious scenic attractiveness; and be it further

Resolved: That the Green-Up symbol, publicized so extensively during last year's campaign and instantly recognizable throughout Vermont as an anti-litter reminder, be adopted as the Official Vermont State Clean-Up insignia; and be it further

Resolved: That this Official Green-Up Symbol shall be registered with the office of the Secretary of State and that this Official Green-Up Symbol shall remain under the direct control of the Vermont State Green-Up Day Committee who, at its discretion, shall authorize the use of the symbol in conjunction wtih Vermont anti-litter programs, campaigns and other efforts at reducing the problem of litter accumulation along the Vermont highways and other scenic areas; and be it further

Resolved: That efforts be initiated to establish a Green-Up Day, Incorporated, organization comprised of representatives from wholesale beverage distributors, environmental groups, concerned citizens and others, for the purpose of carrying on a continuing anti-litter educational emphasis on educational programs for elementary and high school students as well as general programs for college students and adult citizens of the State of Vermont.

THE COURTHOUSE OF STOREY COUNTY, NEV.

Mr. BIBLE. Mr. President, the courthouse in Storey County, Nev., is perhaps unique in that the traditional figure of justice, a regal guardian of the entrance, has no blindfold. But then Storey County itself is unique. A short distance from the courthouse in Virginia City is the site of the fabulous Comstock Lode, where nearly a century ago the richest silver strike

in all history made Nevada's name synonymous with fantastic riches. Virginia City became—if only for a few short years—the home of some of the giants of American history, including Mark Twain and a mining baron, Leland Stanford, who later endowed the university bearing his name.

Much of the Comstock wealth went across the Sierra Nevada Mountains to California. In fact, there is sound historical substance to the claim that Nevada silver paid for the massive rebuilding of San Francisco after the disastrous fire and earthquake of 1906.

The loss of its wealth did nothing to diminish the charm and character of Virginia City. Wisely, the citizens of Storey County have preserved a great many of the buildings and other landmarks identified with the adventurous past. Today, Virginia City is one of the West's most popular tourist attractions. Those who stroll its boardwalks may capture the excitement and vitality of an age when silver was king and vast fortunes were won or lost overnight.

My deep affection for Virginia City and the Storey County courthouse is the product of personal experience. It was there—in 1935—that I began my public career and my practice of law by accepting an appointment as the district attorney of Storey County. I have always been grateful to the citizens of that county for returning me to office in 1936, and I have only the warmest memories of my years in their service.

Mr. President, the April 1971 issue of the American Bar Association Journal features a cover story on the Storey County courthouse. Entitled "The House of Unblindfolded Justice," it was written by Mr. Russell W. McDonald, a distinguished lawyer who for years has ably served the State of Nevada as its legislative counsel. Apart from my warm friendship with Mr. McDonald, I admire him as a skilled writer who has splendidly documented the fascinating history of a western landmark.

Because I believe Mr. McDonald's article would be of interest to Members of Congress and their constituents, I ask unanimous consent that it be printed in the RECORD.

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

THE HOUSE OF UNBLINDFOLDED JUSTICE

Storey County, geographically the smallest county in Nevada and the second smallest in population, is probably finished as a profitable mining area, but its 695 inhabitants are proud of its once famous Comstock Lode and the colorful life of the 1870s when the Big Bonanza proved to be the richest silver deposit in American mining history. Virginia City, the county seat, lies on the eastern face of Mount Davidson twenty-three miles southeast from Reno and is the site of the historic county courthouse completed in 1877, pictured on the *Journal's* cover this month, a product of that amazing era when Storey County and its citizens gloried in lavish expenditures.

The Washoe mines were discovered in June of 1859, resulting in the creation of the Territory of Nevada in 1861. The Washoe excitement caused a migration of hungry, brilliant lawyers from the Pacific Coast to the new territory, where an orgy of mining litigation was soon under way. It was said that "two evils beset the Washoeites—many ledges and many lawyers." But a third evil—an underpaid and allegedly dishonest territorial judiciary—created an arena where "chicanery won more suits than eloquence and learning, and bribery and corruption more than solid merits."

This third evil, coupled with President Lincoln's wartime demands, resulted in Nevada's statehood in 1864. In a few years the state's court calendars were cleared of the hundreds of mining title actions that had accumulated during the territorial period. After nine years of indifferent mining production and economic depression, Storey County was revived in 1873 with the discovery of the Big Bonanza, and by 1875 the Comstock had reached the apex of reckless living and extravagance.

Disaster struck Virginia City in the early morning of October 26, 1875. A fire started, allegedly in a small one-story lodginghouse kept by "Crazy Kate" Shea, and before the day was out two thirds of the city was consumed in the general conflagration. There were 8,000 homeless people, and all the principal public buildings were destroyed. The county courthouse was the first public building to go.

Seven months after the fire, the work of grading and preparing for the erection of the new building commenced in earnest, and on May 29, 1876, the Storey County Board of County Commissioners awarded a contract to Peter Burke in the sum of $68,489.55 for construction of the new courthouse. On June 12 elaborate plans and specifications for the building, prepared by San Francisco architects Keintzer & Ramm, were commented on by the *Gold Hill Daily News:*

"The building will be two stories in height, and the facade will be ornamented by a figure representing Justice, with the scales and sword that are orthodoxically supposed to belong to her. In the drawing she is represented without her eyes being blindfolded, which may be objected to by some as unconventional, but when one considers that this representative dispenser of awards and punishments will be compelled to stand out and take all the sand thrown in her eyes by the Washoe zephyrs, it will be readily conceded that her eyesight would not last long enough for her to get so much as a glimpse of the great wealth to be obtained by wickedly swaying the scales of Right and Wrong. It makes but little difference whether the blind is on or off."

By December, 1876, the new building was almost completed. The county commissioners had ordered eighty-three changes in the plans during construction. In February of 1877 Peter Burke refused to turn over the completed job until "his little bill of extras" was paid. He had possession of the only set of plans and specifications, which he refused to deliver to the architect's representative. Burke had been paid $64,869.31 as the work had progressed. He claimed $3,620.24 was due on the original contract and $38,066.42 for the extras.

Burke then made his initial mistake. On February 16 he surrendered the plans and specifications to the architect's representative, the keys to the county commissioners, accepted $13,447.66 in part payment of his claim and agreed to arbitration. The county commissioners swooped in, took possession of the building and on February 18 opened the building for public inspection. Judge Rising lost no time either. He opened his court for business the next day.

On February 28, 1877, the Nevada legislature validated all loans theretofore made by the county commissioners for the purpose of raising funds to complete and furnish the courthouse and authorized Storey County to sell $100,000 of general obligation bonds to pay all outstanding indebtedness incurred for the construction, completion and furnishing of the courthouse. The bonds were sold and contractor Burke resumed his battle for payment.

The two arbitrators selected by the architects and Burke couldn't agree on the selection of a third man. The grand jury then got in the act, stating that "Burke, the contractor, has received every cent to which he is entitled and his charges for extras are unjust". Burke made a counteroffer of settlement to the county commissioners. They informed him that when he established his rights in the courts they would act accordingly. Burke retained counsel in June of 1877 and again asked for arbitration. The county commissioners stalled by stating they would have to consult with the district attorney.

In July, by agreement, seven taxpayers and well-known prominent citizens were named as arbitrators. They had been in session ten days when the district attorney discovered a flaw in the state law authorizing the appointment of arbitrators, and this temporarily halted arbitration.

On November 6, 1877, the county commissioners met in closed meeting with the arbitrators and agreed that when Burke completed an independent contract of putting up retaining walls back of the courthouse, the courthouse question would again be opened and he would be awarded "whatever may be justly due him". On December 17 the arbitrators recommended Burke be paid a total of $95,000. Burke's attorney stated that unless some consideration were given Burke's petition for more money, suit would be brought. The county commissioners expressed a willingness to discuss the question, since by December 1 they had expended $130,169.98 for courthouse construction and improvements.

In January of 1878 the commissioners declined to take final action on Burke's claim. Nothing further would be done until the district court decided the validity of the judgment rendered by the arbitrators. On March 8, 1878, Judge Rising set aside the arbitrators' judgment and took the question of the award under advisement, and on March 23 Burke threw in the towel. He appeared before the board of county commissioners and offered to settle for $18,500. The arbitrators, in a supplemental report, recommended he be paid $16,183.02. Burke countered with and finally accepted $16,183.03. The battle was over.

By 1880 the energies and assets of the Comstock were fading. The new courthouse saw her lawyers scatter throughout the West to more prosperous mining camps and rewarding litigation. Ultimately Storey County was joined with four other counties to form one judicial district. Today two district judges serving the judicial district sit in Virginia City when occasion infrequently demands. In 1969 but forty-four actions—civil, criminal and probate—were commenced in the Storey County District Court. Yet despite all this, the courthouse represents to Storey County and its inhabitants an illustrious past and a hopeful future.

PRISONER-OF-WAR DAY IN ARIZONA

Mr. GOLDWATER. Mr. President, the plight of our American prisoners of war in Indochina is one that I am sure wrings the hearts of all good Americans. Accordingly, the Governor of my State, the Honorable Jack Williams, has issued a proclamation declaring April 28 to be Prisoner of War Day in the State of Arizona. He has asked the citizens of our State to pray at that time for the many brave Americans who are being held under barbaric and oppressive conditions in enemy camps in Southeast Asia. He

further called upon the people of his State to make known to the opposing government in Indochina their request for immediate negotiations to bring about the release of these prisoners. I ask unanimous consent that the text of the Arizona POW proclamation be printed in the RECORD.

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

PRISONER OF WAR DAY—1971

Whereas, American armed forces are combating the enemies of Freedom and Liberty and Justice on far-off battlefields; and

Whereas, many brave Americans have been taken prisoners of war in these military operations, and are being held under barbaric and oppressive conditions in enemy camps; and

Whereas, the American peoople are deeply concerned about the welfare of these prisoners and the refusal of inimical powers to negotiate for their release;

Now, therefore, I, Jack Williams, Governor of the State of Arizona, do hereby proclaim Wednesday, April 28, to be Prisoner of War Day—1971 in Arizona, and call upon all citizens to pray for these Americans and to make known that the opposing governments must agree to negotiations for their release.

In witness whereof, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Arizona.

Done at the Capitol in Phoenix, this 3rd day of February, in the year of Our Lord One Thousand Nine Hundred and Seventy-one and of the Independence of the United States the One Hundred and Ninety-fifth.

JACK WILLIAMS,
Governor.

NEED FOR INTENSIVE CANCER RESEARCH

Mr. HUMPHREY. Mr. President, I invite the attention of Senators to an article entitled "Cancer Research—Only $1 Per Person," published in the Wednesday, April 14, Wall Street Journal.

This thoughful and moving article states in clear and succinct terms the need for larger appropriations in the field of cancer research. It also underscores the imperative need for an intensive program free from the redtape and the institutional structuring which all too often accompanies programs in the field of public health. 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:

CANCER RESEARCH—ONLY $1 PER PERSON

(By a Parent)

When the doctor told my wife and me 16 months ago that our five-year-old son, Scott, had leukemia, we were plunged into numb agony. In the preceding days, as Scott went through a series of diagnostic tests, we had begun to fear the worst—but hearing the worst was still a terrible experience. We endured constant heartache and shed many tears in the weeks that followed. Life just didn't seem worth living.

It still doesn't. But we have learned to live, after a fashion, with the knowledge that Scott will die in childhood, perhaps very soon. Out of a passion to find out all we could about the disease—before, leukemia was, to us, only a remote malady—we've also learned some other things: how widespread cancer is; how hard it hits children (no other disease kills more of them); what remarkable strides cancer researchers are making, under severe handicaps, in prolonging victims' lives and bringing a cure closer to reality—yet how much more they could do, and how surprisingly little we spend on this high-ranking national problem.

The final fiscal 1971 figure to emerge from Congress, lately accepted by the administration, provides an annual spending rate of $230 million—that's $1 per year per American, compared with $19 on foreign aid. Or, looked at another way, it's a bit less than two-thirds the $361 million the government allocates for outdoor recreation.

Dr. Solomon Garb, a respected Denver cancer researcher, said a consensus of researchers was that $300 million would represent "an austere compromise between the needs of the 40-plus million Americans now living who will get cancer and the financial stringencies imposed on health expenditures. It is by no means even close to a "full speed ahead" budget.

Others think much more than $300 million makes sense; indeed, many people probably assume that much more is already being spent. As Mrs. James W. Cox, a mother of a Fairfax, Va., boy with leukemia said, "Ask almost anyone . . . and they will say a billion or a billion and a half are being spent each year. They base their opinion on the fact that life and health are two of America's most important commodities."

Frustrated by the lack of funds for research, we joined last April with other Washington, D.C.,-area parents of children who have cancer or have died of it, in an effort to do what we could to generate more support for a vigorous cancer-research program.

We knew it was too late to save Scott. Even the most hopeful research results would take too long for that. But maybe we could help hasten the day when other lives wouldn't have to be snuffed out by cancer. Our group called the Candlelighters, pressed its case with key appropriators in Congress and with Nixon administration men, and will keep doing so. Our name was taken from the saying, "It's better to light one candle than to curse the darkness." Our goal is a coordinated nationwide assault. Even before our group was formed, similiar research-minded parent groups were active in Orlando, Fla., and San Rafael, Calif. Since then we have helped spur the creation of about a dozen new groups elsewhere. We have had inquiries from 40 cities in 16 states, and more are coming in.

MONEY AND ANSWERS

One cancer research scientist told us, "A number of important research questions are becoming answerable now. With enough money available, we could identify the people who should work on these questions, assign them to do the work and the questions would be answered."

We have tried to be hard-headed, and discount statements by researchers that seem to be simply self-serving. Our conclusion is that cancer research has been seriously crippled by a prolonged hold-down in spending. Just lately, funding has turned up, and President Nixon promises to ask Congress for $100 million more in fiscal 1972. This improvement is definitely welcome, but the research level is still pathetically low and the effects of previous cutbacks—in scraped projects and prospective scientists not being trained—are still being felt.

In the last three years spending by the government's National Cancer Institute, which funds most cancer research in the U.S., leveled off while research costs climbed. (The government pays for 80% of all cancer research in this country; the American Cancer Society funds most of the balance.) The result was that, over the three years, the amount of research that could be paid for fell by one-third. Particularly disheartening was the fact that the administration returned unspent to the Treasury nearly $10 million of a $190 million appropriation in fiscal 1970.

Because of the hold-down, the cancer institute has rejected many grant applications that it considers promising, funding only half of previously approved projects and approving just a fifth of new ones; this continued a grant decline in force since 1965. The President's fiscal 1971 budget request of $202 million (later augmented by $28 million by Congress and released for use by the administration in recent days) left a number of areas, such as chemotherapy, continuing downward.

The research cutback even touched treatment centers. In clinics like the one where Scott is examined and treated every month, drug treatment is research. Doctors must use their young patients as guinea pigs, administering drugs that have proven useful, in semi-experimental ways, as a method of developing more effective approaches. This use of new drugs coupled with better patient supportive care has extended the lives of many leukemia patients.

SOME PROGRESS MADE

In 1960, children with leukemia usually lived three months; now, 75% live two years or more on treatment with a drug combination; a few have lived over five years, and some of them are probably cured. (Overall, two of every five cancer patients now survive, against one in 10 as of 15 years ago. However, the incidence of the disease and the number of deaths continue to grow.) But contractual drug research in cancer treatment was reduced. Less than half of the drugs that held promise in institute lab tests could be evalulated in treatment programs, where laboratory research is either proven or discounted.

Funding cuts can happen because, while everybody knows about cancer, people just don't get worked up about it. We were as indifferent as anybody—until our own son was stricken. We never knew that cancer kills 325,000 Americans every year (only heart disease kills more), that one-fourth of everyone alive today will get it, that one-sixth will die of it, that only accidents kill more children; 5,000 children die of cancer annually, far more young lives than polio claimed in its peak year.

There's no way of knowing, of course, when research breakthroughs will come.

Recent talk of applying massive funding for cancer research in a moon-shot approach can be faulted for trying to adapt a space program, where technology was in hand, to medical research, where it isn't. But putting considerably more funds into several promising cancer research programs, though it's unknown which ones would pay off the most, seems eminently justified; it would let researchers better pursue many good possibilities that exist.

The prestigious National Panel of Consultants on the Conquest of Cancer, the so-called Yarborough commission, which proposed a $1 billion-per-year research program by 1976, declared, "It is a myth that we could not spend effectively on cancer very much more than is now being spent." In fact, the panel said, "Advances in the fundamental understanding of cancer in the past decade have opened up far more promising areas for major advances in cancer prevention and treatment than have ever before existed."

Some argue there's no guarantee that more money would save a specific number of lives in a certain number of years. True. But highly promising avenues are developing in chemotherapy, viruses as a cancer cause, new methods to support life while treating cancer, ways to help the body do a better job of fighting off the disease with its own immunity system, analysis of how chemicals in food and the air cause cancer so much so that pouring more money into the effort seems sensible.

ATTACK ON TWO FRONTS

Consider just two fronts in the attack. In the field of viruses as a cancer cause, promising leads are coming from work in molecular biology; that work has led to the potential of creating life in a test tube, but may also hold a key to curing or preventing cancer. NCI officials say we'll soon know if a cancer virus vaccine program should go forward, or if some different prevention method makes more sense. New methods have been devised to find cancer viruses in cancer extracts, and NCI people say they are now able to efficiently manage an expanded virus research program.

More money can be effectively used in chemotherapy, too. Success of drug use in some cancer forms opens the way for a large-scale successful chemotherapautic program against these and other forms, just as the demonstration of the curative potential of chemotherapy against a few infections in the 1930s led to a massive program and—within a few years—the majority of bacterial infections were brought under control.

In just the last few months, cancer researchers have isolated an enzyme that could be the key to virus causation of leukemia. They have been able to block its effect in the test tube with an existing drug and have laid plans to test the drug on animal leukemia, then leukemia in humans.

"With more sophisticated use of the agents we now have, and the slow but steady increase in the number of new antileukemia chemicals being discovered, there is little doubt in the minds of those expert in this field that acute leukemia will in the not too distant future be cured by chemicals alone," says Dr. Sidney Farber, professor of pathology at Harvard Medical School and former American Cancer Society president.

But capitalizing on these opportunities takes money. Researchers could be more effective, to cite just one example, if they had a large enough mouse colony to provide enough cases of spontaneous leukemia; instead, they must induce leukemia in the smaller number of mice they do have, which gives less valid results.

Government programs put more emphasis on health care costs for all disease than on research. Yet research has its payoff in health care, too. Direct cancer costs—medicine, doctors and the like—are estimated at $1.5 billion a year, and earnings loss and other expenses are probably near 10 times that. NCI studies show that, despite climbing drug, doctor and hospital costs, the total expenses of treating a leukemic child has fallen to under $5,000 from about $10,000 eight years ago. This is because better treatment methods—resulting from research—have reduced the typical hospital stay to 15 days from 77 days.

If we must wait for assurance that each new research dollar will have "X" number of lives, the problem will never be licked. Cures and vaccines for infectious diseases in the past were developed because the effort seemed worthwhile—witness the national war on polio—not because any certified proof of results was available in advance.

DEPRESSING DEVELOPMENTS IN CHILE

Mr. ALLOTT. Mr. President, Barron's magazine of April 19 published a most informative and cogent editorial on the depressing developments in Chile.

The editorial makes clear that Chile's pretense of fairness in dealing with foreign investors is—a pretense. It makes clear that Chile's economic policies are very detrimental to the interests of all foreign investors, especially those from whom Chile is currently stealing property, and that everything we have learned about economic theory and practice tells us that Chile's economic policies will be detrimental to the long-term interests of Chile.

So that all Senators can consider this interesting editorial, I ask unanimous consent that it be printed in the RECORD.

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

[From Barron's, April 19, 1971]

POINT OF NO RETURN—ALLENDE'S CHILE, LIKE CASTRO'S CUBA, HAS PASSED IT

Contractor Magazine, in its current issue, tells what happened to Nibco Inc., a company in Elkhart, Ind., that wanted to do business with an "underdeveloped" country. Nibco is a manufacturer of valves and fittings; through the good offices of the Alliance for Progress, it launched a joint venture with a Chilean firm to build an ultramodern brass foundry in Santiago. With half a million Nibco dollars behind it, Nibsa, as the subsidiary was called, was an immediate success. However, last fall, after the election of Dr. Salvador Allende Gossens as president of Chile, orders began to plunge. David Hyams, general manager, reported to the home office that within a month the firm would be insolvent. Told to salvage what he could, Mr. Hyams sought to lay off some of the plant's 270 workers, but was refused permission by the union. The sole alternative offered was a loan from Corfo, a government corporation, which would have led to control of the firm. Instead, Mr. Hyams shut down the plant. Ten days later, the government forcibly seized it, ousted Mr. Hyams and filed criminal charges against him.

Most companies with holdings in Chile—U.S. investment there totals $850 million—these days have little or nothing to say. Not so Lee Martin, president of Nibco, who has appealed to the State Department for help in protecting his interests and keeping Mr. Hyams out of jail. "It is our firm conviction," writes Mr. Martin, "that this is an outright expropriation of our investment by the Chilean Government." What really galls Mr. Martin, though, is the sympathetic attitude of official Washington toward the new Chilean regime. Noting that the U.S. Export-Import Bank is considering a loan to Santiago for the purchase of railroad equipment, Mr. Martin declares: "I am unable to understand how the United States can justify a subsidy to a government which, by its political philosophies and actions, by seizing and dissipating the local assets of foreign-based businessmen . . . proves so obviously that it abhors democratic processes."

Allende apologists in this country, of course, tend to shrug off such criticism. Thus, the ranking foreign correspondent of a New York newspaper (which helped convinced the U.S. that Fidel Castro was just an agrarian reformer) recently wrote from Santiago: "Allende's contribution is the ballot-box revolution, which so far has worked with surprising success." Secretary of State Rogers is attending a meeting of the Organization of American States in Costa Rica, along with Chilean Foreign Minister Clodomiro Almeyda; much is heard from delegates of the Andean countries, who have set a 15-year deadline for the nationalization of all U.S. interests within their borders. Washington, meanwhile, still seems under the influence of a Chilean mission which came through a few weeks ago to argue that any aid cutoff would constitute U.S. economic aggression.

Besides possible Eximbank credits, the World Bank currently has a loan mission in Chile, appraising an agricultural project. Loans by the World Bank are not directly under the control of the U.S., but much of its capital comes from the U.S. Treasury, and Washington surely could influence the decision. In addition, the U.S. currently is giving Chile some $6-$7 million under the Food for Peace program, while the Pentagon is making the new Socialist regime an outright gift of $803,000 for training young officers. Chile still enjoys most-favored-nation treatment. Finally, there is the Inter-American Development Bank, which, under its former president, Sr. Felipe Herrera, funneled a disproportionate share of loans into Chile. (When Sr. Allende became president, Sr. Herrera resigned to return to his homeland and "participate in the revolution.") The new IDB president, Antonio Ortiz Mena of Mexico, presumably has a more detached viewpoint; nevertheless, Chile, as a stockholder of the bank, claims a call on its resources.

Such activity seems to fly in the face of a spate of existing legislation, which, under any sensible interpretation, would appear to bar U.S. aid to Chile. Food for Peace shipments are banned to countries under Communist domination. The Foreign Assistance Act prohibits assistance to any country engaged in trade with Cuba or North Vietnam (both now maintain trade missions in Santiago). The Hickenlooper amendment bars aid to countries that expropriate American property without "adequate" compensation. On the latter score, the evidence in Chile is compelling. For Nibsa is neither the only, nor the largest, Yanqui property to be seized since the advent of Dr. Allende's regime, which makes no bones about its Marxist philosophy. Alimentos Purina, a subsidiary of Ralston Purina, was taken over in similar fashion.

The take over of Bethlehem Steel's iron mines, while perhaps not quite so bare-faced, was tantamount to expropriation. The company was persuaded to sell out ("We had no other choice," said a Bessie spokesman) for $20 million, including contracts to supply ore to Japanese steel mills. The price, which the company hopes will be adjusted upward in later negotiations, is roughly equal to what it poured into recent expansion. Nothing was allowed for older facilities, or for the mineral-bearing acreage which company geologists staked out. And the Bethelehem "settlement" probably is a reliable gauge of what U.S. copper companies can expect when Dr. Allende gets around to compensation for their $700 million in properties which are to be "nationalized" under pending legislation. Santiago plans to deduct from its own appraisal of such investments sums equal to the "excess profits" earned by the companies during the last 15 years they were operating in Chile. On that basis, Anaconda, Cerro and Kennecott could wind up owing the government money.

With the best will in the world, the U.S. could do little or nothing to help Chile avoid disaster. For Dr. Allende, like Fidel Castro, is fast leading his country to bankruptcy and ruin. Chilean monetary reserves are falling at the rate of over $30 million a month, down from $465 million last September to $345.3 million at the end of January. The escudo, pegged at 14.3 to the dollar, trades at 35 on the black market. With $560 million of debt maturing this year and next, insolvency is just around the corner. Threats of nationalization have brought investment in Chilean industry to a halt, particularly in the copper mines, and output is running about 9% below last year. Dr. Allende is a physician, but his prescriptions for what ails the Chilean economy are more likely to kill than to cure. To combat inflation, he simply froze prices; then, in order to stimulate demand, he decreed wage increases of 65% in private enterprise and up to 60% in the public sector.

With less and less to buy with their newfound wealth, workers have little time for their jobs; absenteeism in the port of Valparaiso averages 25% except on Monday

mornings, when it runs to 40%. No matter, it's illegal to fire anyone. The president has called for extra hours of voluntary work by copper miners, saying, "Each pound of copper that is produced will help prevent the economic disaster into which they (sic) are trying to drag us." Yet, mine output in January was down 8,000 tons from a year ago. In the countryside Indians and farm workers have taken "land reform" into their own hands through armed occupation of large estates. Farmers, expecting confiscation, are sending out of the country money they otherwise would spend on seed and fertilizer. Herds of dairy and beef cattle are being slaughtered, and food shortages loom.

In a recent interview with a Time correspondent, Dr. Allende warned: "Don't put up roadblocks for us. The worst thing would be if we were to fail, not because we are inept, but because artificial roadblocks are put in our way." Fair enough. Chile is plunging hell-bent down the road to poverty and serfdom. Let the U.S. keep hands off.

POW DAY IN INDIANA

Mr. BAYH. Mr. President, we have long been concerned for the safety and prompt release of American prisoners of war. Until the President designates a specific date for withdrawal from Vietnam, the action that would most help these prisoners we must do all we can to focus attention on the plight of POWs, in order to press for their fair treatment.

I have sought to give the problem proper emphasis by speaking out repeatedly on this subject, and I am a cosponsor of Senate Concurrent Resolution 5, a resolution which would create a joint committee to investigate the treatment of POW's in Vietnam.

Today, I wish to share with the Senate a proclamation by the State of Indiana to declare April 28 POW Day in Indiana. I hope this continued concern will bring comfort to both servicemen and their families.

I ask unanimous consent that the proclamation by printed in the RECORD.

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

PROCLAMATION

Whereas, nearly 1,600 members of the Armed Forces of the United States are officially listed either as missing in action or as prisoners-of-war in Southeast Asia; and

Whereas, these men have suffered and continue to suffer pain, imprisonment, deprivation of their rights, prolonged separation from their loved ones, and the peculiar mental and physical anguish which is the unique lot of the prisoner-of-war; and

Whereas, their wives, children, parents and other relatives in the United States suffer with them the agony of separation and of loneliness; and

Whereas, these men have carried out, and continue to carry out their duties to their country in accordance with their principles and pursuant to directions of the American people whom they are defending; and

Whereas, it is entirely just and in accord with humanitarian instincts that we, the American people, remember these men, cherish their contributions to our security, and pray for their safety and their speedy return to their homes and families;

Now, therefore, I, Edgar D. Whitcomb, Governor of the State of Indiana, do hereby proclaim Wednesday, April 28, 1971, as "Prisoner of War Day" in Indiana, and I urge all citizens to show their respect and concern for these servicemen and to join me in praying for their release.

NEED FOR IMMEDIATE PROGRESS ON CONSTRUCTION OF NATIONAL AIR AND SPACE MUSEUM

Mr. GOLDWATER. Mr. President, on Wednesday of last week, it was my great pleasure to appear before the House Appropriations Subcommittee presided over by a gracious, industrious Representative, Mrs. JULIA HANSEN. She was very kind to set aside some time for me to present a few thoughts in support of the pressing need for increased funds at the National Air and Space Museum and the National Museum of Natural History, which are two of the most important components of the Smithsonian Institution.

Mr. President, this Nation has for too long been negligent in providing for a decent and dignified place in which to display its great technological advances in the field of flight, which includes both manned air flight and space explorations. One recent development serves well to illustrate the deplorable delay in embarking upon this project. Only a week ago, I received word from the estate of Orville Wright, which informed me that it has been waiting for 23 years now for the construction of a new U.S. National Museum for Air and Space Exhibits. In my testimony before Mrs. Hansen's subcommittee, I revealed the fact that the Wright estate had only agreed to bring back the Wright brothers' 1903 "Kitty Hawk" plane from its long exile of honor in England in the expectation and upon the firm promise that it would be placed in a second-to-none U.S. air museum. And yet, Mr. Harold Miller, who is coexecutor of the Orville Wright estate felt compelled to write to me:

It is now 23 years later. The plane is exactly where it was on December 17, 1948, and it is far worse, not better, off than it was when it came here from its 20 years abroad.

Mr. President, it is high time we, the American people, lived up to the promise given to the memory of Orville and Wilbur Wright. To this end, I went before both the Senate and House Appropriations Committees handling Smithsonian funds and made the strongest plea I knew how on behalf of this important project. It is encouraging to me that Dr. Ripley, who is secretary of the Smithsonian, is displaying a new and encouraging attitude toward construction of the building; and in fact, he has now set a firm deadline of July 4, 1976, which is the 200th anniversary of American independence, as the date for opening the new air and space structure.

Also, Mr. President, I made an appeal for increased funds at the museum of natural history which has been encountering difficult budgetary problems of its own in recent years at the same time that its workload has doubled, and I hope the Congress will show an alert interest in the needs of this museum as well. Mr. President, because this is a matter of interest ot all of the American people, I ask unanimous consent that the complete text of my remarks delivered before the House subcommittee be printed in the RECORD.

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

SCIENCE BOOST NEEDED AT THE SMITHSONIAN

(Statement by Senator BARRY GOLDWATER)

Madam Chairman, it is my purpose today to ask that the Committee support the full appropriations sought by the National Air and Space Museum and the National Museum of Natural History.

Madam Chairman, last year when a House Subcommittee conducted a sweeping investigation of the Smithsonian, I presented documented evidence establishing a serious decline in support for these two museums. My testimony pointed to the strange fact that while the total Federal budget for the Institution had doubled within six years and the number of full-time employees had jumped by more than 700 positions, and while the Smithsonian had plunged into the creation of entire new units, such as the Cooper-Hewitt Museum, the Archives of American Art, the Office of Academic Programs, and a Division of Performing Arts, the National Air and Space Museum and the Museum of Natural History were slipping downhill in the degree of support they received from the Institution.

For example, at the end of the 1970 fiscal year, the museum of flight had only 31 employees, yet Congress had appropriated funds for 41. At the same time, the Museum of Natural History had 103 scientists supported by 87 technicians. Yet three years earlier the Museum had 111 scientists and 90 technicians.

The Air and Space Museum did not have a director for 18 months; while over at the Museum of Natural History, the Department of Vertebrate Zoology could not even offer its scientists a research allotment equal to that provided to graduate students.

Though I do not intend to rekindle these old coals today, I do feel it is essential the requested increases for these museums should be viewed against the backdrop of years of inadequate support. For the one essential ingredient of their reconstruction program is the willingness of Congress to appropriate the full added monies which these museums have sought.

Madame Chairman, the top priority item in the National Air and Space Museum budget is the $1.9 million earmarked for planning and redesign of a new museum building. This request is combined with a firm deadline of July 4, 1976, which the Smithsonian has selected for opening the new structure.

Unfortunately, the building project has been on dead center for five years now. The authorization statute itself does not contain any limitation. Nor did the House of Representatives offer any reservations. The only legislative hang-up is found in a single sentence inserted in the Senate Committee report on the 1966 authorization law.

That sentence simply reads: "The Committee expressly recommends . . . that appropriations should not be requested pursuant to H.R. 6125 unless and until there is a substantial reduction in our military expenditures in Vietnam."

Madame Chairman, in my opinion, this language is no longer binding. Certainly it has no effect at all on any action which the House might take. Also, I feel it has been superseded by intervening events. For one thing, it was written before the first manned lunar landing, which did so much to excite public interest in America's space exploits. For another, Congress did not add any similar restriction when it approved $2.9 million for renovating the Smithsonian's Renwick Gallery. Or when it provided $2.6 million for refurbishing the original Smithsonian building.

Nor did Congress impose any tie between Vietnam and the $7 million it appropriated for restoration work on the National Portrait Gallery or the $15 million it is laying out for construction of the Hirshhorn Museum.

Why the National Air and Space Museum should be singled out from all other Smith-

sonian projects and told its construction must be deferred is beyond me. In any event, the Senate Committee on Rules and Administration has recently announced it does not obect to the Smithsonian's request for redesign funds, so we will not run into any jurisdictional conflict at this time.

Which brings me to the fundamental question of why a national museum of flight is needed in America. One purpose, of course is to tell the story of America's achievements in flight. Furthermore, with our nation expanded almost to the limits of its explorable land, the story of space pioneering displayed at the Air and Space Museum might be an excellent means for recharging our national energies.

The need for a central museum of air and space objects has never been in doubt among our friends overseas. Britain has an outstanding aerospace display on an entire floor of its London Science Museum. In addition, a new RAF Museum building is nearly completed. Also, the Deutche Museum in Munich contains a huge hall devoted to air and space displays nearly as extensive as our own. For their part, the French have on show in Paris six to ten times as many original aircraft and flight objects as we do. Italy is installing a major Air and Astro Museum at Turin. Even small Switzerland is developing an impressive Museum of Transportation at Lucerne, which can compete on close terms with what the United States now presents in the air and space field.

An American citizen returning from a tour of these museums, situated in nations one-fourth the size of our own, might easily feel a sense of embarrassment at how his country compares. Why our nation does not even have a permanent home for its collections. We have a small tin hangar in which aviation exhibits have been shown since 1919 and some temporary space in the 90-year old Arts and Industries Building, and that is it.

Madame Chairman, I have just received in the mail a most poignant request for construction of a distinctive flight museum. On April 13, I heard from Mr. Harold Miller, who is co-executor of the Orville Wright Estate. Mr. Miller relates that the Estate only agreed to return the Wright brother's 1903 Kitty Hawk plane from its long exile of honor in England "*in the confident* expectation that there would be a second-to-none U.S. Air Museum in which it would be the premier Exhibit, displayed in a setting appropriate to its unique character and merit like the crown jewels."

Mr. Miller adds: "It is now 23 years later. The plane is exactly where it was on December 17, 1948, and it is far worse, not better, off than it was when it came here from its 20 years abroad."

Madam Chairman, I think it is high time the American people lived up to their promise to the memory of Orville and Wilbur Wright. I believe we, as representatives of all citizens, should immediately initiate some progress toward the erection of a dignified museum worthy of this country's pioneering genius in manned flight.

And for reasons of plain dollars and cents, it looks as if the only way this project can get off the ground is by going the route of a redesign. Because from a cost of $40 million when the building was first authorized in 1966, I am told the expense would now exceed $70 million.

Madame Chairman, as you may know, the original architect, Gyo Obata, claims it is feasible to develop a proper museum at a lower cost. In fact, he has estimated the rough dimensions which such a scaled-down building might have.

Madame Chairman, you may be interested to know the length could be nearly the same, 730 to 760 feet compared with the original 784. The height will stay near 97 feet, which is important because this would preserve the opportunity for installing some full-sized rockets or rocket sections inside the building. Most of the reduced scale would come out of the width. The new building might be 160 to 190 feet wide compared with 250 feet for the original plan.

While this would mean the floor area would be cut in half, I am told the actual exhibition space would be reduced by less than one-fifth, leaving 254,000 square feet for this prime purpose. This is more than three times greater than the maximum area which could be used for exhibits in the two buildings which presently house flight displays. And assuming the ground might be broken by sometime in calendar year 1972, construction itself could be held at a cost below $40 million.

Therefore, from what I have learned, the revised plan retains so much of the original form at a lowered cost, I believe it deserves our support.

My only reservation concerns whether it is necessary to obtain reapproval of the building from all the planning and art and traffic commissions which have a hand in Federal construction. But if these bureaucratic avenues should threaten to stifle the project in a web of red tape, I know Congress could shortcut this route by enacting overriding legislation or even by returning to the original, approved design.

Incidentally, I notice the Smithsonian is confronted with exactly this problem in regard to its proposal for changing the location of the Hirshhorn sculpture garden. According to the Washington Star, the National Capital Planning Commission ordered the revised version to go back for more study and one member of the Commission even appeared ready to reopen the whole issue of whether the museum should have a separate sculpture garden at all. With this warning in mind, I hope the Smithsonian will have its ducks in a better row when it undertakes a redesign of the Air and Space project.

Next, Madame Chairman, I would like to say a few words about the museum's request for additional operating funds. The museum has requested an increase of $105,000 for carrying out its operations in 1972, and I can confirm this amount is honestly required. In fact, even if the full amount of staff and program funds are appropriated, the museum will receive less than 1.7% of the overall Smithsonian budget for salaries and expenses. For a museum that draws one-third of the Smithsonian's visitors—4½ million persons—this allotment is not at all proportionate to the unit's proven importance. Accordingly, it is my sincere hope the Committee will not cut one penny out of its already miniscule allotment.

Madame Chairman, I would like to turn my attention now to the Museum of Natural History. From the early years, when the first Secretary of the Smithsonian, Joseph Henry, made pioneering discoveries in science, the Institution has generally held pure scientific research in high regard. During the mid-1960's, however, the course of the Smithsonian's priorities began to shift. As Paul Oehser writes in his recent history of the Institution: "Today, in contrast, the humanities are demanding an increasing role in Smithsonian programs . . ."

It is during this period that the Museum of Natural History began to fall back. Doctor Richard Cowan, director of the museum, has documented this problem publicly at the House investigation hearings last summer.

Dr. Cowan testified that the lack of adequate technical assistance for his scientists results in an almost "criminal mismanagement of human resources" because highly trained scientists are required to waste their time doing routine chores.

He also confided that the employment picture at the museum is worse than it was several years ago. Dr. Cowan charged: "The available pairs of hands, both professional and supportive, are fewer now than four years ago." His statement was backed by a specific example of the cannibalism which ate away one-third of the staff of the Department of Vertebrate Zoology at the same time its workload was soaring.

In addition, Dr. Cowan exposed the severe and sudden drain on his museum's budget caused by an unusual shift in Smithsonian policies which makes the museum purchase items that formerly had been provided to it without cost from the Institution's Supply Division. As strange as it seems, the museum must now purchase such basic things as storage bottles and cases and some 400 other items which are essential for its operation and were formerly supplied free to it. Why the museum must even purchase many of its own reference books because the Smithsonian Library will not supply them. I might add, Madam Chairman, that given this odd situation, the Institution's decision to request an increase of far more money for personnel than it did for books at its Library is extremely curious.

Madam Chairman, I can reveal today there is another cost which will be unexpectedly dropped on the museum's hard-pressed budget. From now on the museum must not only pay for supplies and materials used in work performed for it by the Smithsonian's Building Management Department, but also for the costs of labor! It should be noted, Madam Chairman, that the Buildings Management Department possesses its own separate budget of more than $9 million. Nevertheless this one arm of the Smithsonian will begin charging all other Smithsonian components for basic work done for them, such as converting office space into laboratory space, moving a desk, or installing a bookcase.

Madame Chairman, the situation has become so bad I must report today that the change in supply and service practices instituted by the Smithsonian management has cut non-salary operating funds at the Museum of Natural History by up to a quarter of a million dollars. The loss of funds formerly charged to the Buildings Management Department alone is about $100,000.

Accordingly, Madame Chairman, I hope you will look at the requested increases in the budget of Natural History not only from the perspective of the need for correcting several years of decline, but also with the realization the museum has been loaded down by sudden and unexpected expenses for which it has been given no additional funds.

Madame Chairman, this completes my comments on the Smithsonian's Federal budget. The only advice I might add is the suggestion the Committee may wish to request a full disclosure from the Smithsonian on its private financing. It is my understanding the pool of private investments, gifts, and grants now returns about $18 million annually; and it seems fair to inquire whether this sum is being spent wisely so as to keep Federal expenditures at a minimum. For example, is the Smithsonian getting a sensible return on its holdings of over $32 million in stocks, bonds, and endowment funds? Could more privately funded employees be engaged at units which seriously need them, such as the Air and Space and Natural History Museums? Is it proper for the Institution to embark upon money losing projects, such as the museum shops and "Smithsonian Magazine" were in 1970, thereby leaving a gap to be filled by Federal appropriations in other areas which could have been financed by the Smithsonian itself?

Madame Chairman, this type of information was given to the House investigating subcommittee last summer, and I think it would be helpful if you might institute the practice on a regular basis.

This concludes my statement.

ARCHIBALD MacLEISH AT 79

Mr. CHURCH. Mr. President, Archibald MacLeish will soon be 79. Few Americans have contributed as much to their country over so long a period as Archibald MacLeish. His contributions have been diverse, for Mr. MacLeish has excelled as poet, professor, and public servant. He has won three Pulitzer Prizes—the first in 1932 and the most recent in 1959—and now he has a new play which just recently opened. The play is "Scratch," whose main character is Daniel Webster. Mr. MacLeish has been a member of the faculties of Princeton University, Cambridge University in England, and Harvard University. In formal public positions he served as the Librarian of Congress and Assistant Secretary of State for Cultural Affairs and Public Relations, among other posts. In short, Mr. President, the arts, the universities, and the general public have all been enriched by his active life.

Mr. President, an article written by Gregory Mcdonald, and published recently in the Boston Globe, recounts the author's recent interview with Archibald MacLeish. This is an excellent article, and I ask unanimous consent that it be printed in the RECORD.

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

[From the Boston Globe, April 4, 1971]

MACLEISH: HE SURVIVES MAGNIFICENTLY

(By Gregory Mcdonald)

"There are two axioms," Archibald MacLeish was saying. "The first is that a teenager has no way of proving, of guaranteeing that he is a poet at that time of his life, even though he is most intensely interested in poetry at that time of life. The second is that pursuing the art of poetry is not the way of eating or sleeping or putting a roof over the head.

"A poet has to do something else.

"He has to find a means of surviving while keeping himself alive in the world of passion and commitment."

MacLeish, whose prose play "Scratch," with Daniel Webster as the central figure, opens Wednesday at the Colonial Theater, will be 79 next month. He is a magnificent survivor.

He played football at Yale. ("Those were during the 'Blue Sweater days.' Yale was not a very cultural institution.") Although he never practiced law, he was on the Harvard Law Review. ("Law is the greatest indoor game in the world.")

For five years he was an editor of Fortune. ("That was during the Depression. For five years there, before Fortune became a Big Business magazine, it was a real good real magazine.")

In 1938, MacLeish was Lecturer in Creative Writing at Princeton. He was then the first curator of the Nieman Foundation in Journalism at Harvard. In 1942, he was the Rede Lecturer at Cambridge University, England.

In 1939, he was the Librarian of Congress; 1941, director of the Office of Facts and Figures; 1942-3, assistant director of the Office of War Information; from 1944 to war's end, assistant Secretary of State for Cultural Affairs and Public Relations. MacLeish was one of those who drew up the original charter for UNESCO.

In 1949, he became the Boylston Professor of Rhetoric and Oratory at Harvard, a chair he kept for 12 years. The chair was first held by John Quincy Adams and, subsequently, by Charles Townsend Copely and Theodore Spencer.

Archibald MacLeish has won three Pulitzer Prizes ("Conquistador," 1932; "Collected Poems," 1953; "J.B.," 1959.)

"If you're lenient with me," he noted, "you can see how all these things led to each other."

We were talking in a quiet room at the Ritz Carleton, he sideways in a moveable chair, chin in his hands, staring out into the Public Garden as we spoke, a ruddy man in black tie and slacks, gray sweater, brand new black shoes (suddenly he took one off, with the comment, "Excuse me. The tongue of these shoes decided to bite me,") with the price still on the bottom.

For years he has been living almost entirely at his greystone, 200-acre "Uphill Farm" in Conway, Mass. After leaving Harvard ("Howard Mumford Jones and I were fired for senility the same day") he succeeded Robert Frost as Simpson Lecturer in Literature at Amherst College. He has a winter home in Antigua.

"As a young man, I was determined not to go into a business tunnel out of which one came, predictably, 40 years later.

"You have to be willing to quit," he advised.

As a present I had brought him a copy of "The Battle Hymm of Lt. Calley," (three copies of which I had received the day Calley was found guilty) as a shocking example of current American rhetoric.

He said, "In the Nuremburg Trials we set ourselves up—and being a member of that generation, I think rightly—to judge the morals of a war. But the problem that bothered us is Where is the moral base?

"If you start with the assumption, with the morality of necessity which makes a war, how do you make judgements internally? World War Two was moral; World War One, my war, was certainly not moral. What is the moral base?

"We are in a war which the majority of American people apparently find immoral. So where is the moral base?

"We are made, in the Calley case, to find a moral base. But where do we find the moral base?"

Talking then about his 1936 radio verse play, "Fall of the City," he used normally a phrase I found extraordinary: "Pretentious powers that turn out to be empty helmets."

At a speech Daniel Webster was giving at Bunker Hill, MacLeish told me, people were pressing hard towards the front. Women and children were in danger of being trampled. The marshals were straining to keep them back.

After watching a moment, Webster announced: "If the marshals will be still, the people will be still!"

We were talking Thursday afternoon. Producer Stuart Ostrow had just left the room, slightly ahead of his cigar smoke. The window was open. On the writing desk was a pot of "the finest pencils in the world," the Blackwing 602. MacLeish was full of his play, "as it is everything I want to say about the world now.

"In this play, we start out with some words from Steve Benet: Neighbor, how stands the union?

"That is still the question.

"You see, in the summer of 1850, the country was nearer to civil war than it ever was 10 years later when it actually broke out.

"His man, Petersen, shares with Webster a companionship that only happens in New England. No gilly in Scotland would answer back his employer, argue with him, as your man will in New England.

"Webster believed in the union above all else. He was in political trouble for it. Emerson wrote a couplet, unpublished except in a newspaper, which went, 'Why did all manly gifts in Webster fail?) He wrote on Nature's gradest brow For Sale.'

"Over breakfast, Petersen argues with Webster, and Webster says, 'What's human liberty without a country?" And Peterson, just like the wids today, answers, 'Or a country without human liberty?'

"The question is still, Neighbor, how stands the union?

"How stands the union," Archibald MacLeish repeated, "seems to be the question—as long as this very useful youthful intellectual turmoil goes on."

NEWS AND EDITORIAL JUDGMENT OF THE NEW YORK TIMES

Mr. ALLOTT. Mr. President, in the unlikely event that the editors of the New York Times are wondering why their newspaper's reputation is suffering, they might want to ponder the following fact.

Last Wednesday, in a speech delivered in New York City to the American Newspaper Publisher's Association, Defense Secretary Melvin Laird revealed that we are now in possession of new evidence which confirms reports that the Soviet Union is launching new and extensive and very ominous ICBM programs.

This is sad and alarming news. It is important news. Appropriately, this story was the lead story on page one of the Thursday morning Washington Post. But the Thursday morning edition of the New York Times did not reflect the importance of the Secretary's report.

Extremely careful readers of the Times would have found that, on page 35, there is reference to the Secretary's speech. It is buried deep in story. The story itself is on a speech by Mr. Louis Harris, who was reporting that some sort of new coalition may be forming in American politics. In the judgment of the Times Mr. Harris' speculation on coalitions are more important than the fact that the Soviet Union may be launching a new and highly dangerous round in the arms race.

Mr. President, obviously the Times editors have a perfect right to indulge whatever is passing for editorial judgment on the newspaper these days. But one cannot help notice how this editorial judgment—concerning news will help advance a particular editorial policy.

Nothing is more certain in this world than the fact that the Times has a vested editorial interest in distracting the public from the realities of Soviet power and the ominous nature of Soviet intentions. Various of the Times editorial positions might almost seem plausible if only we could believe that the Soviet threat is small and diminishing. That is why the Times editors must find it very inconvenient when the Secretary of Defense makes a report such as the one he made last Wednesday. And it seems that the policy of the Times editors is to suppress news which casts doubt on the wisdom of the editorial policy.

Before long, the Times editorial page will be full of sonorous sermons on why we do not need an ABM system. Perhaps the Times editorial writers have come to the conclusion that the only way to make the Times editorial policies seem sensible to the readers is to shield the readers from all relevant news.

Mr. President, just in case any Senators still rely on the New York Times for

news coverage, I ask unanimous consent that Mr. Laird's speech be printed in the RECORD.

In addition, Mr. President, for the purposes of comparison, I ask unanimous consent to have printed in the RECORD the Washington Post's page one story and the New York Times page 35 story.

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

BEYOND VIETNAM

(Address by the Honorable Melvin R. Laird)

I am particularly pleased to have this opportunity to meet with the American Newspaper Publishers Association and to discuss with its members the serious national security problems we face.

This is, in my view, a particularly timely meeting. I would not want to miss this chance to comment briefly on a matter which is of great mutual concern to the ANPA and to the Department and your profession.

As we look beyond Vietnam to the challenges of the years ahead, rarely before in our history have we needed a closer understanding among those who believe in a strong free press.

A strong, free country and a strong, free press go hand-in-hand. You and I share an obligation—and a unique opportunity—to preserve and strengthen both of those great national imperatives.

What we need is not to shout at one another. Rather, we need to sit down and talk over together the problems of national security news coverage which have arisen in the past decade or so. It is time for improved professional contacts—contacts that candidly recognize past mistakes and seek future understanding.

I welcome the opportunity, as you are giving me here today, to discuss openly with you some of our crucial national security problems. The President's goal of a generation of peace through partnership, strength and meaningful negotiations is a worthy goal. Our national security programs are linked to that goal.

In this month of April, 1971, I am able to report that U.S. objectives in Vietnam are rapidly being achieved and that U.S. military involvement in the war in Southeast Asia is coming to an end.

Successful negotiations in Paris remains the quickest way to resolve the Southeast Asia conflict. But Vietnamization is consistent with the goal of self-determination, should Paris continue to produce no meaningful results. Vietnamization will bring about termination of American involvement upon resolution of the Prisoner of War issue. In my judgment, Vietnamization will continue to succeed. The problems that do remain are not going to thwart the policy of United States withdrawal as announced by our Commander-in-Chief.

Now the time has come for the American people to think about America's role in promoting peace and security after Vietnam.

In 1969, when the Nixon Administration assumed office, it seemed to me that we had to shift public debate and discussion from "Why Vietnam" to "Why Vietnamization." It seemed to me profitless to continue an argument about decisions made in earlier years that had committed American forces to combat in South Vietnam. What we needed to do at that time was shift the focus from what led to increasing levels of American troops in Vietnam to what was needed and what we were doing to reduce American troop levels and terminate our involvement.

It is time now to shift the debate from "Why Vietnamization" to "Beyond Vietnam." It is time to discuss the Strategy of Realistic Deterrence which we have formulated to help achieve the goal of a generation of peace.

The changed conditions in the world today and the demands of world realities called for a new foreign policy, a new national security strategy and a different approach and attitude toward American involvement in the affairs of the world.

The President has proved the new foreign policy and the new approach that emphasize realistic involvement and vigorous negotiation which maintaining adequate strength. And we have formulated a new defense strategy that supports the foreign policy goal and approach of the Nixon Administration.

In the 1950's, you will recall, we had a defense strategy that was widely described as a strategy of massive retaliation. It was a credible or realistic strategy for the decade because we had an overwhelming strategic nuclear superiority.

In the 1960's, massive retaliation gave way to a strategy that became known as assured destruction and flexible response. This also was realistic from the standpoint of deterring nuclear war. In the early sixties, for example, President Kennedy was able to take the stand he did in the Cuban missile crisis to a large extent because we still maintained a four or five to one nuclear superiority. Unfortunately, however, the strategy of flexible response did not prevent us from becoming involved in the longest conflict in our history.

And that is precisely the challenge of the 1970's. We need a strategy for the 1970's that can effectively deter not only nuclear war but all levels of armed conflict. It was that need coupled with an awareness of the realities we face that led to the adoption of what we call the Strategy of Realistic Deterrence.

We call it realistic because it is designed to take account of the major realities facing America and the rest of the world in these difficult times. It recognizes that there cannot be any instant solutions to the problems that simultaneously confront us. And it underscores the fact that the United States by itself cannot provide realistic deterrence on a global scale.

The four basic realities which led to the new strategy are: a strategic reality; a fiscal reality; a manpower reality, and a political reality.

The strategic reality includes most notably the tremendous growth in Soviet military strength from a position of clear inferiority in the early 1960's to near parity today. It also includes an emerging nuclear capability on the part of the Peoples Republic of China.

The fiscal reality involves not only the heavy pressure in Congress for reduced defense spending but the upward pressures of inflation on the cost of everything we need to buy to maintain adequate military forces.

The manpower reality is not yet fully understood. People constitute the single biggest cost in the defense budget. Pay and related costs in FY 1972 will claim some 52 per cent of the total defense budget based on the pay increases we have recommended. It will cost us almost $18 billion more than it did in 1964 for 133,000 fewer people. And in the next year or two, manpower costs will be claiming close to 60¢ out of every defense dollar as contrasted to the 43¢ it claimed from the 1964 defense dollar.

The political reality severely complicates the other three:

—whether you look at it from the standpoint of the political and psychological effects of Soviet policy and growing presence around the world, such as in the Mediterranean and the Middle East;

—whether you look at it from the standpoint of political pressures from our allies to maintain forward deployed U.S. forces;

—whether you look at it from the standpoint of Congressional pressures to reduce those forces; or

—whether you look at it from the standpoint of gaining broad political support here at home for doing all the things we have to do to assure our national security interests while continuing to reorder our national priorities.

The most pressing reality remains the strategic reality. The most essential requirement in terms of national survival remains assuring the adequacy of our strategic deterrent.

One year ago yesterday, I spoke to the Annual Luncheon of the Associated Press here in this room. The thrust of my remarks was the deep concern I felt that by the mid-1970's the United States could find itself in a second-rate strategic position.

I regret to report today that nothing has happened in the intervening twelve months to lessen that concern. Quite the opposite is true.

In December and January, it began to look as if the Soviet Union was slowing its rapid rate of ICBM deployments after having reached a level of land-based ICBM's that gave them approximately 400 more than the 1054 possessed by the United States. The situation began to change in February and March, as we reported publicly. More recent evidence confirms the sobering fact that the Soviet Union is involved in a new—and apparently extensive—ICBM construction program. This new ICBM construction effort, coupled with additional momentum in the strategic defensive area—all clearly planned months ago—must be of major concern. Moreover, while we have an advantage in submarine-based missiles today the USSR is rapidly closing that gap with an energetic construction program that continues.

Last year, I indicated that we could postpone some hard decisions in the FY 1971 transitional budget to give SALT every chance of success. We were forced to face some of those decisions in the FY 1972 budget on which I reported to Congress last month. We felt, in the light of the continuing Soviet momentum, as it was assessed late last year, that prudence dictated accelerated development of a new strategic bomber, the B–1, and a new underseas-launched strategic missile system, the ULMS. We are proceeding at the optimum development rate consistent with sound management, but, of course, no procurement decisions have yet been made.

We sincerely hope for convincing progress in SALT. But failing such progress I must tell you today that the renewed Soviet strategic weapons momentum may confront us with the need for additional offsetting U.S. actions. I would have no choice but to recommend these actions—over and above what has been presented to Congress in the FY 72 Budget—in order to preserve the sufficiency of our strategic forces. We would much prefer success in SALT.

I felt last year and I feel now that the people of America perhaps may be willing to settle for a situation of so-called strategic nuclear parity. But under no circumstances, in my view, would the American people be willing to settle for inferiority.

I can assure you of one thing: so long as I am Secretary of Defense—and no matter the criticism it may evoke—I will never refrain from recommending programs which I believe are essential to the survival of our nation and the safety of our people.

My job is to provide the capabilities necessary to prevent war, and that is what we are seeking to do under the Strategy of Realistic Deterrence. But while we can never neglect the essentials of strategic sufficiency, we have tried to fashion a strategy that will lead to the effective deterrence of all war, not just nuclear war.

If we are to prevent all forms of war, if we are to restore and preserve peace, if we are to

make possible a world in which there can be expanding freedom, we must maintain adequate U.S. strength and help improve the strength of our friends and allies. That is what the Strategy of Realistic Deterrence is all about

In its simplest formulation, Realistic Deterrence is the strategy we have designed to carry out the Nixon Doctrine. It is based on the three principles of partnership, strength, and willingness to negotiate. It seeks to steer a prudent middle course between the policy extremes of world policeman and a new isolationism. It does this by providing the means for effective development and use of the military resources of peace-seeking nations to deter conflict at all levels. Except in the field of nuclear weaponry, it calls on other nations to do more to provide for their own defense—particularly by furnishing manpower. It seeks to foster greater readiness on the part of our nations, individually and in regional cooperation, to increase their ability to defend themselves. It offers U.S. assistance—economic and military—and U.S. support to such nations where our interests are involved. The partnership it proposes means that other nations must do for themselves some of the things we have been doing for them. One of its major goals is to prevent American involvement in future Vietnams.

Realistic Deterrence means a smaller military force for the United States, but one which is more combat-ready than it has been in peacetime in the past. It means modernized equipment. It means a vigorous Research and Development program to assure our continued technological leadership. It means strengthening the National Guard and Reserves and reducing reliance on the draft.

In our FY 1972 budget, the Department of Defense is implementing the President's Strategy for Peace by completing the transition from a military force of 3.5 million men and women involved in war—largely draftees or draft-induced volunteers—to a truly volunteer force of at least one million fewer men and women who will be engaged in preventing war. We have established the goal of zero draft calls by July 1, 1973.

Let me be perfectly frank. Successful implementation of the Strategy of Realistic Deterrence is the most difficult and challenging national security effort we have ever undertaken in this country. It must be accomplished in an environment of strategic nuclear parity—a reality that leaves little margin for error and no room for failure. It must be accomplished in a period of vigorous Soviet military expansion at sea, on the land, in the air and in space. Nor can we ignore their expanding military assistance programs and their demonstrated willingness to deploy Soviet troops and equipment in other countries.

What is required is the maximum utilization of all Free World resources for deterrence—not just those, nor primarily those—that the U.S. can provide. That is why in Asia, we are stressing a greater manpower contribution on the part of our friends and allies. That is why in NATO, a new spirit of burdensharing has evolved.

But that is also why it is so important for us in the Department of Defense to have the trust and confidence of members of the press. For it is through the press that we must seek the understanding and support of the American people. Without that support, and full understanding, the goal of a lasting peace—so elusive to so many generations before us—will have no chance for success.

At the beginning of these remarks, I emphasized how important it is for all of us to begin looking beyond Vietnam. It might be appropriate, therefore, to close by calling to your attention important forthcoming talks in NATO.

As we look ahead to the long-range national security requirements of our Nation and the rest of the Free World, the meetings of the Defense Ministers in NATO next month may be the Alliance's most significant substantive discussion in at least a decade. At the Nuclear Planning Group session in the Federal Republic of Germany and then immediately afterwards at the session of the Defense Ministers in Brussels, I will continue the new level of consultations with our NATO Allies which President Nixon initiated shortly after he assumed office.

These meetings will give me an opportunity, both in the formal sessions and in my private meetings with my colleagues, to explain in full detail the new United States National Security Strategy of Realistic Deterrence.

I will speak to my fellow Ministers against a background of two decades in which the partnership, strength and willingness to negotiate among NATO members have provided peace and stability for that Alliance.

I will bring them up to date on the threat assessment as we see it today, and I will want to hear from them their view of the momentum of Soviet activities, such as the stepped-up naval operations in the Mediterranean, and the provision by the Soviet Union of sophisticated new weapons in the Middle East.

I think it is clear that we are past the day when the United States could or should discuss defense problems with our NATO allies or anyone else with a "big brother knows best" attitude. Not only are we trying to face the realities that require adequate free world strength, we are seeking conscientiously and systematically to conduct our relations to fulfull our responsibilities on a full partnership basis.

We are not going to preach platitudes to our own people or to our allies and friends as we seek to implement the Strategy of Realistic Deterrence. We ask only for recognition of the realities we face and the determination to meet them together in a timely and effective manner. In that way, we can achieve our goal of piece.

Laird Reports New Russian ICBM Project

(By Michael Getler)

Defense Secretary Melvin R. Laird disclosed yesterday that the United States now has fresh evidence "confirming the sobering fact that the Soviet Union is involved in a new—and apparently extensive—ICBM construction program."

Although Laird provided no further details, defense officials say U.S reconnaissance satellites in the past three weeks have spotted "several tens" of new underground silos which are expected eventually to house either new versions of the huge Russian SS–9 ICBM or possibly a new large missile.

The existence of new silo construction within the Soviet Union was first disclosed March 7 by Sen. Henry M. Jackson (D-Wash.) during a TV interview. Shortly thereafter, informed sources said privately that about 10 of these silos had been spotted. Now, officials say the number accounted for is several times that figure.

Laird made his disclosure in New York yesterday in a luncheon speech before the American Newspaper Publishers Association. The text was released here.

The tough line he took on new Soviet developments reflected deepening gloom within the Nixon administration about Moscow's intentions and its willingness to slow down the arms race, sources close to the secretary said.

Laird said that unless progress is made soon at the strategic arms limitations talks (SALT) in Vienna, he will be forced into speeding up development of several new weapons to offset the Soviet gains.

"We sincerely hope for convincing progress in SALT," Laird told the publishers. "But failing such progress I must tell you today that the renewed Soviet strategic weapons momentum may confront us with the need for additional offsetting U.S. actions. I would have no choice but to recommend these actions—over and above what has been presented to Congress in the Fiscal 1972 budget in order to preserve the sufficiency of our strategic force."

Although Laird did not elaborate, Defense officials said that a speedup in converting U.S. Polaris submarines to the multiple-warhead-carrying Poseidon missiles was one move under consideration.

Also being considered is acceleration in the development of the Navy's proposed successor to the Polaris/Poseidon submarines, and the Air Force's new B–1 bomber, the Safeguard ABM system and the Hardsite ABM research project.

Referring to his appearance before the same group a year ago, Laird said the thrust of his remarks then "was the deep concern I felt that by the mid-1970s the United States could find itself in a second-rate strategic position."

"I regret to report today," he said, "that nothing has happened in the intervening 12 months to lessen that concern." In fact, Laird stated, "quite the opposite is true."

Although things looked encouraging late last year when a slowdown was noted in all three major Soviet missile programs, that was erased by the new evidence initially gathered late this February.

"This new ICBM construction effort, coupled with additional momentum in the strategic defensive area—all clearly planned months ago—must be of major concern," Laird said.

Among other things, the new satellite photos also reportedly gave U.S. analysts a better look at the stage of silo construction and have intensified administration wariness of Soviet motives.

It is now clear, sources explain that the Soviets began planning their move last year when the SALT talks were moving into a critical phase.

Thus far, reliable sources report that the United States still has not observed the actual missile that will go into the new holes.

Laird's reference to new Soviet defensive developments also relates, other sources say, to new evidence that Moscow has also speeded up testing of a new ABM missile and associated advanced radar.

The Soviet developments are also complicating a major White House decision expected this summer on going ahead either with a fourth Safeguard site in Wyoming or starting an ABM ring around Washington, D.C. The decision hinges upon the likelihood of a U.S.-Russian agreement at SALT which would include limiting rival ABM networks to the respective national capitals.

Laird told the gathering that in his view the American people would be willing to settle for nuclear parity with the Russians. "But under no circumstances, in my view, would they settle for inferiority." He also said that as long as he held forth at the Pentagon, he would recommend programs to keep that balance, "no matter the criticism it may evoke."

Explaining his policy of "realistic deterrence" to the publishers, Laird said "one of its major goals is to prevent American involvement in future Vietnams." He said the strategy backs up the Nixon Doctrine by "steering a prudent middle course between the policy extremes of world policeman and a new isolationism."

In line with the idea of relying more on the manpower and money of our allies in the future, Laird portrayed the forthcoming NATO meetings in West Germany and Belgium next month as perhaps "the most significant" in the last 10 years.

Louis Harris Tells Publishers of New Coalition for Change

(By Peter Kihss)

A leading opinion researcher told the nation's newspaper publishers yesterday that "a new coalition shaping up for change in

the country" included the "new affluents," the poor and those under 30.

Louis Harris, the pollster, told the American Newspaper Publishers Association convention at the Waldorf-Astoria Hotel that it was wrong to think of a "cooling of America."

Instead, he held that young people were "heated up more than two years ago," but were seeking change by working within existing ground rules instead of "bomb-throwing."

The "new affluents" include families with incomes of $10,000 or over, due to rise from 39 to 61 per cent of all families by 1980, Mr. Harris said.

He reported them strongest for tough regulations against pollution, desirous of getting the United States out of Vietnam faster than any other group, impatient about lack of progress in racial equality and "growingly independent in their voting habits."

BACKERS OF STATUS QUO

Pitted in behalf of the status quo, Mr. Harris asserted, is a group that is almost all white—many skilled labor unionists, older people, traditional conservatives rooted in small towns and rural areas. But he said these were "shrinking in both numbers and influence," rather than a dominent "silent majority."

Mr. Harris reported "growing alienation" among varied groups—low-income blacks, supporters of Gov. George C. Wallace of Alabama, many women and the young. He warned that "if we do not learn to attack our common problems instead of each other, we could be doomed as a nation."

At yesterday's convention luncheon for 1,300 people, Secretary of Defense Melvin R. Laird said new, extensive Soviet construction of intercontinental ballistic missiles was causing "major concern." He said the Soviets already had 400 more land-based ICBM's than the United States' 1,054, as of last January, and were now rapidly catching up on submarine missiles.

MAY NEED "OFFSETTING ACTIONS"

This, Mr. Laird said, "may confront us with the need for additional offsetting United States actions." He said these might include recommendations for accelerated development of the B-1 strategic bomber and a new undersea-launched strategic missile system, the ULMS—beyond the defense budget so far asked for fiscal 1972.

Mr. Laird had initially made this assessment of the Soviet Union's missile capability in his annual "defense posture statement," presented to the House Armed Services Committee on March 9. At that time he also described Soviet missile submarines as "the greatest element of the threat."

At the luncheon, Stanford Smith, A.N.P.A. general manager, was awarded the officers' cross of the German Order of Merit by Count Harald von Posadowsky, German consul general here. The award was for "untiring efforts on behalf of the press of the free world."

In an afternoon session, Dr. George Gallup, another opinion researcher, asserted that "unless an individual spends at least one hour and 45 minutes a day reading newspapers, magazines, books, he is not going to go very far."

As early as the age of 10, Dr. Gallup said, students spending the most time reading are typically at the head of their school class. Those spending most out-of-school time looking at television, he said, are "the ones most likely to become dropouts."

His organization's current studies, Dr. Gallup said, show 90 per cent of all daily newspaper readers willing to pay 15 cents for their paper, and two-thirds ready to pay 20 cents.

He reported "the No. 1 interest of newspapers is news of local events and happenings," which "may help to explain why the smaller newspapers have, as a group, experienced smaller circulation losses when they have raised single-copy prices than newspapers published in the largest cities."

Dr. Gallup said that "the most neglected subject" and of greatest interest now to readers was "how to make ends meet in this period of inflation." He held that "every newspaper should have a sort of people's financial page" on how to save, earn, invest and get more for money—and reported that London newspapers were doing well with this.

To make newspapers even more indispensable, Dr. Gallup said, they should help readers to "understand" events and serve their keen interests in health, including costs; education, including school accountability; religion and church ferment; travel, especially weekend trips, and home care, decorating and gardening.

On technological developments, Matthew Gordon, assistant vice president for public information of the Communications Satellite Corporation, reported that "we now have in sight communication satellites capable of transmitting one billion bits of information or all the volumes of the Encyclopedia Britannica, across the country in less than a second," given needed terminal equipment.

At Tuesday's session, A.N.P.A. leaders criticized young people's readiness to approve "rigid control of newspaper content incompatible with the First Amendment"—instead of "compatible," as The New York Times reported yesterday because of a printing error.

ADDITIONAL DEATHS OF ALABAMIANS IN VIETNAM WAR

Mr. ALLEN. Mr. President, I have placed in the RECORD the names of 1,088 Alabama servicemen who were listed as casualties of the Vietnam war through December 31, 1970. In the period of January 1 through March 31, 1971, the Department of Defense has notified 25 more Alabama families of the death of loved ones in the conflict in Vietnam, bringing the total number of casualties to 1,113.

I wish to place the names of these heroic Alabamians in the permanent archives of the Nation, paying tribute to them, on behalf of the people of Alabama, for their heroism and patriotism. May the time not be distant when there will be no occasion for more of these tragic lists.

I ask unanimous consent to have printed in the RECORD the names of the next of kin of these 25 Alabamians.

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

LIST OF CASUALTIES

Incurred by U.S. military personnel from the State of Alabama in connection with the conflict, in Vietnam, January 1, 1971 through March 31, 1971

Pfc. Howard W. Bramlett, Jr., son of Mr. and Mrs. Howard W. Bramlett, Sr., Route 5, Florence, 35630.

Pfc. Bobbie L. Williams, son of Mr. and Mrs. Burt E. Williams, Route 1, Box 295, Parrish, 35580.

Sp4. Ronnie V. Rogers, son of Mr. and Mrs. David V. Rogers, 729 Glen Ridge Drive, Fairfield, 35064.

Sp4. Donald W. Smith, son of Mr. and Mrs. Leroy Smith, 505 Roger Street, Brewton, 36426.

WO1. William H. Seaborn, Jr., son of Mr. and Mrs. William H. Seaborn, Sr., 1507 28th Street, Birmingham, 35218.

Sp4. Calvin E. Milam, husband of Mrs. Charlotte J. Milam, Route 3, Berry, 35546.

Pfc. Walter J. Taylor, Jr. son of Mr. Walter J. Taylor, Sr., 837 6th Street, West, Birmingham, 35204.

Sp4. Willie Gardner, son of Mrs. Bernice Gardner, Route 2, Box 6, Brent, 35034.

Pfc. Ronald C. Ruff, son of Mr. and Mrs. Calvin C. Ruff, Route 2, Box 188D, Notasulga, 36866.

CW2. William D. Sapp, husband of Mrs. Sandra K. Sapp, Box No. 317, Route 2, Ozark, 36360.

Msg. Jackie W. Barnwell, husband of Mrs. Phyllis L. Barnwell, Route 1, Box 150, Clayton, 36016.

Sgt. Charles T. Matthews, son of Mr. and Mrs. Theo Matthews, 3706 Penny Street, Southwest, Huntsville, 35805.

Sgt. Randolph B. McKellips, son of Mr. and Mrs. Jay O. McKellips, 1701 South Boulevard, Sheffield, 35660

SP4 James E. Johnson III, son of Mr. and Mrs. James E. Johnson, Post Office Box #74, Weaver, 36201

Sgt. Howard S. Lamb, son of Mr. Riley S. Lamb, Jr., 962 Old Shell Road, Mobile, 36608

Sgt. Jessie M. Brooks, husband of Mrs. Mal R. Brooks, Route 1, Box 128D, Irvington, 36544

Sgt. George R. Morgan, son of Mr. and Mrs. Verdi D. Morgan, 3704 1st Street, Dauphin Island Parkway, Mobile, 36605

SP4 Charles G. Bobo, son of Mr. and Mrs. Hex A. Bobo, Route 3, Guntersville 35976.

PFC Johnnie L. Pryear, son of Mr. and Mrs. Joe P. Barnes, 1458 Main Street, Mobile, 36617

1LT Harry G. Prince, Jr., husband of Mrs. Charlotte A. Prince, P. O. Box 4, Salem, 36874

Sgt. James D. Schooley, husband of Mrs. Margaret A. Schooley, 115 Westwood Avenue, Mobile, 36606

NAVY

Sksn (Storekeeper Seaman) Tyrone C. Bradley, son of Mrs. Augusta M. Bradley, 256 Lexington Avenue, Mobile

AIR FORCE

1Lt Charles M. Deas, son of Mr. and Mrs. Cecil W. Deas, 2538 Poplar Street, Montgomery

TSgt Clyde W. Hanson, husband of Mrs. Annie L. Hanson, 46 Salem Drive, Montgomery, 36119

MARINE CORPS

Maj Wayne R. Hyatt, husband of Mrs Wayne R. Hyatt, RFD #2, Hanceville.

PROPOSED TEMPORARY OPERATION OF DEPARTMENT OF THE INTERIOR FROM DENVER

Mr. BELLMON. Mr. President, a somewhat revolutionary but downright sensible idea has emerged from the bureaucratic quagmire of one of our Federal agencies.

The Secretary of the Interior, Hon. Rogers C. B. Morton, is considering the possibility of running his Department from Denver for from 3 to 6 weeks on a trial basis. He would take a small number of staff members along, and they would use existing office space in a Federal center where a number of major regional offices of the Interior Department are located.

Since many of the Interior Department's programs—focusing on public lands, parks and recreation, and Indian affairs—are located in the Western States, Morton would get his agency closer to the people it serves.

Mr. President, in view of the congestion, confusion, and frequent disorder that has become characteristic of our Nation's Capital, it would be well for all Federal agencies to consider relocating their operations out where the people are.

Secretary Morton is to be commended for undertaking to improve his Department's effectiveness through a bold and progressive move. I encourage him to go through with it and suggest that other department heads follow his example.

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

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

MORTON OFFICE MAY MOVE TO DENVER AWHILE

Interior Secretary Rogers C. B. Morton may run his department for three to six weeks from Denver, a spokesman said yesterday. He said the idea has not been definitely decided.

The spokesman said Morton was thinking of taking 10 to 20 staff members with him and operating from existing office space in a federal center where a number of major regional offices of the Interior Department are located.

He said Morton wants to get close to "where the action is" as many Interior Department programs are focused in the Western states.

Department employees who go with Morton would receive subsistence payments to cover food and lodging up to a maximum of $25 a day, the spokesman said.

The Interior Department has special telephone lines between Washington and its Denver offices.

SENATOR EAGLETON IN INDOCHINA

Mr. HUMPHREY. Mr. President, the Senator from Missouri (Mr. EAGLETON) returned from a 10-day trip to Southeast Asia.

During 6 days of factfinding in Vietnam, Senator EAGLETON traveled to each military region in Vietnam, from I Corps in the mountainous north to IV Corps in the southern delta, and talked extensively with the men who run the war on a day-to-day basis as well as those who report it. Senator EAGLETON visited Phnom Penh, Cambodia, one of the few Senators to do so.

Senator EAGLETON also visited Hong Kong, a city renowned for its China watchers, at a time when U.S. relations with China were changing for the first time in over two decades.

Yesterday, in a series of three articles, Senator EAGLETON wrote several facets of the many-faceted struggle in Indochina, including aid to Cambodia, the upcoming Vietnamese elections, the recent invasion of Laos, as well as the much heralded "Ping Pong Thaw." But perhaps most important, Senator EAGLETON casts some light on what administration plans may be for Indochina, and outlines the dangers and the risks of indefinite and continued involvement in Vietnam.

Mr. President, I think that Senator EAGLETON'S observations on this seemingly endless war are timely and to the point. I recommend them highly to the Senate and ask unanimous consent that they be printed in the RECORD.

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

SENATOR EAGLETON'S TRIP TO INDOCHINA

The outlook for Indochina is as bleak viewed first-hand as it is when viewed from the perspective of Washington, I learned in a trip to Southeast Asia during the Easter recess of Congress.

For seven days I toured every region of South Vietnam, interviewing military leaders, U.S. civilian advisers, and our troops. I also visited Phnom Penh, the capital of Cambodia.

A week in Southeast Asia hardly makes me an expert on the most complex issue in United States foreign relations. However, my discussions with persons there and my own observations did confirm some conclusions I had long ago reached in this country, and modified some others.

In a second article, I will outline where I think we are heading in Indochina. In this one I would like to share my impressions of where we have been in Laos, where we are in Cambodia, and what will happen in the Vietnamese national elections coming up this fall.

LAOS INVASION

Was Lam Sam 719—the code name for the 6-week invasion of Laos—a success or a failure?

The President and the Pentagon hail it as a master stroke. Others view it differently.

The operation was announced as being "limited in time and space." Without going into classified information, let me say it was far more limited in "time and scope" than anyone planned.

Lam Son 719, as originally conceived by the Pentagon, would have thrust further west after quickly taking Tchepone; would have "blocked" the major arteries of the Ho Chi Minh trail in an attempt to cut the "supply line jugular"; would have lasted until the end of the dry season, approximately May 1; and would have cleared new territory on the way out.

In execution, it did not extend west beyond Tchepone—which itself was taken two weeks later than anticipated only after massive B–52 strikes destroyed the area, annihilating any possible opposition. Some trails were disrupted for a brief period but the "jugular" was not even touched. And the operation ended far sooner than originally planned without clearing any new territory.

Such success as the South Vietnamese did have was achieved only with truly massive—I mean massive—American air support and with a substantial American ground and air presence across the border in South Vietnam to protect their rear.

As usual, enemy body counts and tons of supplies destroyed were wheeled out as indicators of success. But even this "limited success" in terms of enemy lives lost and supplies captured was offset by considerable South Vietnamese casualties, especially from several of their best units, and a memory of retreat that can only haunt the ARVN in the future.

The U.S. lost almost ⅛ of the helicopters involved, as well as tons of supplies.

The most that fairly can be said of Lam Son 719 is that South Vietnamese ground forces, aided by American air power and massive American ground backup across the border, held their own for a short period of time against North Vietnamese ground forces in Laos.

I believe it is too overdrawn to describe Lam Son 719 as a "debacle." But in terms of both its intended goals and achievements, it is indeed fair to describe it as basically a failure.

CAMBODIA

"In a very real sense, this is one war" said Ambassador Emory Swank as he briefed me on my arrival at Phom Penh, the capital city.

Until the fall of Prince Norodom Sihanouk on March 18, 1970, Cambodia, a country of 8,000,000 people equivalent in size to Missouri, had avoided becoming fully embroiled in the then-Vietnam War. Parts of the eastern border areas were occupied by the North Vietnamese as sanctuary areas. The port of Sihanoukville was extensively used, for profit, as a port of entry for communist supplies. But the shooting was elsewhere.

All this changed when Prince Sihanouk fell. Cambodia itself became a battleground.

Now, a year later, 55,000 North Vietnamese, assisted by approximately 10,000 indigenous Khmer Rouge (Cambodian communists), have virtually isolated the capital city.

An ill-trained and ill-equipped Cambodian army of 30,000 troops has grown to an ill-trained and ill-equipped army of 220,000. It is an army only in the loosest sense of the word.

A formerly favorable balance of trade is now a negative nightmare, with profitable rice and rubber exports down to zero. Inflation abounds and black markets have begun to emerge. Country-side refugees have inflated Phnom Penh from 800,000 to 1,800,000.

Still, the war in Cambodia is primarily a side show to the main attraction, the continuing war in South Vietnam.

It is "one war" now, covering the entirety of French Indochina. And yet, it is being fought differently in Cambodia.

South Vietnam has, until recently, been almost strictly an American show. Now, after nearly destroying the country our massive presence was meant to save, we have switched the emphasis to letting Asians fight for themselves.

In Cambodia, the United States seems determined not to stumble into another massive U.S. commitment like Vietnam. Quite properly, the emphasis is on supplying Cambodians to fight for themselves, not on fighting for them.

Despite its problems, Cambodia is lucky in some ways.

First, it is not the main target of the North Vietnamese; South Vietnam is. Currently the North Vietnamese want to use Cambodia, not rule it.

Second, the Cambodians have historically hated the Vietnamese, both North and South. And so there is some unity of spirit, some reason to fight.

Third, unlike the civil war in Vietnam, the enemy has little support among the populace and it is possible to physically tell friend from foe.

Currently, North and South Vietnamese are fighting in the Eastern Cambodian countryside—the former sanctuary area. Should the North Vietnamese decide to take Phonm Penh, its only possible salvation for the present is American air power and support from the South Vietnamese army. Even then the outcome would be in doubt. Luckily, thus far the North Vietnamese have not made that decision.

What Cambodia needs is time to train and build its army without the mistakes of Vietnamization. So far, that time has not been purchased by a massive American presence, and I was impressed by Ambassador Swank's determination that it will not be.

Last year I voted against additional U.S. military and economic aid to Cambodia because I feared it would be the opening wedge of a Vietnam-type U.S. commitment. This year I would support U.S. economic assistance, provided that the present hands-off direction of our policy in that country is continued.

If Cambodia can be put on its own feet, without increased dependence on U.S. advisers or troops, there is some small hope that it can restore the delicate balance with its more powerful neighbors which Prince Sihanouk maintained.

VIETNAM ELECTIONS

Nygen Van Thieu is the odds-on favorite to be re-elected President of South Vietnam next October.

President Thieu has at his disposal the services and power of the entire government. For example, all 44 of South Vietnam's province chiefs, who are essentially administrative warlords, hold office at his pleasure. And as President he not only makes news, he censors it as well.

He can use American economic assistance to avoid unpopular but needed monetary reforms.

He has the backing of American Ambassador Ellsworth Bunker. Bunker not only admires, respects and believes in Thieu, but can also furnish him covert help such as public opinion polls and the assurance that American advisers won't "rock the boat" by pursuing much needed but politically unpopular programs.

Further, Thieu in his own right is an accomplished politician. He knows where his power comes from—the United States government and his own Armed Forces. And he plays to both. He has traveled the length and breadth of his country. And he has shrewdly used the natural advantages of incumbency.

Finally, he should win because there is no one else who appears strong enough to beat him. Neutralists and communists are forbidden to run, as is anyone who advocates a "coalition." Complex Gilbert and Sullivan-type intrigues are all a divided opposition can generally mount, with predictable comic opera results.

General Big Minh, a possible opponent, is a maximum person physically and is a mini folk hero. But even his fervid admirers recognize him as a person with the decisiveness of Warren G. Harding and the administrative capacity of Ulysses S. Grant.

Some American interests would like him to run and may even help financially. They recognize that Thieu will win regardless, but would like to enhance his victory by having him triumph in a "credible and competitive" election.

The whole notion of Vietnamese elections has always troubled me. It is we, the United States, who are hung up about elections in Vietnam. We decided that this war-ravaged, backward country with no historical or current experience in the democratic process must be shaped in our image. Since we elect a President, so too must Vietnam, ready or not.

It salves our conscience. To some it gives surface credence to the argument that "we are fighting for freedom in South Vietnam."

Thus, the elections will be held and American "hawks" will point with pride to "freedom working at its very best," while American "doves" will point with anger to "corruption, rigging, intimidation" and all the rest.

The South Vietnamese will trudge to the polls and probably elect their only identifiable leader, Nygen Van Thieu. Some of the more astute South Vietnamese will smile wryly and wonder why the U.S. gets such a big charge out of South Vietnamese elections.

Hopefully and at best, the elections will give the South Vietnamese people some small sense of participating in their own affairs. Perhaps these elections will be seeds of a more democratic government in the future. But, for now, the practical effect on the government in South Vietnam will be slight.

CONCLUSION

Admittedly, it is difficult and risky to predict the future of Indochina.

I will, however, make the following observations, based on what I learned in a recent trip to South Vietnam and Cambodia.

Administration plans

On the basis of the briefings I received, I am convinced that President Nixon now plans to maintain a residual American force in Vietnam well beyond 1972.

Such a force would be charged with providing at least part of the close-in helicopter support and fighter air interdiction in Laos and Cambodia. Flying from bases outside of Vietnam, B–52's will continue to be called in for strategic bombing. U.S. technicians will continue to service and train the South Vietnamese as they continue to use our modern weapons of war.

Economic assistance will continue at or above the present level for years to come, for without it the South Vietnamese economy would collapse in a matter of weeks.

Despite some public expressions of confidence, the President's advisers are privately telling him that militarily the South Vietnamese cannot "hack it" on their own by the end of 1972

One major difficulty in this formula, I believe, is that the ever-growing domestic disenchantment over the war is so deep and so pervasive as to make such a residual force unacceptable through 1972 and beyond.

If a residual force is to be maintained, President Nixon must first be re-elected. Therefore, as of this point in time, I look for more withdrawals to satisfy public opinion, but with at least 50,000 U.S. soldiers left in Vietnam by election day.

Once re-elected, and unencumbered by the necessities of re-election, I would expect the President to do what he believes is necessary to ensure the survival of the present regime in South Vietnam.

North Vietnam's intentions

There is no indication that either North Vietnam's leaders or soldiers have lost their desire to continue to fight. This one fact stands out. Indeed it is the only thing on which journalists in Vietnam and military men seem to agree, and it is extremely important, especially when juxtaposed against our own war weariness.

The North Vietnamese well recognize the depth of American disillusionment over the war from the left and the more recent post-Calley disillusionment from the right; the volatility of the U.S. electoral process which begins in New Hampshire on March 14, less than 11 months away; and the influence of their actions on both American public opinion and U.S.

Therefore, I suspect that the North Vietnamese will stage something dramatic by the summer of 1972. This dramatic endeavor need not be as massive as TET '68. It might be an assault on Phnom Penh or perhaps even Vientiane. It might be several systematic assaults on American manned installations or a sweep through several "fire bases" or towns, in an attempt to exact sizeable American casualties. Or it might be a terrorist blitz in Saigon.

Whatever the mode, the intent will be to force the war back on the "front page" and at the same time force President Nixon to act.

An enemy offensive, depending on its nature, could force President Nixon to take escalatory action, send in U.S. troops or heavy air support, resume bombing of the North, or simply stop withdrawing soldiers. Or, far less likely, it could force him to totally withdraw Dunkirk-style.

Orderly withdrawal of all U.S. forces

I believe the United States could avoid this dilemma by announcing a fixed withdrawal date now, and tailoring our policies accordingly.

Could the South Vietnamese survive alone, with continuing U.S. economic and material aid, but without U.S. forces?

Quite honestly, no one can say with 100% certainty.

From what I gathered in Southeast Asia, the Pentagon would summarily rule out year-end 1971, view year-end 1972 as problematical, and year-end 1973 as risky.

In truth and in fact there is never going to be a time certain which will guarantee the survival of the Saigon regime. We can—and have—guaranteed that they will have the means to survive, if they can only muster the will.

If President Nixon requires a 100% military guarantee, we will never extricate ourselves from Vietnam.

So often in the past, military advice has been faulty—either overly optimistic, seeing "lights at the end of the tunnel," or overly pessimistic as when General Westmoreland requested another 200,000 U.S. troops in March of 1968.

More than military judgments must go into Presidential decisions on Vietnam. I believe the time has come for the President to exercise the immense power and prestige of his office and end United States involvement in Vietnam.

Hopefully, Richard Nixon will exercise Presidential leadership by setting an attainable and specific withdrawal date commensurate with the orderly and safe withdrawal of *all* American troops.

HONG KONG AND THE PING PONG THAW

Hong Kong, a teeming, active city of 4,000,000 on a tiny land space of 400 square miles (something like putting every Missourian in the City of Kansas City), is the home of the China watchers—those people who study and restudy, analyze and reanalyze Red China's every move.

The British colonial city is loaded with persons—diplomats, journalists, traders, bankers, industrialists—who make it their business to decipher China's tactics, policies, and intentions. There even is a small band of super-watchers who watch the watchers.

The unanimous opinion is that the two-decade-old Chinese deep freeze is beginning to thaw, slowly yet measurably.

Red China is very much coming of age diplomatically and no longer will it pursue a course of not-so-splendid isolation and international intransigence.

More and more non-communist nations are recognizing and dealing with Red China diplomatically—eight since Canada recognized China on October 13, 1970, among them Italy, Ethiopia, Chile, Nigeria and Kuwait.

The day I arrived in Hong Kong on my way back from Vietnam, the British-Chinese transoceanic telephone line was reopened after being closed for 21 years, and American newsmen were granted their long-sought travel visas.

More and more nations realize that Red China, consisting of 25% of the world's population, is not only here to stay, but is a vast source of potential in terms of international trade.

The Canton Trade Fair opened in China on April 16 with more than 3.000 foreign businessmen in attendance—the largest such group ever to assemble in Red China.

The much publicized, highly cordial visit of the U.S. Ping Pong team to China was followed by President Nixon's excellent announcement of somewhat freer travel and trade between the U.S. and China.

The President's announcement, especially as it related to trade, received enormous attention in Japanese circles. The word "trade" is almost synonymous with the word "Japanese." In trade with China the Japanese intend to be second to no one. Thus, it may not be too terribly long before Japan, in an effort to be among the first and friendliest, joins in recognizing Red China.

All this and more points to an unmistakable shift in Red Chinese foreign policy and in consequence, the foreign policy of other nations relating to Red China.

In such a climate of change, the United States position with respect to either recognition of China or the admission of Red China to the United Nations cannot and should not remain frozen in its 1950 Cold War mold.

President Nixon, having already taken significant steps in terms of normalizing relations between the U.S. and Red China, is in a strategic position.

He can take the vital, ultimate diplomatic step of supporting the admission of Red China to the U.N., perhaps assigning the Security Council seat to Red China, while permitting the "other contesting government of China on Formosa to retain its vote in the

General Assembly as well as one for Red China.

(Although not identical to, but analogous to, this is the position of the Soviet Union wherein the Ukraine and Byelorussia have individual votes in the General Assembly.)

This is the important and inevitable chapter yet to be written in an unfolding diplomatic and economic saga now passing through the phase of the Ping Pong Thaw.

In any event, Nixon has made a useful beginning with his freer trade announcement. In the words of an editorial from a leading Hong Kong daily (The South China Morning Post, April 17, 1971), "If immediate results are unlikely to be spectacular, on the long term he (Nixon) could go down in history as the President who began to lead America back to realism and sanity in its relations with China."

THE DECLINE OF THE NEW YORKER

Mr. ALLOTT. Mr. President, many persons have noted with disappointment and dismay that the New Yorker has decided to become the keeper of the American conscience. Many people have also noted that, on the basis of its recent performances, the magazine is manifestly unqualified for that role.

Recently the formerly splendid section called "Talk of the Town" has been given over to diatribes against the President's foreign policy and other favorite topics of what passes for conversation along the "radical chic" trail. This section—which once was gracious and lucid and witty—as now become grim, turgid, humorless, and confused.

I am delighted that Mr. Edwin A. Roberts, distinguished member of the staff of the National Observer, has written a spirited column on the decline of the New Yorker. He focuses on a recent New Yorker piece which hit what until now have been depths of confusion inaccessible even to the New Yorker.

So that all Senators may profit from Mr. Roberts' reasoning, I ask unanimous consent that his article be printed in the RECORD.

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

[From the National Observer, Apr. 19, 1971]

ARMAGEDDON AND VIETNAM: "THE NEW YORKER" ON U.S. "GUILT"

(By Edwin A. Roberts, Jr.)

For almost half a century The New Yorker magazine has been adding grace notes to American intellectual life. Its contents have been notable for perspicacity, composure, and artful whimsy. It has published more good fiction and more civilized analyses than any other periodical. Its appearance in the mailbox used to be quiet evidence that sanity and taste had somehow weathered another anxious week.

Then, not so long ago, The New Yorker decided to become "relevant." The magazine's famous opening section, The Talk of the Town, so long a place for pleasant or astringent essays on city life, became a political forum. It became an editorial page.

Perhaps the new policy reflects the problems the magazine has had with declining advertising lineage. Or perhaps the explanation lies with the hiring of young writers of the Now Generation. Whatever the reason, the personality of The New Yorker has changed, and The Talk of the Town has become the Department of Panic.

What most troubles long-time readers is not that The New Yorker is emphasizing humorless political comment. The cause for regret is that the quality of that comment is low. Gone is the old sense of balance. Where once the commentator's inferences were carefully extracted from the evidence, today the technique is to read doom into every crisis and transient problem.

The lead item in the magazine dated April 10 begins:

"The nation has reached a decisive moment. Regardless of what strategists may say about options and game plans in Indo-China, and regardless, even, of whatever ends are being pursued in this war, the nation's response to the massacre of hundreds of villagers at My Lai may determine whether the nation lives or dies."

The editorial goes on to say that the conviction of Lieutenant Calley has made general the feelings of moral anguish that have tormented the antiwar people for years. But The New Yorker has inferred—and implied—more than the facts will support.

Yes, the nation was horrified by the My Lai killings, especially by the killing of babies who, unlike women and old men, could not possibly have represented a threat to American soldiers whose guerrilla enemy wears no uniform or insignia. But it does not follow that this feeling of moral anguish describes the attitude of the American public toward the entire war.

The majority of Americans want the war to end, not because civilians have been killed by bombers, gunships, and infantrymen—civilians are always extremely vulnerable in war, especially guerrilla war—but because they no longer believe a non-Communist South Vietnam is worth the price. And they calculate that price in terms of dead allied soldiers as well as dead civilians.

The United States was mistaken in entering the war. But that mistake was the result of noble, not important, intent. It has been the aim of the Government to subdue the Viet Cong, push back the invaders from the north, and give the people of South Vietnam a chance to experiment with their own concepts of democracy. The American people know that it was never the purpose of intervention to ravage South Vietnam as it has been ravaged. Nor was the style of combat decreed in Washington or Saigon. The methods of the enemy established the nature of the battle.

The New Yorker continues:

"Everyone has had to ask himself, in effect, whether the crimes committed at My Lai were isolated atrocities in a just war or whether they represented the essential nature of what we were and are doing in and to Indo-China. Each of us has had to ask himself just how deeply implicated he himself is, by his actions or his inaction, in murder. If Calley is guilty, who is not guilty?

"Yet a democratic nation, even if it finds itself mired in crime, can redeem itself. Even if its crimes are unforgivable, it has—because it is a democracy—a chance to retrieve its honor. It can acknowledge what it has done, admit responsibility, and set itself on a different course."

Such observations spring from an unseasoned mind. The notion of collective guilt is childish. Calley and perhaps some other tragically erring soldiers are surely guilty. But the officers who judged and sentenced the lieutenant, many of them combat veterans, are not guilty. The Army that arrested and tried Calley is not guilty. The U.S. Government is not guilty, and the American people are not guilty.

If the New Yorker wants to feel guilty, that is The New Yorker's business. But it is an attitude unworthy of a magazine that became famous by not trifling with the intelligence of its readers. Even the widespread and utterly misplaced sympathy expressed toward Calley does not mean Americans fail to recognize the My Lai slaughter for the horror it was. To suggest that because of the war and because of My Lai, the United States "finds itself mired in crime" is absurd. Mired in one part of the world in political error, yes. Mired in one part of the world in military error, perhaps. But mired in crime, no.

After several paragraphs of agony about America's problem with domestic spies as (a situation well exposed), about assaults on freedom of the press (the press has never been more outspoken, and that includes CBS), and about other controversial matters, The New Yorker concludes its broadside this way:

"Now the conviction of Lieutenant Calley seems to have shocked the country in some new way and awakened it out of a long sleep. We seem to have been given another chance—possibly our last chance—to regain our soul."

I am reassured, slightly, that the magazine does not come right out and say next stop perdition, although it hardly seems optimistic about our prospects for redemption. The whole melancholy analysis rings of juvenility, of that neurotic intellectual provincialism that one runs across on campus quadrangles.

It is an error, a particularly odious one, to damn an entire society for the misdeeds of a few, no matter how repugnant those misdeeds may be. Such comment insults and grossly wrongs the millions of Americans who, in numberless ways, are working to improve the life and character of the nation.

We must be jealous of our morality and our freedom, and we must deal deliberately with individuals or groups who would damage them. But we are not a nation mired in crime, we are not a nation near death, we are not a nation that deserves anything approaching despair.

Your friends are worried about you, Eustace. Get well soon.

PROGRESS IN VIETNAMIZATION

Mr. McGEE. Mr. President, there has been some criticism lately of the U.S. Information Agency for the role it is allegedly playing in promoting the current Saigon Government to the South Vietnamese people of the eve of that country's national elections. There have been suggestions by others that President Nixon should initiate a policy of strict neutrality in these elections.

I would point out it is no small matter that the United States is winding down its participation in the war in South Vietnam. American troops are being withdrawn in substantial numbers each month. All this can be largely attributed to the policy of Vietnamization being undertaken by the President—a policy which allows the current Saigon government to continue taking over a larger burden in fighting this war. To ignore this fact is to ignore the past 15 years which are now a matter of record.

Self-determination is a principle which I hope this country will never cease to dedicate its energies and efforts in promoting. But this principle can only succeed where circumstances allow it to take root and grow. This can be accomplished only through the absence of external or internal hinderances.

It is a fact of life today that South Vietnam is not free of these hinderances. It is, therefore, in the interest of this Government, particularly the interest of our continued disengagement from the

conflict, that we build up the Thieu regime and advance its political interests.

It is evident that under present circumstances self-determination and Vietnamization do not go hand in hand. We can hardly expect the current Saigon government to take over the war effort while at the same time we work for its defeat in the upcoming elections. It is a contradiction beyond understanding.

I would ask what chance self-determination of the South Vietnamese people would have in the future should we promote opposition to Thieu in the upcoming elections. If the opposition could not bring a strong regime to the bargaining table with the enemy, prospects for survival are almost nil. If this would be the case, I submit to Senators that our continued withdrawal would not promote the survival of a government replacing Thieu.

It might mean an end to Vietnamization and our continued presence in South Vietnam might be required to insure the survival of a new government. We have a choice, and I think the choice is clear. We have to continue lending all the support within our capabilities to insure that Thieu's position is continually strengthened. It is only in this manner that we can continue withdrawing from the conflict.

In concluding my remarks, I would hasten to add that it is important the conflict is first resolved before self-determination can play a role in South Vietnamese politics and stand a chance of surviving. To do otherwise would prolong the day indefinitely when the South Vietnamese people would have a voice in shaping their destiny.

URGENT NEED FOR A CURE FOR CANCER

Mr. BEALL. Mr. President, recently a young man just 17 years of age, named Mark Ewell Causey, a resident of my State, died of cancer. The courage that Mark demonstrated during his struggle against this dread disease will not be forgotten by all of those who knew him.

Cancer is the No. 2 cause of death in this country, and by the end of this year it will have claimed more than 340,000 Americans. The battle against cancer has moved ahead on several fronts during the past several year. But the progress has been painfully slow and uncoordinated to date.

In the past, our country has made great commitments which, at the time they were made, seemed almost unobtainable. Commitments such as the construction of the Panama Canal, the development of the atomic bomb, the landing of men on the moon, and many others have impressed the whole world with America's ability to achieve great goals. I believe that today we should make a similar kind of commitment toward finding a cure for cancer.

Mr. President, Mark Causey has shown us the type of courage and determination we need to make such a commitment. I ask unanimous consent that the following editorial tribute published in the Carroll County Times of April 8, 1971, be printed in the RECORD.

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

MARK CAUSEY: EXAMPLE NOT TO BE FORGOTTEN

Mark Ewell Causey was 17 years old when he died, and though it seems incredible in a man so young, he made a name and reputation for himself in Carroll county that most of us will not attain in a lifetime.

Part of it was his courage. His fortitude after being stricken with cancer, his cheerfulness and natural optimism after losing one leg, his drive in earning school athletic letters even with this handicap, serves as an example that will not be forgotten.

He had of course much more than courage. A natural leader, Mark seemed to inspire respect and confidence among all who met him. He had the grace of persons naturally endowed with superior ability. In meetings with him, one was never asked, subtly or outright, to bow to his will. He had great talent, but he also had humility.

His record of achievement both in the academic and athletic fields at Westminster High School testify to his unusual ability. He was president of his class for three years, he won letters in football, basketball and track. He was a member of the National Honor Society. He was made Honorary Captain of the All Star Football Team named by a Western Maryland College newspaper.

He was voted by the senior class as Best Leader, having served every year since the third grade as a student council representative and president of his class during his last three years. He maintained a high scholastic average and was active in school clubs. A member of Grace Lutheran Church, he served as an acolyte, usher and sang in the Junior Choir.

He was one of a very few in Westminster High School's history to make the Varsity basketball squad his sophomore year. He still holds the Carroll county discus and shot put records for the ninth grade. In 1971 he became the first member of his class to earn three varsity sports records.

These silent records, silent because they do not speak of his character or stamina, nonetheless will endure. They are the traces of a human being who, perhaps more than any other high-schooler now on the scene, inspired his colleagues with respect and love.

His death is one of those stunning experiences that seem to defy reason. Many years ago, President John F. Kennedy lost his older brother Joseph in a World War Two airplane accident. Joseph had been the destined leader of the Kennedy's, and his death seemed to rent violently the fabric of the future president's life. He wrote:

"It is the realization that the future held the promise of great accomplishments for Joseph that has made his death so particularly hard for those who knew him. His worldly success was so assured and inevitable that his death seems to have cut into the natural order of things."

It can be said of Mark Causey that his death seemed to have "cut into the natural order of things."

ADDRESS BY WEST VIRGINIA SECRETARY OF STATE JOHN D. ROCKEFELLER IV

Mr. MONDALE. Mr. President, last Saturday evening, Minnesotans were privileged to hear one of America's truly remarkable young public leaders, John D. Rockefeller IV, the secretary of state of West Virginia.

Speaking before the largest Jefferson-Jackson Day dinner in Minnesota's history, Jay Rockefeller inspired his audience with a brilliant moving, and compassionate address which I would like to share with Senators.

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

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

STATEMENT OF JOHN D. ROCKEFELLER IV

This may come as news to some of you but my family is sort of Republican. I'm the white sheep of the family.

I have this Uncle, you see, in New York. In politics. He's a Republican. I have another Uncle in Arkansas who *was* in politics. He's a Republican. Even my wife can trace back certain Republican ties.

So I suppose it would have been natural for me to be a Republican. But a funny think happened on my way to the voting registrar. I became a Democrat. And I'll tell you why.

I had worked with the Peace Corps. That was under a Democratic administration. I had worked in a coal mining community in West Virginia, in the War on Poverty, another Democratic program. Where people were hurting, or forgotten, the Democrats were trying to reach through to them. A growing economy took care of most of us. But for those it failed, the Democrats looked back, reached back, to help. That struck me as right, decent. For the most part, the Democrats have always been that way. I came out of those experiences a Democrat and I like it that way.

It was the Peace Corps that attracted me to Government. It was brand new. Just like a lot of other things were brand new back in 1961. There was a sense of exhilaration and somehow there was an expanded vision of what we felt we could accomplish in America. Almost anything, if desirable, seemed possible. Leadership can do that. The leadership of that moment was infectious not only to young people, but to thousands of Americans who were inspired by the spirit and high purpose of that Democratic administration.

I'm sure it was much the same in the thirties, during those exciting New Deal days, when a president refused to be overwhelmed by the gloom of a great depression, a president who reached out to Americans, who gave hope to people.

But I can only speak for 1961. It was an exciting time to be in government. Many were surprised at the electric response Peace Corps received from young people all over the country. But they shouldn't have been. This was the first time a president had told young people they had something to contribute, that they were important, that they were needed. Young people wanted to work for that challenge. Remember the drive for voting rights? They wanted that challenge, too. Thousands of them went to the south and tried to help. They had found a cause. They felt right. They felt on the move. Our blood coursed with a sense of our potential.

In fact President Kennedy challenged all of us—in almost every area of our society. New programs, people-oriented programs, innovative programs, were being talked about and funded and staffed. Idealism and personal involvement were not mere catchwords or rhetoric—the highest office in the land held these out to all Americans as goals. We were somehow bigger people, bigger in spirit, bigger in outlook, bigger in our aspirations to do better, greater in our compassion.

A Democratic administration did that. I have always believed that the highest offices in our land, the President and Vice President, Republican or Democrat, have a duty, a responsibility, to do that—to inspire the best that is in us, to encourage compassion and generosity in us.

Some administrations do it better than others.

The present administration is the first in our modern history to do it not at all.

Where is the moral leadership we expect of the White House?

Where are the *people* programs of this administration?

We Democrats believe with Thomas Jefferson "the care of human life and happiness is the first and only legitimate object of good government."

"The care of human life . . ."

I don't have to tell you here in Minneapolis about the programs of life which our party has fought for—collective bargaining, workmen's compensation, social security, minimum wage, equal employment opportunity, federal aid to education, medicare, voting rights, model cities, Peace Corps, VISTA, the Job Corps.

That list reads like Hubert Humphrey's report card.

Democrats care about people.

What programs to help people can the Republicans claim?

They're perfectly willing to subsidize mismanaged companies that go bankrupt. But never *people* bankrupt of opportunity.

Look at Penn Central . . . and Job Corps.

Penn Central is a classic of Republican concern. The railroad's efficiency gave rise to many stories like this one: That Penn Central is offering its employees a new retirement plan. You have a choice. You can retire when you reach 30 years . . . or Trenton. Whichever comes first.

That typifies Penn Central. Yet, the administration's heart bled for that mismanaged, bankrupt company.

But Job Corps was another story.

When this Republican administration looked at Job Corps, they didn't see human beings. They saw dollars. One of the early, so-called "economies" of this administration was to close down over half of the Job Corps centers. At a time when we needed to encourage the poor to work and to help themselves, this administration slammed the door on job-training and on opportunity.

Many of our party's programs and attempts to help people have had only partial success. Some have failed.

But we tried. And will continue to try. Rather than despair at problems that seem insoluble, or at efforts that fall short of aspirations, recall the words of Franklin Roosevelt in his Second Inaugural Address:

"Governments can err . . ." said Roosevelt. "Presidents do make mistakes. But the immortal Dante tells us that Divine Justice weighs the sins of the cold blooded; and the sins of the warm hearted, on different scales. Better the occasional faults of a government living in the spirit of charity, than the consistent omissions of a government frozen in the ice of its own indifference."

To me, those words say volumes about the Democratic Party. When Roosevelt made that statement, there was some question about the great American experiment. Some said it was about to fail. His words and his leadership gave it new life.

Today, we find the experiment in trouble again. Everywhere you find a frustration, an uneasiness, that the system isn't working. A good friend of mine started a magazine on that very premise—to report *why* the system isn't responding well enough, or fast enough. He attracted an immediate audience of concerned readers and contributors and last month that magazine—the Washington Monthly—won a George Polk Award for outstanding public service.

The surprising response to John Gardner's Common Cause is another indicator. As you know, Common Cause is a citizen lobby aimed at restructuring our institutions. It wants to revitalize Congress. It is not a political party, it has no jobs to offer, it isn't trying to elect anybody. Yet, in six months it signed up over 130,000 members. When 130,000 people are willing to lay out 15 bucks each to shake up the government, that's significant.

People want something more from this system of ours than what they're getting.

They want more from their politcal parties.

As Democrats, we can take pride in the accomplishments of the New Deal, of the New Frontier, of the Great Society. But with the 18-year-old vote, there's a whole new generation coming into the electorate. And that generation asks *not* what you have done for the country, but what you are *going* to do.

Most of all, our people want a sense of national purpose.

This confusion and aimless spinning about deflates people. I think it's one reason we have so much bitterness and polarization—blacks against whites, students against workers. People in pursuit of a common goal forget personal differences.

In 1976 our country will be 200 years old. But who in government is talking about national purpose, or the needed new institutions, for the next 200 years? All they talk about is where to hold the celebration—in Boston or Philadelhsia.

There is a malaise, the sense that the Republic is drifting out to sea without a rudder.

The Republicans claim they have "cooled off" the cities. That they have lowered voices. That there now is a tranquility in the land.

And I suspect all they have done is cool off the hopes and expectations of millions of needy, desperate Americans.

They have lowered the voices of concern and compassion.

They speak of legal minimums, not human maximums.

The country may be quieter, but the smolderings run deeper.

I think it's fair to say there is one characteristic of recent Republican administrations:

They put us to sleep.

They bore us to death.

Twice before in recent history, our party has returned to power after similar seizures of the national spirit, after the "icy indifference" of Republican administrations lulled our people into an intellectual and spiritual coma.

The party of Franklin Roosevelt did it in 1932.

The party of John Kennedy did it in 1960.

The courage of those men, their resourcefulness and daring, revitalized a nation.

If we are to be worthy of them, we can do no less in 1972.

FIVE HUNDRED AND TWENTIETH ANNIVERSARY OF BIRTH OF QUEEN ISABELLA OF SPAIN

Mr. SPARKMAN. Mr. President, April 22 marked the 520th anniversary of the birth of Queen Isabella of Spain. The Governor of Alabama proclaimed this day as Queen Isabella Day in Alabama, and it was so observed. I ask unanimous consent that the text of the Governor's proclamation be printed in the RECORD.

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

PROCLAMATION

Whereas, the enthusiasm and support of a single ruler led to the discovery of America and the resounding affect this discovery had upon the history of the world; and

Whereas, this great ruler, Queen Isabella of Castile, was the sole backer of Christopher Columbus, whose proposed expedition to the New World was contrary to the 15th century concept of the world; and

Whereas, the shrewd intuition of Queen Isabella, as well as the financial support and risk taken by Her Majesty on behalf of Spain, was responsible for uncovering the unknown riches of the Western Hemisphere; and

Whereas, the history of America has direct linkage to the birth of Queen Isabella on April 22, 1451:

Now, Therefore, I, George C. Wallace, Governor of the State of Alabama, do hereby proclaim Thursday, April 22, 1971, Queen Isabella Day in Alabama and urge all citizens to honor this Spanish Queen who was solely responsible for America's Discovery.

FAIR CREDIT REPORTING ACT NOW EFFECTIVE

Mr. PROXMIRE. Mr. President, yesterday marked the day that the Fair Credit Reporting Act became law. The bill was enacted on October 26, 1970, by the 91st Congress as a part of Public Law 91–508. Its effective date was set as 180 days after enactment.

I wish to draw attention to the Fair Credit Reporting Act because I believe it will be of great help to the consumers of the United States.

Many publications have already printed articles explaining the act. Some of them I have with me today. I ask unanimous consent that they be printed in the RECORD.

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

[From the American Banker, Apr. 9, 1971]

FAIR CREDIT REPORTING ACT SHOULD BENEFIT CREDIT GRANTERS, CONSUMERS

(NOTE.—The Fair Credit Reporting Act, which becomes effective April 25, should produce a decided benefit for credit granters as well as consumers, according to James A. Ambrose, secretary-treasurer of the International Consumer Credit Association. Addressing the spring conference of the Wisconsin Installment Bankers Association in Milwaukee, Mr. Ambrose noted that "the quality of a credit decision is only as good as the information it is based upon.")

During the 91st Congress, Sen. William Proxmire, D., Wis., proposed legislation to "enable consumers to protect themselves against arbitrary, erroneous and malicious credit information." On July 31, 1969, he introduced S. 823, which he entitled the Fair Credit Reporting Act and which was passed by Congress on Oct. 26, 1970.

This new law will become effective on April 25, 1971. It has been designated as Title VI of the Federal Consumer Credit Protection Act. It adds 22 new sections to a very complicated law. But it is not complicated itself. Except for a few spots, the meaning is clear enough.

Reduced to its bare essentials, the Fair Credit Reporting Act states specifically:

1. Who can lawfully use a credit report;

2. What types of information a consumer reporting agency may not report;

3. What disclosures the issuers and users of consumer reports are obligated to make to consumers and when they must be made;

4. What procedures must be followed when a consumer disputes the accuracy of information in a reporting agency's file;

5. What the penalties are for noncompliance, and

6. Which Federal agencies are responsible for enforcement, and which creditors each is responsible for policing.

Through its provisions, the law places certain responsibilities on all those who either

issue or use reports on consumers in connection with the approval of credit, insurance, or employment, or for other legitimate business and governmental purposes. In addition, it confers certain rights on consumers who are the subject of reports; limits the use and content of consumer reports; and provides for civil liability and criminal penalties for willful noncompliance by users or issuers of consumer reports.

Unlike the federal Truth in Lending Act, which followed a stormy course in Congress for nearly a decade, the Fair Credit Reporting Act was passed with a surprising degree of industry cooperation.

Unlike the Federal Truth-in-Lending Act, it involves a minimum of red tape for creditors and other users of reports. And, generally speaking, it conforms to industry guidelines which were adopted at least a year earlier by the Associated Credit Bureaus, Inc., the international trade association for consumer credit reporting agencies.

And unlike the Truth-in-Lending Act, administration of the Fair Credit Reporting Act by Federal agencies is limited to enforcement. There will be no unceasing rule-making and interpretation, as is the case with Regulation Z.

However, for bankers, small loan companies and some other creditors, the law has a special problem. Under it, it is possible for a consumer credit granter or other customary user of consumer reports to fall within the law's definition of a "consumer reporting agency." Consequently, several definitions included in this new law are extremely important in discussing compliance.

The first definition states that, for the purposes of the law, the word "person" means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity. As you can see from this definition, the law wanders far from the credit scene, even into the investigation of heirs under estates and trusts and other aspects of bank management.

Another very important and very complicated definition is the one for "consumer report." It says that this term means:

1. Any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, perconal characteristics, or mode of living which is used, or expected to be used, or collected, in whole or in part, for the purpose of serving as a factor in establishing the consumer's eligibility for (a) credit or insurance to be used primarily for personal, family or household purposes; or (b) employment purposes, or (c) other authorized business, governmental or other purposes specified in Section 604. I will discuss this section later.

The definition further states that the term "consumer report" does not include:

1. Any report containing information solely as to transactions or experiences between the consumer and the person making a report:

2. Any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device, or

3. Any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys his decision with respect to such a request.

In such cases, a report is not a "consumer report" only if the third party advises the consumer of the name and address of the person to whom the request was made, and such person makes the disclosures to the consumer required under Section 615. I will clarify this through later discussion.

Now to go back over this definition, it is quite clear that Congress intended to regard a "consumer report" as any of the character described which does not fall under one of the three exceptions. So let's take a closer look at them.

The first says that a communication of so-called "ledger" information between a credit granter and a reporting agency is not in itself a "consumer report." The same would seem to apply to a communication between a credit granter and another creditor or other similar second party, but not when the information is passed on to someone else. Thus, A gives information to B who passes it on to C. The communication between A and B is not a "consumer report," but the communication between B and C may be one. This is very important to remember if you customarily provide information through what is generally known in the industry as a "direct inquiry."

The implication here is fairly clear that credit granters who provide information through direct inquiries to other creditors may be regarded as "consumer reporting agencies" under the law, and thus subject to all of the provisions applying specifically to such agencies.

The second exception makes it clear that any request for authorization in a credit card program and the resulting approval or denial of such authorization would not be considered as a "consumer report," even though information on the consumer is being imparted to a third party.

The third type of exception would apply to communications between a seller and a third-party financing agency. Typical instances of this would be in automobile credit and home mortgage loans.

For example, if a bank would provide information to an auto dealer or to a real estate agency advising that it cannot approve a consumer's application for a loan and the reasons why, this type of communication would not be a "consumer report" if the auto dealer or real estate firm discloses directly to the customer involved:

1. The name and address of the bank which refused the credit; and

2. The name and address of the "consumer reporting agency" or other information required under Section 615(b).

Consequently, it should be clear here that banks and time sales finance companies are going to have to make sure that the dealers with whom they do business make these disclosures. It would seem to me that the easy way to do this would be to require that a copy of the disclosures be provided by the dealer to the financing source.

Please note that at this point, the law does not exempt from the definition of "consumer report" information transmitted between departments of a bank, between branches of a bank, or between branches of a department store, hotel chain or like chain business, except where the communication is a response to a request for a credit card authorization.

The law makes it quite clear that when a credit granter gives information routinely to a credit bureau or in response to a specific request from a credit bureau, the communication is not a "consumer report." But information routinely imparted elsewhere or provided on direct inquiry, even within a corporation itself, may be regarded under the law as a "consumer report." But as I stated before, "consumer reports" under the law are issued only by "consumer reporting agencies," which will be defined and discussed later.

The next term which is defined in the Fair Credit Reporting Act is what the law calls an "investigative consumer report." Generally speaking, it is one based in whole or in part on subjective information, and it is used more frequently in evaluating consumers for insurance and employment purposes than in granting consumer credit. According to the Associated Credit Bureaus, Inc., most of its members do not issue such reports.

Specifically, the law says that an "investigative consumer report" is a consumer report or portion thereof in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on, or with others with whom he is acquainted or who may have knowledge concerning such items of information.

The definition goes on to say that, however, such information shall not include specific factual information on a consumer's credit record obtained directly through a creditor of the consumer or from a consumer reporting agency when such information was obtained directly from a creditor of the consumer or from the consumer himself.

The term "investigative consumer report" is important, as we will see later, because special disclosures must be made by users of this type of consumer report.

This then brings us to what is perhaps the most difficult definition in the new law. It says that the term "consumer reporting agency" means any persons who, for monetary fees, dues or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

Let's examine this definition critically. Key phrases are: 1) monetary fees, dues, or on a cooperative nonprofit basis; 2) regularly engages and 3) uses any means or faculty of interstate commerce. All three elements are essential in the determination of who or what is a consumer reporting agency under the law. The absence of any one element takes the providing of credit information outside the definition.

Obviously, the definition includes your local credit bureau and other reporting agencies which issue consumer reports as a business. But it is not limited to these. If the shoe fits, it can include:

1) Lenders exchanges and creditors' trade associations and local clubs which are financed through dues or on some other nonprofit basis;

2) Blue books, red books and other publications and lists of credit ratings which are sold or are provided as part of subscriber fees or as a service in return for dues in an organization;

3) Groups of two or more creditors who agree to provide information to one another without charge on a regular basis;

4) Correspondent banks and affiliated business relationships where an agreement for interchange or exchange of credit information is a part of the business relationship; or

5) Specialized, negative credit information reporting services, such as those which serve the direct mail field and other areas of credit.

What then would seem to be excluded? The answer would be those exchanges or interchanges of credit information which do not meet the requirements of the three key phrases. In my view, these are:

1) Direct inquiries, so long as there is no agreement among the persons involved to exchange information. This would not only include the case where creditor A gives information to creditor B for his use, but also where B subsequently reports this information to creditor C.

2) Credit information between departments of a bank, between branches or with unaffiliated banks, between stores in a retail chain, between hotels in a chain, or other such similar situations.

As I have pointed out, the law says that consumer reports are those issued by consumer reporting agencies. Therefore, any

credit information passed on to another party by a creditor would not be a consumer report unless the operation is covered by all three criteria for consumer reporting agencies.

Section 602 of the Fair Credit Reporting Act sets out the findings and purpose of Congress. It states quite clearly that the intention is to regulate consumer reporting agencies. Consequently, the law regulates creditors and other users of consumer reports only so far as is necessary and pertinent to the regulation of consumer reporting agencies.

This is made clear repeatedly in various provisions of the law, in particular in Section 604 on permissible purposes of reports. It says that a consumer reporting agency may furnish a consumer report under the following circumstances and to other:

1) In response to an order of an appropriate court.

2) In accordance with the written instructions of the consumer to whom it relates.

3) To a person which it has reason to believe:

a) Intends to use the information in connection with a credit transaction involving the consumer who is the subject of the report in connection with an extension of credit or review or collection of his account;

b) Intends to use the information for employment purposes;

c) Intends to use it in connection with underwriting of insurance;

d) Intends to use it in connection with determination of eligibility for a license or benefit granted by a governmental agency, when the law requires such investigation of eligibility, or

e) Otherwise has a legitimate business need for the information in connection with a business transaction involving the consumer.

Section 607 requires consumer reporting agencies to maintain reasonable procedures to avoid violation of Section 605. These procedures require that users of information identify themselves, certify the purposes for which information is sought, and certify that it will be used for no other purpose. Section 607 goes on to require reporting agencies to make a reasonable effort to verify the identity of prospective users. And it forbids them from issuing a report when there is reasonable grounds for believing that a report will not be used for a purpose listed in Section 604.

You will note that in discussing this section, it permits a reporting agency to issue a report in accordance with written instructions of the consumer to whom it relates. Thus, this provision makes it permissible for a reporting agency to issue a report for any purpose provided that it is done in accordance with written instructions of the consumer.

In addition, from Section 604 and 607, it is clear that credit bureaus and other reporting agencies are going to want to protect themselves by requiring contracts from all users, and the casual user of credit reports may incur a delay in service unless he obtains permission in writing from the consumer to obtain a report, and presents this to the bureau at the time he requests the report. Some bureaus may even make this mandatory on lawyers, private detectives and others who use their services, but who are not engaged in credit granting.

Credit bureaus have always attempted to protect the confidentiality of file information from intruders, but the law gave them no help. Now under Section 619 of the Fair Credit Reporting Act, any person who knowingly and willfully obtains information under false pretenses may be fined up to $5,000 or imprisoned up to a year. These same penalties are provided in Section 620 to officers or employees of reporting agenciese who knowingly and willfully provide unauthorized reports.

The Fair Credit Reporting Act places restrictions on the release of obsolete or unsupportable information by consumer reporting agencies, places special obligations on them when reports are issued for employment purposes, and requires periodic reverification of information upon reissuance of information in an investigate report. The law also provides for disclosure of file information by reporting agencies to consumers, and procedures to be followed where the accuracy of information is disputed.

I am not going to go into these provisions of the law, because this discussion is limited to creditor compliance. However, the requirements placed on consumer reporting agencies will have a bearing on the rules of use and agreements which bureaus will require from credit granters.

For instance, some bureaus are going to want to be advised of creditor compliance with Sections 606 and 615, perhaps through receipt of copies of writings delivered to consumers to provide required disclosures.

Section 606 sets out disclosure requirements for procurers and users of investigative consumer reports. It says that a person may not procure or cause to be prepared an investigative report on any consumer unless:

1) A clear and accurate written disclosure is made to the consumer that an investigative report is being sought;

2) The written disclosure specifically states that the report will include information on the consumer's character, or general reputation, or personal characteristics, or mode of living, whichever is applicable:

3) The written disclosure is mailed or otherwise delivered to the consumer no later than three days after the report was requested, and

4) The disclosure includes a statement informing the consumer of his right to request an additional disclosure which must be made only upon receipt of a written request. This statement is not required in a case where the consumer has not specifically applied for employment.

Under Section 606, when the consumer has received the first required disclosures and makes a written request within a reasonable length of time, he must be provided with a complete and accurate written disclosure of the nature and scope of the investigation requested. This must be mailed or delivered to him not later than five days after receipt of his request or the date that the report was first requested, whichever is later.

Although the law does not require record keeping as a matter of compliance with Section 606, I recommend that records of these disclosures to consumers be kept for at least two years.

I make the same recommendation with regard to Section 615, which sets out the requirements on users of consumer reports, and which therefore, from the credit granter's standpoint, is the most important section of the law. It has three provisions, which are as follows:

a) Whenever credit or insurance for personal, family, or household purposes, or employment involving a consumer is denied, or the charge for such credit or insurance is increased either wholly or partly because of information contained in a consumer report from a consumer reporting agency, the user of the consumer report shall so advise the consumer against whom such adverse action has been taken and supply the name and address of the consumer reporting agency making the report.

b) Whenever credit for personal, family, or household purposes involving a consumer is denied or the charge for such credit is increased either wholly or partly because of information obtained from a person other than a consumer reporting agency bearing upon the consumer's credit worthiness, credit standing credit capacity, character, general reputation, personal characteristics, or mode of living, the user of such information shall, within a reasonable period of time, upon the consumer's written request for the reasons for such adverse action received within sixty days after learning of such adverse action, disclose the nature of the information to the consumer. The user of such information shall clearly and accurately disclose to the consumer his right to make such a written request at the time such adverse action is communicated to the consumer.

c) No person shall be held liable for any violation of this section if he shows by a preponderance of evidence that at the time of the alleged violation he maintained reasonable procedures to assure compliance with the provisions of subsections (a) and (b).

Now let's go back over these first two provisions of Section 615 to take a closer look at them and what they mean.

Subsection (a) says in effect that, any time you deny credit or increase the charge to the consumer in either case as a result of information provided in a credit report, you must do two things. First, you must tell the consumer that your denial or increased charge resulted from a credit report. And second, you must give the consumer the name and address of the reporting agency.

Three things are particularly notable here. You must do this even if there is no adverse information in the credit report, such as a case where credit would be denied because the creditor feels that additional debt will overload the consumer. Second, the law does not require that the disclosures be made in writing. And third, since there is no time provided, it can be presumed that the disclosures must be made at the time the consumer is informed that credit is denied or that it is being extended at an increased rate.

The fact that Subsection (a) does not relate only to adverse credit report information makes it clear that Congress had a purpose in mind. The idea, it seems to me, is to let the consumer know that a credit report was used and where it is filed. We all know that many consumers are not aware they are the subjects of credit bureau files.

I recommended that the required disclosures be made in writing as a self-protection for the credit granter. But I also foresee that some credit bureaus will probably require in their service contracts that they be notified whenever disclosures are made to a consumer under Section 615. They will want to protect themselves from the possibility of the irate consumer who comes charging to the bureau before the bureau is aware that the consumer has been turned down for credit.

The intent of Congress in the Fair Credit Reporting Act to assist consumers in protecting themselves against arbitrary, erroneous or malicious credit information from sources other than consumer reporting agencies is expressed in Section 615 (b).

It covers denials of credit and increased charges which result from information obtained not only on "direct inquiry," but any other third party source except consumer reporting agencies, including the consumer's references.

Under Subsection (b), when such information results in a denial of credit or an increase in charge for it, the creditor must at the time he communicates his adverse action to the consumer clearly and accurately disclose to the consumer that he has a right to an explanation of the reasons for the adverse action, and that it must be provided upon written request received within sixty days from the date of notice.

When the consumer exercises his right by filing a written request within the time limit, the creditor must disclose the nature

of the information which resulted in a denial of credit or an increased charge. But there is no obligation to disclose the source.

The Fair Credit Reporting Act allows consumers to bring civil suits against either consumer reporting agencies or users of information. For willful non-compliance, the consumer can win actual damages, punitive damages, court costs and recovery of reasonable attorney's fees. For grossly negligent noncompliance, he can win only actual damages, court costs and reasonable attorney's fees.

The Fair Credit Reporting Act assigns enforcement of compliance to a number of Federal agencies. For instance, the Comptroller of Currency is responsible for national banks, the Federal Reserve Board for state banks which are members of the Federal Reserve System, the Federal Deposit Insurance Corp. for insured state banks which are not Federal Reserve System members and the Federal Trade Commission for other banks.

Consumer reporting agencies, retailers and lenders who are not regulated by other Federal agencies come under the jurisdiction of the Federal Trade Commission, which can exercise all of its powers under the FTC Act to enforce compliance. Other Federal agencies with enforcement authority are authorized to use powers under appropriate Federal statutes.

In conclusion, I would like to point out that there appears to have been no punitive intent on the part of Congress when it enacted the Fair Credit Reporting Act.

Hopefully, the law should produce a decided benefit for credit granters as well as consumers. As all of us know, the quality of a credit decision is only as good as the information it is based upon. If the Fair Credit Reporting Act results in better quality credit reports, the entire consumer credit industry will receive great benefits.

[From The Machinist, Apr. 8, 1971]

YOUR CREDIT RATING

(By Sidney Margolius)

A frequent injustice against moderate-income consumers will be at least partly corrected when the Fair Credit Reporting Act goes into effect April 25.

The threat that "your credit will be ruined" has long been used by bill collectors to pressure debtors into paying even bills that were unfairly incurred and against which they may have had legal defenses. Inaccurate or out-of-date credit reports also sometimes have led to denials of credit by the more conservative lenders and stores, forcing moderate-income families to go to high-rate loan companies and high-priced "easy credit" dealers.

Even whether you can get auto insurance at normal rates may be decided by what your file at the credit bureau says about you. As shown by Congressional testimony, sometimes even just hearsay, comments by neighbors or prejudiced observations by credit investigators have kept car owners from getting insurance.

But wage-earners have long had another fear of credit reports. Employers use them too, in hiring and in exchanging information. The "confidential" information a worker gives his employer may wind up in the files of the local credit bureau. This data can follow you even when you move. The information is exchanged among credit bureaus in various towns.

One labor union, in Vancouver, recently adopted a resolution recommending that a "protection of privacy" clause be inserted into contracts requiring employers to keep personnel records confidential and not to divulge information unless the inquirer gets the written consent of the worker.

The main protection provided by the new Fair Credit Reporting law is that credit bureaus now must disclose your credit record to you upon request. There is no fee for the review if you have been denied credit, insurance or employment because of a bad credit report of if you have received a notice from the credit bureau's collection department. The dealer, lender, insuror or employer involved must tell you so and give you the name and address of the credit agency from which they got the adverse information.

You don't have to wait until you have been turned down to review your credit file, *although in this case you do have to pay a fee.* On presentation of proper identification, a credit bureau which issues a report about you must show all information in your file and tell you where it got the information. The bureau also is required to tell you the names of those who have received employment reports about you within the past two years and who have received credit reports about you within the past six months.

The fee for a voluntary review—the one you can request even if not turned down because of a bad report—is an unfortunate loophole. The new law allows a credit bureau to make "a reasonable charge" *plus* an additional fee no higher than it charges its own customers for furnishing statements.

How much will this be? The manager of one of the largest credit bureaus told me that while rates have not yet been set, the bureau usually charges stores and lenders $3 for an ordinary report involving special investigation. If there are many requests from consumers who have not been denied credit but want to see what's in their file, there may have to be an additional charge, perhaps $2, for a total of $5.

Here are facts you ought to know to make use of the new law:

How do you make arrangements? If you want to find out about your record, you can visit your local credit bureaus and provide proper identification. You can bring someone with you in addition to your husband or wife. You also can make a written request for a phone interview, if you can be properly identified over the phone and pay any long-distance charges.

How do you correct an error? Your file usually includes marital status, present employment, income, and personal history such as records of arrests, suits, etc. Bankruptcies are reported for 14 years, suits and judgments for seven years or until the statute of limitations has expired (whichever is longer). Wage-earner plans; paid tax liens; collection accounts; records of arrests, indictments, convictions and similar information also may be reported for seven years.

The bureau will re-investigate any item you question. If it is found inaccurate or can no longer be verified, it will be deleted. If the investigation does not settle the issue you are allowed to file a brief statement telling your side. It will be included in future reports on you.

Who can get a report on you? A bureau can give a credit report on you if it is to be used to consider you for credit, employment or other business purposes such as a lease or investment, or to review or collect your account.

Insurance companies also make what are called "investigative reports" consisting of information on what they judge to be your "character," reputation, personal characteristics or "mode of living." This information usually is gathered through interviews with neighbors, associates and employers.

Credit bureaus usually don't compile this type of report for ordinary credit-grant purposes but may for employment reports. They may get quite a lot of information on you for this purpose, including reports from former employers. This situation can sometimes put a workingman in a difficult spot in which he may want to see what's in his credit bureau file, and find it preferable not to volunteer any unessential information to employers or investigators.

[From The Baltimore Sun., Apr. 13, 1971]

CREDIT DATA CURBS TO START APRIL 25

(By Anne S. Philbin)

New federal curbs on how the nation's credit industry uses the data it has on nearly every adult American will go into effect April 25.

The Fair Credit Reporting Act passed by Congress last fall restricts, for the first time, the purposes for which credit reports may be used. The act also limits the time by which information is considered obsolete and must be deleted from a file, though there are important exceptions.

Consumers will also have the right to know what's in their file except for medical information. If they dispute the accuracy of any information they can request reinvestigation and verification.

INVESTIGATIONS

Another important provision of the act covers "investigative" reports, the kind where a credit agency interviews your neighbors, personal friends and acquaintances for information to sell to your prospective creditors.

"When a creditor, individual or company, asks for this kind of report," said Norman Polovoy, assistant attorney general and chief, consumer protection division, "the agency must notify the consumer within three days of his rights of disclosure.

"If the consumer wants a copy of the report, the agency must give the nature and substance of it in writing within five days after it receives the consumer's request.

"This part of the new law," he added, "gives a consumer the novel prospect of being told what many people have suspected for years: big brother is compiling a credit report on his status, character, reputation, mode of living and other things."

RECIPIENTS LIMITED

Mr. Polovoy said the new law restricts consumer reporting agencies as to whom they may furnish reports.

"Information can be released only to the consumer himself, to an agency's client considering employing, insuring, or engaging in a legitimate business transaction with the consumer, or in response to a court order," he said.

As to obsolete information in a consumer's credit file, Mr. Polovoy said no credit agency may make any consumer report containing any of the following information:

1. Bankruptcies more than 14 years old;

2. Suits and judgments seven years old or until the governing statute of limitations has expired, whichever period is longer;

3. Any of the following which antedate the report by more than seven years: paid tax liens, records of arrest, indictment, or conviction of a crime which from date of disposition, release or parole, antedate the report by more than seven years, or any other adverse information more than seven years old.

SOME EXCEPTIONS

But there are some important exceptions to those provisions.

"There is no time limit imposed on information in consumers' files about credit or life insurance transactions involving $50,000 or more.

"Also excepted is information on an individual's employment at an annual salary of $20,000 or more," Mr. Polovoy noted.

Should a consumer dispute the accuracy of a credit agency's file on him, the law sets up machinery giving him the right to state his own version.

"The law says that unless a credit agency has 'reasonable grounds' to believe the consumer's dispute is frivolous or irrelevant, the agency must reinvestigate the dispute in-

formation and record the current status of it.

"If the reinvestigation shows the information was inaccurate or cannot be verified, the agency must delete such information promptly," Mr. Polovoy said.

And at the consumer's request, the agency must give notice of the deletion to all persons receiving the report in the previous six months or in the previous two years, if the inquiry was for employment.

Mr. Polovoy said that if the consumer disputes the findings of the reinvestigation he is entitled to the insertion of a 100-word statement in his file, giving his side of the story in any future report made by the agency.

Under the new law, the consumer has 30 days from the time he receives word of a bad credit report to go to the credit agency and have its required services supplied without charge.

REASONABLE FEE

And if he just wishes to know what's in his file, he may, for a "reasonable fee," ask to see it upon properly identifying himself.

Mr. Polovoy said he believes the Fair Credit Reporting Act of 1970 is an "excellent piece of legislation in the great tradition of disclosure and the American concept of fair play.

"In essence, this new law says 'I have the right to find out why you say I'm wrong.' It helps the consumer determine why he was rejected for credit and gives him an opportunity to refute it."

[From the Lorain (Ohio) Journal, Mar. 21, 1971]

CREDIT BUREAUS

(By Dave Rothman)

If anybody around town pays his bills regularly, it had better be J. Ed Uland, the husky, back-slapping executive director of the Greater Lorain Chamber of Commerce.

But do merchants know of Uland's correct credit credentials?

There's been quite a lot of publicity lately about credit bureaus getting folks files mixed up and confusing good business risks with deadbeats.

So, at The Journal's request, Uland dropped by the Credit Bureau of Lorain, located in a converted house at 314 9th St., Lorain.

He asked for his record's contents as a new federal law will entitle the public to do effective April 25, although the Lorain credit bureau for many years has let people know about their own files.

The bureau's supervisor, Mrs. W. B. Rozich, a very businesslike redhead, pulled out a manila folder with the following information:

Uland's name. Present and past addresses. Where he works. His wife's name. The number of children. His age. Where he has had loans or credit dealings. Whether he had filed for bankruptcy, had been sued for a debt, had a tax lien filed against him or whether a bill collector had a professional interest in him. And most important: how much he owes, who he owes it to and whether he's a fast payer or a deadbeat.

Ed Uland couldn't read this information himself. It was written out in a special code.

But Mrs. Rozich told him that his record was clean.

Other people might not show up as well.

Thousands of files contain information that could destroy an individual's reputation. This information in some instances includes criminal records, mention of divorces and even, according to one source, some references to paternity suits.

There are also other facts in many people's files that could be used to investigate entire lives—facts such as military service information and where people attended school.

In addition, some credit bureaus reportedly collect heresay information about people's characters and reputations from their neighbors although the Lorain bureau denies doing this.

Not surprisingly, when April 25 rolls around and more people know about the new law, Mrs. Rozich expects "an onslaught" of folks coming in to check their files.

She says it might even be necessary to make appointments in advance.

Right now, Mrs. Rozich doesn't expect that you'll be able to hold the record in your hands.

"Somebody with a bad record could destroy it with a rip."

But you're supposed to be able to learn everything that a businessman checking your file would hear about.

If you've been turned down for credit within the last 30 days, however, the bureau—as in the past—won't charge for pulling out your file and advising you.

However, people checking their files just out of curiosity will have to pay a small fee as they do now.

Mrs. Rozich says she doesn't know exactly what the fee will be after the new law goes into effect although the legislation does permit a fee.

Here are some other aspects of the 1970 Fair Credit Reporting Act:

—The Credit bureau cannot report bankruptcies to its customers if the action is more than 14 years old. On suits and arrests and some other information, the limit is seven years.

—Government agencies will be limited to the kind of facts they can obtain without a court order. This includes name, address, former addresses and past and present places of employment.

—People asking for investigative reports must notify the folks investigated.

Although not fully familiar with the new law at present, Mrs. Rozich calls it "very fair to all, the credit bureau, the people and the business people."

She'd like to think of herself as fair and scrupulous even now, however.

People seeking information from the Credit Bureau, for instance, must give code numbers indicating themselves as bureau members before the bureau will release it to them.

Mrs. Rozich won't disclose the cost of bureau membership. She says it varies and the most of the businesses in the Lorain trading area belong.

(Among other cities, the trading area includes: Lorain, Amherst, South Amherst, Sheffield Lake, Sheffield, Avon, Avon Lake, Vermilion, Birmingham.)

Once the code numbers are given—or once a nonmember presents the proper credentials in person to show he wants the information for a legitimate purpose—the Lorain credit bureau reads off various businesses' opinions of somebody's credit.

Here are some ways the ratings are given: "better than as agreed" (paid off ahead of time, "as agreed" (pays off on time), "a little slow" and "very slow."

The ratings come from individual merchants—identified by trade (such as "furniture store") rather than by name.

The credit bureau itself doesn't supply over-all ratings.

According to one credit bureau user, however, the ladies giving out the information are only human, and sometimes laugh. Mrs. Rozich say they do this because the other person's telling a joke. According to her, the women discuss bad credit risks in "a very businesslike manner."

Who seeks the credit information?

Banks. Loan companies. Department stores. Furniture stores. And lots of other people including doctors who use the bureau to find out whether patients have paid bills.

When government investigators make their infrequent requests, Mrs. Rozich, says, the bureau checks identification papers and phones the government agencies if there's any suspicion.

She claims she doesn't know of the credit bureau ever letting information fall into the wrong hands.

Not only is the data code, but 75 percent is locked up in metal cabinets.

Mrs. Rozich says that any bureau employes caught releasing information to the wrong people would be dismissed.

"This is a very confidential business."

Mrs. Rozich claims the bureau doesn't release all the information it has on people.

"Unless we believe it's pertinent to what a man is doing"—such as applying for a security job—"we don't" give criminal records out, says Mrs. Rozich.

According to her, the Lorain credit bureau doesn't investigate, say, whether you fight with your wife.

It checks only rarely with neighbors, she says, and the phone calls concern mostly routine things like whether you're actually living at such-and-such an address.

Credit bureau people have reported, however, that some loan companies and some insurance investigators are asking "nosy questions" over the telephone in the bureau's name.

Mrs. Rozich suggests requesting the "credit bureau employe's" "operator's number" and phoning the credit bureau back if you have doubts about the caller's identity.

In denying that the bureau invades privacy, she says that newspaper clippings of births, weddings, deaths and other events are kept mainly to assist in identifying applicants.

For instance, Mrs. Rozich says, wedding clippings not only can furnish a name of the groom's wife and parents, but often where he works.

Mrs. Rozich claims precautions are so effective that an error occurs during "only one out of every 20,000 calls" in which the bureau gives out information.

She does admit, however, that credit bureau information can be a year or two behind—at least, say, when somebody hasn't been checked up on credit in a long time.

Mrs. Rozich says the bureau tries to furnish the dates the information was collected.

Some people have complained that the bureau isn't checking up on the outcome of law suits, for instance.

A credit bureau user replies that he's interested even in the fact that somebody may have been sued for collection of a debt.

Mrs. Rozich herself says the bureau updates your files . . .

She also says that if you hesitated to pay a bill because of dissatisfaction with merchandise, you can send the bureau an explanatory letter for its files.

Here is the situation at other area credit bureaus:

NORWALK

Credit Bureau of Norwalk Inc. owner D. O. Woodward will not only let people see their own files for free but will explain how their credit history is written out.

"I" stands for installment. "I1" means "as agreed." "I2" means one payment behind. "I3" means two payments behind.

Some of the people looking at their files give him trouble at times.

"One guy threatened to beat the hell out of me," he recalls, "and I told the girl if he started pounding to call the police."

Woodward says he tries to be objective, however. "I might hate a guy's guts but I won't tinker with his credit rating. You'd lay yourself open to a law suit."

He reports his bureau has 20,000 files. It serves Norwalk, Monroeville, North Fairfield, New London, Wakeman and Collins.

Woodward says he works with public documents—not hearsay.

According to him, he won't snoop on you through your neighbors.

His bureau should not be confused with a firm called the Retail Credit Company, says Woodward.

According to Jim Bronder, supervisor of the Norwalk office of the Retail Credit Company, the firm's name is "a little misleading" since the company is "primarily engaged in insurance inspection work."

However, Bronder says that when investigating somebody for an insurance company, Retail Credit lets people know that its main business is insurance investigation and that it isn't a regular credit bureau.

Retail Credit does handle some credit work, though, he reports.

"We've been in business since 1899 and we have no qualms about speaking to anybody who thinks an error has been made in their report," says Bronder.

The credit and insurance reports are filed out of town, so if you want to discuss them with Bronder, you should call in advance.

Bronder says information gathered for insurance companies, such as drinking habits, isn't available to users of Retail Credit's credit service.

Across the country, Retail Credit maintains 48 million files on individuals and businesses. In Oakland, Calif., an insurance broker has been awarded $290,000 in damages involving a background investigation report which Retail Credit admitted was based on false information.

ELYRIA

Manager Robert Meitzke of the Elyria Credit Bureau says that if you make an appointment and drop by, the bureau will tell you everything in your life. "We've been operating under these rules for the last three years at least." The bureau also serves North Ridgeville, Grafton, LaGrange and Columbia Station.

OBERLIN

Joe Molesky, manager of the credit bureau there for ten years, says people can learn about their files after paying a $2.50 charge. One employee said "The FBI comes in quite often." Molesky himself says the FBI drops by but that it really doesn't visit that regularly. He did not reveal the purpose of their visits.

The FBI and other bureau users will find information if any about criminal records. Molesky says that "a person's character" and an individual's "honesty" are relevant information.

The bureau serves Oberlin and Wellington.

SANDUSKY

Manager J. Robert Hanlon of the Credit Bureau of Erie County Inc. says the bureau lets people learn about their files. The bureau is considering charging fee for such a service.

He says he doesn't know of any information getting into unauthorized hands and claims that the bureau's files are accurate.

This credit bureau serves Erie County except for Birmingham and Vermilion.

[From The Washington Evening Star]

YOUR MONEY'S WORTH—HERE ARE NEW CREDIT RIGHTS

(By Sylvia Porter)

One week from today a great new array of defenses against credit status abuses by credit rating bureaus, credit reporting agencies, credit granters goes into effect. As of next Monday you will, among other things, be able to:

1. Obtain, upon request and proper identification, from any consumer reporting agency which issues a report on you disclosure of all the information in your credit file—including the sources of that information.

2. Get the names of all who have received from any consumer reporting agency employment reports on you within the past two years and the names of all others who have received credit reports about you within the past six months.

3. Arrange for a reinvestigation of any item about you which you question.

4. Have that item deleted from the record if the reinvestigation finds it to be inaccurate or if the item can no longer be verified.

5. File a statement of about 100 words reporting your side of the story if the reinvestigation does not settle the matter—so that your side will be included in any future reports containing the item.

6. See to it, if an item is deleted or a statement added to your file, that the credit bureau informs those who have received employment reports about you within the past two years or regular credit reports about you in the past six months.

7. Get your record and a review without charge if in the past 30 days you have been denied credit because of a credit report from a credit bureau or received a notice from a collection department affiliated with the credit bureau. And under the same circumstances, have previous recipients of information about you notified without charge if an item is deleted or a statement from you is added . . .

These are extraordinarily valuable new rights. They come under the Fair Credit Reporting Act, signed into law last October and effective April 25.

Do not casually shrug off the potential significance of this law. Dossiers on practically every adult are in the files of the 2,500 credit bureaus across the land and of huge numbers of local merchants' associations. Included in these dossiers are facts on jobs, incomes, marital status, associations, personal histories and habits—and gossip too.

The bureaus freely exchange this information. They sell it to retailers, banks, other lenders, credit card companies, corporations—and a credit report almost surely will be issued on you when you apply for a job or insurance or credit.

The consumer credit reporting industry processes from 125 to 150 million credit reports each year. Just one computerized credit reporting company—TRW Credit Data, the largest, founded in Detroit in 1930—says it maintains 30 million files, enters four million "pieces of information" on individuals each month, services 14,000 subscribers and maintains on some individuals as many as 35 to 40 open accounts on which credit performance is reported.

The possibilities for abuse are unending. Yet, prior to this law, we had hardly any way to protect our financial standing and perhaps even our personal reputation.

Now, though, you will have the right under the law to obtain information—except medical—in your file and its sources. The law also forbids bureaus to send out adverse information which is more than seven years old, although bankruptcies may be reported for 14 years, and there are no time limits on information on you if you apply for a loan or insurance policy of $50,000 or more or apply for a job with a salary of $20,000 or more.

There are weaknesses in the law—particularly involving enforcement—but it is an indisputable advance.

Learn your new rights. Use them to the fullest for your protection.

HAWAII READING CLINIC

Mr. FONG. Mr. President, published in the April 1971 edition of American Education, the publication of the U.S. Department of Health, Education, and Welfare, Office of Education, is an excellently written, finely illustrated article on a reading clinic at Hilo, Hawaii's second largest city.

I am proud that attention has been drawn to a young but successful program which is supported by funds provided under title I of the Elementary and Secondary Education Act, supplemented by State money. I believe it is a project which should be instituted in all of our communities, and I hope that other States will follow in the steps of Hawaii.

In order that the article, written by Thomas Kaser of the Honolulu Advertiser, may receive wider attention, I ask unanimous consent that the text be printed in the RECORD.

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

HILO READS WITH ALOHA SPIRIT

(By Thomas Kaser)

Tacked on a wall in the Hilo Reading Clinic, on the island of Hawaii, is a quotation from the 18th-century English writer Jonanthan Swift: "When I am reading a book, it seems to be alive and talking to me."

Literary quotations are not exactly a part of the everyday life of youngsters on the "Big Island," as the largest of the Hawaiian Islands is called, and neither is reading. According to achievement tests administered by the State Department of Education, Big Island students are poorer readers than most youngsters in the continental United States and in the State of Hawaii itself, especially Honolulu.

But the Hilo (pronounced Heé-lo) Reading Clinic has been chipping away at the problem and in its two and one-half years of operation has made a remarkably favorable impression on parents and educators. Study teams from other Hawaiian islands have visited the clinic to learn how they might establish one in their own districts. Parents drop by to express their thanks for the improvement and increased confidence they have noticed in their children. Teachers who referred students to the clinic say they notice considerable attitudinal changes after the students finish their clinical experience. Says one teacher: "One of my girls, Jennifer, is a new person. Before, she was always dejected, one failure experience after another. She came back from the clinic wholly changed. She is now a visible member of the class, not afraid to participate, and I'd say she has been saved from a lifetime of being a poor reader."

Attitudinal changes, which usually beget scholastic changes, are usually apparent both in the classroom and at the clinic. All three clinicians remember Kimo, a burly sixth-grader who came to the clinic a year and a half ago shrouding his reading deficiency in a "rough and tough" image. His walk and his dress were unusually slovenly; the clear implication in his attitude was that reading is for sissies and he didn't have to improve his reading.

Then the clinicians went to work on him. They found he liked to play games, and he developed a love for competition. Before long they had him playing reading games and striving to beat himself at reading without the aid of any external stimulus. Now at his Hilo intermediate school he is often seen reading paperbacks.

Four years ago Laurence Capellas, the Big Island's secondary curriculum specialist, saw an opportunity to upgrade his district's efforts to help students with reading problems. "What we needed," he recalls, "was an injection of expertise." He saw that funds available under title I of the Elementary and Secondary Education Act offered a chance to bring the needed expertise to Hilo.

Capellas went to California in early 1968

to observe several remedial reading projects funded by title I, and he was particularly impressed with the reading clinic at Montebello in suburban Los Angeles. Convinced that such an operation was the answer to a significant number of the Big Island's reading problems, he borrowed Edward Sarkisian, one of the Montebello clinicians, to help set up a reading clinic serving 11 elementary and intermediate schools around Hilo, the Big Island's capital city.

Capellas also hired four consultants to conduct, with Sarkisian, a four-week workshop in Hilo that summer for 18 Big Island reading teachers who today serve as inschool coordinators for the clinic. Each Big Island principal selected one teacher who had displayed the most interest in wanting to learn how to diagnose reading problems effectively, how to deal with such problems, and how to select the most helpful teaching materials and equipment. State and title I funds became available for the Hilo Reading Clinic to begin operation with the 1968–69 school year with Sarkisian as director and three of the 18 summer workshop participations as clinicians.

Reading progress scores verify the effectiveness of the Hilo Reading Clinic. In the clinic's first year, the average gain was 2.8 months of progress for each month that its 59 students (average IQ: 94) attended. "If an expected gain of one month is accepted as normal," said the clinic's summary report for that year, "the gain would be 1.8 months above expectancy for each month of attendance. Yet because learners with the kinds of deficiencies treated at the clinic seldom achieve at a rate of 1.0 per month, the overall average gain of 2.8 per month is more significant."

The clinic's second-year results were even more impressive. The average gain was 3.35 months for each school month spent at the clinic—again, a conservative evaluation considering that the clinic's students seldom achieve at a standard evaluation rate of 1.0 per month in a regular classroom setting. The reason, ironically, is that although Hawaii is the antithesis of a ghetto environment, it has a social atmosphere that is hardly conducive to reading and speech development.

That atmosphere might be called, simply, the Hawaiian way of life. It is friendly. It is fun. It is easy-going and, understandably, outdoor-oriented. Big Island youngsters are great fishermen, swimmers, singers, and athletes, but reading, unfortunately, is not as integral a part of their cultural landscape. Although the enclosing outside world is demanding a more literate population, rural Hawaii retains much of the simple life it has known for centuries. The blue ocean, luaus, and baseball fields are still far more popular than libraries and reading rooms.

Yet, in another way Hawaii is just like Houston or Hoboken in that the same elements produce a nonreader. A child in Hawaii who is never read to, never encouraged to read, never urged to practice sounds of the written language, will end up with the same reading deficiencies that are bred anywhere on the mainland. And Hawaii, with a higher percentage of working mothers than any other State, has its share of neglected children. Hence, reading is a problem, and so is speech.

English, of course, is the language of modern Hawaii, but "pidgin" English is commonly used by most native-born Hawaiians. Although educators used to stigmatize pidgin, the dialect is now accepted—and even encouraged—as necessary to local identity. But the fact remains that language in Hawaii is still more spoken than written, and the result is a larger number of poor readers—at least by national standards.

Much of the clinic's total effort is directed at poor readers from Hilo's heavily Hawaiian Keaukaha (Kay'-ow-ka-ha) district near the Hilo Airport. Although many Keaukaha students come from a family background that does not take reading seriously, they have other advantages—willingness, responsiveness, friendliness, and a basic ability to learn from clinical instruction.

"Our students are poor in anything having to do with language," says Catherine Macken, a young sixth-grade teacher at Keaukaha. "Some of this is due to an indifferent attitude in the home, some is due to a lack of exposure to good language models, and some is due to the Hawaiian way of speaking English. For example, it is more common to say 'sit' rather than 'sit down in the chair.' This style of speech is not to be disparaged, but it does curtail expressiveness."

PRIORITIES FOR HELPING

Because of its relatively small size, the Hilo Reading Clinic is not able to accept all Hilo-area students who need help, and the selection process poses problems for everyone. To fill one vacancy, should a coordinator in a school recommend an average-ability student who would probably make more progress, or a low-ability student—perhaps a physically impaired slow learner—to whom progress would mean reading the most basic of sentences?

After consulting with the principal on such matters, the reading coordinator in each school ranks her referral candidates each May according to priority. The students are bused to the reading clinic and given a series of tests to determine the nature and severity of their individual reading problems. The clinic staff then makes the final selection on the basis of growth potential, and those not selected are placed on a waiting list.

Each clinician works with three students at a time through six periods a day, four days a week. On the fifth day two of the three clinicians conduct followup consultations with teachers who have referred students to the clinic; the third clinician conducts two remedial reading programs—one for problem learners, the other for college-bound slow readers—in Hilo's only public high school.

Each clinician works in such a way that each of her three students receive individualized instruction. Two youngsters may pore over a phonics reading book while the third talks softly in an adjacent cubicle with the clinician who is searching for the cause of his reading difficulty.

"Jimmy, do you have any books in your home?" asks the clinician.

"No books," Jimmy answers.

"Does your father or your mother read anything to you?"

"My father is working, and my mother works too. They are very busy."

"Does your older sister ever read to you?"

"No. I don't like to read, anyway."

"What do you like to do?"

"I like to fish, to play baseball. I like to go camping."

"Would you like to learn how to read well?" Jimmy pauses and then answers, "Yes."

"Do you like to play games with words?"

Jimmy doesn't answer and the clinician continues, "Would you like to try?"

"Yes."

Like Jimmy's last answer, the counseling is slow and deliberate. Often it assumes a more personal approach, dealing with social or family problems that might be retarding the student's reading development. The counseling may continue for weeks at a time until the clinician feels the student is ready for accelerated remedial reading exercises.

Other clinic activities are more enjoyable for the children. While Jimmy answers questions, nine-year-old Raymond uses a flashcard machine in another room. He inserts the flashcard, hears a recording of the word on it, then says the word himself. Now the flashcard reverses in the machine and a recording of his utterance of the word is played back. Raymond sees the word, hears the word, pronounces the word, and hears himself saying the word before moving on to the next flashcard.

In the next room, three fourth-graders play "Go Fish," one of the clinic's numerous reading games. One deals cards with letters expressing different sounds. Then each takes a turn asking the others for cards by making the sound of the letter on the card wanted, for example, by making a "d" sound and using it in an example—"dog." Three cards of the same sound make a book, and whoever has the most books at the end of the period wins the game.

The Hilo clinicians admit they are stumped by some students with severe reading disabilities, and this year the clinic began referring some students for consultations with a Honolulu neurologist who visits the Big Island once a month.

"The biggest challenge for all of us," says Ellen Watanabe, one of the clinicians, "is the 11 to 17 percent of our students who display only marginal progress after receiving remedial help. They have a happy home life, plenty of encouragement from their parents, no personality problems, normal vision and hearing, and they attend the clinic regularly. Yet, something is standing in the way, something we can't discover."

These students are the exception, and many Hilo area teachers value the clinic because it makes reading fun for students who have not previously associated it with pleasure and success. Says one teacher: "There is a certain advantage in having a problem reader go away from the school environment where he has always striven to keep up with his class. Getting away from school, riding the bus, receiving personalized instruction and counseling, using the machines, and playing reading games—it all provides a new framework for overcoming the problem."

Jean Wence, a third-grade teacher at the Kapiolani School, says most of her referrals to the clinic usually have no real motivation and little, if any, academic encouragement from home. "The clinic has performed no miracles, and we don't expect it to," she says. "But I've found that returning students generally have more confidence and are more responsive, more willing to try things, more motivated, and aware of far more words than they were before. On second thought—considering what kind of students I referred to the clinic—that is a miracle."

At Hilo's Waiakea Intermediate School, May Kitagawa has noticed that students she sent to the clinic returned with a marked tendency to want to read orally in class. She said a year's introduction at the clinic turned one reticent, unwilling seventh-grader into one of the most active volunteer readers in her class. Pauline Chillingworth, who teaches English at the school, says that the clinic is so esteemed by parents that one couple in a rural area drive their son to Waiakea each day so he can be eligible to attend the reading clinic.

"He was far behind the other students when he first began attending Waiakea and his attitude was poor," says Mrs. Chillingworth. "His improvement has been heartening to all of us. Other students I have sent to the clinic have even begun picking up paperbacks on our display rack. When that happens, it makes up for all those days when progress seems hopeless."

Some observers of the Hilo Reading Clinic have attributed its success to what is called in Hawaii "aloha spirit." It isn't easily defined but is often described as something akin to teamwork, friendliness, patience, and, especially, cooperation. Capellas is grateful for the relatively free rein he was given in organizing the clinic; the clinicians value the freedom they have in using new ideas and methods to deal with problem readers.

OTHER ISLANDS BECKON

Sarkisian is now working in a new reading clinic in his district. He has, however, made consulting trips to the islands this year, especially to other districts in Hawaii that want to establish something like the Hilo clinic.

"As far as I'm concerned, the Hilo people are the best I've ever encountered," he says. "They're warm, they're extremely conscious of their work, and they are exceptionally cooperative. No reading clinic can effectively operate without at least a part of their zeal, their commitment, their aloha spirit."

THE STRATEGIC BALANCE AND THE FUTURE OF FREEDOM—ADDRESS BY SENATOR JACKSON

Mr. RIBICOFF. Mr. President, the distinguished Senator from Washington (Mr. JACKSON) recently addressed the American Society of Newspaper Editors on the subject "The Strategic Balance and the Future of Freedom."

Whatever views one may have on the adequacy of our Nation's strategic posture and the current arms control negotiations, Senator JACKSON's remarks are an important addition to the discussion surrounding this vital subject. They should be read by all who share his active interest in our defense policies.

I ask unanimous consent that the text of Senator JACKSON's speech be printed in the RECORD.

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

THE STRATEGIC BALANCE AND THE FUTURE OF FREEDOM

(By Senator HENRY M. JACKSON)

For more than two decades a central objective of American defense policy has been to prevent a nuclear war by deterring any potential adversary from launching a first strike against us. In accord with this policy we have foresworn development of a capacity to wage preemptive war. We have deliberately sought a defensive, deterrent, second-strike posture—relying on a protected nuclear capacity to launch an overwhelming retaliatory strike against a nuclear aggressor. We have built a mix of strategic forces—land-based and sea-based—so that the exposure of any one element to neutralization or destruction would not negate the entire deterrent. We wanted to permit no doubt as to the certainty and severity of our response in the event that an attack against us should be contemplated—or made.

I believe the American people today are confident that the United States is overwhelmingly superior in military power. Most Americans believe that the military balance leans heavily in our favor, and that in strategic nuclear weapons we have unchallenged supremacy.

Unfortunately what was once true is no longer so. The United States is slipping. The overall strategic balance is tilting in favor of Moscow.

Our deterrent force is only as persuasive as its ability to survive a first strike in sufficient numbers, and to respond effectively. But the capacity of our strategic force to survive is now coming into question. The relentless Soviet strategic and naval buildup poses a serious threat not to just one, but to all three of the elements of our strategic deterrent—ICBMs, bombers and Polaris/Poseidon.

This adverse shift in the strategic equation can hardly help having far-reaching effects upon world politics. A more confident Soviet Union can be expected to throw its weight around more vigorously on behalf of its great power interests, and to raise its bargaining price at the negotiating table. Thus new elements of risk and turbulence will be introduced into international relations, enhancing the dangers in crisis situations.

If present trends continue the Soviets will achieve a preponderance of strategic power that will leave our security impaired by doubt and uncertainty and our friends and allies exposed and vulnerable. If present trends continue there will be an increasing risk of miscalculation of the sort that could result in war.

Facing this prospect, the prime question is: What does the United States do about it?

Some may urge that we move to an immediate offensive build-up of our own. Even some opponents of our protective defense systems—like the ABM—suggest a better alternative is more offensive systems—like Minuteman or ULMS. But this is a prescription for heating up the costly, offensive arms competition, not cooling it down.

Other people are saying that we should accept the Soviet proposal at the SALT talks for an "ABMs only" agreement. But this would tie our defensive hand while permitting Moscow to continue deploying mammoth offensive missiles—the very weapons that could be aimed at destroying our capacity to strike back.

To counter the dangerous shift in the strategic balance we require first a forthright and unvarnished assessment of some unpalatable military and political facts. Caught in all the current cross fire about "hawks" and "doves" too many politicians are acquiring the protective habits of the ostrich.

The hard fact is that if we are not to be pushed into a whole new build-up of strategic offensive weapons then we must give our most urgent attention to two priorities:

(1) The protection of our deterrent forces, and

(2) The achievement of an arms control agreement on offensive and defensive nuclear systems that will stabilize the strategic balance and not upset it further in Moscow's favor.

THE CHANGING STRATEGIC EQUATION

In the space of five years—from 1966 to 1971—the overall strategic balance has moved markedly in favor of the Soviet Union.

In 1966 we had more than 700 long-range bombers, about 600 submarine launched ballistic-missiles, and more than 900 Minuteman intercontinental ballistic-missiles. At that time the Soviets had about 150 long-range bombers, less than 100 SLBMs, and about 250 ICBMs.

Today the United States bomber force is less than 600, our sub-launched missiles have numbered 656 for four years, and our land-based missiles have totaled 1054 for four years. During this time the Soviet bomber force has remained about constant, but their submarine missile force has grown to almost 400 launchers and is expected to overtake ours in two to three years. And the Soviet land-based intercontinental force has risen to over 1440 operational launchers—with more on the way.

Thus while the Soviets are gaining and will soon exceed us in missile weaponry at sea, we have already fallen distinctly behind them on land.

Over this same period the actual destructive power of the U.S. forces has been continually decreased, while the Soviets' destructive power has greatly increased until the total megatonnage that the Soviets could deliver against U.S. targets is several times our own.

The only strategic area in which we are staying ahead is in the number of individual war heads and we are doing that only by going to small-yield multiples. Even here, however, the Soviets could in time overtake us since their missile forces have considerably greater payload capacity than ours.

The United States has been relying on a mix of strategic forces—ICBMs, bombers, and Polaris/Poseidon missiles—in order to maintain confidence in our strategic deterrent and to assure against it being neutralized or destroyed. A mix provides insurance that a technological breakthrough against any one element would not negate the entire deterrent, and gives protection against serious failures of performance of any one element due to unexpected circumstances, such as unanticipated weapons effects or insufficient prior warning.

But the Soviets are increasing their capacity to pose a serious threat not to just one but to all three elements of our strategic force.

Threat to ICBM Minuteman Force: We have watched the number of Soviet ICBMs climb steadily since 1966, in spite of four years of American restraint: our total ICBMs is 1054 compared to the Soviet total of over 1440, which includes 300 of the mammoth 25 megaton SS–9s now operational or under construction.

Most recently, there is the disturbing evidence of Soviet construction of a new offensive missile system equal and perhaps superior to the SS–9 capability. We do not yet know exactly what the new system is, but we know it involves missiles not less destructive than the 25 megaton SS–9 and it could mean missiles that are far more destructive than the SS–9. Moreover, the Russians have an ability to deploy between 60 and 70 of these huge new missiles this year. And if they do deploy 70 of the new missiles they would be adding in this one year alone more megatonnage (or destructive power) than the United States has in its entire land-based Minuteman ICBM system.

Since the SS–9 has characteristics that could be well adapted to destroy hardened missile silos in a first strike, but is not at all an efficient weapon for retaliation against cities, one is tempted to conclude that the Soviets are not really committed to deterrence only. For the purpose of retaliation the Soviets have available more than 900 SS–11 and SS–13 missiles similar to our Minuteman and perfectly adequate as a deterrent force. The continued Soviet deployment of their mammoth offensive missiles is a forbidding fact that places our ICBMs at great risk—unless we continue to deploy ABM defenses around our Minuteman silos and take other prudent measures for their security.

Threat to SAC Bomber Force: The growth of the Soviet submarine force poses a severe threat to the second element of our land-based deterrent, the SAC bomber force.

The Soviet Navy can now deploy long-range missiles in submarines hidden underwater along our Atlantic and Pacific coasts and in the Gulf of Mexico. By mid-1971, the Soviets are expected to have operational more than 20 Y Class nuclear powered ballistic-missile submarines and they are producing them at the rate of about 8 a year. By stationing these Yankee Class submarines off our coasts, each capable of submerged launching of 16 ballistic missiles with an estimated range of 1300 nautical miles, the Soviets can blanket practically the entire United States. When the Soviets have the much longer range missile they have been actively testing, they will be able to do this from either ocean.

The threat to our bombers arises from the

extremely short flight time from a submerged submarine off our coasts to our bomber bases. Thus a large fraction of the bomber force would be vulnerable to destruction before it could become airborne. Furthermore, the Soviets have deployed a massive system of air defense which would be arrayed against any reduced numbers of U.S. bombers that survived a missile bombardment and did manage to reach the borders of the Soviet Union. Thus, the effectiveness of our bomber fleet as a deterrent can be seriously downgraded.

Threat to Polaris/Poseidon: The third element of our deterrent, the 41 Polaris/Poseidon submarines, has not escaped Soviet developments that raise doubt about its long-term survivability.

Our nuclear submarines are potentially vulnerable to Soviet nuclear attack and cruise-missile submarines, of which the Soviets now have over 60, and are producing at the rate of 6–8 a year. At the same time they are developing more advanced nuclear submarines—including attack submarines that are faster than our own Polaris-types. The Soviets now have the largest and most modern submarine building yards in the world, giving them several times the nuclear submarine construction capacity possessed by the United States.

Moreover, the Soviets are making a massive research and development effort to improve their detection capability of our nuclear submarines. This is especially disturbing because the chief means of defense of the Polaris force is its ability to remain hidden under the seas. If they can be detected they will have lost much of their protective value.

Threat to U.S. Attack Carrier Forces: I should add that the Soviet Navy's general purpose forces are no longer just for coastal defense. They now operate on a continuing basis in the Mediterranean and in the Indian Ocean, and periodically in the Caribbean. With these forces built around attack and cruise-missile submarines, surface ships armed with ship-to-ship missiles, and land-based naval bombers, Moscow has a formidable capacity to attack our carrier forces and disrupt our sea lines of communication—and this Soviet capacity continues to grow.

Vigorous Soviet R&D Effort: Finally, some facts about the Soviet research and development program need attention.

The massive Soviet R&D effort on offensive and defensive nuclear systems has continued to increase for the past several years. The number of offensive missile test-firings has likewise increased substantially. In the last twelve months, the Soviets have conducted extensive tests of various new ABM components, including advanced improved ABM radars.

This huge research and development program, carried out by a country with a gross national product only half our own, gives some sense of the dynamism and direction of the Soviet military effort.

The central fact is that the Soviet Union has continued to support, at great cost, a comprehensive, forward-moving program of strategic and conventional weapons procurement that is not slowing down. On the contrary, the hopes of those who predicted the Soviet build-up was tapering off have been bitterly disappointed—several times.

A BOLDER SOVIET UNION

The Administration has made the claim that we are leaving an "era of confrontation" and entering an "era of negotiation."

I see scant evidence to support such a sunny forecast concerning our relations with Moscow. The massive Soviet weapons build-up does not suggest to me that with greater strength they will be more wary of confrontations

It does suggest to me that they will be better equipped to pursue the tactics they have employed ever since World War II—confrontation and negotiation together as partners in advancing their interests. Indeed, to the Kremlin, confrontation tactics are "bargaining" as much as formal talk can be, and the Soviets are experts at deeds and displays to influence the outcome of a negotiation.

Even before the improvement in its relative power position, Soviet leaders periodically pressed a policy of "opportunistic expansion." I have likened the Soviet Union in its foreign relations to a burglar walking down a hotel corridor, trying the door-handles. When he finds one unlocked—in he goes.

In past Soviet probings the strategic equation has set limits to the extent of the risks that Moscow was willing to run. Khrushchev's backdown in the 1962 Cuban missile adventure is a classic case in point.

Now, however, the Kremlin can be confident of overall nuclear equality with the United States—and it is ahead of us in some nuclear weapons areas—and it can count on a growing capacity to project naval forces and other elements of its military power into many parts of the world.

In this situation, we would be prudent to assume that the Soviet leadership will be more vigorous in the assertion of what it regards as Soviet interests, and will accept greater risks in order to advance them, thus introducing harder Soviet bargaining at the conference table and new elements of danger and turbulence into international affairs.

Leonard Schapiro, one of Great Britain's most respected Soviet scholars, puts the matter this way:

". . . the Soviet Union derives increasing confidence from the sheer quantity and size of the weapons which it possesses . . . as the numbers and strength of Soviet weapons of all kinds, nuclear and non-nuclear as well, increase, so one should expect them to become bolder in their policy and more prepared to take risks."

One would look for such increased Soviet boldness especially in those areas that are without formal defensive ties with the United States, for it is in such areas that the Soviets would be tempted to conclude that the risk of a direct confrontation (perhaps escalating to the nuclear level) is not great. However, in trouble spots like the Middle East, where the Soviets have already invested vast sums of military and economic aid, supplied sophisticated weapons, sent military personnel and taken losses in combat, local instabilities are vastly aggravated with a considerable risk of great power confrontation.

The motto of the Kremlin today is very likely: "No more Cubas." The Soviets may relish the prospect that in future crisis encounters, *we*, and not *they*, will back down and accept diplomatic defeat.

A foretaste of the future could be the brazen and contemptuous Soviet violation of the American initiated standstill agreement in the Mideast, in the summer of 1970, a violation executed from the very day of the agreement's signature, and encouraged, I might add, by the agitated efforts of some high Washington officials to turn their backs.

Professor Robert Byrnes recently made this pertinent comment:

"I would assume that some Americans will find the Russians more reasonable as they become more powerful. There is no reason they should, but this will be their interpretation. You know, this happened in the 1930's. The more powerful and threatening Hitler became, the more rational many British leaders in particular found him to be."

Looking ahead, it is difficult to escape the conclusion that our interests and those of our friends and allies would suffer in a strategic environment in which the American power position was widely questioned, even though the Soviet Union may not have achieved a clear preponderance. We could expect Soviet intransigence in negotiations, and efforts at blackmail and intimidation across a broad range of foreign policy issues, with a consequent rise in the incidence of dangerous situations. Moreover, the element of uncertainty in crisis encounters could become much more severe.

Beyond that, if present trends in the strategic balance continue, we could find ourselves in a situation that encouraged Soviet brinkmanship with a resulting risk of accident, miscalculation and nuclear war.

SOVIET STRATEGIC AIMS AND SALT

For nearly a year and a half now we and the Soviets have been meeting in Vienna and Helsinki to discuss the limitation of strategic arms. This seems a long time to a world impatient for signs of progress. But eighteen months is less than a third of the time it took to negotiate the test-ban treaty. Nothing in the arms control area comes quickly or easily. Such success as we have had in past arms control negotiations has been the product of care, deliberation, and, above all, unremitting patience.

It is one of the sad ironies of negotiations such as these that efforts to hasten them may have the effect of encouraging delay and inflexibility on the other side. Thus the more anxious we appear to buy an agreement, the higher the asking price. Unfortunately, the U.S.-Soviet strategic balance, which made the SALT talks possible, is increasingly threatened by the developing Soviet capability to attack and destroy our deterrent.

We must not be intimidated by our own impatience, either to embark upon new strategic programs prematurely or to accept an unsound early agreement in the idle hope that it will lead eventually to a genuinely stabilizing one.

The Soviet Union has proposed that we limit defensive weapons only. Under this proposal the United States would be prohibited from defending its Minuteman missiles with the Safeguard, or any other, ABM system. This proposal comes at a time when the Soviets are deploying new offensive weapons capable of attacking our Minuteman missiles—the very heart of our strategic deterrent. And they press this proposal while refusing to agree to limit their offensive build-up—and in spite of the fact that our defensive weapons add nothing to our capacity to launch a disarming first strike against them.

The simple fact is that we do not have the capability of launching a disarming first strike against the Soviet Union. We are not engaged in programs that could develop that capability. We have deliberately deployed a strategic missile force, land and sea based, with extremely low-yield warheads—warheads that are wholly inadequate for the purpose of attacking Russian missile silos. We know this. And the Soviets know this too.

By contrast, however, the Soviets are deploying weapons with characteristics that can be adapted to the purpose of attacking our Minuteman silos. Their SS–9 missiles can carry several warheads, each of sufficient yield to destroy a U.S. silo. All that is needed for them to develop the capability to destroy Minuteman is an accurate MIRV device—something well within Soviet technological capabilities.

It is for this reason that I view as unacceptable and even ominous the Soviet demand for an agreement (1) preventing the defense of our deterrent but (2) permitting them to continue deploying offensive missiles. It is unacceptable because it would diminish our security, and ominous because if the Soviet Union is truly committed to a

policy of deterrence only, they should welcome our interest in limiting offenses and treat with indifference our investment to defend our deterrent. What possible justification is there for the Soviets to delay further the negotiation of serious limitations on offensive weapons?

It is remarkable to me that in the face of Soviet refusal to limit its offensive missile force—a position that must raise doubts about their intentions—some Americans are arguing that we should assume their good will and move to limit our defenses. How would an agreement on our part to leave our deterrent unprotected increase the Soviets' interest in doing later what they are evidently unprepared to do now: halt their offensive buildup?

An agreement limited to defense only, far from slowing the arms race, would actually accelerate it. To believe otherwise requires one to place his faith in nothing more tangible than a dream of Soviet self-restraint.

The Soviets would be free to forge ahead with deployment of more offensive weapons while we would be prevented from countering with a defense. Under such circumstances, should they press their advantage—and I see no logical reason why they would not—we would be forced to deploy new offensive systems of our own to balance theirs. Those are the elements of an expanding arms competition which we should be bending every effort to avoid rather than create.

I believe that those urging acceptance of the Soviet proposal have things exactly backwards. If two armies, each armed with swords and shields wish to disarm, does it make sense to lay down the shields and keep the swords? Would it not serve the peace and security of both to lay down their swords—and keep the shields to discourage rearmament?

It has been suggested recently that we ought to accept the Soviet proposal on the understanding that we and they would continue thereafter to negotiate limits on offensive forces. In other words, we must first give up our ABM system in return for which the Russians would agree merely to more talk about their offensive deployments. Some bargain! While they develop their offensive advantage, we both agree to talk about it.

SALT: A New Initiative: The arms race must be brought under control at the SALT talks. We need to buy more time for SALT to succeed. Without time—without a pause in the offense momentum—our best efforts to negotiate a comprehensive agreement may be overtaken by the pace of events.

I believe we ought to consider a partial, interim agreement with the U.S.S.R. that would at once have the effect of slowing the strategic arms competition and adding to the immediate security of the strategic balance.

I have in mind an interim agreement that would freeze the deployment of additional land-based offensive weapons in both the United States and Soviet Union—and it would do so at once. Specifically, I have proposed a mutual U.S.-Soviet agreement for an initial period of one year providing the following:

(1) The United States would immediately halt the deployment of Minuteman III missiles with their MIRV warheads.

(2) The Soviet Union would immediately halt the deployment of new ICBM launchers and missiles including those now under construction.

(3) Both countries would retain the freedom to assure the survivability of their strategic land-based forces so long as they did not add to their offensive potential.

(4) Neither side would deploy a population defending ABM.

Such a program would greatly increase the security of our strategic forces. Moreover, it should calm any possible Soviet concern that we might be increasing the offensive potential of our forces so as to threaten the security of *their* deterrent. I would hope, therefore, that such a proposal would be vigorously pressed at the SALT talks.

It seems to me that the risks involved in proposing such an interim agreement for an initial period of one year are minimal. The advantage of halting the deployment of Soviet offensive weapons would be real, immediate, and stabilizing. It would diminish the pressure that we are now under to press ahead with new offensive nuclear systems of our own. It would genuinely add to the security of both countries.

By permitting us to deploy defenses to protect our Minuteman silos we would be able to counter any likely qualitative upgrading of the current Soviet offensive forces. And we could do this without in any way adding to our capacity to strike the Soviet deterrent.

By preventing the deployment of ABM systems for the purpose of defending populated areas—thick city defenses—we would diminish the necessity for deploying MIRVs on our Minuteman force. At the same time we could continue to deploy the very much smaller warheads of the MIRVed Poseidon missile on our Polaris submarines so as to increase the effectiveness of our sea-based deterrent.

Moreover, the discussion surrounding this proposal may help to illuminate the nature of Soviet strategic objectives. In spite of the obvious importance of having such knowledge, we really know very little about Soviet strategic doctrine. My own view is that we will not emerge from the SALT talks with a very comprehensive agreement unless we and the Soviets succeed in arriving at some common understanding as to the nature and objectives of strategic nuclear forces.

One final word:

The United States is experiencing a wave of hostility to the military at the moment, a hostility that makes fair and objective discussion of defense issues a difficult thing to achieve. From the belief that we have been doing too little to solve our domestic problems—a view that I share with many in this country—it is all too easy to pass to a belief that what we spend on defense is wasted.

The strategic budget is a small fraction of the defense budget and an even smaller fraction of our gross national product. About one percent of the goods and services we will produce this year is allocated to the procurement, maintenance and operation of our strategic deterrent.

That one percent is an essential investment. To fail in the job of strategic defense is to fail in all our aspirations for better housing, health, welfare, education and the environment. I believe that this country is rich enough in moral and material resources to provide for the security of our people and resolve our domestic problems as well.

DEATH OF HON. SIM THOMAS, OF EUFAULA, ALA.

Mr. SPARKMAN. Mr. President, the State of Alabama recently lost one of its finest citizens. I refer to the Honorable Sim Thomas, of Eufaula. For many years, Sim Thomas was my good friend. He was a good citizen. He served 16 years in the State Legislature of Alabama and was one of the most constructive and influential members. He was a leader in good causes and in everything aimed at developing a greater and better community.

An editorial appearing in the Eufaula Tribune several days ago recites some of the contributions that were made to the State and to his community. I ask unanimous consent that the editorial be printed at this point in the RECORD.

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

THOMAS SERVED

Few men ever make as many contributions to society during their life time as did the late Sim Thomas. At the time of his untimely death, caused by a heart attack, the former veteran legislator was serving as a member of the State Mental Health Board and the Auburn University Board of Trustees.

A successful businessman, and a pharmacist by profession, Mr. Thomas served his community and his state well. It should be remembered he chaired the very successful Barbour County Courage Crusade in which a large sum was raised to help finance the Lurleen B. Wallace Cancer Hospital. And of course, Mr. Thomas was very instrumental in convincing the State Mental Health Board the unique Adjustment Center for mentally disturbed young men should be located in the former Eufaula Air Force Station. He spent long hours working to see this dream of a new concept in treating mentally disturbed almost become a reality. The former military installation has been deeded to the State Mental Health Board and renovation work has begun.

While serving four terms in the legislature, he became established as an influential lawmaker. He was a former member of the Board of Health Legislative Committee and later served as chairman of the State Mental Health Board after it was created.

Sim Thomas was an active member of First Presbyterian Church where he served as elder as well as moderator of the East Alabama Presbytery and a commissioner of the General Assembly.

Indeed, Sim Allen Thomas served his community, his county and his state well. He will be sorely missed in Eufaula.

WAR POWERS BILL—TESTIMONY OF McGEORGE BUNDY AND GEORGE REEDY

Mr. JAVITS. Mr. President, in the Committee on Foreign Relations this morning we heard testimony from McGeorge Bundy and George Reedy in support of war powers legislation under consideration before the committee—most specifically S. 731, which I have introduced with a number of other Senators.

In view of Mr. Bundy's unique experience as National Security Assistant to President Kennedy—at the time of the Cuba missile crisis—and to President Johnson—at the time of the Tonkin Gulf incident and the subsequent dispatch of U.S. combat forces to Vietnam on a large scale—I believe his testimony is particularly important and relevant. I feel that Mr. Bundy's support of S. 731 is especially important in rebutting the charge sometimes now leveled that efforts to reassert the constitutional war powers of the Congress is a "neoisolationist" movement.

The testimony of George Reedy is of equal value and relevance, in my judgment. As one of Lyndon Johnson's closest advisers, in the Senate as well as in the Presidency, George Reedy also speaks from a uniquely qualified vantage point. His views on the nature of the Presidency in contemporary circumstances, so lucidly set forth in his recent book, "The Twilight of the Presidency," are further developed in his testimony.

Mr. President, I ask unanimous consent that the testimony of Mr. Bundy

and Mr. Reedy be printed in the RECORD.

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

STATEMENT OF McGEORGE BUNDY

Mr. Chairman, it is an honor to respond to your invitation to take part in these hearings on S. 731, a Bill to Regulate Undeclared War. I believe that the problem addressed by this bill is one of the most important and difficult we have, and I believe that the provisions of this bill are the best yet devised. I think that in working his way to his present proposal Senator Javits has made a most serious contribution.

I believe this proposal strikes the best balance I have yet seen between the national need for certain powers of immediate Presidential action and the national need to ensure that in any sustained hostilities the Executive Branch must act only in partnership with Congress—a partnership in which the President does not act beyond authority explicitly granted by Congress.

The need for the right of rapid Presidential action is clear from our history and our present world situation. That the President has—and must have—the power to order immediate reply to immediate attack; that Presidents have legitimately moved troops into foreign territory to protect American lives; that there is always a possibility that local military action will be necessary when forces are stationed abroad even for the most peaceful purposes—all this is plain.

But it is equally plain that there is a great difference between these necessary immediate executive powers and the power to make war without any limit of time or size. It is clear the Constitution, as it is in our political history, that war, in this larger sense, should have both popular support and explicit Congressional authorization. What S. 731 does is to provide an orderly precedure under which no immediate resort to armed force by the Executive Branch could be sustained for more than thirty days without specific affirmative authorization by the Congress.

The bill also provides that the Congress, if it chooses, can authorize the conduct of hostilities by other means than a formal declaration of war. I believe this provision—Section 1.C—is a most important advance in the process of properly engaging the Congress in decisions about the use of force. I believe that the traditional declaration of war has many dangers, both in its internal and in its foreign effects. For excellent reasons it has not been employed in cases like Korea and Vietnam. And one special weakness of the declaration of war is that by our whole tradition it transfers unfettered direction over the conduct of the war to the Commander-in-Chief. I think one of the most powerful lessons of our long and painful involvement in Southeast Asia is that such a transfer is particularly unwise in situations where there is deep division of opinion in the country. Hard as it may be—and different as it is from some of the traditions of earlier wars—I believe that in such a case there is no substitute for a full and *continuous* sharing of responsibility between the President and the Congress. This cannot be achieved either by waging war without consultation with Congress or by the one-shot process of the formal declaration of war.

One objection to this notion of a regulated process, short of a declaration of war, may be that we have no reason to be happy with the history of the Tonkin Gulf Resolution, which falls exactly into the category of actions authorizing the use of armed force without a declaration of war. But I believe that if we examine that history closely we can see that the exact trouble with the Tonkin Gulf Resolution was that it was misperceived, both by the Congress and by the Executive Branch, in ways that would be much less likely to occur under the procedures of S. 731. The Congress surely did not believe, in 1964, that it was voting for the war that happened. And the Executive Branch, while I believe it was mistaken in describing the Resolution as the functional equivalent of a declaration of war, was thinking and acting in a framework of legal and traditional experience in which there was no clear middle ground between unauthorized hostilities and such a formal declaration. Neither misunderstanding could have occurred under S. 731. Both parties, almost surely, would still have believed that a formal declaration was unwise. Both would then have been required to address the precise question of what other authorization of hostilities they would ask and support. The result might still not have been happy, but I do believe it would have been much better.

Moreover, we now have the history of the Tonkin Gulf Resolution to help us, and we can assume with confidence that any Congress which is asked to authorize limited hostilities at any time in the future, under a bill like S. 731, will remind itself that it must write no blank checks. The Congress can and should put appropriate conditions on any authorization of limited hostilities. The Constitutional power to declare war clearly includes the power to put limits on any hostilities that are authorized. This is what we have not properly understood in the past; this is what S. 731 explicitly affirms; and this affirmation opens the way to a reconstruction of the relation between Congress and the President in this crucial area.

We must all remember, however, that no use of armed force is ever anything but a lesser evil. The best way to deal with the possibility of war is to try by all means to avoid it. I would not favor S. 731 if I thought that it could operate in any way to make the choice of a warlike option more attractive to our government. I make this point because I think it conceivable that some of those who honestly believe that all wars are bad may object to S. 731 on the ground that it could open an avenue to prolonged warfare without forcing the government to face the unpleasant task of declaring war. It can be argued that the establishment of a procedure for Congressional approval of limited hostilities makes the resort to such hostilities more likely. This is an understandable concern, but I think it is groundless. I believe that the requirements of S. 731, together with all that we have learned as a nation in the hard case of Vietnam, would operate to ensure great care in the Executive Branch as well as in the Congress itself.

And unfortunately we cannot assume that there will never be a case in the future in which limited use of our armed forces will be necessary while a formal declaration of war remains undesirable. It is obvious that we must not have "another Vietnam," and I believe we can avoid any such misfortune simply because Vietnam is genuinely unique in many ways. And there are many lessons to be learned from that experience to help us do better in the future. But the world is full of difficult and dangerous situations, and I believe it would be wrong for us to pretend that it will be wise in every case, in every area, in every time, for our Congress to have no choice between a declaration of war, on the one hand, and a complete reliance on the powers of the President, on the other.

One other possible objection deserves mention, although again I think it is not persuasive. We have a long tradition, and a good one, against trying to wage war by committee. For this reason we have left the conduct of campaigns to field commanders, and we have left the conduct of wars to the Commander-in-Chief. And so it can be argued that it is wrong for Congress to assert itself in defining the terms and conditions of any authorization of hostilities. But this is an error, I think—a confusion of different kinds of control. I think that Congress would be most unwise to attempt to tell a field commander how to fight a specific battle, but I think it has every right to assert itself on broad questions of place, time, and the size of forces committed. It also has a right, and even a duty, to concern itself with the purposes of any hostilities and the conditions on which they may be continued or ended. I do not say that all such Congressional concerns will be comfortable for the Commander-in-Chief and his field commanders. I do say that they should be heeded, because the alternative is what we have seen in recent years, namely a progressive breakdown in the indispensable partnership between President and Congress.

So I favor this bill, Mr. Chairman. I do not say that it is perfect, and I hope it will have the careful study, in both Houses and in the Executive Branch, that the importance and the difficulty of the subject justify. Alternative approaches, or improvement in this one, may well be possible. But the purpose is surely right: it is nothing less than to help to reconnect the President and the Congress in the effective control of the use of our armed forces.

STATEMENT BY MR. GEORGE E. REEDY

For purposes of the record, my views are individual and do not reflect in any manner the Woodrow Wilson International Center for Scholars of which I am a Fellow. My comments are directed solely to the impact I believe the bills would have on the Presidential decision making process in military operations short of a formal declaration of war and I do not presume to address myself to the legal issues as this is a field in which I have no special training.

Within that context, it is my judgment that the sponsors of all three measures have focused on the one area in which it is possible to introduce a reasonable measure of legislative control over the power of the Executive to commit American armed forces to combat without a formal war declaration. Short of attempting to eliminate Presidential control over the armed forces or going to a parliamentary form of government—futile, impractical and dangerous endeavors—there is no effective way in which the Presidential capacity to *initiate* hostilities can be brought within bounds. But it is conceivable that after a reasonable period of time, he can be called upon for an accounting and forced to defend his position as the price of continuing that which he has started. All three measures before this Committee proposes machinery to accomplish that purpose and I believe they are important not only as they address themselves to the problem of war but in that their adoption would have a salutary effect upon Presidential thinking and decision making.

The crucial factor which, in my judgment, would make futile any effort to place bounds upon the Presidential initiative is his position in our political and governmental structure. The realities of the world situation compel the United States to maintain a sizable military force. Of necessity, ultimate control over this force in its day-to-day disposition must be lodged in the President. There are obviously legitimate reasons why this force must be committed to hostilities upon some occasions without enough time to consult another branch of the government. If such reasons do not exist, the Executive branch, which has a structure that does not necessarily foster wisdom but which always fosters ingenuity, will devise them and convince even itself that they are valid. And finally, the necessary *political* background for launching hostilities in a crisis in which legal principles become blurred if they are noticed at all.

Two examples which are in the memories

of the Committee members will serve to illustrate the points above. Without passing judgment upon the validity of either action, it is inconceivable to me that Congress as a body would have rejected under any circumstances either a resolution approving President Truman's original commitment of forces to Korea or the Tonkin Gulf resolution. In both instances there was an overwhelming desire to back the President and under similar circumstances, the same reaction can be anticipated in the future. The dissatisfaction did not arise until a later date and there was no Congressional machinery to translate the dissatisfaction into effective action. Therefore, the Executive was able to dismiss the questions that were raised as mere "second guessing." This is a phrase which has a strong impact upon most Americans and frequently inhibits sensible discussion of policy. It is generally concluded that arguing over an event that has already taken place cannot change that event. This conclusion is correct but it overlooks the fact that "second guessing" could prevent a serious mistake from becoming a disaster and could also produce principles that will prevent a repetition of the mistake.

The fact that in a crisis we are dependent upon a President's judgment does *not* mean that we should avoid questioning that judgment as soon as possible or, even more important, that we should avoid questioning the factors that go into that judgment *and the content within which it is made*. There is a widely accepted body of thought which ascribes a certain sanctity to the Presidential decision making process and equates questioning of his decisions with presumptuous arrogance in the field of foreign policy. (For some reason, this same line is rarely advanced in the field of domestic policy where the President is assumed to be a human being liable, like the rest of us, to normal mistakes.) It is held that only the President "knows all the facts;" that only the massive information gathering machinery of the Executive branch is adequate to gather all of the relevant data; that the heavy concentration of "experts" within the Executive branch will inevitably produce better judgments than those which come from the outside.

From direct observation and subsequent study, I believe there is good reason to question all of these assumptions. I also believe that they do a personal disservice to the President himself in terms of history. When things go wrong, they foster a psychological disposition to assume that the President deliberately made incorrect decisions out of venal or corrupt motives rather than a realization that he just made some tragic mistakes. In discussions with young people opposed to the Vietnamese war, I usually find that they are absolutely convinced that we are in it for motives either of economic imperialism or blatant racism and they cannot be argued out of these conclusions even though they have been reached on the basis of highly questionable evidence or no evidence at all. This has an unfortunate effect. A man who is assailed by charges which he regards as unfair is quite likely to become even more stubborn about a course he is following. I have every reason to believe that Presidents are no exception to this rule.

It is interesting to think through the point that *only* the President "knows all the facts." In a certain sense this is true, even though no human being can possibly know everything that is happening even in matters of direct concern. But there is another side to this coin. The converse is that no one else can really be certain *that he knows what the President knows*. There is no manner in which even persons close to him, including members of the Presidential staff, can judge whether he is acting on information, misinformation, verified data, questionable data or just plain hunch. If he is questioned on such matters, he can always fall back upon the flat statement that he has sources which are personal to him alone. In practice, those close to him are not going to raise such questions anyway and those who are not under his direct influence are in no position to compel answers to their questions. In either case, the point is moot. Presidents have sufficient authority to act without defending their position against adversary debate (at least until the next election) and men in such a position are unlikely to make what they regard as unnecessary explanations.

Another interesting field for analysis lies in the thought that only the massive information gathering machinery of the Federal Government is adequate for gathering relevant data. Again, there is a sense in which this is true. But it overlooks the rather obvious point that the data might not be valid—that massive information gathering machinery is a device which multiplies misinformation as well as information and that colossal mistakes can be virtually compelled in the decision making process by the presentation of invalid "facts" in a most beguiling form. When I was in the White House, I was highly impressed by the "pacification" figures which arrived with regularity demonstrating that substantial areas of Vietnam were completely under the control of the Republic of Vietnam.

No matter how I analyzed the statistics, allowing for normal margins of error, appeared valid. It was not until I had left the White House that I came to the realization that they could be entirely meaningless. This happened when I encountered an old friend who had been engaged in gathering the basic statistics in the villages themselves. The picture that he painted shed quite a different light. It was that of an American speaking little or no Vietnamese, standing in the middle of a village which he could visit for only a few hours every month, talking to people who wanted to get rid of him because they were vulnerable to Viet Cong retribution by his very presence and well aware of the fact that the easiest way to get rid of him was to tell him what they sensed he wanted to know. The figures so gathered would be combined with other figures similarly gathered and forwarded to Saigon; then to appropriate agencies in Washington and then to the White House itself.

At every step of the journey, the figures would be evaluated and reevaluated and by the time they reached the National Security Council staff, they would carry the same weight as the Sermon on the Mount. I have never had the resources to check further into this matter but I do not believe that it is necessary. The most elementary common sense should have warned all of us that computers cannot render valid data which ultimately depends upon questioning people of a different culture; a different language; a different experience of life; and a burning desire that we go away. It obviously is not possible to do so but there would be immeasurable value in analyzing all of the data upon which Executive decisions are based from the standpoint of the sources themselves. Unfortunately, by the time that I received a flash of insight from my friend, it was too late to do anything about it. The pacification figures had become accepted gospel in the White House—an atmosphere in which a questioning of accepted gospel arouses only a vague wonderment as to "what has gone wrong" with whoever does the questioning.

Finally, it is not only legitimate but absolutely essential to question the assumption that the heavy concentration of experts in the Executive branch assures sounder decisions than can be made on the outside. This is an assertion which should undergo the most rigorous challenge—not because there is reason to doubt either the skill or the integrity of the experts but because of the use to which they are put. It takes very little service in the White House, and only a minimum of perception, to learn that the role of the expert is to tell the President how best to accomplish his purposes—not to question policies already made.

At the very start, an individual may have an impact upon a Presidential decision. But once the commitment is made, the whole machinery of the Federal Government is geared to defending the commitment and those individuals with second thoughts are lost in the shuffle. I have been quite startled since leaving the White House at the number of second level, sub-Cabinet officials who had strong reservations about the Vietnam policy during the period that the decisions were made. Perhaps some of them are only now revealing those reservations because the war has become unpopular and it is safe to do so. But I doubt it because many of them strike me as men who would always make their feelings known at least to their superiors. Perhaps other White House assistants with direct responsibilities in foreign affairs knew about the reservations at the time as one of the factors of life in the Executive Mansion is that assistants rarely know what other assistants know and do not want to ask (and would not get an answer if they did ask) out of fear of betraying their ignorance and therefore their lack of status.

Perhaps these reservations were made known to the President at meetings attended only by the President, the Secretary of State, the Secretary of Defense and the Chief of the CIA—meetings which were not attended by any assistant. I do not know. But I do know that such matters were never raised in the Cabinet or the National Security Council meetings—theoretically the Presidential mechanisms for obtaining collective judgment. From time to time there would be a "Devil's Advocate" type of discussion but the "Devil's Advocate" is always anticipated and people listen to him with at best tolerance. It is no substitute for a genuine adversary discussion—the only kind which I believe ever produces a reasoned judgment. From the type of discussion I heard in such meetings in 1964 and 1965, I do not see how the President could have reached decisions other than he made. The tragedy is that the skepticism which existed in many areas could not have penetrated the walls and really have been debated.

I do not believe there is any reorganization of the Executive Branch of the Government which can alter the situation I have described. The only hope I can see is to introduce into the national scene an element of adversary discussion which can operate at a sufficiently early point that it will head off catastrophe. As I have already stated, I believe it is futile to attempt to do this at the point of crisis itself, and even if it were not futile, it would be a dangerous undertaking. But it is not futile for Congress to assume the power, after a reasonable period of time, to require the President to defend his position as the price for continuing whatever hostilities he has launched during the crisis. The 30-day period set in these resolutions strikes me as being a bit short but this is a question of practical judgment and I am not disposed to argue over such matters. And, I repeat, I am not in a position to discuss the legal issues but there is obviously enough experience on this Committee—let alone the expertise available to you—to render sound judgment on such matters. The important thing to me is my belief that the principle behind these resolutions is valid and I hope they can be carried into effect.

In closing, I want to be clear on the point that I am well aware of the difficulties involved in translating this approach into a reality. It will be argued that Congress can-

not "run" a war; that Congress cannot have information equal to that possessed by the Executive; that such a procedure runs the risk of conveying information to an enemy; and that it is hazardous to distract a President when he is directing American forces in armed combat. All of these are valid when made in a vacuum. I believe they are beside the point when considered within the context of our present national problem. To take them up on a point-by-point basis, I would like to submit the following considerations:

1. These resolutions do *NOT* seek to usurp the Presidential authority to run a war. They go instead to the proper prerogative of Congress—a determination of whether he has a right to wage a specific war in an age when most wars seem to be run without declarations and probably will be operated that way for some time to come.

2. Congress cannot possibly set up an information system equivalent to that possessed by the Executive. But what is needed is *NOT* alternate data gathering systems but the application of skeptical judgment to the data that already exists. It is not conceivable that such skeptical judgment can be brought to its most effective point within the Executive branch under a governmental system where *all* Executive powers are concentrated in the hands of one man and I doubt strongly that the system can be changed. Under these circumstances, the only hope for skeptical judgment comes from the Congress.

3. The risk of conveying information to an enemy is inherent in any system which brings skeptical judgment to bear upon a problem. But it is less of a risk than the very real hazard, which we know is with us now, of dividing our country because of unilateral judgments on the use of military force. We have succeeded in surviving many situations in which information "leaked" to an enemy. I doubt whether we can survive the kind of massive disillusionment that is now taking place in our society.

4. The argument that it is hazardous to distract a President by forcing him to defend his position against skeptical judgment strikes me as invalid within the context of our times. A nation cannot be any stronger than its resources and of those, the most important is the confidence of the people in their government. The skeptical judgments are not going to disappear from public debate just because there is no machinery for bringing them to a test of public will. All that is going to happen is that they will fester and undermine the consciousness of national unity. It is far better to bring such matters to a head at any early reasonable point and I know of no better place to do it than in the Congress. Perhaps the decisions that will be made will be wrong because there is no guarantee of rightness even in collective judgment. But at least they will be collective judgments and I believe that a free nation can survive even gross mistakes made in that vein. And under any circumstances, collective judgment made in the wake of adversary debate has a far better chance of being right than the judgments we are living under now.

FARM INCOMES

Mr. CURTIS. Mr. President, in the March-April 1971 Grain Producers News, Secretary of Agriculture Clifford M. Hardin discusses the President's economic report. He mentions some of the pluses in agriculture, and there have been some. However, Secretary Hardin also recognizes that many farmers are entitled to more income than they are now receiving.

Secretary Hardin says:

Far too many farm people still have far too little income. Though farm incomes have improved, the fact that they continue low relative to incomes of non-farmers remains the number one problem of agricultural policy.

Mr. President, the farmers of America have a real friend in Clifford Hardin. He understands their situation. He speaks up for them and it is gratifying to know that we have a Secretary of Agriculture who wants to improve farm income. Secretary Hardin is to be commended for raising his voice in the high councils of Government for a better deal for agriculture.

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:

HARDIN DISCUSSES PRESIDENT NIXON'S ECONOMIC REPORT

(By Clifford M. Hardin)

I appreciate the opportunity to comment on the President's Economic Report as it relates to agriculture and to rural America. I will confine my remarks to the state of the agricultural economy, service to consumers, geographic distribution of the population and environmental protection.

AGRICULTURAL ECONOMY

Realized net income per farm in 1970 averaged practically the same as the record level in 1969 and was 82% above the 1960 level. The per capita disposable income of the farm population from all sources, farm and nonfarm, in 1970 was 139% above 1960. This compares with a gain of 67% for the nonfarm population. In 1960, per capita disposable income of the farm population was only 55% of the income of the nonfarm population. Last year farm people got 78% as much income as nonfarm people. This was a substantial gain for the decade, but far too many farm people still have far too little income. Though farm incomes have improved, the fact that they continue low relative to incomes of non-farmers remains the number one problem of agricultural policy.

Income from nonfarm sources is becoming a larger and larger component of the net incomes of farm people. Off-farm jobs of various kinds are the chief source of such income. In 1970, the per capita disposable incomes of people on farms averaged a record $2,633. Almost half of this (47.7%) was from nonfarm sources. These dollars are as useful in buying goods and services as those earned from farming operations.

The year 1970 found crop prices rising and livestock prices falling. The net result was an increase in prices received by farmers of 2% above the 1969 level. The decline in livestock prices was primarily due to the large increase in pork production accompanied by continued large supplies of beef, eggs and milk. The rise in crop prices was due mainly to higher prices for grains and soybeans, reflecting the smaller 1970 grain crop. Corn blight cut the yield of that crop by approximately 15%. Adding to the price strength for grain was an expanding domestic and export demand for both grains and soybeans.

Agricultural exports in 1970 hit a record $7.2 billion, 22% above the previous year and 4% above the previous record in 1966. Much of the advance was attributable to the poor grain harvest in Eastern and Western Europe and the strengthening demand for grain and grain products for livestock feeding as diets improved in other developed nations. We achieved some export gains through trade concessions that we were able to negotiate.

Agricultural imports continued to expand in 1970 with most of the increase accounted for by gains in animal products, fruits, vegetables, sugar, and beverages. Agriculture showed a net excess of exports over imports of $1.5 billion during the year, thus helping to improve the Nation's overall trade balance. With the comparative advantage enjoyed by much of American agriculture, we should be able to improve our performance even more—if we can keep export markets open.

In the year ahead, agriculture faces substantial change as supply conditions adjust and demand improves. Large supplies of livestock and products may hold farm product prices below the highs of last winter. But with the general economy improving, we are looking for farm product prices to strengthen by around midyear as livestock production tapers off.

For 1971 as a whole, cash receipts from farm marketings are expected to show an increase. Realized gross farm income could run slightly above the previous record.

Although there has been a decline in the ratio of prices received to prices paid by farmers, it is important to recognize the limitations of this measure as an indicator of farmer well-being. The development and application of new production technologies, rapid changes in the size structure and organization of production units, and the further integration of production and marketing processes have yielded very rapid gains in productivity in the postwar years. As a result, it is more meaningful to examine trends in income per farm and in per capita income of farm people.

SERVICE TO CONSUMERS

The average American family purchases its food supply with only 16.7% of the family income. Never before has this percentage been so low, and never before has the quality of the food supply been so high.

This remarkable achievement, never before attained anywhere in the world, is a tribute to the great efficiency of American farmers. During the last 10 years, efficiency—that is, the amount of output per unit of input—has been advancing about twice as rapidly in agriculture as in the rest of the economy.

To the degree that the relatively low share of the income spent for food results from agricultural efficiency, we take pride. But to the degree that it results from inadequate returns to the labor, management, and capital employed in the production of food, we feel concern. All of these elements are in the picture.

POPULATION

The geographic distribution of population and employment opportunities is an issue of growing national significance. We know from the census of last year that about half of all counties in the nation (most of them rural) lost population over the decade of the 1960's and that another one-quarter grew slowly. They experienced net outmigration and most often the outmigrants were young adults beginning their most productive years of life. In such States as North Dakota, South Dakota, Nebraska, Kansas, Montana and West Virginia, over three-quarters of all counties lost population.

Yet there are growth centers in most of these States where the rate of population increase equals that of the metropolitan centers.

One of the major challenges before us now is to combine these two forces—the decline and stagnation of large areas and the growth and vitality of nearby centers—in a manner that is mutually supportive. The increased use and support of planning and development districts will help place the issue in the areawide context that is needed. It will also help Federal agencies bring their efforts into more effective, more complementary relationships at the local level. With the prospect of localities having access to noncategorical grants in the form of Fed-

erally shared revenues, these institutions take on even greater potential stature.

A subcommittee of the Domestic Council has been examining the need for a national growth policy, with particular attention to the development of nonmetropolitan areas. I am hopeful that this work will soon take the form of an explicit Federal-wide policy.

ENVIRONMENT

The Department of Agriculture has a long and outstanding record in the environmental field. Among the many notable accomplishments are the:

Abatement of the Great Dust Bowl problem through soil conservation.

Reduction of flooding damages through upstream conservation.

Control of forest fires on National Forests and on private lands.

Improvement of the landscape and stabilization of soils through cooperative tree planting programs.

We must not, however, permit past successes to make us complacent to present and future needs, which are many. We cannot solve all our environmental problems overnight. It will take a deliberately programmed effort over time to realize the improvements we desire. In some cases we will have to wait for standards to be established and for technological improvements from research. In other situations new or expanded authorities may be needed. The cooperation of public and private efforts will also be an important ingredient. Nonetheless, we are determined to make progress on the entire breadth of the environmental front.

The Department of Agriculture's environmental program for the 1970's as it is now taking shape, will include five major elements. The first will involve the identification, retention, and protection of land for agricultural production. Second, we are designing new approaches to the use of land released from agriculture for aesthetic and recreational purposes. A third element will be to stimulate selected small and medium size growth centers around the nation. As a fourth element, we are intensifying our efforts to determine the capacity of land to absorb wastes and to design means of converting wastes into beneficial uses. Finally, a fifth element involves modifications in the use of agricultural chemicals. We are, for example, already beginning to use a number of biological control mechanisms to replace the more toxic chemicals.

WITHHOLDING OF FUNDS FOR HOUSING AND COMMUNITY DEVELOPMENT PROGRAMS

Mr. SPARKMAN. Mr. President, I am submitting for the RECORD a copy of a letter that I have sent to Mr. George Shultz, Director of the Office of Management and Budget, together with related materials concerning the withholding of funds for housing and community development programs.

My letter to Mr. Shultz urges him to reconsider his earlier decision to withhold housing and development funds in the light of changing conditions. I refer particularly to increased unemployment in a number of areas and to the President's recent actions to limit wage increases in the construction industry.

I find it very difficult to understand why the administration persists in embargoing funds we have appropriated for rebuilding our cities at a time when the number of cities with substantial unemployment has reached its highest total since 1962.

The Manpower Administration of the Department of Labor reports that 50 major labor market areas in the country had 6 percent or more unemployment last month; that 37 new areas were declared eligible for emergency public works assistance; that 28 other areas were added to the "substantial or persistent unemployment" lists, raising the total number of communities with serious unemployment to 712.

The Department of Labor reports that we have many cities with unemployed workers. The Department of Housing and Urban Development reports that there is a lot of work that needs to be done if we are to rebuild our cities and house our growing population. But the Office of Management and Budget reports that it is withholding millions of dollars that has been appropriated by the Congress to get the job done.

I have urged Mr. Shultz to reconsider and to release the money for housing and urban programs without further delay.

I ask unanimous consent that the letter to Mr. Shultz and related materials be printed in the RECORD.

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

APRIL 21, 1971.

HON. GEORGE SHULTZ
Director, Office of Management and Budget, Executive Office Building, Washington, D.C.

DEAR GEORGE: I am writing this as a follow-up to our recent hearings regarding the withholding of funds for housing and urban development programs, and to the testimony by Deputy Director Caspar Weinberger.

I am still very concerned about the wisdom of withholding these funds.

I continue to receive communications from all parts of the country urging my intercession with the President to release immediately all funds appropriated for housing and community development. Last week, for example, Robert W. Maffin, Executive Director of the National Association of Housing and Redevelopment Officials wrote to me about the numerous inquiries and responses he has received from local housing and redevelopment agencies. On the basis of communications from over two hundred communities of all sizes in all regions, he concludes:

"A crisis of major proportions is developing, a crisis which can jeopardize the continuation of community development and housing production programs in many localities. To be blunt, unless action is taken immediately to release these funds before July 1, many local programs will not survive and others will face a drastic curtailment of their operations."

I am particularly distressed by the communications I have received from communities in Alabama, communities which I know well. During the past month, my office has literally been deluged with pleas from communities from all over the State to assist them in obtaining funds which they have been waiting for over many months.

It appears to me that the withholding of funds for housing and community development is having three serious impacts, all of them undesirable.

First, the withholding of funds is badly disrupting the development plans of local communities and is jeopardizing the orderly execution of development projects.

Second, the withholding of funds is retarding economic recovery in many localities, and is even reported to be generating additional unemployment and need for publicly-assisted housing.

Third, the withholding of funds is robbing the President and the Congress of public confidence. To me, this is the resource which is absolutely essential for community development. By failing to implement the laws and the programs we have established to improve the quality of life in our cities and towns, we are violating the trust local citizens have placed in us and are wasting the most important of our national resources.

Mr. Weinberger stated, during his testimony before the Subcommittee, that

"As conditions shift, . . . we would certainly be very pleased to be able to move policy to accommodate them to the extent that we can . . . we would certainly be flexible in trying to release and schedule the release of funds as conditions warranted any change in policy."

Mr. Weinberger emphasized the inflationary wage trend in construction as a major condition affecting the decision of the Office of Management and Budget to withhold housing and community development funds. He also pointed to the budgetary ceiling imposed by Congress as a factor controlling Administration decisions. While I am not fully satisfied that his interpretation of the ceiling is the correct one, it seems to me that conditions have shifted significantly since you made your earlier decisions with respect to the withholding of housing and urban development funds.

I am thinking, in particular, about the President's actions limiting wage increases in the construction industry, his announcements of stabilizing price levels, and recent reports of increased unemployment in a number of areas.

In light of these changes, it would seem to me that, in carrying out your pledge to be flexible and to move policy in order to accommodate to changing conditions, you would now review the status of impounded housing and community development funds and act to release them without further delay.

Sincerely,

JOHN SPARKMAN.

APRIL 9, 1971.

HON. JOHN SPARKMAN,
Chairman, Subcommittee on Housing and Urban Affairs, Senate Committee on Banking, Housing and Urban Affairs, Washington, D.C.

DEAR MR. CHAIRMAN: This letter is in response to your request to keep you informed about the continuing difficulties resulting from the hold-back of authorized funds for public housing and urban renewal, first brought to light by the hearings of the Senate Subcommittee on Housing and Urban Affairs on March 3-4. This particularly concerns the withholding of 150 million dollars in annual contributions for public housing authorized by the 1970 Housing and Urban Development Act, and 200 million dollars in urban renewal funds appropriated by the Congress in December 1970.

Following our testimony before your subcommittee, we received numerous inquiries from local housing and renewal agencies regarding the national scope of the problems related to this Administrative withholding of funds. Accordingly, late last month we sent a memorandum to all our agency members requesting their evaluation of the local degree of emergency prompted from this embargo of funds. The response has been overwhelming. Considering the short time from when this memorandum was sent, we have been flooded with phone calls, telegrams and letters detailing the specific conditions of hardship imposed upon localities because of the embargo. To date we have received over 200 responses from every region in the country representing communities of all sizes. A list of these communities is attached for your information.

As a result of these responses, it is our conclusion that a crisis of major proportions is developing because of the withholding of funds, a crisis which can jeopardize the con-

tinuation of community development efforts and housing production programs in many localities. To be blunt, unless action is taken immediately to release these funds before July 1st, many local programs will not survive and others will face a drastic curtailment of their operations.

The embargo of funds has had a total community impact—slowing down many communities' development efforts, creating chaos in their planned development for physical improvements, and accentuating local enconomic problems. Timetables for public and private development have to be altered, contracts with private companies have had to be delayed, potential sites for development have been lost, prospective developers have had to turned away because the community can not guarantee that renewal and housing funds will be available when needed.

This is especially hard on those numerous communities facing high unemployment rates, where capital improvement projects would have a positive economic effect in the private sector, providing immediate jobs for hundreds of unemployed workers. Ironically, these same communities are finding that the high degree of unemployment is creating an even higher demand for public housing units for these unemployed families, a demand which cannot be met due to the withholding of these funds. Thus, the embargo has a double negative impact in these localities. Public renewal and housing programs are not the only casualties; but also the private sector—developers, contractors, architects, blue collar workers, construction industry trainees, and others who would participate in the program.

A second overall trend emerging from these letters is that the embargo of funds in these two areas has hindered the orderly implementation of other public programs. Public housing, for example, is an essential relocation resource for families displaced by other governmental programs such as renewal, highway development, school construction, clearance of unsafe buildings and those numerous other activities which force a community to displace families, many of whom are low income and cannot afford private housing. Without adequate housing funds, many communities find they cannot meet the relocation requirements as outlined in last year's Uniform Relocation and Property Acquisition Act. Likewise, the timing of a renewal project is often of critical importance to a community's efforts to implement its total public improvement program. Delays in funding have endangered the coordinated action with other federal programs including model cities, assisted housing, public works, and has caused delays in the implementation of the locality's capital improvement schedule.

A third area of concern expressed in these responses is that many housing and renewal authorities face a financial crisis which could result in the termination of programs and the elimination of the agency itself. This crisis results from not funding new applications, not honoring previous commitments and reservations, and, in public housing, the failure to implement fully the Sparkman/Brooke amendments. Some housing and renewal agencies have laid off staff, cut down expenses, and postponed the payment of their financial obligations. This in turn means the loss of competent staff, and the loss of confidence in the agency by those with whom it does business.

A fourth set of concerns relate to the increased costs resulting from the delays this embargo is producing. Financial estimates based on purchasing property, and constructing improvements made according to a timetable assuming prompt funding are no longer valid. Each day of postponement results in increased costs, especially those related to construction projects where materials and labor costs have been increasing at a high rate. These increases will mean the cost to the federal and local government and to private developers will be higher if and when these projects can proceed.

A fifth area where comments were made was the noting of the confusion of goals at the federal level. Why, they ask, is there now an embargo of funds when just months ago the federal government was encouraging communities to become involved in these programs. Many letters express a sense of frustration. Communities which a year ago were encouraged to participate in the renewal and housing programs, prepared applications, worked their way through the whole series of local approvals required from public and citizen groups, now are told that these applications cannot be funded because money is being withheld in Washington. Many communities who invested a large amount of their resources toward the task of preparing such applications are now suspicious of the federal government's ability to fulfill its promises.

A final, and perhaps the most serious, generalization coming from these responses is that public confidence in these programs is being eroded because the locality is unable to meet the goals it set, goals which were established under the belief that funding would be forthcoming. Citizen groups, merchants, businessmen, developers and elected public officials are reexamining their support for programs which promise community improvement, but which are unable to produce results.

I would like to cite some specific examples of the effect of this crisis which is now occurring in many communities.

PUBLIC HOUSING

Among the several responses noting the overall community impact of the embargo are the following:

From a housing authority in Texas: "This Authority has in active development 466 units of Turnkey family housing which are in jeopardy because of lack of funds. Four different developers are involved in five scattered sites. Proposals were accepted in June, 1970 and thousands of dollars have been invested in land options, architectural and engineering fees, only to find that the Regional Office, as of March 19, can fund only 152 of these units. As a result, valuable sites will probably be lost along with goodwill developed in the community. Extensive efforts were expended in selling the Turnkey program to the community and to local developers who are now disillusioned . . ."

From a housing authority in Washington: "Delay in relief on public housing operational needs and new development funds is seriously endangering our ability to meet critical housing needs of welfare families who have suffered drastic cuts in housing allowances, leaving them no place to turn but public housing . . ."

From a housing authority in Connecticut: "Our entire metropolitan areas suffers from a dangerously high level of unemployment . . . we presently have nearly 400 units under program reservation not funded and pending for over nine months . . . we also have a pending application for operating subsidies . . . these programs could both mean additional jobs and economic investment in the area . . ."

A large number of agencies noted that the lack of housing funds were directly affecting the community's renewal program and disrupting other activities where housing was to provide relocation. Among these responses were:

From an urban renewal agency in Arkansas: "This authority has 824 units of World War II housing . . . about 500 of these units are on leased land and the lease will expire on December 31, 1972, and will not be renewed by the owners . . . these units must be vacated and demolished by that time. We had a program reservation for 300 units last year; however, 100 units were eliminated due to the funding 'crunch.' Thus, we now have only 200 new units to replace 300 old ones, and only 21 months in which to provide replacement housing before the old units must be vacated . . ."

A sample of the cost increases emerging from these delays is provided by the following quote:

From a small housing authority in Tennessee: "We have three projects that need immediate attention . . . the sites for these projects have been selected and approved . . . options were signed and will expire in a short time if we do not work fast. As you know, the price of land is growing by leaps and bounds, and it will be impossible to hold this property at our option price for an indefinite period of time . . ."

A few samples of the comments relating to the financial crisis the embargo is producing are:

From a housing authority in Iowa: "For the first time our housing authority has operated in the red, because of our inability to get supplemental funds to implement the Brooke amendment (rent reduction amendment) which went into effect on March 24, 1970 . . . these funds are being held up, though authorized . . ."

From a housing authority in Rhode Island: "As of today, our deficit is estimated at approximately 175 thousand dollars above current reserves . . . when July 1 comes, the figure could be much higher . . ."

From a housing authority in New York: "We are a relatively small local authority with a new HUD-assisted program (nothing more than five years old) and therefore do not have the backup of an older established program . . . current operating income, including special subsidies and their timely receipt are crucial. The Section 23 program is even more sensitive in that funds are parceled out on a quarterly basis and must be on hand to pay contractural obligations under leases with private owners . . . we have subsidy funds owing and long overdue in both special subsidies and leasing . . ."

Finally, we are enclosing a quote from one authority which is indicative of how the withholding has endangered public and community support for the program.

From a housing authority in South Carolina: "We have a planning grant for a housing development which has received the enthusiastic approval of area residents, as well as the public at large . . . the living conditions in this neighborhood have been a disgrace for 40 years . . . at the last several community meetings, the residents have expressed despair and hopelessness in the lack of progress . . . They have opined that they will never live to see actual construction begin on this housing development . . . our housing authority staff has never observed such utter desperation."

URBAN RENEWAL

There are several examples of how the embargo has effected the timing of projects, and their coordination with other financing sources and programs:

A small community in Texas is planning a large development effort which involves a major overpass over its railroad yards. To accomplish this, the city received commitments from the state highway department and the railroad for over a half million dollars to assist in this project. However, both now express concern that they will not be able to keep earmarking these funds much longer, and action which will prevent this project from ever being initiated. To make matters worse, the agency's operating funds will be exhausted on May 15, 1971 unless its application is approved.

A Rocky Mountain city has a pending renewal application which would provide a site to be shared by three colleges. The

state appropriated 1.4 million dollars for financial assistance to the project, but this money will revert to the general fund on June 30th unless the federal application is approved.

A related timing problem resulting from delays due to the Administrative withholding of funds revolves around the use of non-cash credits to meet the community's local share requirement:

A small town in Pennsylvania notes that its urban renewal project is dependent upon using 650,000 dollars in non-cash credits relating to school construction. Yet, unless a loan and grant contract is signed by November these credits will expire and the community will be unable to proceed with its development plans.

Another series of examples demonstrates the effect of this embargo on the continuation of the NDP program and its relationship to total community efforts:

One California city submitted a third year application for 9.7 million dollars, 4.8 million dollars of which is new funds. The HUD Area Office informed it that it could receive only 1.2 million dollars in new money which "wouldn't even cover interest payments on our project notes."

A large southern city is in similar straits. For its second year NDP activities, the city requested 6.3 million dollars but was informed it should submit a revised application for only 1.4 million dollars, the amount of its first year grant. The Executive Director notes the implication of this reduction of the application—(1) "the 'life-blood' of our Agency . . . is in severe jeopardy;" (2) "it would be extremely difficult to tailor a 6.3 million dollar program to a 1.4 million dollar program and still produce a meaningful and significant impact in the NDP area;" and (3) "the confidence and support of the residents of the area . . . will be seriously eroded."

A large Texas city in submitting its second year NDP application placed major emphasis on drainage improvements, working out a joint project with the local river authority, the Model Cities program, and the U.S. Corps of Engineers. The city's application for these activities was for $14 million dollars. Yet HUD has informed the city it will receive only 3.5 million dollars. The Executive Director comments, "our scheduled second year share of the channel improvements alone is 3.8 million dollars. At the moment, it looks as if we not only have to cut second year actions involving housing sites and rehabilitation (both critical areas of concern in Model Cities) but also have to somehow cut back on what we are committed to do on channel improvements."

A final set of responses notes the imminent financial crisis implicit in the embargo:

One village in New York State is presently completing a renewal project which should be closed out by July of this year. The community has a pending application for an additional project, which if not funded before the termination of the existing project may mean "a good possibility that this agency and the employees will have to be terminated."

A small New England city notes that unless its amendatory application is funded within 60 days "we will have no other alternatives but to close down these projects." The agency has already cut staff by 50% and now has a balance of 500 dollars in the account of one of its projects.

From an upstate New York community: "Our emergency arises from the fact that we have exactly $1,536.63 in our checking account on this date with liabilities of more than double that amount. Our monthly expenses are about 3,000 dollars. We will literally close the doors unless we receive some immediate action from HUD."

A New England city reports that because it has not received approval of an amendatory application, it has been forced to borrow more than 90,000 dollars from other local sources to pay relocation claims and interest charges.

Another nearby city faces an even more serious problem—80,000 dollars in relocation payments due, but no resources from which to borrow.

In summary, the lack of funds for renewal is placing the whole program in jeopardy. The backlog needs of nearly 3 billion dollars remains and our inability to meet this backlog is reaching critical proportions—forcing many communities to question the good faith of Congress and the federal government in being committed to a physical development program. While we realize that the release of this 200 million dollars will not solve these problems in every community, we believe it can take care of some of the most pressing situations where agencies will be forced to close down or terminate projects without immediate financial assistance. Likewise, immediate use of the 150 million dollars for public housing development and operational subsidies would meet the most critical situations and be a sign of good faith that the federal government is committed to this program.

In closing, I would like to transmit to you a copy of the responses we received from Macon, Georgia and Louisville, Kentucky, which succinctly summarize the plight of many communities and highlights the local importance of the renewal and housing programs.

Your leadership in efforts to release these funds is greatly appreciated.

Sincerely yours,

ROBERT W. MAFFIN,
Executive Director.

RESPONSES TO MARCH 26 LETTER TO HOUSING AND RENEWAL AUTHORITIES

Housing: Responses to date: 153; representing 34 States.

Alabama: Alexander City, Ashland, Bay Minette, and Gadsden.

Arkansas: Fort Smith, Mena, and Truman.

California: Contra Costa County, Fresno, Monterey County (Salinas), Riverside County, and San Francisco.

Connecticut: Danbury, New Haven, and Waterbury.

Florida: Broward County, Dade County, Florida Association of Housing and Redevelopment Officials, Fort Lauderdale, and New Smyrna Beach.

Georgia: Americus, Broxton, Canton, Oglethorpe, Rome, and Taccoa (6 cities combined).

Illinois: Albion (Edward County), East St. Louis (St. Claire County), Jefferson County (Mt. Vernon), Peoria, and Quincy (Adams County).

Indiana: South Bend.

Iowa: Des Moines and Iowa City.

Kansas: Lakin, Strong City (Marion, Morris, Lyon, Chase Counties), and Wichita.

Kentucky: Danville, Hartford, Louisville, and Martin.

Louisiana: Farmersville.

Massachusetts: Massachusetts Association of Housing Authorities, Northampton, Pittsfield, Quincy, and Weymouth.

Michigan: Bessemer, Cadillac, Dearborn, Mt. Clemens, Muskegon Heights, Negaunee, Traverse City, and Wakefield.

Minnesota: Ely.

Mississippi: Biloxi, Cleveland, Fayette, and Natchez.

Missouri: Branson, Chaffee, Excelsior Springs, Milan, Portageville, and Tarkio.

Nebraska: Doniphan and Neligh.

Nevada: Clark County.

New Jersey: Camden, Cumberland, Glassboro, Hoboken, Irvington, Vineland, West New York, and Lodi.

New York: Binghampton, Elmira, Freeport, and Rochester.

North Carolina: Apex, Brevard, Chapel Hill (Orange-Chatham), Clayton, Highpoint, Rocky Mount, and Sylva.

Ohio: Dayton.

Oregon: Clackamas County, Douglas County, Washington County, and Lane County.

Pennsylvania: Allentown, Armstrong County, Beaver County, Bucks County, Butler, Dauphin County, Greene County, Lebanon County, Montgomery County, Northumberland County, Oil County, Philadelphia, Pittsburgh (Allegheny County), and Westmoreland County.

Rhode Island: Harrisonville, Pawtucket, and Providence.

South Carolina: Columbia and Regional Housing Authority No. 3.

Tennessee: Athens, Crossville, Dayton, Elizabethton, Nashville, Gallaway, Hohenwald, Johnson City, Knoxville, La Follette, Maynardsville, Morristown, Murfeesboro, Newbern, and Stewart County (Dover).

Texas: Austin, Brownsville, Dallas, Del Rio, Denton, Donna, Galveston, Grapeland, Hamlin, Kirbyville, San Antonio, Sherman, Smiley, Texarkana, and Marlin.

Vermont: State of Vermont, Agency of Development and Community Affairs.

Virginia: Lynchburg and Newport News.

Washington: King County, Seattle, and Tacoma.

West Virginia: Clarksburg.

Wisconsin: Kaukauna (Outagamie County), Menominee (Dunn County), New Richmond (St. Croix County), and Wausaukee (Marinette, Florence, Forest, Oconto Counties).

Urban renewal: Responses to date: 83; representing 28 States.

Alabama: Daleville.

Arkansas: Hope, Little Rock, Pine Bluff, and Truman.

California: Fresno, Los Angeles, Napa, Oakland, Port Huneme, and San Francisco.

Colorado: Denver, Pueblo, and Trinidad.

Connecticut: Farmington, Glastonbury, Hartford, New Haven, Stamford, Stratford, Waterbury, and West Haven.

Florida: Dade County, Florida Association of Housing and Redevelopment Officials, and Jacksonville.

Georgia: Brunswick and Macon.

Illinois: De Kalb, Peoria, and Springfield.

Indiana: Mishawaka.

Iowa: Evansdale and Iowa City.

Kentucky: Paintsville and Pakesville.

Massachusetts: Brookline, Holyoke, Lynn, Malden, and New Bedford.

Michigan: Albion, Highland Park, Niles, and Saginaw.

Missouri: University City.

Mississippi: Cleveland.

New Jersey: Bridgeton, Camden, Jersey City, Paterson, Rahway, Wildwood, and Trenton.

New York: Amsterdam, East Rochester, Glen Cove, Hempstead, Port Jervis, and Roslyn Heights.

North Carolina: Fayetteville and Washington.

Ohio: Akron.

Oklahoma: Oklahoma City.

Oregon: Portland.

Pennsylvania: Bradford, Monessen, Nanticoke, New Castle, New Kensington, Philadelphia, Pittsburgh, Reading, and Westmoreland County.

Rhode Island: Newport.

Tennessee: Athens, Crossville, and Nashville.

Texas: Hearne, Lubbock, San Antonio, and White Settlement.

Virginia: Waynesboro.

West Virginia: Huntington.

Wisconsin: Milwaukee.

THE HOUSING AUTHORITY
OF LOUISVILLE,
Louisville, Ky., April 1, 1971.

Mr. ROBERT W. MAFFIN,
Executive Director, National Association of Housing and Redevelopment Officials, The Watergate Building, Washington, D.C.

DEAR BOB: This is in reply to your letter of March 26, 1971, in which you asked that we advise you of all our programs which are being held up by the Administration's "freeze" of the 150 million dollars of public housing funds. We have two programs in Louisville that are being delayed because of this action, they are as follows:

1. Avenue Plaza, Project KY-1-14, was originally designed as a project on two sites, totaling 348 dwelling units, both of these buildings were high-rise buildings for elderly. They were designated under an Annual Contributions Contract for Project KY-1-13, totaling 348 units. Because of design difficulties, KY-1-13 will be reduced in units to 173 units on one site, and the difference in approved units (175) will be increased to 226 units which will become KY-1-14. This building will also contain space for a new Central Office Building for our Authority, plus the increase in number of units which is now proposed to total 226 dwelling units. This change will require an additional million dollars over and above the funds remaining in the original KY-1-13 Project. The Regional Office, in Atlanta, has expressed some concern to us as to whether or not they can get the additional 51 dwelling units, plus the money needed to complete the project.

2. Louisville obtained a Program Reservation of 1,000 units in the fall of 1968. Since that time we have been concentrating on high-rise buildings for elderly, which are referred to in No. 1 above. There now remains 400 units which are designated as "Turnkey" developments for families. We have attempted, in recent weeks, to get approval from the Regional Office to proceed with invitations to bid to turnkey developers to build these units on a scattered-site concept. We have been informed by the Regional HUD Officials that no funds are available for Annual Contributions Contracts and we must, therefore, wait until funds are available before proceeding with advertising for proposals.

The low rent housing situation in Louisville has reached a critical stage. Public Housing Authorities are the only ones who can produce housing for the low-income sector at rents within their limits to pay. In recent weeks there have been deliberate attempts on the part of the National Tenant Organization, the Local Tenant Union and the Legal Aid Society, among others, to force crisis situations at the Mayor's Office, and other public agencies, by moving people out of slum properties and expect agencies to house them in standard housing. The only sources our Authority have is in turnover of existing units. The problem is compounded by the fact that we presently have over 3,000 applicants who are eligible to be placed in public housing. I think you can see that this causes a great deal of unrest and dissatisfaction among eligible applicants when, because of pressure from other groups, other families are put into vacant units prior to those who have been waiting many months for placement. This situation is not going to improve until funds are released to develop new dwelling units for low-income occupancy. Our Mayor, Frank W. Burke, included this appeal when he visited with President Nixon, in the White House Conference of Mayors, March 16.

If the Louisville story is of any help to you in your efforts to get additional units released, you are welcome to use it in any way you see fit.

With best personal regards, I remain.

Sincerely,

H. M. BOOTH, Jr.
Executive Director.

MACON, GA.,
April 1, 1971.

Mr. ROBERT W. MAFFIN,
Executive Director, NAHRO, The Watergate Building, Washington, D.C.

DEAR MR. MAFFIN: We have your communication of March 26, 1971 regarding the $200 million of Urban Renewal funds that have been authorized by the Congress and are still unavailable to the operating agencies. As requested, we are outlining below a situation that exists in Macon regarding Urban Renewal which we feel could, and very well may already be a critical situation.

The application for the Unionville Urban Renewal Project, Ga. R-129 has been pending since the Spring of 1968. The application was originally filed for a conventional type Urban Renewal Project. In October of 1968, we were advised by HUD to include the Unionville project in with our NDP Application. Our applications were reworked accordingly; however, in December of 1969, we were advised by HUD that the Unionville Area could not be approved as a NDP Area because it would involve too much planning and not enough "project execution" the first year. At HUD's request, the Unionville Area was withdrawn and resubmitted as a conventional Urban Renewal project Application. We were informed at that time that the project would probably be approved right away if this separation were made. To date this project has not been approved.

We were informed at the end of 1970 that sufficient funds would be allocated to the Regional Office early in 1971 and that Unionville would probably be funded from this. When the funds were received, we were told there was not sufficient money to approve any new applications.

The Project is to be a clearance and rehabilitation type project and plans are to widen Pio Nono Avenue, which includes one of the most dangerous intersections in the City of Macon, and is a major thoroughfare for Warner Robins traffic. New street patterns, paving, storm drainage installations, etc., are planned for the entire area (94.7 acres). There are 368 residential structures of which 81.8% are substandard. The area is 100% black and consists of narrow, winding dirt streets, almost impassible in wet weather and dusty in dry weather. The people in Unionville feel that they have not gotten their fair share of City services and are very bitter. The City cannot afford to pave the streets and provide storm drainage. The only hope is through Urban Renewal. This area was a target area for the Black Liberation Front last Summer which was the major racial confrontation Macon has had. It is felt this Summer will bring stronger racial demands unless we have something definite to promise the black race for this area. The project is to be redeveloped into private low income and moderate income housing. We understand how the residents of this area feel because all we have given them in the last three years are promises.

We have been informed that this project has been approved by HUD in Washington and is just awaiting funding. If additional information is needed, please advise.

Yours very truly,

R. D. FEAGIN,
Director.

DISCRIMINATORY PREFERENCES WITH RESPECT TO CITRUS FRUITS

Mr. FANNIN. Mr. President, on April 1 the Senate agreed to Senate Resolution 89. The resolution urges the President to "promptly make every effort to obtain the removal of discriminatory import preferences maintained by the European Economic Community with respect to citrus fruits."

There will be an opportunity this week to take up this issue at a General Agreement on Tariffs and Trade meeting. The Office of the Special Representative for Trade Negotiations has proposed that the citrus issue be included on the GATT agenda for the Wednesday and Thursday meetings.

I am urging that all executive departments concerned with these negotiations give their approval to put the matter before GATT at this time.

We have waited long enough—too long, in fact—for the EEC to rectify the unequal and unfair treatment of citrus imports from the United States. It is costing us millions of dollars in trade. American-grown citrus continues to pay full tariff while Morocco, Tunisia, Spain, and Israel all have tariff reductions of 40 to 80 percent.

It is my hope that we can settle this matter quickly at the trade conference table. If not, our government should take immediate action to force the EEC to live up to its trade agreements with the United States.

It was encouraging to read in today's Washington Post that Secretary of the Treasury Connally is aware of the importance of this and other foreign trade inequities. He was quoted as saying that in world trade, "The United States is in bad shape."

If anyone is qualified to judge the state of our foreign trade standing, it is the Secretary of the Treasury.

Secretary Connally suggests that the time is coming for our government to make some very basic decisions concerning the future of American foreign trade. We are inviting disaster unless we insist that other nations begin playing fairly in international trade.

It is my hope that Congress and the administration can benefit from Secretary Connally's sound judgment and good advice in the field of foreign trade.

Mr. President, I ask unanimous consent that the Post article be printed in the RECORD.

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

CONNALLY URGES TOUGH TRADE STANCE

(By Don Oberdorfer and Frank C. Porter)

Secretary of the Treasury John B. Connally has suggested that the United States withdraw its overseas support for countries that fail to give it a fair break on trade opportunities.

"We can't continue to hold a military, economic and political umbrella over the free world by ourselves as we have been doing," Connally said during luncheon at the Washington Post last Thursday. We need "a radical change" in our basic trade position, he said.

Connally made clear this is not necessarily the official government view but that he is pushing it hard within the Nixon administration.

The only Democrat in Mr. Nixon's cabinet and a former governor of Texas, Connally even suggested that this was one of the reasons for his surprise appointment to the Treasury post.

He said he and Roy Ash, president of Litton Industries and chairman of a presidential commission on governmental reorganization, had presented strong arguments for this thesis while conferring with Mr. Nixon at San Clemente last summer. Connally took office about two months ago.

"The United States is in bad shape" in world trade, Connally said, and will reach "a point of decision fairly soon on how we're going to proceed in this decade and hereafter."

Getting down to specifics, the Secretary cited trade concessions made by Western European nations to smaller states in North Africa and the Middle East—concessions that presumably would discriminate against American exports.

When the United States protested the action, Connally said, the European countries explained apologetically that the concessions were made to neighbors within the Mediterranean family of nations.

If that's the way they feel, Connally said with some feeling, the United States should pull its Sixth Fleet out of the Mediterranean and let the Europeans arrange for their own defense.

He was similarly blunt about the rising industrial giant of the Pacific. "We're going to have to say to Japan, 'My friends, no more.' We've got to get tough with those countries," the Secretary said.

Japan has been increasingly criticized for violating the rules of the General Agreement on Tariffs and Trade by maintaining illegal barriers to scores of imported commodities while pushing its export penetration of freer markets, such as that of the United States.

"We're confronted with fierce competition," Connally said. "We're not facing up to it . . . The standard of living in the United States is at stake—no less than that.

"We did well when we were a lean, hungry nation. There are lean, hungry nations around the world. They're going to be wanting what we have."

The Secretary explained that he didn't begrudge other nations wanting or attaining the affluence reached by the United States nor did he blame them for pressing any trade advantage against this country. But the United States must defend its own interests, he maintained.

Connally said the United States depends upon four categories for export earnings: farm products, raw materials and fuels, simple manufactured goods, and products with a high technology input. The nation suffers a trade deficit on the first three, he said, and the $9 billion annual surplus in the high technology sector "saves us."

"That has kept our head above water," he said, but Japan, West Germany and a number of other nations are hard on our heels now in this sector.

SELENIUM POISONING

Mr. CURTIS. Mr. President, although a certain amount of selenium is necessary in the diet of farm animals—among other things, it prevents nutritional muscular distrophy or "white muscle disease" in calves and lambs—U.S. Department of Agriculture scientists describe this trace mineral as highly toxic.

Stockmen in some parts of the country, particularly in areas west of the Mississippi River, have feared selenium poisoning since 1857 when cavalry horses at Fort Randall, S. Dak., became sick while grazing pastures near the fort. Animals die as the result of too much selenium ingested through forage and grain. So-called blind staggers, an advanced form of poisoning, leads to death within a short time.

Scientists in USDA's Agricultural Research Service are seeking ways to combat selenium poisoning as part of an overall study of trace minerals as they relate to human nutrition. Because of the long-time interest in this subject, I ask unanimous consent that an article published in the March issue of Agricultural Research magazine be printed in the RECORD.

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

DETOXIFYING DIETARY SELENIUM

How to combat selenium poisoning, which causes death of cattle and sheep in certain areas of the country, is part of an over-all study of trace minerals as they relate to human nutrition.

Either too little or too much of this element can be harmful, and the margin for error is relatively small. Less than one-fifth of an ounce in a ton of hay prevents nutritional deficiences in livestock which cause degeneration of the liver, pancreas, heart, or muscle tissue, depending on the animal species. But the mineral is also highly toxic.

Previous research indicates that several materials decrease selenium toxicity and that each acts uniquely. It is believed that the amino acid, methionine, works with vitamin E to decrease selenium residues in the organs; that arsenic stimulates excretion of selenium through the bile, thus decreasing its toxic effects; and that linseed oil meal increases the ability of body tissues to bind selenium in a less toxic form.

To verify the interaction of methionine and vitamin E and to learn more about the way these two compounds work together, a team of ARS scientists in the Beltsville, Md., human nutrition laboratories studied the response of female weaning albino rats to high-selenium diets. Chemist Orville A. Levander headed the team.

All rats were fed a basic peanut meal ration devoid of vitamin E with 10 parts per million selenium added. One group received a methionine supplement; one received vitamin E; others were given supplements containing both methionine (0.5 percent) and vitamin E at different levels (0.01 to 0.05 percent). In other groups, certain antioxidants were substituted for vitamin E.

Rats receiving the selenium-peanut meal diet without a supplement of methionine or vitamin E showed moderate to severe liver damage. Adding either alone had only a slight beneficial effect. All combinations of methionine and vitamin E protected against selenium poisoning, with the best protection at the higher vitamin E levels.

When certain fat-soluble antioxidants—ethoxyquin (Santoquin), butylated hydroxytoluene, and N.N.'diphenly-p-phenlenediamine—were added to the diet in place of vitamin E, animals were protected in varying degrees. These compounds, which together with methionine protected against liver damage cause by selenium toxicity, were the same compounds previously reported to be active against acute liver damage in selenium-deficient rates. The water-soluble anti-oxidants, methylene blue and abscorbic acid (vitamin C), were ineffective.

Animals receiving any of the protective supplements showed lower selenium levels in the liver and kidneys than those fed the selenium-peanut meal diet without supplement.

Because selenium itself is considered an antioxidant, it is believed unlikely that vitamin E and the effective fat-soluble antioxidants are acting as antioxidants. Rather, Dr. Levander suggests that vitamin E and the fat-soluble antioxidants make the methy component of methionine more available for use in detoxifying the selenium.

PRESIDENTIAL WAR POWERS

Mr. GOLDWATER. Mr. President, it was my great privilege last Friday morning to appear before the Committee on Foreign Relations to present my thoughts on the great issue of where the powers of war and peace are deposited by the Constitution among our branches of government. Mr. President, I went before the committee as an individual who was a Presidential candidate at one time and who was thereby personally exposed to all of the terrific and almost omnipresent powers handed by the Constitution to the President, particularly in the domestic field. Also, during the time of that Presidential campaign and since, I have noted that it is Congress who repeatedly expands the powers of the President by enacting broad and very expansive laws which broaden his authority. In this sense, I testified Friday from the standpoint of an individual who shares to some extent the concern of others about the sweeping breadth of the Executive's powers.

Nevertheless, Mr. President, in my opinion the trio of bills before the Foreign Relations Committee, which are generally referred to as the war powers bill, are improper, unwise, and perhaps illegal. They seek to attack the issue of the President's authority over the use and deployment of U.S. military forces by passing legislation which contain rigid limitations over his ability to make independent policy decisions. In effect, under these kinds of bills, Congress would don its brass helmets and seek to reduce the President to no more than a simple stooge who is expected to follow the smallest directive of the legislature in each and every matter relating to military and foreign policy.

Mr. President, there simply is no foundation at all in our Constitution for this concept, and there is an immense amount of historical precedence contrary to this position, backed up by solid judicial statements and conclusions made by reputable authorities, Mr. President, these bills are so bad they would prevent the United States from taking any action in the defense of Israel; they would completely override all our 42 mutual security treaties including NATO; and to my mind, they would reduce the United States to a second- or third-rate power and destroy our integrity as a great nation in the world.

Mr. President, it became amply clear during the hearing that the only action which U.S. troops could take in countries such as Israel, with which we have no defense commitments, is a limited rescue effort for the protection of American citizens.

The truth is, the war powers bill introduced by the Senator from New York (Mr. JAVITS) would not allow American forces to protect Israel itself. It would not permit American fighting units to defend Israeli citizens or the territorial independence of Israel. Oh, yes, we might rush in Air Force transport planes to whisk our own citizens out of danger. We might even send a contingent of marines into cities where our embassies and legations are located to aid them.

But when our forces are called upon to act for broader purposes—for reasons of vital strategic interests such as saving another nation's people from annihila-

tion—the war powers bill will halt our forces short. This would be carrying out a national commitment. And this is plainly prohibited by the war powers bill unless and until Congress has specifically granted its goahead.

Also, Mr. President, it became quite evident that the war powers bill, as it stands right now, would allow some future Congress to drag a reluctant President into wider military hostilities than he wishes. This development could actually occur pursuant to a provision of the bill which sets up a shortcut procedure for action by Congress on legislation designed to sustain the use of American forces beyond 30 days.

For example, if the Javits bill had been in effect at the time of the Cuban missile crises, Congress would have been required to vote on sustaining the deployment of American military forces in the Caribbean longer than 30 days. And under the terms of this bill this vote might have taken place, with Congress already in session, within a matter of days. Thus, it could have occurred shortly after the Cuban naval quarantine had commenced—in other words right at the peak of emotional excitement and public concern.

Is it improbable to conceive that in a fever-pitched situation of this magnitude—with enemy missiles about to be aimed at cities holding 80 million American citizens, with reports arriving of attacks on American reconnaissance planes and then with the killing of an American pilot over Cuba—a majority in Congress, mindful of the imminent elections, might not have voted for legislation directing a United States air attack on Cuba, or an invasion?

Mr. President, this is the terrible dilemma posed by the Javits bill. For it rests upon the broad proposition that Congress controls the war powers and the President must faithfully carry out the directives Congress lays down. But what happens when Congress does not want to restrain the President but instead wants to push him over the brink? In either case, the Javits bill says the President has no option. According to the legal memorandum submitted by the Senator from New York, it is his argument that "The President as Commander in Chief was intended to be the executive arm of Congress, carrying out its policy directives in the prosecution of military hostilities."

In other words, if Congress tells the President to stop hostilities, he must stop If Congress tells the President to expand the hostilities, he must expand them. Under the Javits bill "the President has no right to contravene such legislation."

Mr. President, the reasons for my strong opinions about the war powers bills are spelled out in detail in the remarks which I presented Friday morning before the committee, and in order that the entire Senate and the many readers of the RECORD can be able to study these arguments and look at the many authorities which I believe support the arguments, I ask unanimous consent that the entire text of my statement be printed, including the appendix to my remarks which sets out a summary of all 153 incidents in which the United States has taken armed military action in its history without any declaration of war from Congress.

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

THE PRESIDENT'S RIGHT TO PROTECT OUR FREEDOMS

(Statement by Senator BARRY GOLDWATER)

PURPOSE TO JOIN ISSUES

Mr. Chairman, the Committee has heard from a steady stream of witnesses who have announced their endorsement of legislation fixing rules for the use of United States forces in military hostilities abroad. It is with some trepidation that I, a layman and nonlawyer, feel compelled to disagree with the position held by the distinguished historians and Senators with law degrees who have preceded me at these hearings.

But the issues raised by the War Powers Bill are so fundamental and the possible drawbacks of such legislation are so immense, I feel someone should join the issue so that the Committee may make its judgment on these grave matters in the light of all possible points of view. So if you will consider my statement as being intended to assist the Committee in making an objective analysis of the War Powers Bill and measures like it, I will present my admittedly personal thoughts on this subject.

And in doing so, I wish to interject the thought that, as a former candidate for the Presidency, I have come to a very close and personal realization of the awesome powers held by that office. Thus, in speaking to you, Mr. Chairman, it is from the standpoint of one who shares to some extent your concern about the sweeping breadth of the Executive's powers.

Nevertheless, Mr. Chairman, in my opinion, the War Powers Bill is not the correct way to tackle this issue. To my mind, the bill is improper, unwise, and perhaps illegal. It would leave the United States helpless to prevent the annihilation of Israel. It would emasculate NATO. It would unwittingly allow a militant Congress to initiate a nuclear holocaust. And it may incite one of the gravest Constitutional crises in American history.

DEFENSE OF ISRAEL PROHIBITED

Mr. Chairman, as strange as it seems, this country has no formal legislative commitment to defend the security of Israel. There is no treaty or convention or any kind of legislative device committing the United States to assist in preserving Israel's independence.

What this means, under the War Powers Bill, is that the United States must stand idly by in the event of an all-out attack against the Israeli people. No matter that Arab fanatics may be seeking to make good on their aim of shoving the Israelis into the sea. No matter that approximately 20,000 Soviet personnel may be manning SA–3 missile sites and advanced jet fighters while massive Egyptian tank forces mount an invasion on disputed Sinai territory.

Congress may be in recess or adjournment. The United Nations may be bogged down in an endless exchange of animosity and bombast. But no matter. Regardless of the humanitarian exigencies and the dire consequences upon European security, the War Powers Bill prohibits an immediate limited response by the United States to forestall an Arab conquest of Israel. The War Powers Bill prohibits any action for strategic purposes unless there is in effect a legislative instrumentality specifically covering the interest at stake.

Of course, by the time Congress assembles and gathers a quorum for acting on the crisis, it may be too late for anything but resolutions of condolence. The victim people may have been slaughtered and the world may be confronted with a fait accompli. It is interesting in this regard that though the War Powers Bill establishes a special procedure for speeding up Congressional action on legislation in the event of some emergencies, the procedure does not apply in the case of countries with which we have no defense treaties.

MUTUAL DEFENSE TREATIES BUTCHERED

Not only does the bill fail to provide a means for taking prompt action in behalf of countries such as Israel with which we share mutual bonds of trust, religion, and free democratic institutions, but it also will undermine the credibility of our most basic defense agreements such as NATO. With one swipe, our 42 defense pacts will be chopped into 30-day wonders, if that. This is because under the War Powers Bill, United States military forces shall not be used to comply with our treaty commitments beyond 30 days unless Congress subsequently enacts legislation extending our military participation over a longer period. What is more, Congress can curtail our assistance short of 30 days if it passes a joint resolution to this end.

Thereby, the proposed bill will place all our treaty obligations in a state of permanent doubt. No ally can ever know if the United States will stand by it for more than 30 days; and even then, it cannot be certain whether Congress will shut off our aid sooner.

If Communist troops sweep across the island of free Berlin, the War Powers Bill tells us Congress might order American forces not to respond. If a Russian attack begins on Turkey, the War Powers Bill says Congress may direct United States troops to terminate whatever collective self-defense measures they had started.

In other words, the War Powers Bill would turn over the day-to-day calculations of strategic military and foreign policy decisions from the President to the Congress. The President and the National Security Council, the Secretary of Defense and the Joint Chiefs of Staff, and our 42 defense commitments as well, would all be dispatched to the sidelines. Congress would don its brass uniforms and take hold of the reins guiding the when and where of each American military activity.

Imagine the shock which this concept will have upon the minds of foreign leaders who are told the United States can no longer make long-range promises of American support, even when those commitments have been nailed down in written treaties duly ratified under the American Constitution. Such an approach would in my opinion, utterly demolish their judgment of America's dependability as an ally.

By converting our treaties into 30-day notes payable, with cancellation optional at a sooner date, we would, I fear, seriously endanger the entire structure of American mutual security agreements reached over a lengthy history of past negotiations and cooperation. Thereby the greatest safeguard of global peace would be downgraded to a community of suspicious, confused signatories who could never know when the United States might be counted on to live up to its past assurances or when one Congress might change the policy directives laid down by its predecessor.

DANGER OF MILIANT CONGRESS

Equally bad, if it is true Congress has the right to legislate concerning the conduct of war and the President has no right to contravene such legislation, then Congress must also possess the power to order the President into broader hostilities than he wishes. In this sense, the War Powers Bill would be a terrible sword of Damocles hanging over the heads of the American people. At one moment it may pulverize our national treaty commitments. At the next, it might

lead the nation right up to the brink of nuclear destruction.

Those who look to Congress as the ultimate haven of peaceful thinking might thumb through the pages of Robert Kennedy's short manuscript on the Cuban Missile Crisis. Senator Kennedy recounts that of all the deliberations which preceded President Kennedy's address to the nation on the situation in Cuba, his meeting with the leaders of Congress was the most difficult.

Senator Kennedy writes:

I did not attend, but I know from seeing him afterward that it was a tremendous strain.

Many Congressional leaders were sharp in their criticism. They felt that the President should take more forceful action, a military attack or invasion, and that the blockade was far too weak a response.

Is it not possible Congress might, when confronted with dramatic pressure for making an immediate decision, vote in favor of a military strike? Are the Members of Congress more immune to emotional, impulsive reactions than other humans? Can we be certain a majority of some future Congress, mindful of an imminent election, will not be overwhelmed by the pressure of events and steer our nation into greater military action than is warranted?

CAN SUPREME COURT RESTRAIN POLITICAL BRANCHES

But there are other dangers in the War Powers Bill. Suppose the Supreme Court considers the bill and rejects it as an improper abridgment of the shared powers divided among the President and Congress. If a frustrated Congress fails to accept the decision, might it not impeach the President for disobeying its rules against the conduct of military hostilities? In that event, could the Supreme Court restrain the Senate from sitting as a court of impeachment?

On the contrary, let us suppose the Court should approve Congressional regulation over the use of armed forces. If the President defies the Court in the belief the final existence of this country is utterly at stake, how will the Court enforce its decision? Since the President controls the sanctions which the Court must rely upon, won't the Court lack an effective means for carrying out its order?

These considerations might seem novel, but they are exactly the ones raised by the Supreme Court itself in rejecting a motion asking it to enjoin President Andrew Johnson from stationing troops in Mississippi under the Reconstruction Acts. *State of Mississippi* v. *Johnson*, 71 U.S. 475 (1866).

Mr. Chairman, this case illustrates the reasons why the Supreme Court has consistently refused to directly question the legality of Presidential military decisions. The courts have dropped this issue like a hot potato.

FOREIGN MILITARY POLICY IS A POLITICAL MATTER NOT MEANT FOR JUDICIAL DECISION

For example, the Supreme Court has turned down several challenges against the validity of the Vietnam conflict. In one important test, it left standing a significant ruling by Chief Justice Burger, who was then sitting as a Circuit Judge in the Court of Appeals for the District of Columbia. *Mora* v. *McNamara*, 389 U.S. 934 (1967). In this decision, the Circuit Court had flatly stated:

The fundamental division of authority and power established by the Constitution precludes judges from overseeing the conduct of foreign policy or the use and disposition of military power; these matters are plainly the exclusive province of Congress and the Executive. *Luftig* v. *McNamara*, 373 F. 2d 664–666 (1967).

It is true the Supreme Court once tackled a potentially embarrassing case when it acted on President Truman's seizure of most of the Nation's steel mills; but it must be recalled the President had served early notice he would comply with any Supreme Court ruling in that case. Also, it should be remembered the case turned on the far different nature of the President's authority over internal affairs as contrasted with his role in external matters. *Youngstown Co.* v. *Sawyer*, 343 U.S. 579 (1952).

Mr. Chairman, I may be wrong, but I think the probable course which the Court will take has been revealed in a recent legal discussion examining the precise question of what it might do if confronted with an Act of Congress restricting the President's war-making authority. This article suggests that in the first place Congress should not create a crisis by placing the Court in a position where it must take sides with one of the political branches. Secondly, it concludes the Court will not entertain the issue because a decision on the merits "might jeopardize the Supreme Court's ability to function effectively and endanger the Constitutional system." ("The Supreme Court as Arbitrator in the Conflict Between Presidential and Congressional War-Making Powers," 50 Boston U. Law Review 78, Spring, 1970.)

LIBRARY OF CONGRESS REPORT ON POLITICAL QUESTION DOCTRINE INDICATES COURT LACKS JURISDICTION

Further warning about the likely disinclination of the high Court to pass on the War Powers Bill comes from a current Library of Congress report on the Massachusetts statute which purports to exempt its citizens from service in undeclared wars. Though the statute is designed to stir up a court test on the legality of the Vietnam War, the Legislative Reference Service concludes the issues of undeclared war and the sending of troops abroad are "political questions" not meant for judicial decision. ("Undeclared War and the Right of Servicemen to Refuse Service Abroad," pp. 10–16, November 30, 1970, L.R.S.)

The report builds a sound case for the application of the political question doctrine to all matters of foreign military policy. For example, it recalls a declaration made by the Supreme Court in 1918, when it said:

The conduct of the foreign relations of our Government is committed by the Constitution to the Executive and Legislative—"the political"—Departments of the Government, and the propriety of what may be done in the exercise of this political power is not subject to judicial inquiry or decision. *Oetjen* v. *Central Leather Co.*, 246 U.S. 297, 302 (1918).

The Court recognized the same doctrine again in 1949 in these words:

Certainly it is not the function of the Judiciary to entertain private litigation—even by a citizen—which challenges the legality, the wisdom, or the propriety of the Commander-in-Chief in sending our armed forces abroad or to any particular region . . . The issue tendered . . . involves a challenge to conduct of diplomatic and foreign affairs, for which the President is exclusively responsible. *Johnson* v. *Eisentrager*, 339 U.S. 763, 789 (1950).

The report also mentions the above-stated case of *Mississippi* v. *Johnson* in which the Court found it had no power to restrain acts of either Congress or the President regarding the use of troops.

Thus an impressive line of cases can be mustered which cast serious doubt on the willingness of the Supreme Court to consider any statute governing the President's deployment of troops. And, it goes without saying, our nation will be placed in a pretty bad Constitutional muddle in the event Congress and the President are left without any arbiter to resolve the statute's legality.

WAR POWERS BRIEF FAILS TO SUPPORT BILL

But even should the Court look at the merits of the bill, it is by no means certain the measure could stand the test of judicial scrutiny. In this regard, Mr. Chairman, I would like to review the legal memorandum offered by the Senator from New York. For unless I have read the six cases wrongly upon which the bill stands, three of them might be taken as authority for the contrary, one is plainly limited to domestic affairs only, and the remaining two had no restraint at all on the President during the course of military hostilities.

EX PARTE MILLIGAN

One case is *Ex parte Milligan*, in which the Court held that neither Congress nor the President could authorize the trial of a civilian before a military tribunal in a State which had been loyal to the Union during the Civil War. 71 U.S. 2 (1866). To me, the pertinent part of this decision lies in the following comment by four of the justices, who remarked upon the power of Congress in time of war as follows:

This power necessarily extends to all legislation essential to the prosecution of war with vigor and success, except such as interferes with the command of the forces and the conduct of campaigns. That power and duty belong to the President as commander-in-chief. 71 U.S. 139.

While I am not a lawyer, it appears to me this case might reasonably be read as saying Congress cannot restrict the President's command of military decisions once hostilities begin, whether war is declared or not.

MIDWEST OIL COMPANY

Another decision which may expand the President's power, but is cited as authority for the War Powers Bill, is *United States* v. *Midwest Oil Company*, 236 U.S. 459 (1915). The case concerned a Presidential decree, issued in 1909, which withdrew from private acquisition all public lands containing petroleum. The President issued the order even though Congress had by statute made these same lands free and open to purchase by United States citizens. Nevertheless, the Court found the Executive had for a long time been making similar orders contrary to Acts of Congress and determined this established a power in the President to do what he had been doing. 236 U.S. 469. Thus, the Court expressly recognized a power of the President, in certain circumstances, to ignore Congressional enactments.

PRIZE CASES

A third decision mentioned in the War Powers brief is the *Prize Cases*, a Civil War action regarding the legality of President Lincoln's blockade against the Confederacy. 67 U.S. 635 (1863). It is claimed this case proves "the Court's insistence upon Congressional authorization as the basis of Presidential war powers."

And yet, Justice Grier, who wrote the Court's opinion, carefully explained the issue is not whether Congress authorized the blockade, but whether the President, acting alone, had a right to take military action "on the principles of international law, as known and acknowledged among civilized States?" 67 U.S. 671.

In upholding the Executive's right to meet the insurrection, the Court said: "If a war be made by invasion of a foreign nation, the President is not only authorized but bound to resist force by force. He does not initiate the war, but is bound to accept the challenge without waiting for any special legislative authority." 67 U.S. 668.

Again, we have an opinion which far from establishing a superior role for Congress, points to a duty on the part of the President to meet certain challenges against the nation without waiting for Congress to baptize them with a name.

"STEEL SEIZURE CASE"

Another decision relied on by the War Powers brief is the "Steel Seizure" case which arose from President Truman's attempted takeover of most of the nation's steel mills. Though the Court held, six to three, the President lacked power to take possession of

private property, it is quite clear the Court's majority treated the case as a domestic affair far removed from instances involving day-to-day fighting in a theater of war. 343 U.S. 5.

Justice Jackson appears to have captured the mood of the Court correctly when he wrote:

We should not use this occasion to "circumscribe," much less to contract, the lawful role of the President as Commander in Chief. I should indulge the widest latitude of interpretation to sustain his exclusive function to command the instruments of national force, at least when turned against the outside world for the security of our society. 343 U.S. 645.

Accordingly, I cannot see that the "Steel Seizure" case is controlling in a situation regarding the use of United States troops outside the nation.

THE ELIZA

Nor do the final two cases discussed in the War Powers brief give me any more comfort. One of these, *The Eliza*, involved nothing more than whether the word "enemy" should be applied to French privateers during the late 1790's. 4 Dallas 36 (1800). The purpose of the Court's exercise was simply to determine whether the owner of the "Eliza" had to pay salvage under a Federal law relating to the recapture of ships from the enemy, rather than under a general law which required payment of a much smaller sum.

It is true three justices spoke in brief, but sweeping, terms about the limits which Congress might set on the hostilities, but these references were in no way necessary to the decision of the case. They are gratuitous *dictum* and cannot sustain anything more than the interesting concept that American forces can properly engage in fighting without a general declaration of war.

THE FLYING FISH

The final case raised in support of the War Powers Bill also construed the meaning of a Federal statute applicable to the undeclared naval war with France. This time the case involved a law providing for forfeiture of American vessels employed in commerce with France. Though the statute empowered American warships to seize craft going *into* French ports, President Adams directed our ships to capture trading vessels both going to and from French ports. In these circumstances, when an American frigate seized a Danish vessel, the "Flying Fish," upon leaving a French port, the Court held the action was unlawful even should the vessel have been an American ship. *The Flying Fish*, 2 Cranch 170 (1804).

Now on the surface, this decision may appear to support the validity of Congressional restraints over the conduct of military hostilities. However, upon close inspection, it can be seen that even this citation is a highly dubious one. In the first place, the Court's discussion of the conflict between the Presidential order and the Congressional statute was superfluous. Neither the President nor Congress had authorized the seizure of neutral vessels, which the "Flying Fish" was. The capture of a Danish vessel was unlawful under either claim of authority.

Second, the decision had no effect whatsoever upon subsequent military activities. The case was decided in 1804, four years after peace had been achieved. What the Court would decide in the course of an ongoing war, and what the President's reaction would be if a holding shackled his ability to conduct that war, present a far different situation than the minor incident settled by this decision.

Third, the decision was not aimed at stopping the President from using American forces. The case solely affected the civil obligations of the commander of the one armed vessel which had taken the Danish ship.

PRESIDENT'S BROAD POWER TO PROTECT FREEDOMS

The fact is, Mr. Chairman, I know of no record that has been made, and I know of no legislative history, or Constitutional history, or court history that gives us the right to legislate as the master of American military and foreign policy. To the contrary, I am convinced there is not question that the President can take military action at any time he feels danger for the country or for its freedoms or, stretching a point, for its position in the world. The truth of the matter is that out of the 158 military actions this country has engaged in during its history of nearly 200 years as a Republic, only five of them have been declared wars.

Mr. Chairman, I find support for this impression in the works of the late Professor Edward Corwin, who has written about the President's power to repel war as follows:

It had developed into an undefined power—almost unchallenged from the first and occasionally sanctified judicially—to employ without Congressional authorization the armed forces in the protection of American rights and interests abroad whenever necessary. (Corwin, "Who has the Power to Make War"?, N. Y. Times Magazine, July 31, 1949, p. 14.)

HISTORIAL RIGHT OF PRESIDENT TO USE FORCE ABROAD ON EXECUTIVE AUTHORITY ALONE

Even as early as 1912, United States Solicitor of the Department of State, J. Reuben Clark, was able to compile a list of 48 instances in which the United States used military forces in foreign countries without any statutory or treaty right and in accordance only with a general authority recognized by international law. (Clark, "Right to Protect Citizens in Foreign Countries by Landing Forces," 1912, Revised Edition.)

By 1945, James Grafton Rogers, a former Assistant Secretary of State, was able to expand upon this statement by saying: "The Executive has used force abroad at least a 100 times to accomplishd national purposes without reference to Congress." (Rogers, "World Policing and the Constitution, "1945.)

Four years ago, the State Department updated its list of armed actions taken by the United States without any declaration of war, and this time the total reached 137 incidents. (Department of State Research Project No. 806A, August, 1967.)

Regardless of the actual number, and my own research has turned up 153 such actions, I agree with Professor Corwin, who evaluated the Rogers list as follows:

While inviting some pruning, the list demonstrates beyond peradventure the power of the President, as Chief Executive and Commander in Chief, to judge whether a situation requires the use of available forces to support American rights abroad and to take action in accordance with that decision. (*Supra.*)

And yet some writers argue these instances are "relatively minor" and "short-lived." Henry Steele Commager complained they were confined to the Western Hemisphere. Let us study the record and see for ourselves.

153 ARMED ACTIONS TAKEN WITHOUT A DECLARATION OF WAR

To this end, Mr. Chairman, I have collected a list of 153 military operations which were conducted without any declaration of war. I would be glad to offer this material at the end of my statement. But Professor Commager may be interested to know the list includes 59 military actions which occurred before 1950 outside the Western Hemisphere.

Also, the summary shows that 56 incidents involved actual gunfire or the imminent threat of warfare. Sixty-four continued beyond 30 days. And only 63 out of the 153 could arguably have been initiated under any form of legislative instrumentality.

Were the operations minor? Between 1899 and 1901, the United States used over 126,000 troops against the Philippine Insurrection. This represented at least 60% of our total military force then in existence.

Remember Commodore Perry's expedition? In 1854, at a time when American forces did not exceed 50,000 men, Perry took 2,000 of them to the other side of the world in order to pressure Japan into reaching a commercial treaty with us.

In 1927, we had 5,670 troops ashore in China and 44 naval vessels in its waters. After World War I had ended, we landed 5,000 soldiers at Archangel in Russia, plus 9,000 more in Siberia.

PRESIDENT HAS USED AMOUNT OF FORCE NECESSARY

Were these engagements "minor"? Set in the perspective of their times, I think not. In the words of Professor Henry Monaghan, who has written an article on this issue:

The validity of each of the precedents . . . need not be separately defended. Taken as a whole, they seem to me to add up to the following: with ever-increasing frequency, presidents have employed that amount of force that they deemed necessary to accomplish their foreign policy objectives. When little force was needed (e.g., in our incursions in Latin America), little was used; when larger commitments were necessary, they too were forthcoming. (Monaghan, "Presidential War-Making," 50 Boston U. L.R., Spring, 1970, p. 27.)

PRESIDENT AS "SOLE ORGAN" OF FOREIGN RELATIONS

What are the powers that Presidents have claimed in order to take these actions? First, I suggest we might reexamine the words of the Supreme Court in the *Curtiss-Wright* decision, where the country's highest tribunal declared it was "dealing not alone with an authority vested in the President by an exertion of legislative power, but with such an authority plus the very delicate, plenary and exclusive power of the President as the sole organ of the federal government in the field of international relations—a power which does not require as a basis for its exercise an act of Congress . . . "*U.S.* v. *Curtis-Wright Corp.*, 299 U.S. 304, 319–320 (1936).

GENERAL EXECUTIVE POWERS

Next, we might consider the wide range of powers that has been granted to the President under the first sentence of article II of the Constitution, which reads: "The Executive Power shall be vested in a President of the United States of America."

It was Alexander Hamilton who first used this sentence in arguing that the President's role in international matters is a positive one. In a series of articles in the Gazette of the United States, Hamilton claimed this clause had vested in the President all the general executive powers of a sovereign nation, including the right to form policy, which "may, in its consequences, affect the exercise of the power of the Legislature to declare war."

President Taft, who was later a Chief Justice of the Supreme Court, held much the same view. In 1916, during lectures at Columbia, he stated: "Under the Constitution, only Congress has the power to declare war, but with the Army and the Navy the President can take action such as to involve the country in war and to leave Congress no option but to declare or to recognize its existence."

PRESIDENTIAL RIGHT TO ENFORCE INTERNATIONAL OBLIGATIONS

There is a third power of the President, which is set forth in section 3 of article II of the Constitution. This provision places upon the President, and the President alone, the duty and right to "take care that the laws be faithfully executed."

Now, as we all know, the laws of the land

include international laws as well as domestic law. And inasmuch as it is the President who carries out our international obligations, it would seem to be left for him to interpret the scope of those obligations.

Again, if I may quote Professor Corwin, it appears this particular view has received judicial support. In his famous work on the Presidency, Corwin writes:

Thanks to the same capacity to base action directly on his own reading of international law—a capacity which the Court recognized in terms in the *Neagle* case—the President has been able to gather to himself powers with respect to war-making which ill accord with the specific delegation in the Constitution of the war-declaring power to Congress, Corwin, *The President: Office and Powers, Chapter 5.*

In the *Neagle* case, which Corwin spoke about, the Supreme Court ruled that the power of the President to enforce the laws extends to "the rights, duties and obligations growing out of the Constitution itself, our international relations, and all the protection implied by the nature of the government under the Constitution." *In re Neagle,* 135 U.S. 1, 64 (1889).

COMMANDER IN CHIEF

Finally, Mr. Chairman, we come to the President's power as Commander in Chief of the Armed Forces, which is spelled out in article II, section 2, of the Constitution. The President is designated Commander in Chief, and I believe him to be just that, even having the power as Lincoln once almost did to publicly assume command of the armies in the field.

Just why the founding fathers saw fit to confer this title on him and to invest him with these powers, I've never quite been able to understand; but I have a growing feeling that with the recognized and infinite wisdom of the founding fathers, they realized that a single man with these powers who would not be disturbed by the politics of the moment would use them more wisely than a Congress which is constantly looking toward the political results.

MINORITY INTERESTS ENDANGER SINGLE NATIONAL COURSE IN CONGRESS

Let me give you an example of what leads me to this thought. Let us say an election year is upon us, and recognizing that there is a large concentration of Jews in all of the large Eastern cities and that they are a strong voting bloc, wouldn't it be perfectly proper to expect a Member of Congress from that area to stand up and demand strong action in defense of Israel—while, at the same time, with no strong concentrations of South Vietnamese living any place in the United States, a policitician would not be so interested in that part of the world?

Would it be improper to foresee this same attitude arising on behalf of the Italians should they suddenly become embroiled in action which would require our assistance, or on behalf of any other country in which we find a large number of people constituting a minority living in our country?

Would it not be proper to assume, therefore, that the founding fathers in their wisdom foresaw the day when this situation might come about, and realizing that a Congress divided amongst different minority interests would be loath to give proper direction to a single American course, thought the power of war and peace might better be vested in a single man where the probability of minority weight might not have this effect?

Mr. Chairman, I may be terribly wrong in this surmise, and, of course, I hope I am; but I believe it would offer an explanation of a means by which our forefathers and we ourselves were meant to become a single people with a single purpose. These are, of course, my own thoughts. I have gathered them from no other place because I have not seen them recorded in other places.

JUDICIAL HOLDINGS SUPPORT BROAD VIEW OF PRESIDENT'S POWER

Mr. Chairman, to get on with my discussion of the President's power as Commander in Chief, I should mention that what little judicial holdings there are suggests this power is a broad one.

In 1860, Justice Nelson, who was sitting as a district judge, upheld the authority of the President to take whatever action he determines proper to protect the lives and property of American citizens abroad, without awaiting word from Congress. *Durand* v. *Hollins,* 4 Blatch 451.

Six years later, in *Ex parte Milligan,* the Supreme Court pointedly stated "Congress cannot direct the conduct of campaigns . . ." 71 U.S. 139 (1866).

In 1897, the Court of Claims held: "Congress cannot in the disguise of 'rules for the government' of the Army impair the authority of the President as Commander in Chief." Significantly, this decision was later affirmed by the Supreme Court. *Swain* v. *U.S.,* 28 Court of Claims 173, 221; 165 U.S. 553.

Finally, in 1904, the Court of Claims restated its view of the President's ability to act without authority from Congress. The Court said, while speaking of the undeclared war in the Philippines, "In time of war, the Commander in Chief has the same powers as other civilized governments, and the exercise of them needed no ratification to give to them effective force." *Warner, Barnes and Co.* v. *U.S.,* 40 Court of Claims 1, 32.

CONSTITUTION MAY GRANT DIVIDED POWERS

Mr. Chairman, I do not expect these few citations will convince anyone that the President enjoys an exclusive role in the domain of foreign military matters. But I do hope I have raised enough questions and disclosed enough varying positions to suggest it may be improper and unwise to adopt the opposite view—that the controlling powers are deposited solely with Congress. The truth may lie somewhere in between these two theories and perhaps the power is divided among both branches, to be resolved on a political level.

And if this be so, the American citizens may not be badly served. The Constitution clearly vests the power of the purse in Congress and even limits appropriations for the military to two years at a time. This may be a very unwise restraint to use, but nevertheless it exists. In addition, the forum of public opinion, backed by a free press, can place a true check on the President's decisions.

CHANGE CAN BE MADE BY CONSTITUTIONAL AMENDMENT ONLY

In summary, Mr. Chairman, it is my opinion it would be most improper for Congress, by legislation, to change the long established practice of government through which the President has protected the freedoms of the country. If a majority should feel deeply enough this practice must be changed. I believe it is a matter of such serious consequence to the future of our Republic that it would be far wiser if they prepared an amendment to the Constitution so the people could vote on it in their State legislatures. Though I would not support it if I felt it would be a vote for American isolation, a vote to make this country an ingrown, third-rate power, or a vote for dishonoring an American commitment, I certainly would be the first one to say, yes, let the American people speak their voice on it.

APPENDIX

A. CHRONOLOGICAL LIST OF 153 MILITARY ACTIONS TAKEN BY THE UNITED STATES ABROAD WITHOUT A DECLARATION OF WAR

1798–1800: *Quasi-War with France:* When John Adams became President in 1797, he faced the serious problem of strained relations between France and the United States. France was displeased with the terms of the treaty the United States had concluded with England in 1794 and had made it a practice to seize American merchant ships and to manhandle their crews. Adams at first attempted to negotiate a settlement. His envoys arrived in France in October 1797, but, when the French demanded exorbitant bribes and loans, the envoys rejected the proposals and departed.

Adams, thereupon, decided to abandon his attempts to appease the French and, in March 1798, asked Congress for the power to arm merchant ships and take other defensive measures. The opposition party balked, but when the details of the French demands were made public both the American public and Congress reacted strongly against the French. Congress acceded to most of Adams' requests. It created a Navy Department, voted appropriations for new warships, and authorized the enlistment of a "Provisional Army" for the duration of the emergency. In July 1798, the French treaties and consular conventions were abrogated.

The result was a "quasi-war," during which neither country declared war. The American Navy, which won some notable victories, attacked only French warships and privateers and fought primarily for the protection of commerce. Some ninety French ships were captured during this naval war. In 1800 a convention was agreed to and peace was achieved.

1801–1805: *War with Tripoli.* During the early years of the Republic, the United States, following the practice of several European nations, paid tribute to North African pirates. Shortly after Jefferson became President, the Pasha of Tripoli, dissatisfied with the apportionment of tribute, declared war on the United States (May 1801). Jefferson thereupon sent warships to the Mediterranean. After naval actions and landings under Commodore Preble, an inconclusive treaty of peace with Tripoli was signed in 1805. Congress passed various enabling acts during the conflict but never declared war.

1806: *Mexico (Spanish territory).* Captain Z. M. Pike, with a platoon of troops and on the orders of General James Wilkinson, invaded Spanish territory at the headwaters of the Rio Grande, apparently on a secret mission. Pike was imprisoned and later released.

1806–1810: *Gulf of Meico.* American gunboats operated from New Orleans against Spanish and French privateers.

1810: *West Florida (Spanish territory).* Governor Clairbourne of Louisiana, on orders from the President, occupied with troops disputed territory east of the Mississippi as far as the Pearl River. No armed clash occurred.

1812: *Amelia Island and other parts of East Florida (Spanish territory).* President Madison and Congress authorized temporary occupation of Amelia Island and St. Augustine by American troops in order to prevent occupation by any other power, but, when General George Matthews took possession by making himself the head of a revolutionary party, the United States disavowed his action because of its irregularity. This incident is included only for purposes of historical completion.

1813: *West Florida (Spanish territory).* On authority granted by Congress, General Wilkinson seized Mobile Bay with 600 soldiers; a small Spanish garrison gave way without fighting.

1813–1814: *Marquesas Islands, South Pacific (claimed by Spain).* United States marines built a fort on one of the islands to protect three captured prize ships.

1814–1825: *Caribbean Area.* There were repeated engagements between American ships and pirates both ashore and off shore about Cuba, Puerto Rico, Santo Domingo, and Yucatan. In 1822, Commodore James Biddle employed a squadron of two frigates, four sloops of war, two brigs, four schooners, and two

gunboats in the West Indies. The United States sunk or captured 65 vessels.

1815: *Second Barbary War (Algiers)*. In 1812 an Algerian naval squadron operated against American shipping in the Mediterranean. In one attack an American merchantman was captured and its crew imprisoned. With the termination of the war with England, the United States was able to turn its attention to Algiers; in March, 1815, Congress passed an act that authorized the use of armed vessels "as may be judged requisite by the President" to provide effective protection to American commerce in the Atlantic and the Mediterranean. The act also made it lawful to take prizes. A naval squadron of 10 vessels under Commodore Stephen Decatur attacked Algiers, compelling the Dey to negotiate a treaty. Decatur also demonstrated at Tunis and Tripoli. All three states were forced to pay for losses to American shipping, and the threats and tribute terminated.

1816–1818: *Spanish Florida*. During the "First Seminole War," United States forces invaded Spanish Florida on two occasions. In the first action, they destroyed a Spanish fort harboring raiders who had made forays into United States territory. In the second, Generals Jackson and Gaines attacked the Seminole Indians because their land was a haven for escaped slaves and border ruffians. In the process of pursuing the Indians, United States forces attacked and occupied Spanish posts.

1817: *Amelia Island (Spanish Territory)*. Under orders from President Monroe, United States forces landed and expelled a group of smugglers, adventurers, and freebooters.

1822: *Cuba (Spanish Territory)*. United States naval forces landed on the northwestern coast of Cuba and burned a pirate station.

1823: *Cuba (Spanish Territory)*. Between April and October naval forces made a number of landings in pursuit of pirates, apparently incident to Congressional authorization which became operative in 1822.

1824: *Cuba (Spanish Territory)*. In October, the *U.S.S. Porpoise* landed sailors to pursue pirates during a cruise authorized by Congress.

1824: *Puerto Rico (Spanish Territory)*. Commodore David Porter headed a landing party of 200 men that attacked a town inhabited by pirates who had insulted American naval officers. He forced an apology from the pirates. This action was claimed to be incident to Congressional authorization, but he was court-martialed for exceeding his powers.

1825: *Cuba (Spanish Territory)*. In March British and American forces landed on two offshore Cuban islands to capture pirates who were based there. The action appears to be incident to Congressional authority.

1827: *Greece*. In October and November, United States forces from the *U.S.S. Warren* landed to hunt pirates on three Greek islands.

1831–1832: *Falkland Islands (Argentina)*. American forces under Captain Duncan of the *U.S.S. Lexington* landed to investigate the capture of three American sailing vessels. The Americans released the vessels and their crews and dispersed the Argentine colonists.

1832: *Sumatra*. A force of 250 men from the *U.S.S. Potomac* landed to storm a fort and punish natives of a town for an attack on American shipping and the murder of crew members.

1833: *Argentina*. Between October 31 and November 15, at the request of American residents of Buenos Aires, a force of 43 marines and sailors landed from the *U.S.S. Lexington* to protect American lives and property during an insurrection. There was no American Legation or Consulate in Buenos Aires at that time.

1835–1836: *Peru*. Marines from the *U.S.S. Brandywine* landed at various times at Callao and Lima to protect American lives and property during a revolt.

1838–1839: *Sumatra*. American forces landed to punish natives of two towns for attacking American ships.

1840: *Fiji Islands*. American forces totaling 70 officers and men landed to punish natives of two towns for attacking American exploring and surveying parties.

1841: *Drummond Island (Kingsmill Group, Pacific Ocean)*. American marines from the *U.S. Peacock* landed and burned two towns to avenge the murder of a seaman by natives.

1841: *Samoan Islands*. American forces from the *U.S. Peacock* landed to avenge the murder of a seaman. They destroyed some native settlements.

1842: *Mexico*. Acting on the misconception that war had started between the United States and Mexico, Commodore T. A. C. Jones, in command of a squadron cruising off the California coast, landed at and occupied Monterrey. He withdrew and saluted. A similar incident occurred a week later at San Diego. This is not cited as a precedent, but for purposes of historical completeness.

1843: *West Africa*. In November and December, four United States vessels demonstrated and landed various parties (one of 200 marines and sailors) to discourage piracy and the slave trade along the Ivory Coast and to punish attacks made by the natives on American seamen and shipping. In the process, they burned villages and killed a local ruler.

1844: *Mexico*. President Tyler deployed our forces to protect Texas against Mexico, pending Senate approval of a treaty of annexation, which later was rejected.

1846: *Mexico*. President Polk ordered General Scott to occupy disputed territory months preceding a declaration of war. Our troops engaged in battle when Mexican forces entered the area between the Nueces and Rio Grande Rivers. The fighting occurred three days before Congress acted.

1849: *Smyrna (Now Izmir, Turkey)*. In July, the *U.S.S. St. Louis* gained the release of an American seized by Austrian officials.

1851: *Turkey*. After a massacre of foreigners (including Americans) at Jaffa, the United States Mediterranean Squadron was ordered to demonstrate along the Turkish coast. Apparently, no shots were fired, but the display amounted to compulsion.

1851: *Johanna Island (East of Africa)*. The *U.S.S. Dale* delivered an ultimatum, bombarded the island, and landed a force to punish the local chieftain for the unlawful imprisonment of the captain of an American whaler.

1852–1853: *Argentina*. Several landings of marines took place in order to protect American residents of Buenos Aires during a revolt.

1853: *Nicaragua*. American forces landed at Punta Arenas and remained for two days (March 11–13) to protect American lives and interests during political disturbances.

1853–1854: *Japan*. Commodore Matthew C. Perry led an expedition consisting of four men-of-war to Japan to negotiate a commercial treaty. Four hundred armed men accompanied Perry on his initial landing at Edo Bay in July, 1853, where he stayed for ten days after refusing to leave when ordered. He then sailed south, landing a force at the Bonin Islands, where he took possession, and at the Ryukyus, where he established a coaling station. In March, 1854, he returned to Edo Bay with ten ships and 2,000 men, landed with an escort of 500 men, and after six weeks signed a treaty with Japanese authorities at Kanagawa. The whole campaign was on executive authority.

1854: *China*. American and British forces consisting of 150 English sailors, 60 United States sailors, and 30 merchant sailors landed at Shanghai to protect their nationals during a battle between Chinese imperial and revolutionary troops.

1854: *Greytown, Nicaragua*. The commander of an American naval vessel demanded reparation after an American official was injured during a riot. When this was not forthcoming, the vessel bombarded the town. Foreign property, including British and French, was destroyed. President Pierce defended the action of the American commander in his annual message to Congress.

1855: *China*. There were two brief actions by United States warships, the first at Shanghai to protect American interests there, the second at Hong Kong against pirates.

1855: *Fiji Islands*. American marines from the sloop-of-war the *U.S.S. John Adams* landed to seek reparations for depredations against Americans. The landing party fought skirmishes and burned some villages.

1855: *Uruguay*. United States and European naval forces put sailors ashore to protect American interests during an abortive revolt in Montevideo.

1856: *Panama, Republic of New Granada*. United States forces landed and stayed two days to protect American interests, including the Isthmian railroad, during an insurrection. (By the treaty of 1846 with New Granada, the United States had acquired the right to protect the Isthmus and to keep it open, in return for guaranteeing its neutrality.)

1856: *China*. The United States warships *Portsmouth* and *Levant* disembarked 280 officers and men to protect American interests at Canton during hostilities between the British and the Chinese and in response to an unprovoked assault upon an unarmed boat displaying the United States flag. The American squadron took and destroyed four Chinese forts.

1857: *Nicaragua*. In May, Commander C. H. Davis, in charge of a United States man-of-war, mediated between the forces of William Walker, an American citizen and filibusterer who was trying to seize Nicaragua, and the Central American army opposing him. The leader of the Central American forces agreed to allow Walker and his men to surrender to Davis. In November and December, marines from the United States vessels *Saratoga* and *Wabash* landed at Punta Arenas and blocked another attempt by Walker to seize power. An American commander compelled Walker to leave the country, an action tacitly disavowed by the Secretary of State and apparently repudiated by President Buchanan.

1858: *Uruguay*. Forces from two United States warships landed in January to protect American property during a revolt in Montevideo. The action was taken in conjunction with the forces of other powers at the request of the local government.

1858: *Fiji Islands*. About 60 marines and sailors from the *U.S.S. Vandalia* landed to punish natives for the murder of two Americans citizens and engaged in a fierce conflict with 300 native warriors.

1858–1859: *Turkey*. American citizens were massacred in 1858 at Jaffa and mistreated elsewhere. In the face of Turkish indifference, the Secretary of State asked the United States Navy to make a display of force along the Levant.

1859: *Mexico*. Two hundred United States soldiers crossed the Rio Grande in pursuit of the Mexican bandit Cortina.

1859: *China*. Forces from the *U.S.S. Mississippi* landed at Woosung and Shanghai to protect American interests and restore order. The American consul had called on the ship for assistance.

1859: *Paraguay*. Congress authorized a naval squadron to seek redress for an attack on a naval vessel in the Parana River during 1855. Apologies were forthcoming after a display of force, which amounted to compulsion.

1860: *Kisembo, West Africa*. About 50 American forces from the sloop-of-war *Marion* landed twice to prevent the destruction of American property.

1860: *Colombia (State of Panama)*. Under Commander Porter of the *St. Mary*, American forces landed to protect American interests

during a revolt. This may have been authorized pursuant to the Treaty of 1846.

1863: *Japan.* When Japanese shore batteries at Shimonoseki fired on a United States merchant ship, the American Minister demanded redress. Accordingly, the *U.S.S. Wyoming* retaliated by firing on three Japanese vessels lying at anchor. The shots were returned, and, by the time the action was over, there were casualties on both sides. A claim of $10,000, presented by the American Minister to the Japanese Government for the action against the merchant ship, was promptly paid.

1864: *Japan.* Between September 4 and 8, naval forces of the United States, Great Britain, France, and the Netherlands jointly forced open the Straits of Shimonoseki, which had been closed in violation of commercial agreements. Shore batteries were destroyed and 70 cannon seized. In addition, the Japanese Government agreed to pay $3,000,000 to cover the expenses of the action. The share the United States received was regarded as grossly disproportionate by Congress, which, in 1883, voted to return the sum to Japan.

1865–1866: *Mexican border.* In late 1865, General Sheridan was dispatched to the Mexican border with 50,000 troops to back up the protest made by Secretary of State Seward, who notified Napolean III that the presence of over 25,000 French troops in Mexico "is a serious concern to the United States." In February, 1866, Seward demanded a definite date be set for withdrawal and France complied. Though American forces did not cross the border, the threat of foreign military operations was clear and imminent.

1865: *Panama.* American forces from the *U.S.S. St. Marys* landed to protect American interests during a revolt. This was apparently implied by The Treaty of 1846.

1866: *China.* Various landings were made in June and July, including one to punish an assault on the American Consul at Newchwang.

1866: *Mexico.* To protect American residents, General Sedgwick and 100 men obtained the surrender of the Mexican border town of Matamoras in November. He was ordered to withdraw to Texas after three days, and his act was repudiated by the President. This incident is included only for historical purposes.

1867: *Formosa.* Some 181 American forces from the *U.S.S. Ashuelot* landed to punish natives who had murdered the crew of a wrecked American bark. Several huts were burned.

1868: *Japan.* Various landings were made in February to protect American interests during local hostilities in which one American seaman had been wounded.

1868: *Uruguay.* At the request of local Uruguayan authorities, several landings were made at Montevideo during the month of February in order to protect foreign residents and the customs house during an insurrection.

1868: *Colombia.* An American force landed at Aspinwall in April to protect the transit route during the absence of local police. This was impliedly permitted by the Treaty of 1846.

1870: *Mexico.* The *U.S.S. Mohican* pursued a pirate ship up the Tecapan River near Mazatlan in June and destroyed it during a pitched battle.

1871: *Korea.* American landing forces under Admiral Rodgers captured five Korean forts after a surveying party, which had been granted permission to make certain surveys and soundings, had been attacked. No treaty or convention was in effect.

1873: *Colombia.* About 200 American forces landed on three different occasions near the Bay of Panama to protect American interests during local hostilities. The action was impliedly allowed by the Treaty of 1846.

1873–1882: *Mexico.* United States troops repeatedly crossed the Mexican border to pursue cattle thieves. Mexico occasionally reciprocated. Such incursions were finally recognized as legitimate by an agreement in 1882.

1874: *Hawaii.* A party of 150 men from two United States vessels landed to preserve order at the request of local authorities.

1876: *Mexico.* At the request of the United States Consul at Matamoras, American forces were landed under Commander Johnson to preserve order when the town was temporarily without a government.

1882: *Egypt.* Over 100 forces from the *U.S.S. Lancaster* and two other vessels landed at Alexandria in July when the city was being bombarded by the British navy, in order to protect American interests there, including the American consulate.

1885: *Columbia (State of Panama).* American forces landed to protect American property and guard valuables in transit over the Isthmus during local revolutionary activity. The action was likely authorized under the Treaty of 1846.

1888: *Korea.* Twenty-five men from the *U.S.S. Essex* landed to protect American residents in Seoul during unsettled political conditions. The action was requested by the American Minister.

1888–1889: *Samoan Islands.* In 1886, the German consul announced that the Sanwan group was henceforth a German protectorate, an action that brought the United States and Great Britain together in opposition. By 1889, Germany and the United States were close to a direct confrontation. The United States and Germany, together with Great Britain, shared certain treaty rights in Samoa for the maintenance of naval depots. In November 1888, United States marines landed from the *U.S.S. Nipsic* to protect American interests after civil strife broke out ashore. In January, 1889, German forces landed, and, when those forces were attacked by the natives, German ships shelled the island. This action by Germany aroused the American public, and Congress appropriated $500,000 for the protection of American lives and property on the island and $100,000 for the development of Pago Pago harbor. The United States also ordered two more warships to the scene. All three powers had warships on the scene and an untoward event might have touched off war had not a hurricane in March, 1889, destroyed all the warships except one British vessel. Thereafter, the Germans took the initiative and invited the three powers to a conference on Samoa. Representatives of Great Britain, the United States, and Germany met in Berlin, and in April, 1889, they created a new government for Samoa and established a three-power protectorate there. In 1899 the Samoans were divided, the United States acquiring Tutuila.

1888: *Haiti.* American warships made a display of force in December to obtain the release of an American merchant vessel captured by a Haitian warship. The Haitian Government surrendered the ship and paid an indemnity after Admiral Luce gave an ultimatum ordering its release before sunset.

1889: *Hawaii.* At the request of the American Minister in Honolulu, the *U.S.S. Adams* sent a marine guard ashore for one day in July because of revolutionary disorder.

Late 1880's: *Bering Sea.* United States patrol boats seized British sealers operating in the Bering Sea outside the three mile limit. Subsequently, the United States paid nearly $500,000 to Britain in damages. The incidents are mentioned only for reasons of historical completeness.

1890: *Argentina.* The *U.S.S. Tallapoosa* landed a party in July to protect the American Consulate and Legation in Buenos Aires during a revolt.

1891: *Navassa Island, Haiti.* American forces disembarked in May from the *U.S.S. Kearsarge* to protect American lives and property during a period of unrest. The action was taken pursuant to Congressional action.

1891: *Chile.* In August, 102 Americans of the South Pacific station landed at Valparaiso during a revolt in order to protect the American Consulate.

1894: *Brazil.* The United States navy engaged in gunfire and a show of force in January to protect American shipping at Rio de Janeiro during a revolt of the Brazilian navy. President Cleveland stated our action "was clearly justified by public law."

1894: *Nicaragua.* American forces landed In June, July, and August at Bluefields to protect American interests during a revolt.

1894: *Korea.* At the request of the American Minister, a force of 21 marines and 29 sailors landed at Seoul in June to protect American lives and property during the Sino-Japanese War. A marine guard remained at the American Legation until 1896.

1894: *China.* Marines disembarked from the *U.S.S. Baltimore* at Tientsin in November and marched to Peking for protection purposes during the Sino-Japanese war.

1895: *Colombia (State of Panama).* Marines from the *U.S.S. Atlanta* landed in March to protect American interests during a revolt. This appears to have been authorized by treaty.

1896: *Nicaragua.* Marines were put ashore at Corinto by the *U.S.S. Alert* during revolutionary disorders to protect American interests.

1898: *Nicaragua.* Marines landed at San Juan del Sur by the *U.S.S. Alert* to protect Americans against disorder in February.

1898–1899: *China.* American forces guarded the Legation at Peking and the Consulate at Tientsin from November, 1898, to March, 1899, during a period of unrest.

1899: *Nicaragua.* In response to a petition from foreign merchants during an insurrection, American marines landed in February in cooperation with British forces to protect life and property at San Juan del Norte and Bluefields.

1899: *Samoan Islands.* Sixty Americans landed in March from the *U.S.S. Philadelphia,* and in April joined a British force in efforts to disperse native rebels. This may have been under color of treaty or statute.

1899–1901: *Philippine Islands.* The United States employed 126,468 troops against the Philippine Insurrection without a declaration of war after the Treaty of Peace with Spain was concluded. Presumably the United States acted to suppress the rebellion under authority of the Treaty of Peace, which transferred to it the sovereignty possessed by Spain in the Philippine Islands.

1900–1901: *"Boxer" Rebellion (Peking).* In 1900 President McKinley sent 5,000 troops to join the international military force organized for the relief of foreign legations besieged in Peking by Chinese "Boxers." Using troops already mobilized for the Spanish-American War and the Philippine Insurrection, McKinley did not seek authority from Congress. Peace terms were concluded at an international conference, and a peace Protocol was signed September 7, 1901. The Protocol was not submitted to Congress. Because of the obvious inability of Chinese authorities to control local disorders, the United States acquired the right to maintain a guard at Peking for defense of the American Legation and to station military forces at certain points in Chinese territory to keep open communications between Peking and the sea. (Earlier, in 1858, the United States had acquired the right by treaty to station naval vessels in Chinese waters.)

1901: *Colombia (State of Panama).* American forces went ashore in November and stayed until December to protect American property and to keep transit lines open across the Isthmus during serious political distrubances. This apparently was authorized by the Treaty of 1846.

1902: *Colombia (State of Panama)*. Marine guards landed in April to protect the railroad across the Isthmus during civil disorders. They continued to land at various times between April and November. This appears to have been authorized by the Treaty of 1846.

1903: *Honduras*. American forces disembarked at Puerto Cortez in March to protect the American Consulate and port facilities during a period of revolutionary activity.

1903: *Dominican Republic*. In April, 29 marines landed at Santo Domingo, where they remained for three weeks to protect American interests during a period of political disturbances.

1903–04: *Turkey*. A marine guard landed and remained for a few days at Beirut in April to protect the American Consulate during a Moslem uprising. Also our Mediterranean Squadron demonstrated at Beirut from September to January and at Smyrna the next August.

1903: *Panama*. A revolution leading to the independence of Panama from Colombia broke out in November. Marines landed from the *U.S.S. Nashville* to prevent Colombian troops from carrying out a threat to kill American citizens, after Commander Hubbard had refused to allow the Colombians to transport their troops across the Isthmus. Marine guards remained on the Isthmus from the date of Panamanian independence (November 4, 1903) until January, 1914, to protect American interests during the construction of the Canal. This was allowed under the Hay-Bun au-Varilla Treaty.

1903–1904: *Abyssinia*. Twenty-five American marines were sent with U.S. Counsel General to protect him while negotiating our treaty.

1904: *Dominican Republic*. The *U.S.S. Detroit* landed marines at Puerto Plata and Santo Domingo to protect American lives and property during a revolt.

1904: *Morocco*. A squadron demonstrated in Moroccan waters in June to force the release of a kidnaped American. A marine contingent landed briefly to protect the Consul General.

1904: *Panama*. American troops were used to protect American lives and property at Ancón in November when a revolt seemed imminent. This action seems to have been authorized by treaty.

1904–1905: *Korea*. In January, American troops were sent to guard the American Legation at Seoul because of the outbreak of the Russo-Japanese War. They remained until November 1905.

1906: *Cuba*. An American squadron demonstrated off Havana, and, in September, marines landed to protect American interests during a revolution. In October army units landed and took up quarters in many Cuban towns in connection with the temporary occupation of the country under a provisional governor appointed by the United States. This occupation was within the scope of the provision of the 1903 Treaty of Relations between the two countries, which gave the United States the right to intervene to preserve order. The occupation lasted until January, 1909.

1907: *Honduras*. During a war between Honduras and Nicaragua, the *U.S.S. Marietta* disembarked 10 men to guard the American Consulate at Trusillo. The *U.S.S. Paducah* also landed forces at Laguna and Choloma.

1910: *Nicaragua*. One hundred men from the *U.S.S. Paducah* landed at Greytown to protect American lives and property during a revolt. The *U.S.S. Dubuque* also engaged in shows of force. Joined combat was "hourly expected."

1911: *Honduras*. Sixty men from the *U.S.S. Tacoma* and *Marietta* went ashore at Puerto Cortez during a revolt to protect American interests. The American Commander threatened to use force if necessary.

1911–1912: *China*. American forces made six landings to protect American interests during the initial stages of a revolution. They were stationed at Foochow, Chinkiang, Peking, Hankow, Nanking, Shanghai, and Taku. This may have occurred pursuant to treaty rights acquired during the "Boxer" Rebellion.

1912: *Honduras*. A small force landed in February from the *U.S.S. Petrel* at Puerto Cortez to protect an American-owned railroad there. Apparently Washington disapproved and the men were withdrawn in a day or two. This is cited for historical completeness only.

1912: *Panama*. During June and July, at the request of local political groups, American troops supervised elections outside the Canal Zone. This was impliedly authorized by the Hay-Bunau-Varilla Treaty.

1912: *Cuba*. American troops landed in eastern Cuba during a revolt and remained for three months to protect American interests. This appears to have been authorized by the treaty of 1903.

1912: *Turkey*. A troop detachment from the *U.S.S. Scorpion* assisted in the protection of the diplomatic corps at Istanbul during the Balkan War.

1912: *Nicaragua*. During a civil war, the President of Nicaragua asked the United States to protect its citizens resident there. Acting on a recommendation of the American Minister, President Taft ordered a detachment of marines to Managua in September, 1912. Other detachments landed at Bluefields and Corinto. Political stability returned to Nicaragua by January, 1913, but a detachment of marines was kept in Managua to guard the American Legation after the rest of the Americn troops withdrew. The Legation guard remained until 1925.

1913: *China*. United States forces landed in July at Chapei and in August at Shanghai to protect American interests. Rogers reports there were many demonstrations and landing parties by United States forces for protection in China continuously from 1912 on to 1941. He writes: "In 1927, for example, this country had 5,670 troops ashore in China and 44 naval vessels in its waters. In 1933 we had 3,027 armed men ashore. All this protective action was in general terms based on treaties with China ranging from 1858 to 1901." Rogers, "World Policing and the Constitution," p. 117, 1945.)

1913: *Mexico*. In September a few marines disembarked at Ciaris Estero, during a period of civil strife, to aid in the evacuation of American citizens.

1914: *Haiti*. American troops landed in January, February, and October to protect American citizens during a period of unrest.

1914: *Dominican Republic*. During a period of revolutionary activity, United States naval forces fired at revolutionaries who were bombarding Puerto Plata, in order to stop the action. Also, by a threat of force, fighting in Santo Domingo was prevented.

1914: *Occupation of Vera Cruz, Mexico*. On April 9, 1914, a commissioned American naval officer and 9 crewmen from the U.S.S. *Dolphin*, anchored off the coast at Tampico, Mexico, were arrested and marched through the streets by local authorities. They were released and an apology was extended as soon as the local Mexican commander learned of the incident, but Admiral Mayo, the commander of the American squadron, also demanded a 21-gun salute to the American flag. This the Mexicans refused to give, and President Wilson, who backed Mayo's demands, promptly ordered the North Atlantic battleship fleet to Tampico. On April 20, he addressed Congress in a joint session and asked for authority to use the armed forces. While Congress debated, Wilson learned that a German steamer was headed toward Vera Cruz to unload munitions for Huerta, and he decided to direct the naval action against Vera Cruz instead of Tampico. American armed forces landed at Vera Cruz, and, after an armed engagement resulting in 400 casualties, the Americans occupied the city on April 22. The same day, apparently after the fighting began, Congress passed a joint resolution which declared (1) that the President was "justified in the employment of the armed forces of the United States to enforce his demand for unequivocal amends for certain affronts and indignities committed against the United States" and (2) that "the United States disclaimed any hostility to the Mexican people or any purpose to make war upon Mexico." By November, 1914, American troops had left Mexican soil.

1915: *Haiti*. In July, at the initiative of the Executive, the United States placed Haiti under the military and financial administration of the United States, in part to forestall European intervention to collect debts. Marines were stationed in Haiti until 1934. The occupation was sanctioned by a treaty signed and ratified by the Senate in February, 1916, but the first months of the occupation were on executive authority alone.

1916: *Dominican Republic*. President Wilson ordered the occupation of Santo Domingo in May, 1916, owing to local unrest. At one point, 3,000 marines were ashore. The United States placed a military governor in the Dominican Republic but turned political affairs over to the Dominicans in 1922. United States troops withdrew in 1924, and a general treaty signed that year formally sanctioned the previous occupation.

1916: *China*. American forces landed at Nanking to quell a riot taking place on American property. Apparently this was authorized by a treaty.

1916–1917: *Pershing Expedition into Mexico*. In October, 1915, the United States recognized the Carranza regime as the *de facto* government in Mexico. Another Mexican rebel, Pancho Villa, directed a campaign against the United States. In January, 1916, Villa's followers massacred 18 American mining engineers in Santa Ysabel, Mexico. The popular reaction in the United States was one of indignation. Resolutions favoring intervention were introduced in Congress, though not adopted.

On March 9, 1916, 400 of Villa's men raided Columbus, New Mexico, sacked the town, and killed 17 Americans. The American public was now incensed, and Wilson delayed sending an expedition only until he could obtain Carranza's consent. On March 13, 1916, when Carranza's government acceded to the United States request for permission to dispatch an expedition, Wilson ordered General John J. Pershing to take regular United States Army units into Mexico. On March 16 Pershing crossed the border with 6,000 troops. On the following day, Congress, with Wilson's knowledge and warm approval, adopted a joint resolution introduced by Senator Robert LaFollette sanctioning the use of the armed forces.

Villa successfully eluded Pershing, and the size of the expedition soon grew to such proportions (12,000 men) that Carranza protested and demanded its withdrawal, threatening war. Wilson on June 18 called out the National Guard and incorporated it into the Army; 150,000 militia were ordered to the Mexican border. Two days later, Secretary of State Lansing warned Carranza that any attack on American forces "would lead to the gravest consequences." But neither country really wanted war, and, although some minor clashes occurred between the forces of Pershing and Carranza, the crisis gradually subsided. In view of the deteriorating situation in Europe, Wilson decided to

withdraw all American troops from Mexico in February, 1917.

1917: *Cuba.* American troops landed at Manzanilla to protect American interests during a revolt. Various other landings were made, and, though the revolt ended in April, 1917, troops remained until 1922 because of continued unsettled political conditions. This was authorized by the Treaty of 1903.

1918: *China.* American troops landed at Chungking to protect American lives during a political crisis. Apparently this was done pursuant to a treaty.

1918–1919. *Mexico.* United States troops entered Mexico to pursue bandits three times in 1918 and six times in 1919. In August, 1918, there was a brief skirmish between American and Mexican troops at Nogales.

1918–1920: *Expeditions to Russia.* Following the Bolshevik revolution in Russia in 1917, Allied expeditions landed, in 1918, at Murmansk and then Archangel. At Archangel the United States contributed some 5,000 men and suffered some 500 casualties. The Allies also landed units in Siberia, where Bolshevik troops were fighting a force of 50,000 Czech soldiers who were trying to fight their way eastward; the Japanese sent 72,000 soldiers, the Americans sent 9,000, and the British and French provided minor contingents.

President Wilson, who acted without Congressional approval, agreed to participate in the allied expeditions in order not only to aid the anti-Bolsheviks but also to forestall any possible Japanese expansionist plans in Siberia. After the end of World War I, however, Congressional and public pressure for withdrawal of troops mounted. Wilson yielded to this pressure and withdrew the American troops by April 1, 1920.

1919: *Honduras.* A small American force went ashore at Puerto Cortez to maintain order in neutral zone during an attempted revolt.

1919–1920: *Panama.* American troops went outside the Canal Zone, on request of the Panamanian Government, to supervise elections. This apparently was authorized by treaty.

1920: *China.* American forces landed at Kiukang and Youchow to protect American lives and property. Apparently this was authorized by treaty.

1920: *Guatemala.* Forty men from the *U.S.S. Tacoma* and *Niagara* went inland to Guatemala City to protect the American Legation and other American interests during local fighting.

1920–1922: *Siberia.* The United States stationed a marine guard on Russian Island, Bay of Vladivostok, to protect United States radio facilities and other property.

1921: *Panama-Costa Rica.* American naval squadrons demonstrated for one day on both sides of the Isthmus to prevent war between the two countries over a boundary dispute. This was impliedly authorized by treaty.

1922: *Turkey.* In September forces from several American warships went ashore with the consent of both Greek and Turkish authorities to protect American interests when the Turkish forces were advancing on the city of Smyrna.

1922–1923: *China.* There were three landings by marines (at Tungchow, Foochow, and Masu Island) to protect Americans during periods of unrest. This appears to have been authorized by treaty.

1924–1925: *Honduras.* There were intermittent landings to protect American lives and property during local unrest. In April, 1925, the *Denver* put ashore 165 men at Ceiba for a day to establish a neutral zone.

1924: *China.* Troops landed at Shanghai in September to protect Americans during a period of unrest. Apparently this was authorized by treaty.

1925: *Panama.* As a result of strikes and rent riots, and at the request of Panamanian officials, 600 troops from the Canal Zone entered Panama City in October and remained for 11 days to maintain order. This conformed to American treaty rights.

1926–1933: *Nicaragua.* When local disturbances broke out in 1926, the Nicaraguan Government requested that American forces undertake to protect lives and property of Americans and other foreigners. In May the *U.S.S. Cleveland* landed a force of marines at Bluefields, and the area was declared a neutral zone. Later in the year, neutral zones were also established at Rio Grande and Puerto Cabezas. Early in January, 1927, American forces established neutral zones at Pearl Lagoon, Prinzapolca, and Rama, and a Legation guard of 175 men was established at Managua. In all, five thousand soldiers were put ashore in 1927.

This occupation was undertaken entirely on the executive responsibility of President Coolidge. The Democratic minority bitterly criticized his policy as a "private war" and as "imperialism," but did not question the President's authority.

1926: *China.* American forces landed at Hankow in August and September during the Nationalists' attack there. This appears to have been authorized by treaty.

1927: *Armed Actions in China.* Anti-foreign incidents in China, a nation wracked by almost chroic disorder from 1911 onwards, reached a climax in 1927. On January 3 of that year, a large mob tried to overrun the British consulate at Hankow, but Cantonese soldiers dispersed the rioters. The United States landed 50 sailors to protect American lives and interests. Then in February, as a result of disorders in the Shanghai area, the United States landed 1,250 marines as reinforcements in Shanghai, where the combined foreign contingent reached 13,000 men.

The most serious incident of 1927 occurred in Nanking. Civilians and Nationalist soldiers in that city attacked foreigners, including Americans. On March 22, eleven men from the *U.S.S. Noa* landed to protect the American Consulate. In addition, the *U.S.S. Preston* sent a small guard to protect Americans and their property. Following further Chinese hostile action, the Consulate was evacuated, and Americans and other foreigners took refuge on property owned by the Standard Oil Company. When Nationalist soldiers attacked the beleaguered group, the *U.S.S. Noa* and a British vessel at the scene laid down a barrage which drove off the Chinese soldiers and allowed the foreigners to escape to the warships.

In April, 1927, 24 marines landed at Hankow to protect an American business firm, and in May forces from the *U.S.S. Ford* and *H.M.S. Wolverine* went ashore at Chinkiang to fight a fire caused by a direct hit on a Standard Oil fuel tank. In December, during a revolt in Canton, one officer and eight marines were sent to assist in the evacuation of American citizens.

By the end of 1927, the United States had 44 naval vessels in Chinese waters and 5,670 men ashore. Great Britain, France, Japan, and Italy also had considerable forces there. Although the United States had joined with them in vigorously protesting the "Nanking Incident," it refused to take joint military action when the Nationalists' replies proved unsatisfactory. The following year, when the Nationalists had gained greater control over Chinese territory and purged themselves of Communist support, the United States reached a separate accord with the Nationalists in regard to "Nanking Incident" and, in July, signed a treaty with Nationalist China which constituted United States recognition of the Nationalist Government. A gradual reduction of United States forces in China began in the same month.

1932: *China.* American forces landed at Shanghai to protect American interests during the Japanese occupation of the city, apparently under treaty.

1933: *Cuba.* During a revolution, United States naval forces demonstrated offshore but no forces landed. This was pursuant to the Treaty of 1903.

1940–1941: *Undeclared War.* There are four examples of military occupations made by the President on foreign territory without Congressional authority and before we became a belligerent in World War II;

1940: *British possessions in Western Atlantic.* On September 3, President Roosevelt informed Congress that he had agreed to deliver a flotilla of destroyers to Great Britain in exchange for a series of military bases granted us on British soil along the Western Atlantic. American troops and ships occupied a number of these points in the following months. The President did not ask approval from Congress;

1941: *Greenland (Denmark).* In April, after the German invasion of Denmark, the U.S. Army occupied Greenland under agreement with the local authorities. Congress was not consulted and the action appears to be contrary to an express Congressional limitation on using troops outside the Western Hemisphere;

1941: *Iceland.* By Presidential order, U.S. troops occupied Iceland on July 7, the same day Congress was notified. The President did not consult Congress in advance, and, in fact, the action clearly violated an express restriction that Congress had enacted a year before. Both the Reserves Act of 1940 and the Selective Service Act of 1940 provided that United States troops could not be used outside the Western Hemisphere. Iceland is invariably placed with the section on Europe in each World Atlas and is some 3,300 miles away from the United States, and is only 520 miles away from Britain;

1941: *Dutch Guiana.* In November, the President ordered American troops to occupy Dutch Guiana by agreement with the Netherlands Government-in-exile.

1950–1953: *Korean Conflict.* Communist armies of North Korea invaded South Korea on June 25, 1950. Later that day the United Nations Security Council denounced the aggression, called for an immediate cease-fire, and asked member nations "to render every assistance to the United Nations in the execution of this resolution." On June 27 President Truman announced that he had "ordered United States air and sea forces to give the Korean Government troops cover and support" and had ordered the Seventh Fleet to prevent any attack on Formosa and also to prevent the Chinese Government on Formosa from conducting any air and sea operations against the Communist mainland. The Security Council, on the same day, adopted a resolution "that the members of the United Nations furnish such assistance to the Republic of Korea as may be necessary to repel the armed attack and to restore international peace and security in the area."

The Department of State prepared a memorandum, on July 3, 1950, which defended the authority of the President to take the necessary action to repel the attack on Korea, using the argument that the "President, as Commander in Chief of the Armed Forces of the United States, has full control over the use thereof."

Truce talks began in July, 1951, were broken off, then resumed, and were still continuing at the time of the Presidential campaign of 1952.

It was not until July, 1953, that an armistice was signed.

1958: *Lebanon Operation.* A period of protracted civil unrest began in Lebanon in May, 1958, led by Moslems who reportedly were aided by the United Arab Republic's President Nasser. When a pro-Nasser coup took place in Iraq July 14, President Cha-

moun of Lebanon, alarmed at these developments in the neighboring country, sent an urgent plea for assistance to President Eisenhower, saying his country could not survive both domestic rebellion and "indirect aggression." On July 15 President Eisenhower sent 5,000 marines to Beirut to "protect American lives" and to "assist" Lebanon in preserving its political independence. Three days later British paratroopers landed in Jordan. The President publicly stressed the provocative Soviet as well as Cairo radio broadcasts, and he referred to the "Eisenhower Doctrine," a statement of policy contained in a joint resolution of Congress, passed in 1957, which authorized the President to use United States armed forces to assist any Middle Eastern nation which requested help against Communist aggression. Eventually, 14,000 American soldiers and marines occupied strategic areas in Lebanon, but with orders not to shoot unless shot at.

On the day of the initial landings, the United States asked the United Nations Security Council to establish an international police force to preserve Lebanon's independence, but the Soviet delegate vetoed the American resolution. Further, the Soviet Union announced that it would hold military maneuvers near the Turkish and Iranian frontiers. As a result, the crisis now extended beyond the Lebanon-Jordan theater.

On August 21 the General Assembly passed a compromise resolution which called on the member states to respect one another's territorial integrity and observe strict noninterference in one another's internal affairs and which requested that practical arrangements be made leading to the withdrawal of troops from Lebanon (and Jordan). A degree of stability returned to Lebanon, and, on September 26, the United States notified the Secretary-General of the United Nations that, because of the improvements in the security situation in Lebanon, it has been possible, in agreement with Lebanese authorities, to withdraw a portion of the American forces and to work out a schedule to withdraw the remainder by the end of October.

1961: *Show of Naval Force in Dominican Waters.* On May 30, Dominican dictator Rafael Trujillo was assassinated. Political conditions in the Dominican Republic steadily deteriorated during the summer and early autumn. Then, on November 15, General Hector Trujillo and General Jose Trujillo, brothers of the slain dictator, returned to the island. Secretary Rusk stated three days later they appeared "to be planning an attempt to reassert the dictatorial domination of the political and economic life of the country . . ." He added: "the United States is considering the further measures that unpredictable events might warrant."

On November 19, U.S. Navy ships took up positions three miles off the Dominican coast and Navy jet planes patrolled the shoreline. The show of force produced the desired result because the Trujillo brothers and other members of the family departed for Miami before the day was over. According to one authority, "It later transpired that the Kennedy Administration was prepared to order U.S. marines ashore if President Joaquin Balaguer had so requested or if the Trujillos had ousted Balaguer from the presidency."

1962: *Cuban Naval Quarantine.* President Kennedy could not wait for Congressional approval of his actions in the Cuban missile crisis of 1962. On October 24, confronted with a build-up of Soviet surface-to-surface missiles bases in Cuba, President Kennedy ordered a quarantine 500 miles deep in the waters around Cuba. The blockade was aimed both at preventing delivery of additional Russian missiles and obtaining the removal of those offensive Russian weapons already in Cuba.

The crisis appears to date from Tuesday, October 16, when the Government's inner circles first began to discuss the idea of a blockade. On October 20, the First Armored Division began to move out of Texas into Georgia, and five more divisions were placed on alert. The base at Guantanamo Bay was strengthened. The Navy deployed 180 ships into the Caribbean. The Strategic Air Command was dispersed to civilian airfields and the B–52 bomber force was ordered into the air fully loaded with atomic bombs.

On October 22, President Kennedy went on television to explain before the nation the situation in Cuba and the reasons for the quarantine. On Tuesday, the 23rd, the Council of the Organization of American States formally authorized by a unanimous vote "the use of armed forces" to carry out the quarantine of Cuba. Apparently, one day later the blockade went into effect.

Other notable dates include October 27, when the Defense Department announced that 24 troop-carrier squadrons of the Air Force Reserve were being recalled to active duty; October 28, when Premier Khrushchev in a message to President Kennedy, announced he had ordered the dismantling of Soviet missile bases in Cuba; October 29, when the United States announced it would lift the blockade for two days; October 31, when the White House announced the arms blockade and air surveillance of Cuba would be resumed on November 1; November 11, when Deputy Secretary of Defense Gilpatric announced the United States had counted 42 medium-range missiles being removed from Cuba on Soviet ships; and November 20, when President Kennedy announced he had ordered the lifting of the naval blockade. Most of the U.S. ships participating in the blockade returned to their ports on November 21 and the same day 14,200 Air Force Reservists were released from active duty.

Finally, on December 6, U.S. Navy planes verified that 42 Soviet jet bombers were being transported home from Cuba and on December 8, nine thousand marines were sent back to California after service in the Caribbean area. The United States apparently closed the book on the Cuban crisis about this date.

1964: *Congo.* In August the United States sent four C–130 transport planes with approximately 100 flight and maintenance crews and paratroopers to protect the aircraft while on the ground. The purpose was said to be to provide airlift for the regular Congolese troops to combat areas during a rebellion against the government of Premier Tshombe and President Kasavubu. Earlier, in July, the United States had sent 68 officers and men to Leopoldville to advise the Congolese army. Both actions followed the withdrawal on June 30 of the last of the 20,000-man force which the United Nations had placed in the Congo in order to keep the peace.

Subsequently, in November, rebels in the Stanleyville area held over a thousand foreign civilian hostages, including 60 Americans, who were subjected to many atrocities and whom the rebels threatened to kill. When negotiations between the rebels and the United States failed, the United States and Belgium arranged to land Belgian paratroopers to undertake a humanitarian rescue operation.

About 600 Belgian paratroopers were poised on Ascension Island in the South Atlantic Ocean ready to fly into Stanleyville, but when their presence was prematurely disclosed, the rebels announced that hostages were being moved into the jungle. On November 24, the force was airdropped by U.S. transport aircraft in the Stanleyville area and liberated most of the hostages.

Despite insulting attacks by most African nations and Communist countries, Belgian paratroopers undertook a second rescue operating on November 26, capturing the rebel town of Paulis. During the four-day operation about 2,000 foreigners had been rescued.

With the completion of the two missions, plans began the next day for the departure of the paratroopers. President Johnson assumed "full responsibility" for the United States role in the decision to transport the Belgian troops in American planes.

On December 30, the U.N. Security Council adopted a resolution which called for an end to all foreign intervention in the Congo. In this regard, it may be noted Ambassador Stevenson listed Algeria, Ghana, the Sudan, the Congo Republic (formerly French Congo), Burundi, the Soviet Union, and Communist China as all having supplied arms to the Congolese rebels.

1964–1965: *Armed Actions in Laos.* At the request of the Laotian Government, unarmed United States jet planes began flying reconnaissance missions over the Plaine des Jarres in May, 1964, in order to gather information on rebellious forces headed by leftist Pathet Lao. After two jets were shot down on June 6 and 7, President Johnson decided to carry out a limited reprisal. On June 9, U.S. Navy jets attacked a Communist gun position in north central Laos, and this was followed by 36 "sorties" which knocked out a number of Communist posts.

1964–1971: *Armed Action in Vietnam.* Following the Geneva Accords of 1954 which provisionally divided Vietnam at approximately the 17th parallel, the Communists held control of the northern half of the country while anti-Communists maintained an increasingly precarious hold on the south. A U.S. Military Assistance Advisory Group which assumed responsibility for the training of the South Vietnamese army after the French relinquished command authority was steadily expanded as Communist guerrilla activity supported and directed from the north intensified to alarming proportions in South Vietnam. By 1962 there were 12,000 U.S. advisors; two years later, twice that number.

In August, 1964, at the request of President Johnson following an attack on American naval vessels in the Gulf of Tonkin, Congress passed the so-called Gulf of Tonkin Resolution, unanimously in the House and by a vote of 88–2 in the Senate that expressed approval and support of "the determination of the President, as Commander in Chief, to take all necessary measures to repel any armed attack against the forces of the United States and to prevent further aggression." Also it provided that the United States is "prepared as the President determines, to take all necessary steps, including the use of armed force, to assist any member or protocol state of the Southeast Asia Collective Defense Treaty requesting assistance in defense of its freedom." (South Vietnam is a protocol state of SEATO.) The joint resolution was signed into law on August 10 as Public Law 88–408.

Steadily increasing numbers of U.S. Armed Forces were sent into Vietnamese combat during the years following passage of the Gulf of Tonkin Resolution. Both this resolution and the SEATO agreement itself have been claimed as authority for United States activities in Vietnam. In addition, several appropriations laws providing for support of the hostilities in Southeast Asia have been purported to represent authority for our engagement there. However, on March 12, 1970, the State Department presented the Senate Foreign Relations Committee its view that: "The Administration is not depending on any of these resolutions as legal or constitutional authority for its present conduct of foreign relations, or its contingency plans." The Administration position was responsive to a then pending legislative proposal which would repeal the Formosa, Middle East, Cuba, and Gulf of Tonkin resolutions. The Tonkin Gulf resolution was subsequently repealed by P.L. 91–672.

Since assuming office in January 1969, President Nixon has made five withdrawal

announcements. From a high of 540,000 men, President Nixon has authorized the withdrawal of 384,000 troops as of April 1971. The latest announced reduction will bring the total number of American military forces in South Vietnam to 184,000 by December 1971.

1965: *Dominican Republic Operation.* A revolt broke out in the Dominican Republic on April 24, 1965, and on April 28 President Johnson announced that Dominican military authorities had requested assistance from the United States in protecting the lives of United States citizens living in that country, as their safety could no longer be guaranteed. The President added that he had ordered the Secretary of Defense to put the necessary troops ashore to protect Americans and that this assistance would be available to the nationals of other countries as well. At the same time, the President stated that the Organization of American States had been advised of the situation by the Dominican Ambassador. On April 30 the Council of the OAS called for a cease-fire and convoked a Meeting of Consultation of Ministers of Foreign Affairs of the American Republics.

The first United States military contingent to the Dominican Republic consisted of 400 men, but this number proved insufficient. On May 2 the President announced that he was sending 200 more men immediately and that an additional 4,500 would go at the earliest possible moment. He cited the increasing communist control of the revolutionaries, as well as the urgent need for food, medical supplies, and other humanitarian assistance to the Dominican people, as reasons for his decision. At their peak 21,500 United States troops were in the Dominican Republic.

On May 5, a five-man OAS peace commission succeeded in achieving a cease-fire agreement among the various contending forces; on May 6 the OAS voted to create an Inter-American Peace Force to assist in restoring peace and order. The United States promptly offered to make its military personnel available to the inter-American force. The arrival on May 21 of the first contingent of a Brazilian force permitted the withdrawal of 1,700 United States troops, and as other foreign contingents arrived, additional United States troops were withdrawn. By the end of 1965, the Inter-American Peace Force totaled 9,400. In the meantime, a formula to restore constitutional government, worked out by an OAS Ad Hoc Commission, had also made considerable progress. The inauguration of a civilian, Hector Garcia Godoy, as provisional president on September 3, 1965, was a major step toward the restoration of stability, although sporadic outbreaks of violence continued to plague efforts to achieve a settlement.

1967: *Congo.* In July, Lt. General Mabutu, who had now become President of thet Congo, was challenged by a revolt of about 170 white mercenaries and a few hundrded Katangese troops. The Congolese army numbered around 32,000, but required outside logistical support in order to crush the revolt.

Responding to a direct appeal from President Mabutu, on July 8 the United States sent three C–130 military transport aircraft to the Congo, with their crews, to provide the Central Government with "long-range logistical support." Approximately 150 American military men arrived with the planes.

The small American task force immediately began to drop several plane loads of paratroopers and their equipment and continued to fly troops until November. On July 15, the first aircraft was withdrawn; on August 4, the second; and on December, the last.

B. FIVE UNITED STATES MILITARY ACTIONS TAKEN UNDER A DECLARATION OF WAR

War of 1812. (1812–1815) On June 18, Congress approved a declaration of war against England. The war was officially concluded by the Treaty of Ghent, December 24, 1814, but the major battle of the war occurred with an American victory at New Orleans in January, 1815.

War Between the United States and Mexico. (1846–1848) Congress declared war on May 11, 1846. The Treaty of Guadalupe Hidalgo ended the conflict on February 2, 1848.

Spanish-American War. (1898) On April 25, 1898, the United States declared war against Spain. The peace treaty ending hostilities was signed in Paris on December 10, 1898.

World War I. (1914–1918). The United States declared war on Germany on April 6, 1917, and against Austria on December 7, 1917. The Treaty of Versailles was signed on June 28, 1919. The treaty was never ratified by the United States.

World War II. (1941–1945). The United States declared war on Japan December 8, 1941, and on Germany and Italy December 11, 1941. The War ended in Europe on May 8, 1945. Japan signed the formal surrender in Asia on September 2, 1945.

C. THIRTY-ONE MILITARY OPERATIONS FOR BROAD STRATEGIC PURPOSES

1844: Mexico. President Tyler deployed our troops to protect Texas one year before annexation.

1846: Mexico. President Polk ordered General Scott to occupy disputed territory between the Nueces and the Rio Grande.

1853–1854: Japan. Commodore Perry's expedition of 2000 men and ten ships advanced American commercial interests.

1864: Japan. U.S. Naval units participated in a joint effort to force open the Straits of Shimonoseki for commercial operations.

1865–1866: Mexican border. General Sheridan and 50,000 U.S. troops backed up a demand from Secretary of State Seward that French forces withdraw from Mexico.

1888–1889: Samoan Islands. Germany and the United States were close to warfare due to their rivalry over naval privileges in the Samoans.

1899–1901: Philippine Islands The United States used 126,468 troops against the Philippine Insurrection in order to preserve and foster any rights it had acquired from Spain.

1900–1901: Boxer Rebellion (Peking). The Boxer uprising in China created a demand for troops and marines to relieve foreign legations in Peking and to keep open communication betweeen Peking and the sea.

1906: Cuba. Army units took up quarters in many Cuba towns to preserve order.

1912: Panama. American troops supervised elections outside the Canal Zone.

1912: Cuba. American troops landed to preserve order.

1914: Dominican Republic, U.S. naval forces fired at revolutionaries in order to stop the fighting.

1915: Haiti. By force of arms U.S. troops took over Haiti in part to forestall European intervention.

1916: Dominican Republic. U.S. troops occupied Santo Domingo and supported a military governor in the Dominican Republic.

1917: Cuba. American troops landed because of unsettled political conditions.

1918–1920: Expeditions to Russia. The U.S. contributed some 14,000 men to aid the anti-Bolsheviks and to forestall Japaneses expansionist plans in Siberia.

1919–1920: Panama. American troops went outside the Canal Zone to supervise elections.

1919: Honduras. A small American force went ashore to maintain order in a neutral zone during an attempted revolt.

1940: British possessions in Western Atlantic. U.S. occupied military bases on British soil to protect long-range national security interests.

1941: Greenland. The U.S. Army occupied Greenland for the same reason as above.

1941: Iceland. U.S. Troops occupied Iceland for the same reason as above.

1941: Dutch Guiana. American troops occupied Dutch Guiana for the same reason as above.

1950–1953: Korean War. U.S. forces acted to assist the Republic of Korea in order "to restore international peace and security in the area."

1958: Lebanon. Though an important purpose of using U.S. armed forces in Lebanon was to protect American lives, a primary purpose also was to assist Lebanon in preserving its political independence.

1961: Dominican Waters. U.S. Navy ships took up positions three miles off the Dominican coast and Navy jet planes patrolled the shoreline to prevent a revolution in the Dominican Republic.

1962: Cuban Naval Quarantine. President Kennedy ordered a naval quarantine of Cuba to prevent delivery of additional Russian missiles and to obtain the removal of those already in Cuba.

1964: Congo. A task force of four U.S. C–130 transport planes with about 100 crew members and paratrooper guards were sent to the Congo to provide airlift for the regular Congolese troops during a Communist-assisted rebellion. Also, the United States had 68 military advisers in Leopoldville.

1964–1971: Vietnam. American forces have acted to support freedom and protect peace in Southeast Asia.

1964–1965: Laos. At the request of the Laotian Government, unarmed U.S. planes flew reconnaissance missions over the Plaine des Jarres. After two jets were shot down, President Johnson carried out a limited reprisal.

1965: Dominican Republic. Though the protection of the lives of U.S. citizens was an important function of U.S. troops sent to the Dominican Republic, the threat of a Communist takeover and the need to provide humanitarian assistance to the Dominican people also were major reasons for the American landings.

1967: Congo. A task force of three U.S. C–130 transports and 150 men ferried Congolese paratroopers in order to crush a revolt against Mobutu's government.

D. FIFTY-SIX HOSTILE OPERATIONS INVOLVING ACTUAL GUNFIRE OR IMMINENT THREAT OF WARFARE

1798–1800: Quasi-war with France.
1801–1805: War with Tripoli.
1806. Mexico.
1806–1810: Gulf of Mexico.
1814–1825: Caribbean area.
1815: Second Barbary War.
1816–1818: Spanish Florida.
1817: Amelia Island (Spanish Territory).
1822: Cuba.
1823: Cuba.
1825: Cuban Keys.
1831–1832: Falkland Islands (Argentina).
1832: Sumatra.
1840: Fiji Islands.
1841: Drummond Islands (Pacific Ocean).
1841: Samoan Islands.
1843: West Africa.
1846: Mexico.
1851: Turkey (Apparently no shots fired, but the force displayed amounted to a compulsory ultimatum).
1851: Johanna Island (East of Africa).
1853–1854: Japan (Commodore Perry's expedition including 10 ships and 2000 men conveyed an imminent threat of using force).
1854: China.
1854: Greytown, Nicaragua.
1855: Fiji Islands.
1855: Uraguay.
1856: China.
1858: Fiji Islands.
1859: Paraguay (The Naval display of force amounted to compulson).
1863: Japan.
1864: Japan.
1865–1866: Mexican border (General Sheridan and 50,000 American troops backed up the demand of Secretary of State Seward that French forces leave Mexico).
1867: Formosa.
1870: Mexico.

1871: Korea.
1888: Haiti (American Commander issued an ultimatum threatening force if necessary).
1888–1889: Samoan Islands (Three powers had warships on the scene during an intense rivalry over claims in the islands. War was close when a hurricane destroyed German and American vessels.)
1894: Brazil.
1899: Samoan Islands.
1900–1901: Boxer Rebellion (China).
1899–1901: Philippine Insurrection.
1910: Nicaragua (Armed combat was "hourly expected.")
1911: Honduras (The American Commander expressly threatened to use force if necessary.)
1914: Dominican Republic.
1914: Occupation of Vera Cruz, Mexico.
1915: Haiti
1916: Dominican Republic
1916–1917: Pershing Expedition into Mexico
1918–1919: Mexico
1918–1920: Expeditions to Russia
1926–1933: Nicaraguan occupation
1927: Armed Actions in China
1950–1953: Korean War
1962: Cuban naval quarantine
1964–1965: Armed actions in Laos
1965: Dominican Republic
1964–1971: Vietnam War

E. SIXTY-FOUR MILITARY OPERATIONS LASTING MORE THAN THIRTY DAYS

1798–1800: Quasi-War with France
1801–1805: War with Tripoli
1806–1810: Gulf of Mexico
1813–1814: Marquesas Islands (South Pacific)
1814–1825: Caribbean Area
1815: Second Barbary War
1816–1818: Spanish Florida
1823: Cuba
1827: Greece
1831–1832: Falkland Islands
1835–1836: Peru
1838–1839: Sumatra
1843: West Africa
1844: Mexico
1846: Mexico
1852–1853: Argentina
1853–1854: Japan
1858–1859: Turkey
1865–1866: Mexican border
1866: China
1873–1882: Mexico
1888–1889: Samoan Islands
1894: Nicaragua
1898–1899: China
1899: Samoan Islands
1899–1901: Philippine Islands
1900–1901: "Boxer" Rebellion (Peking)
1901: State of Panama
1902: State of Panama
1903: Panama
1904–1905: Korea
1906: Cuba.
1911–1912: China.
1912: Panama.
1912: Cuba.
1912: Nicaragua.
1913: China.
1914: Haiti.
1914: Vera Cruz (Mexico).
1915: Occupation of Haiti.
1916: Occupation of Dominican Republic.
1916–1917: Pershing Expedition into Mexico.
1917: Cuba.
1918–1919: Mexico.
1918–1920: Expeditions to Russia.
1919–1920: Panama.
1920–1922: Siberia.
1922–1923: China.
1924–1925: Honduras.
1926–1933: Nicaragua.
1926: China.
1927: China.
1940: Occupation of British possessions in Western Atlantic.
1941: Occupation of Greenland.
1941: Occupation of Dutch Guiana.
1941: Occupation of Iceland.
1950–1953: Korean War.
1958: Lebanon.
1962: Cuban naval quarantine.
1964–1965: Laos.
1964–1967: Vietnam.
1964: Congo.
1965: Dominican Republic.
1967: Congo.

F. SIXTY-FIVE MILITARY ACTIONS TAKEN BY THE UNITED STATES OUTSIDE THE WESTERN HEMISPHERE

1801–1805: War with Tripoli.
1813–1814: Marquesas Islands (South Pacific.
1815: Second Barbary War.
1827: Greece.
1832: Sumatra.
1838–1839: Sumatra.
1840: Fiji Islands.
1841: Drummond Island (Pacific Ocean).
1841: Samoan Islands.
1843: West Africa.
1849: Smyrna (Now Izmir, Turkey).
1851: Turkey.
1851: Johanna Island (east of Africa).
1853–1854: Japan.
1854: China.
1855: China.
1855: Fiji Islands.
1856: China.
1858: Fiji Islands.
1858–1859: Turkey.
1859: China.
1860: Kissembo (West Africa).
1863: Japan.
1864: Japan.
1866: China.
1867: Formosa.
1868: Japan.
1871: Korea.
1874: Hawaii.
1882: Egypt.
1888: Korea.
1888–1889: Samoan Islands.
1889: Hawaii.
1894: Korea.
1894: China.
1898–1899: China.
1899: Samoan Islands.
1899–1901: Philippine Islands.
1900–1901: "Boxer" Rebellion (Peking).
1903–1904: Turkey.
1903–1904: Abyssinia (Ethiopia).
1904: Morocco.
1904: Korea.
1911–1912: China.
1912: Turkey.
1913: China.
1916: China.
1918: China.
1918–1920: Expeditions to Russia.
1920: China.
1920–1922: Siberia.
1922: Turkey.
1922–1923: China.
1924: China.
1926: China.
1927: China.
1932: China.
1941: Occupation of Greenland.
1941: Occupation of Iceland.
1950–1953: Korea.
1958: Lebanon.
1964–1965: Laos.
1964–1971: Vietnam.
1964: Congo.
1967: Congo.

G. 63 MILITARY OPERATIONS ARGUABLY INITIATED UNDER PRIOR LEGISLATIVE AUTHORITY (NO DECLARATIONS OF WAR)

Year and military operation	Legislation	Treaty
1798 to 1800—Quasi-War with France	X	
1801 to 1805—War with Tripoli	X	
1813—Spanish Florida	X	
1806 to 1810—Gulf of Mexico [2]	X	
1813 to 1814—Marquesas Islands	X	
1814 to 1825—Caribbean area	X	
1815—Second Barbary War	X	
1817—Amelia Island	X	
1822—Cuba	X	
1823—Cuba	X	
1824—Cuba	X	
1825—Cuban Keys	X	
1827—Greece [1]	X	
1832—Sumatra [1]	X	
1838 to 1839—Sumatra [1]	X	
1841—Drummond Island [1]	X	
1841—Samoan Islands [1]	X	
1843—West Africa [1]	X	
1851—Johanna Island, east of Africa [1]	X	
1855—China [1]	X	
1856—Panama		X
1859—Paraguay		X
1860—Panama		X
1864—Japan		X
1865—Panama		X
1867—Formosa [1]	X	
1868—Colombia		X
1870—Mexico	X	
1873—Columbia		X
1885—Panama		X
1888 to 1889—Samoan Islands	Treaty or legislation	
1891—Navassa Island, Haiti	X	
1894—Brazil	X	
1895—Panama		X
1899—Samoan Islands	Treaty or legislation	
1899 to 1901—Philippine Islands		X
1901—Panama		X
1902—Panama		X
1903—Panama		X
1904—Panama		X
1906—Cuba		X
1911 to 1912—China		X
1912—Panama		X
1912—Cuba		X
1913—China		X
1914—Vera Cruz, Mexico	X	
1916—China		X
1917—Cuba		X
1918—China		X
1919–1920—Panama		X
1920—China		X
1921—Panama-Costa Rica		X
1922 to 1923—China		X
1924—China		X
1925—Panama		X
1926—China		X
1927—China		X
1932—China		X
1933—Cuba		X
1950 to 1953—Korean War		X [2]
1958—Lebanon Operation	X	
1962—Cuban Naval Quarantine		X(OAS)
1964 to 1967—Vietnam	Treaty or legislation	

[1] Indicates military activity may have occurred pursuant to broad interpretation of authority conferred by certain acts of Congress against piracy.
[2] U.N. Charter.

THE DRAFT AND COMBAT CASUALTIES

Mr. HATFIELD. Mr. President, on Friday, April 22, 1971, a study concluding that a draft, even with internal reforms, would put an undue burden on the black and the poor was placed in the RECORD. One would conclude that if this were the case, combat casualties would be borne more by the poor than by any other group. This has been the case in Vietnam, and in a study by Duane Leigh and Robert Berney, of the College of Economics and Business at Washington State University, it is concluded that casualties would continue to be borne by the poor if the draft were to continue.

Short of legislating internal policies of the Armed Forces, such as setting up a ration by economic class for men who

serve in various combat specialties, the draft, by any method of selection, would put an unfair burden on the poor in the combat arms. To attempt to legislate internal policies of any agency, let alone one the size of our Armed Forces, would be contrary to virtually every lesson we have learned regarding effective management. The simplest and easiest method of eliminating the burden on the poor is to abolish the draft. Obviously this would not be the answer to the entire question, but it would be a significant first step. The causes of poverty must be eradicated, but we should not impose any more of a burden on the poor than their economic status already does.

Mr. President, extending the draft would put a greater burden on the poor than would an all-volunteer military. And most particularly, the draft would continue to impose a greater responsibility on the poor for carrying the brunt of combat operations than it would on other economic groups. The Leigh-Berney study concludes that—

Hostile casualties are disproportionately borne by segments of the population with relatively low civilian income-earning opportunities. . . . The draftee had casualty rates approximately twice that of the volunteer. . . . (And) it has been shown that the college graduate, even though drafted, is most likely to be trained for non-combat MOS's.

Mr. President, I ask unanimous consent that the study by Leigh and Berney be printed in the RECORD.

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

THE IMPACT OF HOSTILE CASUALTIES ON THE MILITARY DRAFT*

(By Duane E. Leigh and Robert E. Berney)

One of the side effects of the Vietnam War has been the increased attention given by economists to the present draft system of manpower procurement. Much of this effort has been directed toward estimating the tax-in-kind borne by draftees and "reluctant" volunteers.[1]

Among the first to publish estimates of the distributive burden imposed by the draft were W. Lee Hansen and Burton Wiesbrod [7]. They estimated the tax as the difference between civilian income-earning opportunities and actual military compensation, concluding that the tax subsidized those with low-income earning potentials similar to a negative income tax. Beyond the break-even point of $2,400, the tax was progressively distributed, reaching a 76 per cent rate for the draftee with an income earning potential of $10,000.

Ronny Davis and Neil Palomba [5] came to similar conclusions on the progressivity of the tax but noted that the progressivity was "seriously tempered" by college deferments. In a subsequent paper, Robert Berney [3] emphasized that Davis and Palomba's definition of progressivity applied only to the individual draftee or reluctant volunteer and did not reflect a change in the relative burdens between educational-income groups. Adjusting the Davis-Palomba estimates by the relative number of draftees in each income group, Berney concluded that the tax was progressive only over educational categories up to and including high school graduates. For higher educational categories, the tax was regressive. Thomas Willert [17] criticized the Davis-Palomba estimates arguing that the implicit tax imposed on a serviceman should properly be measured as a difference in the discounted future earning streams, where the earning streams of the draftee or reluctant volunteer is adjusted by the individual's taste concerning military versus civilian employment.

Present value estimates for high school graduates and college students assume to enter military service at ages 18 and 22 were estimated by Duncan Bailey and Thomas Cargill [2]. They reported that the average rates of the tax-in-kind in present value terms imposed on servicemen falling into each category and found that the high school graduate is faced with a slightly higher average tax rate than is the college student at the same age. But since high school graduates are usually inducted at an earlier age than college students, Bailey and Cargill concluded that the effective tax rate may be equalized [2, p. 369].

As yet, few systematic analyses have been forthcoming on the additional question of the distribution of military casualties among servicemen.[2] The purpose of this study is to analyze the distribution of hostile casualties in Southeast Asia to determine whether the burden of military fatalities varies between socio-economic groups. The hypothesis advanced here is that the risk of combat death is on the average inversely related to the civilian income earning potential of young men qualified for military service. This hypothesis is based on the supposition that men with relatively high-income earning potentials are better able to avoid the military service than are other men; but if inducted, they are less likely to be placed in combat units of the military. To the extent that this hypothesis can be confirmed for draftees and reluctant volunteers, the distribution of the tax-in-kind imposed by the draft would have to be judged less progressive or more regressive than previously estimated.

The remainder of this paper considers the hypothesis relative to (1) survey results collected for the war dead from the state of Utah and from Long Island, New York, and (2) nation-wide hostile casualty data provided by the Defense Department.

I. EVIDENCE ON THE DISTRIBUTION OF HOSTILE CASUALTIES

Evidence supporting our hypothesis of a regressive distribution of hostile casualties comes from analysis both at the micro and the macro levels. At the micro level, James Clayton and Jerry Smith [4] investigated the backgrounds of 182 Utah servicemen killed in hostile action in Southeast Asia through January 31, 1969. Also *Newsday* [9] investigated 400 war dead from Long Island. At the macro level, a multi-variable regression model was developed to explain state by state variations in hostile casualties using socio-economic relationships as independent variables. Finally, the Department of Defense has released aggregative data on the number of draftees serving in and becoming casualties in Vietnam.

A. Micro analyses of military casualties

From a list of casualties published in the *Congressional Record* by Congressman Paul Findley, Clayton and Smith obtained names of 182 Utah servicemen killed in hostile action in Southeast Asia. They conclude from the obituaries of these men that the casualties were young (the average age at time of death was less than 21 years) and overwhelmingly from the lower middle class of the state's population [4, p. 4]. Of the 67 casualties from Salt Lake City, virtually none were from either the areas in which the upper 10 per cent (in terms of median income for 1960) of the city's population resided or the areas in which the bottom tenth of the city's population resided.

Educational data were obtained for 143 of the war dead. Although most had graduated from high school, only two of the casualties were college graduates. Only 39 of the casualties had attended college despite the fact that Utah leads the nation in the enrollment of its 18 to 21 year-old population in institutions of higher learning [4, p. 7]. In an attempt to stratify the war dead by income groups, Clayton and Smith distinguished the four Salt Lake City high schools located in the upper-income areas of the city from the four schools serving students in the less affluent areas. Servicemen who attended one of the less affluent schools were found to have over twice the casualty rate of servicemen who attended schools in the upper-income areas [4, p. 6].

A major alternative to active duty for men eligible for the draft is to enlist in the National Guard or a reserve component of the armed forces. Clayton and Smith examined a randomly selected sample from a typical Utah Army National Guard unit in the Salt Lake City area which was comparable in size to the state's casualty list. They found that the members of the National Guard were considerably older than the war dead (25 versus 20 years of age) and tended to come from upper middle and upper income families [4, p. 7].

These conclusions on the characteristics of reserve personnel are highly consistent with those reported by the Gates Commission [11, pp. 110–14.] The Commission found that reservists in fiscal 1969 were older and possessed a substantially higher level of educational attainment than did active-duty personnel [13, p. 112]. As one would expect, enlistment in the reserves appears highly draft motivated.

The results of the *Newsday* survey [8] of 400 war dead from Long Island are generally consistent with the Utah results. Most of the casualties were high school graduates, but only a few of the enlisted men had college degrees and only about 12.5 per cent had attended college. Most were young with working-class backgrounds. "Their parents were typically blue-collar or clerical workers, mailmen, factory workers, building tradesmen and so on. Most of the dead could have been expected to do similar work perhaps inching up the income scales a notch or two [8, p. 5W]."

To summarize, although the available surveys of war dead are quite restricted in geographical coverage, the pertinent results of these studies do support the hypothesis advanced here. The burden of military casualties does seem to have been disproportionately borne by lower middle class families whose sons had relatively low propensities to go on to college immediately following high school. Young men from poverty backgrounds in general had difficulty passing the mental and physical requirements of the armed forces [18, p. 71]. On the other hand, men from the higher income classes were much more likely to attend college and then to take advantage of opportunities for additional deferments (e.g., graduate school, occupational, and parenthood) following college graduation. If such deferments were not obtainable, assignments in the National Guard or Reserve units tended to be more available to these men. But even where active duty was the only option, college men were more likely to have the abilities and/or training that would allow them to be placed in non-combat military occupations.

B. Macro analysis of military casualties

At the national level, data apparently do not exist classifying casualties by either income or educational groups; nor was a classification of war dead by method of initial procurement (induction or enlistment) when our initial calculations were made. The data made available by the Department of Defense classify casualties in Southeast Asia through December 1969 by attained age, by rank, by length of service, and by state of residence.

It seems reasonably clear that high school dropouts and high school graduates were subject to the draft at considerably earlier ages than men who went on to college [5, pp. 151–152]. With this in mind, the distribution

Footnotes at end of article.

of hostile casualties by attained age was examined relative to the distribution of active duty military personnel by attained age. Specifically, the percentage of hostile deaths in a particular age group, say, age 18, was calculated as a ratio of the percentage of active-duty personnel (as of June 30, 1968) for the same age group. Ratios of unity would indicate that the percentage distribution of hostile casualties is exactly equal to the percentage distribution of servicemen. The calculated ratio was 1.72 for 18-year-olds; it peaked at 2.10 for 19-year-olds; and for servicemen of age 20 and 21, the ratios fell to 1.61 and 1.02, respectively. For servicemen older than 21, the ratios were less than unity and declined with age. From this evidence, it appears that the burden of hostile casualties were disproportionately borne by servicemen between the ages of 18 and 20.

It might be argued that the influence of servicemen in their second or third tours of military duty tends to reduce the casualty burden borne by servicemen aged 21 and older since these men may be in a position to reduce their exposure to combat action. If this were the case, a 22-year-old draftee might face approximately the same risk as an 18-year-old draftee despite the evidence showing that hostile casualty ratios decline with age beyond 19. To check this possibility, the percentage distribution of casualties by length of service was calculated relative to the percentage distribution of servicemen on active duty (June 30, 1968) classified by length of service. Considering these ratios, there is little to indicate that the burden of hostile casualties as disproportionately borne by men in their first tour of duty relative to men serving in their second or third tours, particularly in the Army where almost all draftees serve.[3]

Thus, it seems likely that young servicemen in their first tour of duty did face a higher risk of death than did older servicemen (age 21 and older) in their first tour of duty. And since men with only high school educations tended to be drafted earlier than men with college educations, it follows that servicemen with relatively low levels of educational attainment bore a greater risk of hostile death. At least a partial rationale for this conclusion is found in the discussion of the Gates Commission [12, pp. 42–44] of the increasing demand for skilled personnel by the armed forces and the declining proportion of men required in the relatively unskilled military occupations largely consisting of ground combat occupations. For instance, in fiscal 1953, 35 per cent of Army enlisted men were assigned to ground combat units (riflemen, artillery crews, tank crews, etc.) while by 1969 the percentage had fallen to 26 per cent. In their discussion, the Commission places considerable emphasis on the growing similarity of the military's skill requirements to those of the civilian economy.[4]

In a further attempt to test the hypothesis against the available national data, hostile casualty data by state of residence were utilized to discover whether at this level of aggregation a relationship could be found between state-by-state differences in hostile casualties and state variation in particular socio-economic characteristics related to income-earning opportunities.

It is reasonable to anticipate the hostile casualties from a particular state would be significantly related to the number of servicemen from that state stationed in Southeast Asia. While state-by-state data on servicemen in Southeast Asia were not available, regression results indicated that hostile casualties by state were highly correlated with the total number of servicemen from each state. To abstract from consideration of state size in terms of military manpower, hostile casualties by state relative to number of servicemen from that state were examined.

Since data on servicemen are available only for particular years, the dependent variable in the regression analysis has been specified as the proportion of hostile casualties by state relative to the proportion of total military personnel by state for a particular year, i.e., the dependent variable was written as $(HD_i/\Sigma HD_i)/(SM_i/\Sigma SM_i)$, where HD_i is the number of hostile casualties through December 1969 and SM_i is the number of servicemen from state i ($i=1, \ldots, 51$). Observations run over all fifty states plus the District of Columbia. If the proportion of casualties were the same as the proportion of servicemen for each state, the ratios would all be unity and there would be nothing to explain by other variables. In fact, there is considerable variation in the dependent variable.

Similar ratios were also calculated for Army and for Marine Corps hostile casualties and these were used as additional dependent variables. Of total hostile casualties, approximately 61.8 per cent were Army personnel and 33.0 per cent were Marines. These additional dependent variables were introduced in order to contrast the results obtained for Army personnel of whom a large proportion were draftees (42.1 per cent of total enlisted men as of June 30, 1967) with the results obtained for the Marine Corps which contained relatively few draftees (6.0 per cent of total enlisted men as of June 30, 1967).

The following characteristics are considered to be important determinants of a serviceman's civilian income-earning opportunities: educational attainment, employment opportunity, and family background. Wherever possible, we searched for variables representing these characteristics for men between the draft-eligible ages of 18 to 26. Three proxy variables were selected for use as independent variables: (1) state rates of mental disqualification on preinduction examination of draftees in 1965 [11, Table 9.4, pp. 206–7], (2) state unemployment rates in 1966 [14, Table D–4, p. 260], and (3) states ratios of non-white male to total male populations in 1960 [13, Table 29, p. 28].

The rate of mental disqualification on preinduction physicals is utilized as a proxy to represent state differences in the educational attainment of draft-eligible males. Because educational administration is localized, the results of the written examinations administered at the preinduction physical are used to represent a single national "yardstick" for measuring the educational achievement of all male youth [18, p. 71].[5] The standard screening test determining fitness for military service is the Armed Forces Qualification Test (AFQT). Although this examination is not, strictly speaking, a measure of educational achievement or innate mental ability. Wool finds a relatively high positive correlation between year of school completed and average AFQT scores [18, p. 77].[6] We proceeded on the assumption that the higher the general level of educational attainment in a state, the lower would be the mental disqualification rate given the existence of fixed national standards.[7] Preliminary correlation estimates indicated that, in general, states with low rates of mental disqualification are those with high public school expenditures per pupil and high median years of education of males over age 25. In addition, the rate of mental disqualification is fairly highly correlated with per capita personal income in the negative direction. Our hypothesis requires that differences in relative hostile casualties across states be negatively related in interstate differences in the income-earning opportunities available to young men. Since greater educational attainment generally leads to expanded economic opportunities, we expect to obtain a positive relationship between relative hostile casualties and the rate of mental disqualification.

State unemployment rates are introduced as the second independent variable in the regression analysis to represent interstate differences in employment opportunities. It is likely that lack of job experience tends to reduce the usefulness of a serviceman for other than combat duty. Hence, a positive relationship between the unemployment rate and relative hostile casualties is expected. Since unemployment rates for males of ages 18 to 26 are not available on a state-by-state basis, we have had to use overall state unemployment rates.

Finally, state ratios of nonwhite male to total male population are introduced in an attempt to isolate evidence on whether nonwhite suffer a higher incidence of hostile casualties than whites given the effect of variables intended to measure educational attainment and job experience. Positive coefficient estimates could indicate racial discrimination.

Table 1 reports the results obtained by regressing three variations of each of the three dependent variables on the three independent variables. The terms involved in the definitions of the dependent variables are the following:

HD=total hostile casualties by state through December 1969;

AHD=U.S. Army hostile casualties by state through December 1969;

MHD=U.S. Marine Corps hostile casualties by state through December 1969;

SM64=estimated total number of servicemen by state as of December 31, 1964 [15, pp. 9673–74];

SM68=estimated total number of servicemen by state as of June 30, 1968; and

SM64–8=SM64 plus the sum of total inductees by state for the years 1965–68 [16].

TABLE 1.—ESTIMATED RELATIONSHIPS BETWEEN RELATIVE HOSTILE CASUALTIES AND THE RATE OF MENTAL DISQUALIFICATION, STATE UNEMPLOYMENT RATES, AND PERCENTAGE NONWHITE MALE POPULATION

Dependent variable	Constant	Rate of mental disqualification	State unemployment rate	Percent nonwhite male population	R^2
Percent HD/percent SM64	0.3011	**0.0209	*0.1189	−0.2719	0.3010
	(1.5022)	(2.7138)	(2.6248)	(−0.2340)	
Percent AHD/percent SM64	0.2039	**0.0237	*0.1292	0.1610	0.3458
	(0.9478)	(2.8750)	(2.6590)	(0.1292)	
Percent MHD/percent SM64	*0.4743	*0.0183	0.0828	−1.1570	0.1967
	(2.4083)	(2.5455)	(1.8605)	(−1.0136)	
Percent HD/percent SM64–8	**0.5767	*0.0124	*0.0725	0.0210	0.2512
	(4.0684)	(2.2711)	(2.2630)	(0.0255)	
Percent AHD/percent SM64–8	**0.4991	*0.0142	*0.0798	0.5321	0.3377
	(3.4190)	(2.5374)	(2.4191)	(0.6289)	
Percent MHD/percent SM64–8	**0.7041	0.0122	0.0454	−0.9760	0.1097
	(4.3276)	(1.9563)	(1.2336)	(−1.0349)	
Percent HD/percent SM68	**0.9240	0.0041	0.0040	−0.2603	0.0528
	(12.7247)	(1.4814)	(0.2454)	(−0.6185)	
Percent AHD/percent SM68	**0.8761	*0.0054	0.0065	0.1468	0.1770
	(12.3762)	(1.9964)	(0.4043)	(0.3578)	
Percent MHD/percent SM68	**0.9867	0.0044	−0.0092	−1.0145	0.0437
	(8.0878)	(0.9474)	(−0.3318)	(−1.4346)	

*Significantly different from 0 at the 5 percent level.
**Significantly different from 0 at the 1 percent level.

Note: The numbers in parenthesis are "t" statistics.

Footnotes at end of article.

The variable SM64–8 is utilized to provide a second estimate of total armed forces strength by state in 1968. The use of this variable assumes that the number of volunteers during the period since 1964 is just offset by the number of men discharged during the period. The total number of servicemen estimated in this manner is quite close to the total number of military personnel on active duty as of June 1968.

The estimates obtained for the rate of mental disqualification are positive as expected in all nine equations and significant in six equations including the three Army equations. A comparison of the beta coefficients within each equation indicates that this variable makes the largest contribution of the three independent variables to the explanation of the variation in relative hostile casualties for both services and for total casualties.

The estimated coefficients of the state unemployment rate are positive and significant in four of the equations. Given that such a rough measure of employment opportunity was utilized, this result lends limited support to the hypothesis that lack of civilian job experience increases the probability of being placed in a combat unit.

Considering finally the coefficient estimates for the ratio of nonwhite males to total males, the addition of this variable appeared to make little difference in any of the equations estimated. The indication is that racial discrimination did not increase the relative probability of a nonwhite serviceman being placed in a combat unit if his educational attainment and employment background were equivalent to that of a white serviceman. This conclusion is not inconsistent with evidence indicating that the incidence of casualties was disproportionately borne by black servicemen in the period examined. Because of their generally disadvantaged backgrounds, it appears that blacks tended to be used in relatively low-skill jobs such as ground combat. The results reported here indicate that only racial discrimination did not appear to be a significant factor in the allocation process of the military. Furthermore, it appears that black soldiers, like servicemen from other minority groups tend to volunteer for elite combat units.

Judging from the coefficients of determination (R^2), the independent variables performed better in the equations for the Army than in the equations for the Marine Corps. As noted, the Army contains a high proportion of draftees among active-duty personnel as compared to the Marine Corps, with about 72 percent of total first-term Army personnel in 1967 being classified as draftees and reluctant volunteers [11, p. 49].

Through December 1969, 84.7 per cent of total Army hostile casualties and 85.3 per cent of Marine Corps hostile casualties were servicemen with less than three years of service. In both combat branches, therefore, first-term personnel constituted a very large proportion of total hostile deaths. Since almost three quarters of Army active duty personnel were either draftees or reluctant volunteers, we feel reasonably confident in asserting from the Army equations in Table 1 that the burden of hostile casualties among draftees and reluctant volunteers during the 1961–69 periods was disproportionately borne by those with relatively low income-earning opportunities.

Additional evidence was recently supplied on the disproportionate share of combat and, consequently, the higher casualty rates borne by the draftee. During 1969, 88 per cent of the infantry riflemen were draftees, 10 per cent were first-term volunteers, while only two per cent were career personnel [6, p. S13936]. The explanation for this distribution is that regular Army volunteers select the military occupational specialty (MOS) for which they will be trained, and relatively few volunteers select the combat occupational specialties.[8] The draftee on the other hand, is trained in the MOS which is in short supply, typically the combat specialties. Consequently, casualty rate data covering the period of the Vietnam conflict indicate that the Army draftee had a 2.44 per cent chance of being killed and a 10.54 chance of being wounded seriously enough to require hospital treatment, while the average Army enlisted men had a 1.96 per cent chance of getting killed and a 8.47 chance of being wounded. [6, p. S13937].

A study was also made of the college graduate who makes up approximately 15 per cent of the personnel entering the Army. In fiscal 1969, only 24 per cent of college graduates were assigned to combat units even though 61 per cent of this group were drafted.

II. SUMMARY AND CONCLUSIONS

The hypothesis advanced in this paper was that hostile casualties are disproportionately borne by segments of the population with relatively low civilian income-earning opportunities. The hypothesis was first tested against the relevant findings of two studies surveying the war dead from the State of Utah and Long Island, New York. Then the hypothesis was examined relative to available national casualty data. Hostile casualties stratified by age groups were employed in an attempt to determine risk of death in the military borne by high school graduates relative to that borne by older men likely to have achieved higher levels of educational attainment. In addition, data on hostile casualties by state of residence were utilized in a cross-sectional regression model. Variations in proxy variables representing educational attainment and employment experience were found to be important independent variables. Additional information was provided to show that the draftee was the primary source of manpower for the combat units in the Army; and consequently, the draftee had casualty rates approximately twice that of the volunteer. Finally, it has been shown that the college graduate, even though drafted, is most likely to be trained for non-combat MOS's. Each of these sources provided evidence generally consistent with the hypothesis. Although, the evidence gathered from any one of these data sources cannot be considered persuasive by itself, the inferences obtained from all the sources seems to provide a reasonable degree of confirmation of the hypotheis.

The published studies examining the tax-in-kind imposed by the draft have yielded quite different estimates of the structure of the tax. The Hansen-Wiesbrod and Davis-Palomba papers found the tax imposed on servicemen to be progressive by education-income groups. In present value terms. Bailey and Cargill have suggested that the tax is roughly proportional. Berney found that the tax is progressive over education-income groups up to and including high school graduates but regressive for higher educational categories when one includes in his calculations the probabilities of being drafted. The evidence reported here indicates that a further refinement of these estimates is in order. Regardless of how the tax is measured, consideration of the impact of hostile casualties requires that the tax structure be judged less progressive or more regressive than estimated in previous studies since those who are paying the ultimate tax are most likely to be the draftees who come from families with relatively low incomes.

FOOTNOTES

*An earlier draft of this paper was presented at the 1970 Western Economic Association Meetings at Davis, California. The authors gratefully acknowledge the financial support of the Bureau of Economic and Business Research at Washington State University, the research assistance of Terry Barr, and the Department of Defense for providing us with unpublished data.

[1] For informative discussions of the tax-in-kind imposed by the draft see [1, pp. 418–20], [7], [9], [10, pp. 53–57], and [12, pp. 23–33].

[2] The availability of distributive data limit the definition of casualties used in this paper to the number of U.S. servicemen killed in Southeast Asia through December 1969. Aggregative data show that for every fatal casualty there were 6.6 nonfatal casualties of which one-half required hospital attention. Our analysis could be extended by assuming total casualties are distributed in the same manner as fatal casualties. However for the purposes of this paper hostile casualties are defined to include servicemen killed in action plus those who died while captured. As of December 1969, total casualties numbered 47, 251 of which 84.7 per cent were classified as hostile casualties.

[3] For Army personnel, the calculated ratios for the first two years of service were 1.18 and 1.28, respectively. The ratios fell to 0.70 and 0.96, respectively, for servicemen in their third and fourth years of service. The ratio then peaked at 1.96 for servicemen in their fifth year of service; and, finally, it fell to 0.67 for servicemen with more than five but less than eight years of service.

[4] These conclusions also find support in the recent study by Harold Wool [18]. Wool presents an extended discussion of the ". . . long-term trend toward relative growth in those occupations associated with the newer military technology and in the white-collar enlisted force, generally at the expense of the older ground-combat, craft, and service occupations [18, p. 41]."

[5] It should be noted that draftee disqualification rates are not fully representative of differences for the population as a whole [18, p. 72].

[6] All men who score less than the tenth percentile on the AFQT are disqualified for military service. Those with percentile scores between 10 and 30 are accepted if their aptitude test scores are satisfactory; otherwise, they are classified I–Y [18, p. 75]. Eight years of school completed corresponds to an average AFQT percentile score of 24.6; while 9 to 11 years of school corresponds to an average percentile score of 36.8 [18, p. 77].

[7] Hansen and Wiesbrod also report an inverse relationship, educational attainment, and the mental disqualification rate. [7, pp. 407–08, n. 5]

[8] In fiscal 1970, only 2.5 per cent of those who trained for an infantry rifleman's MOS, 3.1 per cent for a mortarman's MOS, 4.1 per cent for a field artillery man's MOS and 12.0 per cent for an armored crewman's MOS were regular Army volunteers.

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AMERICAN ATTITUDES ABOUT WELFARE

Mr. RIBICOFF. Mr. President, it is time to end the confusion that has surrounded the entire debate about welfare reform. We must recognize that welfare reform is a confession of our failures as a society. We spend less than 1½ percent of our trillion-dollar economy on welfare. This is a small overhead to pay for our failures in education, health, housing, and employment.

Unfortunately, myths dominate our discussion of welfare reform and we rarely attempt to pierce the veil of welfare cliches. Americans can, on the one hand, be compassionate and generous. Yet on the other hand they resent Government welfare programs for the poor and suspect most recipients of cheating and laziness.

This dichotomy in American opinion—compassion for one's fellow man versus the Puritan ethic of hard work as a panacea for everyone's ills—frequently appears in opinion surveys.

A recent Lou Harris poll commissioned for an ABC television documentary on American opinions illustrates this apparent schizophrenia. Eighty-five percent of those polled expressed grave concern that some Americans suffer from hunger. Yet, at the same time, they blamed the hungry for the problem. Eighty-two percent believed that, if the hungry population showed a little get-up and go, the hunger problem would not exist.

The response is not an isolated one. According to HEW's recent publication, "Public Attitudes Toward Social Security 1935–65," the same attitude has existed for some time. The HEW study cites a 1964 Harris poll in which 68 percent agreed that the Government must see to it that no one is without food, clothing, or shelter. The same poll showed that 64 percent believed that welfare and relief make people lazy.

The American attitude toward helping those in need was recently illustrated in an ABC television documentary, "The Anatomy of Welfare." I ask unanimous consent that an excerpt from the program—a particularly revealing dialogue between Frank Reynolds and some construction workers—be inserted in the RECORD at the conclusion of my remarks.

The workers interviewed echoed the standard complaints about welfare fraud and laziness. Yet when Mr. Reynolds pointed out that President Nixon's family assistance plan would put a $2,200 income floor under every family of four, the workers complained that such a level provides an inadequate standard of living for such a family. One worker even suggested a guaranteed income of $5,000 or $6,000.

It seems that Americans have compassion for others in need but are opposed to programs of relief or welfare. Part of the problem is semantics. Few Americans see subsidies to rich farmers or shipping interests or airlines as welfare or relief. Yet the words "welfare" and "relief" as applied to the poor have become code words—symbols of a bottomless-pit program pouring vast sums of money into the hands of lazy and dishonest people.

Studies made in 1961 indicate the effect of these key words. Surveys showed that 60 percent of those polled believed the Government should spend more to help needy people but only about one-third favored increased expenditures when the question was phrased in terms of "welfare" programs.

This opposition to welfare is based on the widespread belief that welfare cheating is a common phenomenon.

According to surveys compiled by HEW, most Americans have believed at least as far back as the New Deal that welfare cheating is of epidemic proportions.

In 1936, 24 percent of those polled thought that persons taken off relief would have an easy time finding work.

In 1937, 55 percent believed that many persons on WPA could get jobs if they tried.

In 1939, 69 percent believed that welfare recipients could get jobs in private industry if they tried.

In late 1964, 67 percent of those polled believed that some or most persons were on relief for dishonest reasons.

In mid-1965, 83 percent believed that many people collect unemployment benefits even though they could find work.

In another 1964 poll, the criticism of welfare mentioned most often was cheating by welfare recipients, mentioned by 22 percent of all respondents.

The belief in widespread welfare-cheating has reached into Government as well, leading to the growth of armies of welfare investigators whose function is to ferret out the chiselers and save the taxpayer dollar. The costs of these demeaning invasions of privacy are much greater than savings amassed through cut-offs of benefits to cheaters.

The public reads on the front page of newspapers about alleged massive welfare cheating. Yet it rarely sees the outcome of follow-up investigations.

Take the case of Nevada. In December of 1970, the Navada State Division of Welfare conducted an eligibility review and then cut its welfare rolls by 22 percent due to alleged incorrect reporting of information by recipients. The story received heavy coverage by the national news media. Few people saw the results of a thorough HEW study. HEW concluded that only 3.8 percent were ineligible.

In fact, spot checks last year in 39 States among the aged, blind, and disabled on welfare found only 2.5 percent of the clients ineligible. About half of this ineligibility resulted from Government administrative errors. And a 1969 Government investigation of fraud showed that only four-tenths of 1 percent—or 4 out of every 1,000—of all welfare cases were fraudulent.

Nevertheless, HEW has joined in the hue and cry of those who see welfare reform as elimination of welfare cheating. In response to House Ways and Means prodding, HEW earlier this year announced a program to "clean up sloppy administration of the welfare program and get rid of ineligible recipients."

The plan would send Federal inspectors into homes of some welfare recipients to determine eligibility. Fifty-five inspectors would be hired with an annual budget of nearly a million dollars.

No one supports providing welfare funds to ineligible recipients. But we must have a sense of priorities. We cannot afford to overlook what is truly important in welfare reform—providing an adequate income and a program enabling recipients of public assistance to eventually become self-supporting.

An inadequate welfare reform program would truly be a welfare fraud.

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

REYNOLDS. We asked a group of the members of the Construction General Laborers and Material Handlers Union how they felt about welfare and what they thought could be done about it.

In their favorite hangout down the street from their union hall, we found out.

Do you feel that too much of your income, too much of the money you earn by working, is being spent on welfare?

WORKER. The government should subsidize some of the people that need it, but the people who are able to work, go out and work, the government should do something, get these people off the welfare rolls like creating a WPA or CCC camps, have them back up again.

You have eligible people who are physically able to go to work and just don't want to go to work for the simple reason their parents may have been on welfare back in the thirties and they're continuing in the same path as their parents. They never wanted to advance theirselves in one way or another.

WORKER No. 2. All you have to do is have a sob story.

REYNOLDS. A sob story.

WORKER No. 2. That's all it takes.

REYNOLDS. You mean go in with an aching back or something.

WORKER. No. 2. And that'll do it.

REYNOLDS. How do you know that there are people working or not working and actually living better than you do? Do you get all this

from the press, from the television, are you getting it, do you know it?

WORKER. We're working people. We live in ordinary working neighborhoods where we know people are on welfare. We know what they're doing. Sure we know what they're doing. I mean, we're not living out in the suburbs, or something. We live here. We know what's going on here.

WORKER. We go out and work for what we want and we barely make it.

REYNOLDS. Well, it sounds to me that you people are a bunch of fools.

WORKER. That's what they think. That's the way they look upon it.

REYNOLDS. Why don't you just relax, get off, quit your work and get on welfare.

WORKER. We have work pride. Because there's such a thing in this world, yet, God, thank God for, that a man has got some pride. There's a few men left in this world that's got some pride about theirself, that know that no one can do it better than theirself for theirself. And those are the ones that are suffering because they're carrying the burden.

REYNOLDS. What are you going to do, men, if somebody comes to you and says 'I can't work, I've got all these children, and my back hurts.'

WORKER. There's plenty jobs. There's plenty jobs. For any type of person, there's a job.

There's a lot of people right now that are making less money working and making less money than people who are on welfare. Now this isn't right.

No way. I mean I know people worked for fifty dollars a week. And I know people on welfare who get more than than $250 a month. So why should this person go out and work when he can collect welfare at $250 a month?

People came from the old country, they came here, they weren't on welfare. They went to work.

We've had jobs go begging here in this area and you couldn't get people to work. So, create jobs, that's not going to get someone that's, could live just as good off welfare, to go to work.

REYNOLDS. So you don't think that the recession, then, that we're having in this country right now, has anything to do with the welfare costs? I mean, there are jobs available right here in Pittsburgh, now?

WORKER. Call the State Employment Office they get some men to try to put them to work and we couldn't get enough people to fill the jobs.

Let's get to the unwed mother situation, too.

REYNOLDS. Alright.

WORKER. Alright. Now anybody's entitled to one mistake. We'll all grant that. One mistake. But how about women that have two, three, maybe four illegitimate children. Now I don't think it's, we should pay for all the mistakes. I mean, it's just not right.

REYNOLDS. What are you going to do with the children?

WORKER. That's something maybe I don't, I don't know. I really don't know. But it's not right for us to have to pay this.

REYNOLDS. Well, again, though, you know, gentlemen, what are we going to do with those children? It isn't their fault that somebody made a mistake, is it?

WORKER. Someone still has to pay this freight and in a case like this, the government should come in and help.

REYNOLDS. The Federal Government should take over this whole operation. . . .

WORKER. I think so.

REYNOLDS. And get the states out of it. Local government.

WORKER. Yes.

I think if Washington gets done with this program it's going to cost you three times as much.

REYNOLDS. You think it'd cost more if it was handled by Washington.

WORKER. They'd be featherbedding the jobs for more of their own people.

REYNOLDS. What do you think about the President's plan to put a floor under the income of every American family? Now it's 22 hundred dollars a year for a family of four. Think that's a good idea?

WORKER. Who can live on $2200 a year? Can you feed a family of four? No, I don't think it's a

REYNOLDS. As a base, a start.

WORKER. It should be higher.

You give 'em a $2200 you might as well put 'em right back on the relief rolls and let them stay there then. Give them an incentive. Raise it up to 5 or 6 thousand dollars. So's an old man can feed a family of four.

REYNOLDS. Well, who's going to pay for that? You are.

WORKER. Yeah, we're going to pay for it. But, still these people have an incentive. You make 2200, you go out and make 2200, I'll give you 2200. You go out and earn 2200 or 2500 more. And if you make 2500 or 3000 dollars more, I'll subsidize you another couple thousand dollars so you can support your family.

We're not restoring nothing but letting them exist until they die. And laughing up their sleeve at us. I'm for it if you deserve it and you want it, God bless the man that's willing to give it to 'em. And anytime you got a state, a municipality, or town, or country, or anything that's willing to look back and help his fellow man, fine, that's a good town or anything it is that when you catch the leeches, those are the ones you have to look out for.

IMPROVEMENT OF AIRPORT FACILITIES IN AMERICAN SAMOA AND TRUST TERRITORY IN THE PACIFIC

Mr. INOUYE. Mr. President, last year Congress passed a landmark act, the Airport and Airway Development Act, to assist in the construction and expansion of modern airport facilities.

Congress passed this legislation to deal with serious deficiencies in our system of air transportation and to plan for a future that promises massive expansion of this mode of transport. In recent decades no other segment of the transportation industry has had the growth of the aviation sector, and it was to meet the problems generated by its success that the act was passed.

The air transport industry provides a significant contribution to the Nation's economy. It provides jobs not only among ancillary services such as the construction industry, catering, freight forwarding, manufacturing, and so forth, but also among secondary industries and professions.

Of principal importance to many areas is the jobs created by tourism. My own State of Hawaii is an example of a region that has prospered because of tourism, and it is the air transport industry which contributes most significantly to this prosperity.

I introduced a bill on April 22, S. 1629, that will correct an oversight in the 1970 act. Under the act's current provisions, the Territory of American Samoa and the Trust Territory of the Pacific Islands are ineligible for planning and development funds. Their omission from the 1970 legislation is most unfortunate because it is perhaps indicative of an attitude of benign neglect that has characterized our policy toward these two territories.

American Samoa has maintained friendly relations with the United States for many decades and has been a Territory since 1900. The Trust Territory of the Pacific Islands, which hitherto has been of little interest to the United States and consequently suffered from our indifference, will occupy a more central role in our military strategy as we consolidate our forces in Asia. Moreover, even in these remote islands, tourism shows great promise of developing into a major industry.

Improvement of airport facilities in these two areas could easily bring new jobs and new prosperity to these islands. They are American lands which deserve our sympathetic attention. I hope that Congress will move expeditiously to correct this oversight by passing this legislation.

OPPOSITION TO PROPOSED TAX GIVEAWAY OUTLINED BY SENATOR BAYH

Mr. BAYH. Mr. President, I ask unanimous consent to have printed in the RECORD the text of a letter I submitted to the Internal Revenue Service outlining my opposition to the proposed changes in depreciation.

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

U.S. SENATE,
Washington, D.C., April 22, 1971.

The Hon. RANDOLPH THROWER,
Commissioner of Internal Revenue,
Washington, D.C.

DEAR MR. COMMISSIONER: In compliance with the Notice of Hearings on the proposed Asset Depreciation Range system published in the Federal Register on Saturday, March 13, 1971, I am submitting the following brief remarks outlining a statement I intend to present at the hearings.

As you know, Mr. Commissioner, I am vigorously opposed to the Treasury's proposed ADR system and have introduced a Sense of the Senate resolution, S. Res. 98, expressing the view that it is both unwarranted and unlawful. In addition, I have introduced a bill, S. 1532, restating as a general rule the long-established principle that a deduction for depreciation must be based on the estimated useful life of the asset—a principle from which the Treasury Department now proposes to depart.

It is true that the present provisions of Section 167 of the Internal Revenue Code authorize the Treasury to permit a reasonable allowance for depreciation. It is also true that the Treasury is authorized to prescribe methods for determining a reasonable allowance. It is not true, however, that the ADR system yields such a reasonable allowance. Nor is it true that the Treasury Department has the authority to implement the proposed changes on its own.

The proposed ADR system is based on a totally new concept of depreciation as far as American tax policy is concerned. By permitting a deduction for depreciation based on the arbitrary ranges selected by the Treasury Department—rather than estimated useful life of the asset—a new capital cost recovery system would be instituted by administrative fiat. For 40 years, beginning in 1931 with the Treasury Departments' first set of published guidelines for determining useful lives, it has become clearly established that reasonableness is to be based on the estimated useful life of the asset. While the guidelines have

been revised and updated in light of replacement experience, first in 1942 and again in 1962, they were not abandoned.

It is precisely because the concept of useful life is being discarded that the ADR system does not meet the required standard of reasonableness. First, to my knowledge no technical evidence has been presented that the 1962 Guidelines on useful lives are now outdated. Second, there is no evidence that the 20 percent range selected by the Treasury Department is the appropriate one. Third, it hardly seems likely that the 1962 Guidelines can, at the same time, be both too long and too short. Fourth, it is even less likely that each category of asset lives is outdated by the same range.

It is obivous, therefore, that the proposed Asset Depreciation Range system is an artificial and arbitrary device designed, not on the basis of reasonableness, but in the hope of granting a small, select group of taxpayers an economically unjustified and illegal concession.

There have been a number of occasions in the past when it was considered in the public interest to provide for exceptions to the useful life principle. On these occasions, however, it was not the Treasury Department who implemented the changes but Congress. By specifically amending the Internal Revenue Code in the case of emergency defense facilities, grain storage facilities, and pollution control equipment, Congress has established ample precedent for the view that legislative authority is required before the historic concept of useful life can be abandoned.

The Secertary of the Treasury, it is true, has the authority under Section 7805 to make "needful rules and regulations for the enforcement of the Internal Revenue Code." While this is a broad grant of administrative authority, it must be interpreted in light of the substantive provisions of Section 167. As I noted earlier, however, the Asset Depreciation Range system is a startling departure from the general rule of Section 167 that a deduction for depreciation should be based on the useful life of the asset.

Nor is it correct to cite the 1962 changes as precedent for implementing the ADR system by administrative action. The 1962 action by the Treasury Department was an attempt to update the historic concept of useful life based upon engineering and technical data that actual asset lives were markedly different from those spelled out in the earlier guidelines. The proposed ADR system, in contrast, departs from the basic principle of useful life.

The proposed Asset Depreciation Range system, the elimination of the reserve ratio test and the new full and half year conventions—as proposed by the Treasury—were recommendations sent to the President by his Task Force on Business Taxation. The Task Force strongly urged that a system of cost recovery be substituted for the present methods of providing a reasonable deduction for depreciation and suggested that this could be accomplished by establishing an asset depreciation range system of ±40 percent from the guidelines. The Treasury Department's proposed ADR system incorporated all of the major recommendations of the Task Force but proposed a ±20 range.

The Task Force stated, in a section entitled "Implementation of Recommendations,"

We recommend that the proposals discussed above be implemented by appropriate amendments of the Internal Revenue Code. The proposals in section A for substituting in the case of machinery and equipment a system of cost recovery allowances for the present depreciation system involve some matters that have been dealt with under the present system by administrative procedures and regulations rather than by changes in the statute. For example, the reserve ratio test was formally introduced in Revenue Procedure 62-21, and, although our proposal for elimination of the test could be effectuated by administrative action, we strongly urge amendment of the statute to this end. Moreover, since the shift from depreciation to cost recovery unrelated to the useful life concept does require amendment of the present law, we urge that all the matters covered in the recommendations which are related to such a shift be incorporated in the statute.

I do not believe that the mere difference in asset range between the Task Force's recommendation and the President's proposal is sufficient to justify the Treasury's view that these changes can be implemented by administrative fiat.

Thank you for your courtesy, Mr. Commissioner. I look forward to testifying at the hearings. I believe my statement will require 20 minutes. With best regards.

Sincerely,

BIRCH BAYH,
United States Senator.

Mr. BAYH. Mr. President, as I noted in my letter to Commissioner Thrower, the proposed asset depreciation range system represents a marked departure from the long established principle that a deduction for depreciation must extend over the useful life of the asset to the taxpayer. The Treasury Department now proposes, arbitrarily, to establish a ±20 percent range for depreciating assets. Such a departure, it seems to me, requires congressional authorization. It is no different, under whatever guise Treasury may propose it or whatever name it may take, from setting tax rates—and only Congress can do that.

In response to the Treasury's proposal, a number of prominent legal scholars have expressed their opposition to the ADR system, pointing out that a specific grant of congressional authority is required to implement it. Prof. William Popkin, of the University of Indiana Law School, for example, has noted that:

It is clearly illegal for the Treasury to vary the tax rates for one sector of the economy without an explicit grant of authority. There is certainly no doubt that an arbitrary variation in the rules governing deductions for depreciation is a rate adjustment, as the percentage depletion deduction and the corporate dividends received deduction demonstrate.

I ask unanimous consent that Professor Popkin's letter be printed in the RECORD.

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

SCHOOL OF LAW,
Bloomington, Ind., April 16, 1971.

COMMISSIONER OF INTERNAL REVENUE,
Washington, D.C.

DEAR COMMISSIONER: I have recently had an opportunity to read Professor Bittker's memorandum concerning the Treasury's Proposed Regulations on liberalized depreciation—the ADR system. I agree completely with the memorandum and urge you to withdraw the regulations.

The power of Congress to determine tax rates has been jealously guarded throughout our country's history. The Executive has sought power to adjust tax rates on many occasions and it has not been granted except in the recent Interest Equalization Tax provisions and except as incident to the Treaty making power. It is clearly illegal for the Treasury to vary the tax rates for one sector of the economy without an explicit grant of authority. There is certainly no doubt that an arbitrary variation in the rules governing deductions for depreciation is a rate adjustment, as the percentage depletion deduction and the corporate dividends received deduction demonstrate.

There is also at stake an issue beyond problems of taxation. Agency rule-making is a growing phenomenon which is of vital importance in our society. Irresponsible rule-making, such as the ADR proposals, can only set back the development of a legitimate rule-making function for administrative agencies and bureaucracies.

Thank you for your consideration of this matter.

Yours truly,

WILLIAM D. POPKIN,
Assistant Professor of Law.

ADEQUATE FUNDING FOR THE SOIL CONSERVATION SERVICE

Mr. CHURCH. Mr. President, today I submitted testimony to the Agricultural Appropriations Subcommittee of the Senate Appropriations Committee regarding the need for adequate funding of the Soil Conservation Service. These programs deserve the interest and support of every Member of this body.

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

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

TESTIMONY ON SOIL CONSERVATION SERVICE FUNDING BY MR. CHURCH

Mr. Chairman, in recent years we have come to recognize the vital need to preserve and improve our nation's environment. It has become one of those subjects, all too rare in today's society, upon which citizens of all ages agree. To many, this realization has come only recently, but the Social Conservation Service has recognized the need for sound conservation practices for many years. Even more important, the SCS has earnestly worked to do something about it.

We are all aware of the stringent restrictions placed on the availability of funds for deserving federal programs. We are additionally aware of the fact that all too often funds which are duly appropriated by Congress do not reach their intended destination. Members of this Committee need not be reminded that the Executive Branch has impounded nearly $12 billion in funds which the Congress has voted to spend. Thus we face a dual burden in seeking to appropriate money. First, we must determine the need and then make certain that once Congress has acted to fund the need, the Executive Branch respects the will of Congress by spending the appropriated money.

To do otherwise is to compromise Congressional power and responsibility. The power of the purse lies in the Congress, not in the Executive Office of the President.

According to one set of figures, the Executive Branch, as of March 26 of this year, was withholding $497 million appropriated by the Congress for the use of the Department of Agriculture. The breakdown was as follows:

DEPARTMENT OF AGRICULTURE

	Amount in millions
Agricultural Research Service:	
Salaries and Expenses	$5
Other	*
Food and Nutrition Service:	
Special Milk Program	2
Foreign Agricultural Service:	
Salaries and Expenses (special foreign currency program)	4
Other	*

DEPARTMENT OF AGRICULTURE—CONTINUED

	Amount in millions
Agricultural Stabilization and Conservation Service:	
Agricultural Conservation Program	$46
Revolving Fund, Defense Production Act	1
Rural Electrification Administration:	
Loans	25
Farmers Home Administration:	
Rural water and waste disposal grants	56
Rural housing for domestic farm labor	1
Mutual and self-help housing	*
Direct Loan Account	72
Self-help housing land development fund	1
Emergency credit revolving fund	49
Forest Service:	
Forest protection and utilization	2
Forest roads and trails	217
Youth Conservation Corps	1
Expenses, brush disposal (permanent)	15
Other	*
Other Agriculture	*

This withholding of funds appropriated for agriculture is a matter to which this Committee should give special attention.

Mr. Chairman, Idaho is primarily an agricultural state. In fact, agriculture is still actively expanding in many parts of my state. The demand for the services provided by the Soil Conservation Service is growing as a result of this extension of the agricultural economy.

In Idaho, the Soil Conservation Districts are doing all in their power to meet these pressing needs. But the inadequate funding presently granted places a severe handicap on the Service in terms of both resources and personnel. Some examples from my state will serve to illustrate the serious problems attendant to inadequate funding of these programs:

Three Soil Conservation Districts in Idaho do not have a Soil Coservation Office or any resident Soil Conservation Service staff located within the District.

Seven other Districts have no Soil Conservation Service work unit office or a resident SCS district conservationist.

There are some 20 Soil Conservation Districts having less than a full-time staff.

The overall evaluation of staffing needs, completed in November of 1970, calls for additional staffing to provide a hundred more man years of technical assistance in Idaho. Although it would be difficult, if not impossible, to meet this need immediately, I feel that we should move in this direction.

Soil Conservation Districts in Idaho have requested funding for the Soil Conservation Service as a level that would provide an increase of 15 technicians for conservation operations and 5 additional soil scientists to help accelerate soil survey work. In addition, they have asked for other specific program increases. I think these requests are prudent and justified.

Accordingly, I hope the Committee will support the following increases in the Soil Conservation Service appropriation over and above the budget requests:

	Million
Conservation Operations	+$12
Watershed Planning	+1.2
Watershed Construction	+25
RC&D Projects, 15 new starts	+6.8

I also support the budget request for $9.591 million for River Basin Surveys which, I understand, includes funds to begin work on the Snake River Basin in Idaho.

Mr. Chairman, the Soil Conservation Districts in Idaho are working closely with a number of local, state and federal units to help solve a wide variety of problems. Without question, they occupy a unique position that can have a major influence on rural development, environmental improvement, economic and community planning and development, in addition to their role in assisting individual farmers.

Quite often people ask, "Just what is a Soil Conservation District?" Recently a publication issued by the Idaho Soil Conservation Commission came to my attention which answers that question succinctly and well. Because it is pertinent to our discussion today, I ask that the contents of the pamphlet appear at this point in the Hearing Record.

SOME QUESTIONS AND ANSWERS ON IDAHO'S SOIL CONSERVATION DISTRICTS

(By Idaho Soil Conservation Commission)

1. What is a soil conservation district?

Idaho soil conservation districts are legal subdivisions of state government established in accordance with the provisions of the Soil Conservation Districts Law 22-27, Idaho Code. Their major objectives as set forth in the law are to provide for conservation of the soil and the soil resources of the state, and for control and prevention of soil erosion, and for the prevention of damage from floods and sediment, and for the conservation, development, utilization, and disposal of water.

Soil conservation districts are:

Initiated by 25 or more landowners, organized by vote of the people.

Administered by elected supervisors who serve without pay.

Operated under state law not federal law or regulation.

Empowered to request and receive help from public agencies—local, state and federal—and from private sources.

Authorized to furnish assistance only to cooperators who apply for it.

Without Power to Tax or levy bonds.

2. How is a district organized?

Petition: Any 25 or more landowners file a petition with the State Soil Conservation Commission asking that a soil conservation district be organized in the territory described.

Hearing: The State Commission holds a hearing within the proposed area to determine need for the district and give interested people an opportunity to express themselves regarding the proposal.

Referendum: A referendum on the organization of the district is held if the State Commission determines that there is a need for the district. Each landowner is entitled to vote "Yes" or "No."

Organization: If the district is approved by a majority of those voting, a certificate of organization is issued.

3. Who administers the Soil and Water Conservation Districts law?

The State Soil Conservation Commission, which is composed of five members appointed by the Governor, plus the President of Idaho Association of Soil Conservation Districts, the Director of the Extension Service, the State Conservationist of the Soil Conservation Service as advisory members. The Commission supervises the formation and operation of districts as provided in the law and carries out other duties designated. An office is maintained at the Statehouse.

4. Why Organize A Soil Conservation District?

To better determine and solve conservation problems within the area. A district enables individuals and groups to work together more effectively in activating needed conservation plans through their own legal organization.

As a legal subdivision of the state, a district is entitled to obtain technical assistance from the Soil Conservation Service and to request assistance from county, state and other federal agencies to do conservation jobs in the community which the individual may not be able to do by himself.

The technician works directly with the cooperators in carrying out their voluntary land use programs as agreed upon with board of supervisors.

5. What can be done through a Soil and Water Conservation District?

Districts are concerned with making the best use of land and water resources through the voluntary development of soil conservation practices. In general, districts are authorized to do everything that needs to be done to achieve the prevention and control of soil erosion and the conservation of soil and water resources.

The district program developed by supervisors may include (1) proper crop rotation; (2) pasture and forage improvement and utilization; (3) maintenance of soil fertility; (4) proper use of fertilizer; (5) improvement of irrigation systems; (6) drainage; (7) land leveling; (8) erosion control; (9) water application; (10) woodland management; (11) reservoir design; (12) soil survey (land-resource inventory); (13) fish and wildlife conservation; (14) watershed development and resource planning.

6. How is the work of a Soil and Water Conservation District accomplished?

Important steps taken by supervisors to carry out the district program are:

a. The district Supervisors develop district program and request assistance from local groups, counties, state departments or federal agencies. This may include:

(1) Technical assistance from the Soil Conservation Service for soil surveys, farm plans, and engineering;

(2) Educational assistance from the Extension Service through tours, meetings and publicity on district programs;

(3) Cooperation with County Agricultural Stabilization and Conservation Committees in developing a coordinated conservation program;

(4) Cooperation with State Forestry Department and U.S. Forest Service in forest conservation programs;

(5) Entering into agreements with Bureau of Land Management, Idaho Department of Public Lands and other land management agencies for coordinated development of private and public lands;

(6) Representing the landowners in negotiations with the State Highway Department, county road departments, railroads and similar agencies in water development projects.

b. Encouraging landowners in the district to apply conservation practices to their lands and make the best use of the facilities and assistance available through the district organization.

c. Obtaining equipment needed for special type conservation work not available in the area.

d. Serving as the local sponsor for watershed projects and similar resource development programs desired by the landowners of the district.

7. What is my responsibility as a landowner in the District?

Landowners in SCDs have no financial responsibility other than carrying out practices which they decide are desirable for their own lands! As district cooperators, they may develop a conservation program that will make the best use of their soil and water resources. There are no work "quotas." Cooperators may do as much or as little conservation work as they choose.

8. How does a Soil Conservation District work with another district or municipality?

An SCD may provide assistance to other districts or municipalities in much the same way as it cooperates with landowners.

9. Who pays for District work?

The supervisors serve without pay. Technicians working with the district are paid by their agency. Cooperators pay for the jobs done on their lands or for work which benefits them.

A district does not make payments to farmers for conservation practices. However,

some practices qualify for cost-sharing through A.C.P.

10. Does a District have any compulsory power?

An SCD cannot tax, issue bonds, or make assessments.

11. How can a District be terminated?

After a district has been organized for five years, by the same procedure under which it was organized, petition, hearing and referendum.

Mr. Chairman, I thank the Committee for this opportunity to appear today. I hope that the Committee will see fit to grant the Soil Conservation Service the additional funds it so vitally needs to carry on its excellent work in Idaho and throughout the nation.

BURDENSOME $15 SURCHARGE ON SECURITIES TRANSACTIONS

Mr. SPARKMAN. Mr. President, a very informative and interesting article was published in the Business and Finance section of the Washington Post today. It was written by Philip Greer and is entitled "Surcharge Points Up Need for Rate Change."

Mr. Greer discusses the surcharge on stock transactions. This surcharge of $15 per trade on small transactions is a heavy, undue, and unjust burden upon the small dealer in stocks. I believe that every encouragement ought to be given to the small investor to use his funds profitably and wisely in the stock market, but it is not fair to have this heavy burden placed upon him, and it is bound to be discouraging to such small transactions.

The surcharge was instituted as an emergency matter. I do hope that it will be lifted, and I hope that action will come very soon.

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:

SURCHARGE POINTS UP NEED FOR RATE CHANGE

(By Philip Greer)

NEW YORK, April 25.—In Wall Street, as should be apparent by now, people are never happy unless they have something to argue about. With the market still defying gravity and heading for the moon, and the brokers merrily negotiating commission rates, it would seem that there isn't too much reason for bickering, but that would be a mistaken idea.

Last week, Merrill Lynch, Pierce, Fenner and Smith Chairman Donald T. Regan, in a speech that received curiously scant attention, called for an end to the $15 surcharge that small investors pay on stock transactions. The idea is not likely to make Regan very popular with his fellow members of the New York Stock Exchange, which is on record as maintaining that the surcharge is still vital to the profitability of many firms.

The surcharge, which amounts to 50 per cent of the base commission charge, up to a maximum of $15 per trade, was started in April, 1970, as an "interim" step to give brokers additional income at a time when most of them were wallowing in red ink. There is little doubt that the surcharge kept the broker mortality list from being quite a bit longer than it eventually was.

To prove the point, the Big Board, which is never at a loss for such things, has come up with a survey of 70-odd firms showing that, in 1970, surcharge and all, they lost $148 million. In January of this year, with the extra levy throwing off $19 million, those firms broke even and, in February, they turned a profit of $22 million after reaping $24 million from the surcharge. That would seem to show that the surcharge has been of more than passing importance to a number of firms.

It's safe to assume that Merrill Lynch was not one of the firms that depended on the surcharge for its profits. As the biggest shop around—and as Regan conceded—Merrill pulled in buckets of money from the levy, but it didn't make a life or death difference.

At the time the Securities and Exchange Commission approved the charge, it gave it a life of 90 days. At the end of that time, in what was then normal aggressiveness for the commission, it extended the charge and, eventually, made it open-ended. Supposedly, the surcharge will expire when and if the SEC and the NYSE agree on a new commission rate structure more closely tied to the actual costs of handling business.

Regardless of the help it has given many houses, the surcharge is a pain in the neck for the industry. There haven't been any signs of an irate public outcry against it, but congressmen don't like it, some stockholder groups have challenged it and various members of the industry, like Reagan, find it a good peg for a speech. The industry would be better off without it and, on that, even the nabobs of the Big Board would agree.

But the fact is that many firms would probably be right back on the brink of disaster without it. While volume on the NYSE has set a string of records since the beginning of the year, the big turnover has been heavily concentrated in the blocks normally traded by mutual funds and other institutions—and, therefore, in the firms that handle that kind of business. In retail board rooms, brokers are still mostly sitting on their hands. So the initial reason for approving the levy, while eased, has not disappeared.

The answer to the problem is not to cut out the surcharge, but to change the commission rates. Even from a strictly popular viewpoint, it's hard to argue with the Street's contention that it is entitled to higher charges because the tariff hasn't been boosted since 1958 while all the costs have gone way up. So admit that charges have to climb and get on with the job.

The onus of all this falls, of course, on the NYSE, which has messed around with a couple of ideas, at least one of which was so far out that the exchange disowned it before the ink was dry.

A new commission proposal is due at the SEC by the end of June. Unless the NYSE wants to creat another sweat for itself, it will make sure that the next plan is realistic, politic and practical. And that it's done as soon as possible.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. The period for the transaction of routine morning business is now concluded.

EMERGENCY SCHOOL AID AND QUALITY INTEGRATED EDUCATION ACT OF 1971

The PRESIDING OFFICER. Pursuant to the previous order, the Chair lays before the Senate the unfinished business, which will be stated.

The assistant legislative clerk read as follows:

(S. 1557) to provide financial assistance to local educational agencies in order to establish equal educational opportunities for all children, and for other purposes.

The Senate resumed the consideration of the bill.

CALL OF THE ROLL

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

[No. 48 Leg.]

Allen	Gurney	Percy
Baker	Hruska	Roth
Byrd, Va.	Mansfield	Schweiker
Byrd, W. Va.	McGee	Stevenson
Ellender	Metcalf	Symington
Ervin	Pell	Young

Mr. BYRD of West Virginia. I announce that the Senator from Alaska (Mr. GRAVEL), the Senator from (Washington (Mr. JACKSON), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Maine (Mr. MUSKIE), and the Senator from Alabama (Mr. SPARKMAN) are necessarily absent.

I further announce that the Senator from Oklahoma (Mr. HARRIS), and the Senator from South Carolina (Mr. HOLLINGS) are absent on official business.

Mr. GRIFFIN. I announce that the Senator from Tennessee (Mr. BROCK), the Senator from Kentucky (Mr. COOK), the Senators from Kansas (Mr. DOLE and Mr. PEARSON), the Senator from Colorado (Mr. DOMINICK), the Senator from Iowa (Mr. MILLER), the Senators from Oregon (Mr. PACKWOOD and Mr. HATFIELD), the Senator from Pennsylvania (Mr. SCOTT), the Senator from Alaska, (Mr. STEVENS), and the Senator from Connecticut (Mr. WEICKER), are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from New York (Mr. BUCKLEY), and the Senator from Maryland (Mr. MATHIAS) are detained on official business.

The ACTING PRESIDENT pro tempore. A quorum is not present.

Mr. MANSFIELD. Mr. President, I move that the Sergeant at Arms be directed to request the attendance of absent Senators.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the motion of the Senator from Montana.

The motion was agreed to.

The ACTING PRESIDENT pro tempore. The Sergeant at Arms will execute the order of the Senate.

After some delay, the following Senators entered the Chamber and answered to their names:

Aiken	Eastland	Mondale
Allott	Fannin	Montoya
Anderson	Fong	Moss
Bayh	Fulbright	Nelson
Beall	Gambrell	Pastore
Bellmon	Goldwater	Prouty
Bennett	Griffin	Proxmire
Bentsen	Hansen	Randolph
Bible	Hart	Ribicoff
Boggs	Hartke	Saxbe
Brooke	Hughes	Smith
Burdick	Humphrey	Spong
Cannon	Inouye	Stennis
Case	Javits	Taft
Chiles	Jordan, N.C.	Talmadge
Church	Jordan, Idaho	Thurmond
Cooper	Kennedy	Tower
Cotton	Long	Tunney
Cranston	Magnuson	Williams
Curtis	McClellan	
Eagleton	McIntyre	

The PRESIDING OFFICER (Mr. BENTSEN). A quorum is present.

EMERGENCY SCHOOL AID AND QUALITY INTEGRATED EDUCATION ACT OF 1971

The Senate continued with the consideration of the bill (S. 1557) to provide financial assistance to local educational agencies in order to establish equal educational opportunities for all children, and for other purposes.

The PRESIDING OFFICER. The question is on agreeing to the amendment (No. 45) offered by the Senator from North Carolina (Mr. ERVIN).

Mr. ERVIN. Mr. President, I ask for the yeas and nays on the amendment.

The yeas and nays were ordered.

Mr. ERVIN. Mr. President, the pending question is on agreeing to amendment No. 45. Inasmuch as the amendment affects various parts of the bill, I ask unanimous consent that the provisions of the amendment be voted on en bloc.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. ERVIN. Mr. President, while the amendment may appear to be somewhat complicated on its face, it is a very simple amendment. I had it drawn by the legislative counsel. I have checked it, and it provides exactly what it was drawn to accomplish; that is, it strikes from the bill all the provisions which authorize the use of Federal moneys to aid nonprofit private schools. In most cases these are church schools conducted by religious denominations in order to provide both secular and sectarian education to children attending such schools.

The first amendment declares that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. This bill provides Federal funds for the establishment of religion in church schools conducted by religious denominations, and for that reason it is unconstitutional under all the decisions construing the first amendment. That Federal funds are intended to go to church schools is made very plain by the provisions of the bill relating to nonprofit private schools.

Mr. President, with great reluctance, I ask that the Senate be in order.

The PRESIDING OFFICER (Mr. BENTSEN). The Senate will be in order.

Mr. ERVIN. And that audible conversation cease.

The PRESIDING OFFICER. Conversation will cease. The Senate will be in order.

Mr. ERVIN. This bill specifies, in the provisions which begin on line 23 of page 14 and extend through line 17 on page 17, what activities are to be financed under the provisions of this bill. They authorize the use of this money for virtually all educational purposes.

On page 15, subsection (1) of section 6(a), it provides that this money can be used to develop new curricula and instructional methods, practices, and techniques to support a program of instruction for children from all racial, ethnic, and economic backgrounds, including instruction in the language and cultural heritage of minority groups.

Subsection (2) of the same section provides that Federal moneys can be used to provide remedial services.

Subsection (3) provides that the money can be used to pay the cost of establishing guidance and counseling services.

Subsection (4) provides that Federal tax moneys authorized to be appropriated by this bill can be used to pay the salaries of administrators and auxiliary personnel who render administrative and auxiliary service to facilitate the projects authorized by this bill.

Subsection (5) of the same section provides that Federal tax moneys can be used for community activities.

Subsection (6) of the same section provides that Federal tax moneys can be used for recruiting, hiring, and training of teacher aides.

Subsection (7) provides that Federal tax moneys can be used to provide in-service teacher training designed to enhance the success of the schools assisted by the bill. It provides, in effect, that teachers can be educated at institutions of higher learning at the expense of the taxpayers.

Subsection (8) provides that funds authorized to be appropriated which can be used to defray the evaluation of programs and projects and the dissemination of information with respect to such programs and projects.

Subsection (9) provides in express terms that Federal tax moneys authorized to be appropriated by the bill could be used to repair schoolhouses, or even to defray the cost of minor remodeling or alteration of schoolhouses and other school facilities.

So, it is apparent that under the provisions of section 6(a) of the bill, the bill authorizes the use of tax moneys to defray what may be virtually described as something in the nature of a general operation of all schools whether they be public schools or nonprofit private schools as described in the bill. Then the provisions of the bill, which constitute section 9(a)(8) beginning on line 10, and ending on line 21 of page 27, expressly provide that before a local educational agency can obtain any funds authorized to be appropriated by the bill, it must file an application for such funds with the Federal Commissioner of Education. And before it files its application, the local public educational agency must consult with the officials of the private, nonprofit schools located within the territory in which the local educational agency operates and, pursuant to such consultation with the officials of the private nonprofit schools, must request aid for the private nonprofit schools within the purview of the activities authorized by the bill on an equitable basis.

These provisions in the bill make it as clear as the noonday sun in a cloudless sky that the bill provides for the use of Federal tax moneys to support the operation of private nonprofit schools, which term necessarily embraces church schools operated by religious denominations to give both secular and sectarian training to the students who attend such schools.

For the life of me, I cannot comprehend how it is any of the business of the Federal Government to undertake to desegregate private nonprofit schools or to determine the composition, directly or indirectly, of the student bodies in church schools operated by religious denominations to teach both secular and sectarian matters.

Mr. President, I propose to refrain from basing my arguments on the church-state issue on the statement of a southerner. I am forced to conclude that if a southerner would make a proposal while the Senate was considering a bill having racial overtones even to commend the Lord's Prayer, or to commend the Sermon on the Mount, the proposal would with an overwhelming defeat. For that reason, I am not going to say anything that I would customarily say on the subject, so far as the meaning of the first amendment is concerned, but I am going to read what Justices of the Supreme Court had to say about it. I am going to confine my quotations from Supreme Court cases to the statements of Supreme Court Justices who lived above the Potomac and Ohio Rivers—certainly not south of the Mason-Dixon line.

The leading case on this subject is *Everson* v. *the Board of Education, Township of Ewing*, 330 United States page 1.

I am going to modify my remarks—I am going to quote what a man from Alabama, Justice Black, says but I think that he has sufficiently seceded from the Confederacy to make his statements about the meaning of the Constitution credible and acceptable.

On the pages of his opinion in the Everson case, which precede his elucidation of the meaning of the first amendment, Justice Black pointed out the history of the first amendment and showed that it was designed to embody the Virginia statute of religious freedom. On pages 12 and 13 of the opinion in the Everson case, Justice Black quoted the preamble to Thomas Jefferson's statute on religious freedom.

It states:

> Almighty God hath created the mind free; that all attempts to influence it by temporal punishments or burthens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness, and are a departure from the plan of the Holy author of our religion, who being Lord both of body and mind, yet chose not to propagate it by coercions on either . . .; that to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical; that even the forcing him to support this or that teacher of his own religious persuasion, is depriving him of the comfortable liberty of giving his contributions to the particular pastor, whose morals he would make his pattern. . . .

After reviewing the struggle in Virginia for the enactment of the Jefferson Statute of Religious Freedom, Justice Black laid down this proposition on pages 15 and 16 of his opinion in the Everson case.

> The "establishment of religion" clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass

laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will; or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect "a wall of separation between church and state."

Mr. President, the importance which Thomas Jefferson attributed to the provisions of the first amendment is shown by the epitaph on the stone which marks his grave. This epitaph has been said to have been written by Thomas Jefferson himself.

At the time Thomas Jefferson wrote this epitaph he had been a member of the House of Burgesses of Virginia. He had been Governor of Virginia. He had been a member of the Continental Congress. He had been Ambassador to France. He had been Secretary of State in the administration of George Washington. He had been Vice President in the administration of John Adams. And he had twice been elected to the highest office within the gift of the people of this Nation—that of the Presidency.

Yet when he penned his epitaph he did not desire the people of America to remember him, because of these high offices he had held or the high honors that had been paid to him by those who chose him for those offices. His epitaph simply said:

Here lies Thomas Jefferson, author of the American Declaration of Independence, of the Statute of Virginia for Religious Freedom, and Founder of the University of Virginia.

Thomas Jefferson knew the importance of the first amendment, which was an embodiment of the Virginia Statute for Religious Freedom. He knew that we cannot have political freedom in any nation where the church controls the State and that we cannot have religious freedom in any nation where the State controls the church.

So, he authored the Virginia Statute of Religious Freedom and, indirectly, the first amendment through his protege, James Madison, to erect a wall of separation between church and state.

There is a remarkable opinion in the Everson case by Justice Jackson. It appears at pages 26 and 27 of the report of the case in the Supreme Court reports. Speaking of the freedom of religion Justice Jackson has this to say:

This freedom was first in the Bill of Rights because it was first in the forefathers' minds; it was set forth in absolute terms, and its strength is its rigidity. It was intended not only to keep the states' hands out of religion, but to keep religion's hands off the state, and, above all, to keep bitter religious controversy out of public life by denying to every denomination any advantage from getting control of public policy or the public purse.

Every American who values the freedoms which our Constitution was designed to confer upon us ought to read the Everson case. For this reason I ask unanimous consent that the entire report of that case and its various opinions be printed at this point in the RECORD.

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

[Cases ajudged in the Supreme Court of the United States at October Term, 1946]

EVERSON AGAINST BOARD OF EDUCATION OF THE TOWNSHIP OF EWING ET AL.

APPEAL FROM THE COURT OF ERRORS AND APPEALS OF NEW JERSEY

No. 52. Argued November 20, 1946.—Decided February 10, 1947.

Pursuant to a New Jersey statute authorizing district boards of education to make rules and contracts for the transportation of children to and from schools other than private schools operated for profit, a board of education by resolution authorized the reimbursement of parents for fares paid for the transportation by public carrier of children attending public and Catholic schools. The Catholic schools operated under the superintendency of a Catholic priest and, in addition to secular education, gave religious instruction in the Catholic Faith. A district taxpayer challenged the validity under the Federal Constitution of the statute and resolution, so far as they authorized reimbursement to parents for the transportation of children attending sectarian schools. No question was raised as to whether the exclusion of private schools operated for profit denied equal protection of the laws; nor did the record show that there were any children in the district who attended, or would have attended but for the cost of transportation, any but public or Catholic schools. *Held:*

1. The expenditure of tax-raised funds thus authorized was for a public purpose, and did not violate the due process clause of the Fourteenth Amendment. Pp. 5–8.

2. The statute and resolution did not violate the provision of the First Amendment (made applicable to the states by the Fourteenth Amendment) prohibiting any "law respecting an establishment of religion." Pp. 8–18.

133 N.J.L. 350, 44A. 2d 333, affirmed.

Counsel for parties

In a suit by a taxpayer, the New Jersey Supreme Court held that the state legislature was without power under the state constitution to authorize reimbursement to parents of bus fares paid for transporting their children to schools other than public schools. 132 N. J. L. 98, 39 A. 2d 75. The New Jersey Court of Errors and Appeals reversed, holding that neither the statute nor a resolution passed pursuant to it violated the state constitution or the provisions of the Federal Constitution in issue. 133 N. J. L. 350, 44 A. 2d 333. On appeal of the federal questions to this Court, *affirmed*, p. 18.

Edward R. Burke and *E. Hilton Jackson* argued the cause for appellant. With *Mr. Burke* on the brief were *Challen B. Ellis, W. D. Jamieson* and *Kahl K. Spriggs.*

William H. Sperr argued the cause for appellees. With him on the brief were *Porter R. Chandler* and *Roger R. Clisham.*

Briefs of *amici curiae* in support of appellant were filed by *E. Hilton Jackson* for the General Conference of Seventh-Day Adventists et al.; by *Harry V. Osborne, Kenneth W. Greenawalt* and *Whitney N. Seymour* for the American Civil Liberties Union; and by *Milton T. Lasher* for the State Council of the Junior Order of United American Mechanics of New Jersey.

Briefs of *amici curiae* in support of appellees were filed by *George F. Barrett*, Attorney General of Illinois, *William C. Wines*, Assistant Attorney General of Illinois, and *James A. Emmert*, Attorney General of Indiana, for the States of Illinois and Indiana; by *Fred S. LeBlanc*, Attorney General, for the State of Louisiana; by *Clarence A. Barnes*, Attorney General, for the Commonwealth of Massachusetts; by *Edmund E. Shepherd*, Solicitor General, and *Daniel J. O'Hara*, Assistant Attorney General, for the State of Michigan; by *Nathaniel L. Goldstein*, Attorney General, and *Wendell P. Brown*, Solicitor General, for the State of New York; and by *James N. Vaughn* and *George E. Flood* for the National Council of Catholic Men et al.

Opinion of the court

MR. JUSTICE BLACK delivered the opinion of the Court.

A New Jersey statute authorizes its local school districts to make rules and contracts for the transportation of children to and from schools.[1] The appellee, a township board of education, acting pursuant to this statute, authorized reimbursement to parents of money expended by them for the bus transportation of their children on regular busses operated by the public transportation system. Part of this money was for the payment of transportation of some children in the community to Catholic parochial schools. These church schools give their students, in addition to secular education, regular religious instruction conforming to the religious tenets and modes of worship of the Catholic Faith. The superintendent of these schools is a Catholic priest.

The appellant, in his capacity as a district taxpayer, filed suit in a state court challenging the right of the Board to reimburse parents of parochial school students. He contended that the statute and the resolution passed pursuant to it violated both the State and the Federal Constitutions. That court held that the legislature was without power to authorize such payments under the state constitution. 132 N.J. L. 98, 39 A. 2d 75. The New Jersey Court of Errors and Appeals reversed, holding that neither the statute nor the resolution passed pursuant to it was in conflict with the State constitution or the provisions of the Federal Constitution in issue. 133 N.J. L. 350, 44 A. 2d 333. The case is here on appeal under 28 U.S.C. § 344(a).

Since there has been no attack on the statute on the ground that a part of its language excludes children attending private schools operated for profit from enjoying State payment for their transportation, we need not consider this exclusionary language; it has no relevancy to any constitutional question here presented.[2] Furthermore, if the exclusion clause had been properly challenged, we do not know whether New Jersey's highest court would construe its statutes as precluding payment of the school transportation of any group of pupils even those of a private school run for profit.[3] Consequently, we put to one side the question as to the validity of the statute against the claim that it does not authorize payment for the transportation generally of school children in New Jersey.

The only contention here is that the state statute and the resolution, insofar as they authorized reimbursement to parents of children attending parochial schools, violate the Federal Constitution in these two respects, which to some extent overlap. *First.* They authorize the State to take by taxation the private property of some and bestow it upon others, to be used for their own private purposes. This, it is alleged, violates the due process clause of the Fourteenth Amendment. *Second.* The statute and the resolution forced inhabitants to pay taxes to help support and maintain schools which are dedicated to, and which regularly teach, the Catholic Faith. This is alleged to be a use

Footnotes at end of article.

of state power to support church schools contrary to the prohibition of the First Amendment which the Fourteenth Amendment made applicable to the states.

First. The due process argument that the state law taxes some people to help others carry out their private purposes is framed in two phases. The first phase is that a state cannot tax A to reimburse B for the cost of transporting his children to church schools. This is said to violate the due process clause because the children are sent to these church schools to satisfy the personal desires of their parents, rather than the public's interest in the general education of all children. This argument, if valid, would apply equally to prohibit state payment for the transportation of children to any non-public school, whether operated by a church or any other non-government individual or group. But, the New Jersey legislature has decided that a public purpose will be served by using tax-raised funds to pay the bus fares of all school children, including those who attend parochial schools. The New Jersey Court of Errors and Appeals has reached the same conclusion. The fact that a state law, passed to satisfy a public need, coincides with the personal desires of the individuals most directly affected is certainly an inadequate reason for us to say that a legislature has erroneously appraised the public need.

It is true that this Court has, on rare instances, struck down state statutes on the ground that the purpose for which tax-raised funds were to be expended was not a public one. *Loan Association* v. *Topeka,* 20 Wall. 655; *Parkersburg* v. *Brown,* 106 U. S. 487; *Thompson* v. *Consolidated Gas Utilities Corp.,* 300 U.S. 55. But the Court has also pointed out that this far-reaching authority must be exercised with the most extreme caution. *Green* v. *Frazier,* 253 U. S. 233, 240. Otherwise, a state's power to legislate for the public welfare might be seriously curtailed, a power which is a primary reason for the existence of states. Changing local conditions create new local problems which may lead a state's people and its local authorities to believe that laws authorizing new types of public services are necessary to promote the general well-being of the people. The Fourteenth Amendment did not strip the states of their power to meet problems previously left for individual solution. *Davidson* v. *New Orleans,* 96 U.S. 97, 103–104; *Barbier* v. *Connolly,* 113 U.S. 27, 31—32; *Fallbrook Irrigation District* v. *Bradley,* 164 U.S. 112, 157–158.

It is much too late to argue that legislation intended to facilitate the opportunity of children to get a secular education serves no public purpose. *Cochran* v. *Louisiana State Board of Education,* 281 U.S. 370; Holmes, J., in *Interstate Ry.* v. *Massachusetts,* 207 U.S. 79, 87. See opinion of Cooley, J., in *Stuart* v. *School District No. 1 of Kalamazoo,* 30 Mich. 69 (1874). The same thing is no less true of legislation to reimburse needy parents, or all parents, for payment of the fares of their children so that they can ride in public busses to and from schools rather than run the risk of traffic and other hazards incident to walking or "hitchhiking." See *Barbier* v. *Connolly, supra,* at 31. See also cases collected 63 A. L. R. 413; 118 A. L. R. 806. Nor does it follow that a law has a private rather than a public purpose because it provides that tax-raised funds will be paid to reimburse individuals on account of money spent by them in a way which furthers a public program. See *Carmichael* v. *Southern Coal & Coke Co.,* 301 U.S. 495, 518. Subsidies and loans to individuals such as farmers and home-owners, and to privately owned transporation systems, as well as many other kinds of businesses, have been commonplace practices in our state and national history.

Insofar as the second phase of the due process argument may differ from the first, it is by suggesting that taxation for transportation of children to church schools constitutes support of a religion by the State. But if the law is invalid for this reason, it is because it violates the First Amendment's prohibition against the establishment of religion by law. This is the exact question raised by appellant's second contention, to consideration of which we now turn.

Second. The New Jersey statute is challenged as a "law respecting an establishment of religion." The First Amendment, as made applicable to the states by the Fourteenth, *Murdock* v. *Pennsylvania,* 319 U.S. 105, commands that a state "shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . ." These words of the First Amendment reflected in the minds of early Americans a vivid mental picture of conditions and practices which they fervently wished to stamp out in order to preserve liberty for themselves and for their posterity. Doubtless their goal has not been entirely reached; but so far has the Nation moved toward it that the expression "law respecting an establishment of religion," probably does not so vividly remind present-day Americans of the evils, fears, and political problems that caused that expression to be written into our Bill of Rights. Whether this New Jersey law is one respecting an "establishment of religion" requires an understanding of the meaning of that language, particularly with respect to the imposition of taxes. Once again,[4] therefore, it is not inappropriate briefly to review the background and environment of the period in which that constitutional language was fashioned and adopted.

A large proportion of the early settlers of this country came here from Europe to escape the bondage of laws which compelled them to support and attend government-favored churches. The centuries immediately before and contemporaneous with the colonization of America had been filled with turmoil, civil strife, and persecutions, generated in large part by established sects determined to maintain their absolute political and religious supremacy. With the power of government supporting them, at various times and places, Catholics had persecuted Protestants, Protestants had persecuted Catholics, Protestant sects had persecuted other Protestant sects, Catholics of one shade of belief had persecuted Catholics of another shade of belief, and all of these had from time to time persecuted Jews. In efforts to force loyalty to whatever religious group happened to be on top and in league with the government of a particular time and place, men and women had been fined, cast in all, cruelly tortured, and killed. Among the offenses for which these punishments had been inflicted were such things as speaking disrespectfully of the views of ministers of government-established churches, non-attendance at those churches, expressions of non-belief in their doctrines, and failure to pay taxes and tithes to support them.[5]

These practices of the old world were transplanted to and began to thrive in the soil of the new America. The very charters granted by the English Crown to the individuals and companies designated to make the laws which would control the destinies of the colonials authorized these individuals and companies to erect religious establishments which all, whether believers or nonbelievers, would be required to support and attend.[6] An exercise of this authority was accompanied by a repetition of many of the old-world practices and persecutions. Catholics found themselves hounded and proscribed because of their faith; Quakers who followed their conscience went to jail; Baptists were peculiarly obnoxious to certain dominant Protestant sects; men and women of varied faiths who happened to be in a minority in a particular locality were persecuted because they steadfastly persisted in worshipping God only as their own consciences dictated.[7] And all of these dissenters were compelled to pay tithes and taxes[8] to support government-sponsored churches whose ministers preached inflammatory sermons designed to strengthen and consolidate the established faith by generating a burning hatred against dissenters.

These practices became so commonplace as to shock the freedom-loving colonials into a feeling of abhorrence.[9] The imposition of taxes to pay ministers' salaries and to build and maintain churches and church property aroused their indignation.[10] It was these feelings which found expression in the First Amendment. No one locality and no one group throughout the Colonies can rightly be given entire credit for having aroused the sentiment that culminated in adoption of the Bill of Rights' provisions embracing religious liberty. But Virginia, where the established church had achieved a dominant influence in political affairs and where many excesses attracted wide public attention, provided a great stimulus and able leadership for the movement. The people there, as elsewhere, reached the conviction that individual religious liberty could be achieved best under a government which was stripped of all power to tax, to support, or otherwise to assist any or all religions, or to interfere with the beliefs of any religious individual or group.

The movement toward this end reached its dramatic climax in Virginia in 1785–86 when the Virginia legislative body was about to renew Virginia's tax levy for the support of the established church. Thomas Jefferson and James Madison led the fight against this tax. Madison wrote his great Memorial and Remonstrance against the law.[11] In it, he eloquently argued that a true religion did not need the support of law; that no person, either believer or non-believer, should be taxed to support a religious institution of any kind; that the best interest of a society required that the minds of men always be wholly free; and that cruel persecutions were the inevitable result of government-established religions. Madison's Remonstrance received strong support throughout Virginia,[12] and the Assembly postponed consideration of the proposed tax measure until its next session. When the proposal came up for consideration at that session, it not only died in committee, but the Assembly enacted the famous "Virginia Bill for Religious Liberty" originally written by Thomas Jefferson.[13] The preamble to that Bill stated among other things that—

"Almighty God hath created the mind free; that all attempts to influence it by temporal punishments or burthens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness, and are a departure from the plan of the Holy author of our religion, who being Lord both of body and mind, yet chose not to propagate it by coercions on either . . .; that to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical; that even the forcing him to support this or that teacher of his own religious persuasion, is depriving him of the comfortable liberty of giving his contributions to the particular pastor, whose morals he would make his pattern . . ."

And the statute itself enacted—

"That no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief . . ."[14]

This Court has previously recognized that the provisions of the First Amendment, in the drafting and adoption of which Madison and Jefferson played such leading roles, had the same objective and were intended to provide the same protection against govern-

Footnotes at end of article.

mental intrusion on religious liberty as the Virginia statute. *Reynolds* v. *United States, supra* at 164; *Watson* v. *Jones*, 13 Wall. 679; *Davis* v. *Beason*, 133 U.S. 333, 342. Prior to the adoption of the Fourteenth Amendment, the First Amendment did not apply as a restraint against the states.[15] Most of them did soon provide similar constitutional protections for religious liberty.[16] But some states persisted for about half a century in imposing restraints upon the free exercise of religion and in discriminating against particular religious groups.[17] In recent years, so far as the provision against the establishment of a religion is concerned, the question has most frequently arisen in connection with proposed state aid to church schools and efforts to carry on religious teachings in the public schools in accordance with the tenets of a particular sect.[18] Some churches have either sought or accepted state financial support for their schools. Here again the efforts to obtain state aid or acceptance of it have not been limited to any one particular faith.[19] The state courts, in the main, have remained faithful to the language of their own constitutional provisions designed to protect religious freedom and to separate religions and governments. Their decisions, however, show the difficulty in drawing the line between tax legislation which provides funds for the welfare of the general public and that which is designed to support institutions which teach religion.[20]

The meaning and scope of the First Amendment, preventing establishment of religion or prohibiting the free exercise thereof, in the light of its history and the evils it was designed forever to suppress, have been several times elaborated by the decisions of this Court prior to the application of the First Amendment to the states by the Fourteenth.[21] The broad meaning given the Amendment by these earlier cases has been accepted by this Court in its decisions concerning an individual's religious freedom rendered since the Fourteenth Amendment was interpreted to make the prohibitions of the First applicable to state action abridging religious freedom.[22] There is every reason to give the same application and broad interpretation to the "establishment of religion" clause. The interrelation of these complementary clauses was well summarized in a statement of the Court of Appeals of South Carolina,[23] quoted with approval by this Court in *Watson* v. *Jones*, 13 Wall. 679, 730: "The structure of our government has, for the preservation of civil liberty, rescued the temporal institutions from religious interference. On the other hand, it has secured religious liberty from the invasion of civil authority."

The "establishment of religion" clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and *vice versa*. In the words of Jefferson, the clause against establishment of religion by law was intended to erect "a wall of separation between church and State." *Reynolds* v. *United States, supra* at 164.

We must consider the New Jersey statute in accordance with the foregoing limitations imposed by the First Amendment. But we must not strike that state statute down if it is within the State's constitutional power even though it approaches the verge of that power. See *Interstate Ry.* v. *Massachusetts*, Holmes J., *supra* at 85, 88. New Jersey cannot consistently with the "establishment of religion" clause of the First Amendment contribute tax-raised funds to the support of an institution which teaches the tenets and faith of any church. On the other hand, other language of the amendment commands that New Jersey cannot hamper its citizens in the free exercise of their own religion. Consequently, it cannot exclude individual Catholics, Lutherans, Mohammedans, Baptists, Jews, Methodists, Non-believers, Presbyterians, or the members of any other faith, because of their faith, or lack of it, from receiving the benefits of public welfare legislation. While we do not mean to intimate that a state could not provide transportation only to children attending public schools, we must be careful, in protecting the citizens of New Jersey against state-established churches, to be sure that we do not inadvertently prohibit New Jersey from extending its general state law benefits to all its citizens without regard to their religious belief.

Measured by these standards, we cannot say that the First Amendment prohibits New Jersey from spending tax-raised funds to pay the bus fares of parochial school pupils as a part of a general program under which it pays the fares of pupils attending public and other schools. It is undoubtedly true that children are helped to get to church schools. There is even a possibility that some of the children might not be sent to the church schools if the parents were compelled to pay their children's bus fares out of their own pockets when transportation to a public school would have been paid for by the State. The same possibility exists where the state requires a local transit company to provide reduced fares to school children including those attending parochial schools,[24] or where a municipally owned transportation system undertakes to carry all school children free of charge. Moreover, state-paid policemen, detailed to protect children going to and from church schools from the very real hazards of traffic, would serve much the same purpose and accomplish much the same result as state provisions intended to guarantee free transportation of a kind which the state deems to be best for the school children's welfare. And parents might refuse to risk their children to the serious danger of traffic accidents going to and from parochial schools, the approaches to which were not protected by policemen. Similarly, parents might be reluctant to permit their children to attend schools which the state had cut off from such general government services as ordinary police and fire protection, connections for sewage disposal, public highways and sidewalks. Of course, cutting off church schools from these services, so separate and so indisputably marked off from the religious function, would make it far more difficult for the schools to operate. But such is obviously not the purpose of the First Amendment. That Amendment requires the state to be a neutral in its relations with groups of religious believers and non-believers; it does not require the state to be their adversary. State power is no more to be used so as to handicap religions than it is to favor them.

This Court has said that parents may, in the discharge of their duty under state compulsory education laws, send their children to a religious rather than a public school if the school meets the secular educational requirements which the state has power to impose. See *Pierce* v. *Society of Sisters*, 268 U.S. 510. It appears that these parochial schools meet New Jersey's requirements. The State contributes no money to the schools. It does not support them. Its legislation, as applied, does no more than provide a general program to help parents get their children, regardless of their religion, safely and expeditiously to and from accredited schools.

The First Amendment has erected a wall between church and state. That wall must be kept high and impregnable. We could not approve the slightest breach. New Jersey has not breached it here.

Affirmed.

FOOTNOTES

[1] "Whenever in any district there are children living remote from any schoolhouse, the board of education of the district may make rules and contracts for the transportation of such children to and from school, including the transportation of school children to and from school other than a public school, except such school as is operated for profit in whole or in part.

"When any school district provides any transportation for public school children to and from school, transportation from any point in such established school route to any other point in such established school route shall be supplied to school children residing in such school district in going to and from school other than a public school, except such school as is operated for profit in whole or in part." New Jersey Laws, 1941, c. 191, p. 581; N.J.R.S. Cum Supp, tit 18, c 14, § 8.

[2] Appellant does not challenge the New Jersey statute or the resolution on the ground that either violates the equal protection clause of the Fourteenth Amendment by excluding payment for the transportation of any pupil who attends a "private school run for profit." Although the township resolution authorized reimbursement only for parents of public and Catholic school pupils, appellant does not allege, nor is there anything in the record which would offer the slightest support to an allegation, that there were any children in the township who attended or would have attended, but for want of transportation, any but public and Catholic schools. It will be appropriate to consider the exclusion of students of private schools operated for profit when and if it is proved to have occurred, is made the basis of a suit by one in a position to challenge it, and New Jersey's highest court has ruled adversely to the challenger. Striking down a state law is not a matter of such light moment that it should be done by a federal court *ex mero motu* on a postulate neither charged nor proved, but which rests on nothing but a possibility. *Cf. Liverpool, N.Y. & P. S. S. Co.* v. *Comm'rs of Emigration*, 113 U.S 33, 39.

[3] It might hold the excepting clause to be invalid, and sustain the statute with that clause excised N. J. R. S. tit. 1, c. 1, § 10, provides with regard to any statute that if "any provision thereof, shall be declared to be unconstitutional . . . in whole or in part, by a court of competent jurisdiction, such . . . article . . . shall, to the extent that it is not unconstitutional . . . be enforced . . ." The opinion of the Court of Errors and Appeals in this very case suggests that state law now authorizes transportation of *all* pupils. Its opinion stated: "Since we hold that the legislature may appropriate general state funds or authorize the use of local funds for the transportation of pupils to any school, we conclude that such authorization of the use of local funds is likewise authorized by *Pamph. L.* 1941, *ch.* 191, and *R. S.* 18:7–78." 133 N. J. L. 350, 354, 44 A. 2d 333, 337 (Italics supplied.)

[4] See *Reynolds* v. *United States*, 98 U.S. 145, 162; *cf. Knowlton* v. *Moore*, 178 U.S. 41, 89, 106.

[5] See *e. g.* Macaulay, History *of England* (1849) I, cc. 2, 4; The Cambridge Modern History (1908) V, cc. V, IX, XI; Beard, Rise of American Civilization (1933) I, 60; Cobb, Rise of Religious Liberty in America (1902)

c. II; Sweet, The Story of Religion in America (1939) c. II; Sweet, Religion in Colonial America (1942) 320–322.

[6] See *e. g.* the charter of the colony of Carolina which gave the grantees the right of "patronage and advowsons of all the churches and chapels . . . together with licence and power to build and found churches, chapels and oratories . . . and to cause them to be dedicated and consecrated, according to the ecclesiastical laws of our kingdom of England." Poore, Constitutions (1878) II, 1390, 1391. That of Maryland gave to the grantee Lord Baltimore "the Patronages, and Advowsons of all Churches which . . . shall happen to be built, together with License and Faculty of erecting and founding Churches, Chapels, and Places of Worship . . . and of causing the same to be dedicated and consecrated according to the Ecclesiastical Laws of our Kingdom of *England*, with all, and singular such, and as ample Rights, Jurisdictions, Privileges . . . as any Bishop . . . in our Kingdom of *England*, ever . . . hath had . . ." MacDonald, Documentary Source Book of American History (1934) 31, 33. The Commission of New Hampshire of 1680, Poore, *supra*, II, 1277, stated: "And above all things We do by these presents will, require and command our said Councill to take all possible care for ye discountenancing of vice and encouraging of virtue and good living; and that by such examples ye infidle may be invited and desire to partake of ye Christian Religion, and for ye greater ease and satisfaction of ye so loving subjects in matters of religion. We do hereby require and command ye liberty of conscience shall be allowed unto all protestants: ye such especially as shall be conformable to ye rites of ye Church of Engd shall be particularly countenanced and encouraged." See also *Pawlet* v. *Clark*, 9 Cranch 292.

[7] See *e. g.* Semple, Baptists in Virginia (1894); Sweet, Religion in Colonial America, *supra* at 131–152, 322–339.

[8] Almost every colony exacted some kind of tax for church support. See *e. g.* Cobb, op. cit. *supra, note* 5, 110 (Virginia); 131 (North Carolina); 169 (Massachusetts); 270 (Connecticut), 304, 310, 339 (New York), 386 (Maryland), 295 (New Hampshire).

[9] Madison wrote to a friend in 1774: "That diabolical, hell-conceived principle of persecution rages among some . . . This vexes me the worst of anything whatever. There are at this time in the adjacent country not less than five or six well-meaning men in close jail for publishing their religious sentiments, which in the main are very orthodox. I have neither patience to hear, talk, or think of anything relative to this matter; for I have squabbled and scolded, abused and ridiculed, so long about it to little purpose, that I am without common patience. So I must beg you to pity me, and pray for liberty of conscience to all." I Writings of James Madison (1900) 18, 21.

[10] Virginia's resistance to taxation for church support was crystallized in the famous "Parson's Cause" argued by Patrick Henry in 1973. For an account see Cobb, *op. cit., supra*, note 5, 108–111.

[11] II Writings of James Madison, 183.

[12] In a recently discovered collection of Madison's papers, Madison recollected that his Remonstrance "met with the approbation of the Baptists, the Presbyterians, the Quakers, and the few Roman Catholics, universally; of the Methodists in part; and even of not a few of the Sect formerly established by law." Madison, *Monopolies, Perpetuities, Corporations, Ecclesiastical Endowments*, in Fleet, *Madison's "Detached Memorandum,"* 3 William and Mary Q. (1946) 534, 551, 555.

[13] For accounts of background and evolution of the Virginia Bill for Religious Liberty see *e.g.* James, The Struggle for Religious Liberty in Virginia (1900); Thom, The Struggle for Religious Freedom in Virginia: The Baptist (1900); Cobb, *op. cit., supra*, note 5, 74–115; Madison, *Monopolies, Perpetuities, Corporations, Ecclesiastical Endowments, op. cit., supra*, note 12, 554, 556.

[14] 12 Hening, Statutes of Virginia (1823) 84; Commager, Documents of American History (1944) 125.

[15] *Permoli* v. *New Orleans*, 3 How. 589. *Cf. Barron* v. *Baltimore*, 7 Pet. 243.

[16] For a collection of state constitutional provisions on freedom of religion see Gabel, Public Funds for Church and Private Schools (1937) 148–149. See also 2 Cooley, Constitutional Limitations (1927) 960–985.

[17] Test provisions forbade officeholders to "deny . . . the truth of the Protestant religion," *e.g.* Constitution of North Carolina (1776) § XXXII, II Poore, *supra*, 1413. Maryland permitted taxation for support of the Christian religion and limited civil office to Christians until 1818, *id.*, I, 819, 820, 832.

[18] See Note 50 Yale L. J. (1941) 917; see also cases collected 14 L.R.A. 418; 5 A.L.R. 879; 141 A.L.R. 1148.

[19] See cases collected 14 L.R.A. 418; 5 A.L.R. 879; 141 A.L.R. 1148.

[20] *Ibid.* See also Cooley, *op. cit., supra*, note 16.

[21] *Terrett* v. *Taylor*, 9 Cranch 43; *Watson* v. *Jones*, 13 Wall. 679; *Davis* v. *Beason*, 133 U.S. 333; *Cf. Reynolds* v. *United States*, *supra*, 162; *Reuben Quick Bear* v. *Leupp*, 210 U.S. 50.

[22] *Cantwell* v. *Connecticut*, 310 U.S. 296; *Jamison* v. *Texas*, 318 U.S. 413; *Largent* v. *Texas*, 318 U.S. 418; *Murdock* v. *Pennsylvania*, *supra; West Virginia State Board of Education* v. *Barnette*, 319 U.S. 624; *Follett* v. *McCormick*, 321 U.S. 573; *Marsh* v. *Alabama*, 326 U.S. 501. *Cf. Bradfield* v. *Roberts*, 175 U.S. 291.

[23] *Harmon* v. *Dreher*, Speer's Equity Reports (S. C., 1843), 87, 120.

[24] New Jersey long ago permitted public utilities to charge school children reduced rates. See *Public S. R. Co.* v. *Public Utility Comm'rs*, 81 N.J.L. 363, 80 A. 27 (1911); see also *Interstate Ry.* v. *Massachusetts*, *supra*. The District of Columbia Code require that the new charter of the District public transportation company provide a three-cent fare "for school children . . . going to and from public, parochial, or like schools. . . ." 47 Stat. 752, 759.

JACKSON, J., DISSENTING

Mr. JUSTICE JACKSON, dissenting.

I find myself, contrary to first impressions, unable to join in this decision. I have a sympathy, though it is not ideological, with Catholic citizens who are compelled by law to pay taxes for public schools, and also feel constrained by conscience and discipline to support other schools for their own children. Such relief to them as this case involves is not in itself a serious burden to taxpayers and I had assumed it to be as little serious in principle. Study of this case convinces me otherwise. The Court's opinion marshals every argument in favor of state aid and puts the case in its most favorable light, but much of its reasoning confirms my conclusions that there are no good grounds upon which to support the present legislation. In fact, the undertones of the opinion advocating complete and uncompromising separation of Church from State, seem utterly discordant with its conclusion yielding support to their commingling in educational matters. The case which irresistibly comes to mind as the most fitting precedent is that of Julia who, according to Byron's reports, "whispering 'I will ne'er consent,'—consented."

I

The Court sustains this legislation by assuming two deviations from the facts of this particular case; first, it assumes a state of facts the record does not support, and secondly, it refuses to consider facts which are inescapable on the record.

The Court concludes that this "legislation, as applied, does no more than provide a general program to help parents get their children, regardless of their religion, safely and expeditiously to and from accredited schools," and it draws a comparison between "state provisions intended to guarantee free transportation" for school children with services such as police and fire protection, and implies that we are here dealing with "laws authorizing new types of public services . . . ." This hypothesis permeates the opinion. The facts will not bear that construction.

The Township of Ewing is not furnishing transportation to the children in any form; it is not operating school busses itself or contracting for their operation; and it is not performing any public service of any kind with this taxpayer's money. All school children are left to ride as ordinary paying passengers on the regular busses operated by the public transportation system. What the Township does, and what the taxpayer complains of, is at stated intervals to reimburse parents for the fares paid, provided the children attend either public schools or Catholic Church schools. This expenditure of tax funds has no possible effect on the child's safety or expedition in transit. As passengers on the public busses they travel as fast and no faster, and are as safe and no safer, since their parents are reimbursed as before.

In addition to thus assuming a type of service that does not exist, the Court also insists that we must close our eyes to a discrimination which does exist. The resolution which authorizes disbursement of this taxpayer's money limits reimbursement to those who attend public schools and Catholic schools. That is the way the Act is applied to this taxpayer.

The New Jersey Act in question makes the character of the school, not the needs of the children, determine the eligibility of parents to reimbursement. The Act permits payment for transportation to parochial schools or public schools but prohibits it to private schools operated in whole or in part for profit. Children often are sent to private schools because their parents feel that they require more individual instruction than public schools can provide or because they are backward or defective and need special attention. If all children of the state were objects of impartial solicitude, no reason is obvious for denying transportation reimbursement to students for denying transportation reimbursement to students of this class, for these often are as needy and as worthy as those who go to public or parochial schools. Refusal to reimburse those who attend such schools is understandable only in the light of a purpose to aid the schools, because the state might well abstain from aiding a profit-making private enterprise. Thus, under the Act and resolution brought to us by this case, children are classified according to the schools they attend and are to be aided if they attend the public schools or private Catholic schools, and they are not allowed to be aided if they attend private secular schools or private religious schools of other faiths.

Of course, this case is not one of a Baptist or a Jew or an Episcopalian or a pupil of a private school complaining of discrimination. It is one of a taxpayer urging that he is being taxed for an unconstitutional purpose. I think he is entitled to have us consider the Act just as it is written. The statement by the New Jersey court that it holds the Legisture may authorize use of local funds "for the transportation of pupils to any school," 133 N. J. L. 350, 354, 44 A. 2d 333, 337, in view of the other constitutional views expressed, is not a holding that this Act authorizes transportation of *all* pupils to *all* schools. As applied to this taxpayer by the action he complains of, certainly the Act does not authorize reimbursement to those who choose any alternative to the public school except Catholic Church schools.

If we are to decide this case on the facts

before us, our question is simply this: Is it constitutional to tax this complainant to pay the cost of carrying pupils to Church schools of one specified denomination?

II

Whether the taxpayer constitutionally can be made to contribute aid to parents of students because of their attendance at parochial schools depends upon the nature of those schools and their relation to the Church. The Constitution says nothing of education. It lays no obligation on the states to provide schools and does not undertake to regulate state systems of education if they see fit to maintain them. But they cannot, through school policy any more than through other means, invade rights secured to citizens by the Constitution of the United States. West Virginia State Board of Education v. Barnette, 319 U. S. 624. One of our basic rights is to be free of taxation to support a transgression of the constitutional command that the authorities "shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . ." U.S. Const., Amend. I; Cantwell v. Connecticut, 310 U.S. 296.

The function of the Church school is a subject on which this record is meager. It shows only that the schools are under superintendence of a priest and that "religion is taught as part of the curriculum." But we know that such schools are parochial only in name—they, in fact, represent a world-wide and age-old policy of the Roman Catholic Church. Under the rubric "Catholic Schools," the Canon Law of the Church, by which all Catholics are bound provides:

"1215. Catholic children are to be educated in schools where not only nothing contrary to Catholic faith and morals is taught, but rather in schools where religious and moral training occupy the first place. . . . (Canon 1372.)"

"1216. In every elementary school the children must, according to their age, be instructed in Christian doctrine.

"The young people who attend the higher schools are to receive a deeper religious knowledge, and the bishops shall appoint priests qualified for such work by their learning and piety. (Canon 1373.)"

"1217. Catholic children shall not attend non-Catholic, indifferent, schools that are mixed, that is to say, schools open to Catholics and non-Catholics alike. The bishop of the diocese only has the right, in harmony with the instructions of the Holy See, to decide under what circumstances, and with what safeguards to prevent loss of faith, it may be tolerated that Catholic children go to such schools. (Canon 1374.)"

"1224. The religious teaching of youth in any schools is subject to the authority and inspection of the Church.

"The local Ordinaries have the right and duty to watch that nothing is taught contrary to faith or good morals, in any of the schools of their territory.

"They, moreover, have the right to approve the books of Christian doctrine and the teachers of religion, and to demand, for the sake of safeguarding religion and morals, the removal of teachers and books. (Canon 1381.)" (Woywood, Rev. Stanislaus, The New Canon Law, under imprimatur of Most Rev. Francis J. Spellman, Archbishop of New York, and others, 1940.)

It is no exaggeration to say that the whole historic conflict in temporal policy between the Catholic Church and non-Catholic comes to a focus in their respective school policies. The Roman Catholic Church, counseled by experience in many ages and many lands and with all sorts and conditions of men, takes what, from the viewpoint of its own progress and the success of its mission, is a wise estimate of the importance of education to religion. It does not leave the individual to pick up religion by chance. It relies on early and indelible indoctrination in the faith and order of the Church by the word and example of persons consecrated to the task.

Our public school, if not a product of Protestantism, at least is more consistent with it than with the Catholic culture and scheme of values. It is a relatively recent development dating from about 1840.[1] It is organized on the premise that secular education can be isolated from all religious teaching so that the school can inculcate all needed temporal knowledge and also maintain a strict and lofty neutrality as to religion. The assumption is that after the individual has been instructed in worldly wisdom he will be better fitted to choose his religion. Whether such a disjunction is possible, and if possible whether it is wise, are questions I need not try to answer.

I should be surprised if any Catholic would deny that the parochial school is a vital, if not the most vital, part of the Roman Catholic Church. If put to the choice, that venerable institution, I should expect, would forego its whole service for mature persons before it would give up education of the young, and it would be a wise choice. Its growth and cohesion, discipline and loyalty, spring from its schools. Catholic education is the rock on which the whole structure rests, and to render tax aid to its Church school is indistinguishable to me from rendering the same aid to the Church itself.

III

It is of no importance in this situation whether the beneficiary of this expenditure of tax-raised funds is primarily the parochial school and incidentally the pupil, or whether the aid is directly bestowed on the pupil with indirect benefits to the school. The state cannot maintain a Church and it can no more tax its citizens to furnish free carriage to those who attend a Church. The prohibition against establishment of religion cannot be circumvented by a subsidy, bonus or reimbursement of expense to individuals for receiving religious instruction and indoctrination.

The Court, however, compares this to other subsidies and loans to individuals and says, "Nor does it follow that a law has a private rather than a public purpose because it provides that tax-raised funds will be paid to reimburse individuals on account of money spent by them in a way which furthers a public program. See *Carmichael* v. *Southern Coal & Coke Co.*, 301 U.S. 495, 518." Of course, the state may pay out tax-raised funds to relieve pauperism, but it may not under our Constitution do so to induce or reward piety. It may spend funds to secure old age against want, but it may not spend funds to secure religion against skepticism. It may compensate individuals for loss of employment, but it cannot compensate them for adherence to a creed.

It seems to me that the basic fallacy in the Court's reasoning, which accounts for its failure to apply the principles it avows, is in ignoring the essentially religious test by which beneficiaries of this expenditure are selected. A policeman protects a Catholic, of course—but not because he is a Catholic; it is because he is a man and a member of our society. The fireman protects the Church school—but not because it is a Church school; it is because it is property, part of the assets of our society. Neither the fireman nor the policeman has to ask before he renders aid "Is this man or building identified with the Catholic Church?" But before these school authorities draw a check to reimburse for a student's fare they must ask just that question, and if the school is a Catholic one they may render aid because it is such, while if it is of any other faith or is run for profit, the help must be withheld. To consider the converse of the Court's reasoning will best disclose its fallacy. That there is no parallel between police and fire protection and this plan of reimbursement is apparent from the incongruity of the limitation of this Act if applied to police and fire service. Could we sustain an Act that said the police shall protect pupils on the way to or from public schools and Catholic schools but not while going to and coming from other schools, and firemen shall extinguish a blaze in public or Catholic school buildings but shall not put out a blaze in Protestant Church schools or private schools operated for profit? That is the true analogy to the case we have before us and I should think it pretty plain that such a scheme would not be valid.

The Court's holding is that this taxpayer has no grievance because the state has decided to make the reimbursement a public purpose and therefore we are bound to regard it as such. I agree that this Court has left, and always should leave to each state, great latitude in deciding for itself, in the light of its own conditions, what shall be public purposes in its scheme of things. It may socialize utilities and economic enterprises and make taxpayers' business out of what conventionally had been private business. It may make public business of individual welfare, health, education, entertainment or security. But it cannot make public business of religious worship or instruction, or of attendance at religious institutions of any character. There is no answer to the proposition, more fully expounded by Mr. Justice Rutledge, that the effect of the religious freedom Amendment to our Constitution was to take every form of propagation of religion out of the realm of things which could directly or indirectly be made public business and thereby be supported in whole or in part at taxpayers' expense. That is a difference which the Constitution sets up between religion and almost every other subject matter of legislation, a difference which goes to the very root of religious freedom and which the Court is overlooking today. This freedom was first in the Bill of Rights because it was first in the forefathers' minds; it was set forth in absolute terms, and its strength is its rigidity. It was intended not only to keep the states' hands out of religion, but to keep religion's hands off the state, and, above all, to keep bitter religious controversy out of public life by denying to every denomination any advantage from getting control of public policy or the public purse. Those great ends I cannot but think are immeasurably compromised by today's decision.

This policy of our Federal Constitution has never been wholly pleasing to most religious groups. They all are quick to invoke its protections; they all are irked when they feel its restraints. This Court has gone a long way, if not an unreasonable way, to hold that public business of such paramount importance as maintenance of public order, protection of the privacy of the home, and taxation may not be pursued by a state in a way that even indirectly will interfere with religious proselyting. See dissent in *Douglas* v. *Jeannette*, 319 U.S. 157, 166; *Murdock* v. *Pennsylvania*, 319 U.S. 105; *Martin* v. *Struthers*, 319 U.S. 141; *Jones* v. *Opelika*, 316 U.S. 584, reversed on rehearing, 319 U.S. 103.

But we cannot have it both ways. Religious teaching cannot be a private affair when the state seeks to impose regulations which infringe on it indirectly, and a public affair when it comes to taxing citizens of one faith to aid another, or those of no faith to aid all. If these principles seem harsh in prohibiting aid to Catholic education, it must not be forgotten that it is the same Constitution that alone assures Catholics the right to maintain these schools at all when predominant local sentiment would forbid them. *Pierce* v. *Society of Sisters*, 268 U.S.

[1] See Cubberley, Public Education in the United States (1934) ch. VI; Knight, Education in the United States (1941) ch. VIII.

510. Nor should I think that those who have done so well without this aid would want to see this separation between Church and State broken down. If the state may aid these religious schools, it may therefore regulate them. Many groups have sought aid from tax funds only to find that it carried political controls with it. Indeed this Court has declared that "It is hardly lack of due process for the Government to regulate that which it subsidizes." *Wickard* v. *Filburn*, 317 U.S. 111, 131.

But in any event, the great purposes of the Constitution do not depend on the approval or convenience of those they restrain. I cannot read the history of the struggle to separate political from ecclesiastical affairs, well summarized in the opinion of MR. JUSTICE RUTLEDGE in which I generally concur, without a conviction that the Court today is unconsciously giving the clock's hands a backward turn.

MR. JUSTICE FRANKFURTER joins in this opinion.

MR. JUSTICE RUTLEDGE, with whom MR. JUSTICE FRANKFURTER, MR. JUSTICE JACKSON and MR. JUSTICE BURTON agree, dissenting.

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . ." U.S. Const., Amend. I.

"Well aware that Almighty God hath created the mind free; . . . that to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical; . . .

"*We, the General Assembly, do enact*, That no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer, on account of his religious opinions or belief . . ."[1]

I cannot believe that the great author of those words, or the men who made them law, could have joined in this decision. Neither so high nor so impregnable today as yesterday is the wall raised between church and state by Virginia's great statute of religious freedom and the First Amendment, now made applicable to all the states by the Fourteenth.[2] New Jersey's statute sustained is the first, if indeed it is not the second breach to be made by this Court's action. That a third, and a fourth, and still others will be attempted, we may be sure. For just as *Cochran* v. *Board of Education*, 281 U.S. 370, has opened the way by oblique ruling[3] for this decision, so will the two make wider the breach for a third. Thus with time the most solid freedom steadily gives way before continuing corrosive decision.

This case forces us to determine squarely for the first time[4] what was "an establishment of religion" in the First Amendment's conception; and by that measure to decide whether New Jersey's action violates its command. The facts may be stated shortly, to give setting and color to the constitutional problem.

By statute New Jersey has authorized local boards of education to provide for the transportation of children "to and from school other than a public school" except one operated for profit wholly or in part, over established public school routes, or by other means when the child lives "remote from any school."[5] The school board of Ewing Township has provided by resolution for "the transportation of pupils of Ewing to the Trenton and Pennington High Schools and Catholic Schools by way of public carrier . . . ."[6]

Named parents have paid the cost of public conveyance of their children from their homes in Ewing to three public high schools and four parochial schools outside the district.[7] Semiannually the Board has reimbursed the parents from public school funds raised by general taxation. Religion is taught as part of the curriculum in each of the four private schools, as appears affirmatively by the testimony of the superintendent of parochial schools in the Diocese of Trenton.

The Court of Errors and Appeals of New Jersey, reversing the Supreme Court's decision, 132 N. J. L. 98, 39 A. 2d 75, has held the Ewing board's action not in contravention of the state constitution or statutes or of the Federal Constitution. 133 N. J. L. 350, 44 A. 2d 333. We have to consider only whether this ruling accords with the prohibition of the First Amendment implied in the due process clause of the Fourteenth.

I

Not simply an established church, but any law respecting an establishment of religion is forbidden. The Amendment was broadly but not loosely phrased. It is the compact and exact summation of its author's views formed during his long struggle for religious freedom. In Madison's own words characterizing Jefferson's Bill for Establishing Religious Freedom, the guaranty he put in our national charter, like the bill he piloted through the Virginia Assembly, was "a Model of technical precision, and perspicuous brevity."[8] Madison could not have confused "church" and "religion," or "an established church" and "an establishment of religion."

The Amendment's purpose was not to strike merely at the official establishment of a single sect, creed or religion, outlawing only a formal relation such has had prevailed in England and some of the colonies. Necessarily it was to uproot all such relationships. But the object was broader than separating church and state in this narrow sense. It was to create a complete and permanent separation of the spheres of religious activity and civil authority by comprehensively forbidding every form of public aid or support for religion. In proof the Amendment's wording and history unite with this Court's consistent utterances whenever attention has been fixed directly upon the question.

"Religion" appears only once in the Amendment. But the word governs two prohibitions and governs them alike. It does not have two meanings, one narrow to forbid "an establishment" and another, much broader, for securing "the free exercise thereof." "Thereof" brings down "religion" with its entire and exact content, no more and no less, from the first into the second guaranty, so that Congress and now the states are as broadly restricted concerning the one as they are regarding the other.

No one would claim today that the Amendment is constricted, in "prohibiting the free exercise" of religion, to securing the free exercise of some formal or creedal observance, of one sect or of many. It secures all forms of religious express, creedal, sectarian or nonsectarian, wherever and however taking place, except conduct which trenches upon the like freedoms of others or clearly and presently endangers the community's good order and security.[9] For the protective purposes of this phase of the basic freedom, street preaching, oral or by distribution of literature, has been given "the same high estate under the First Amendment as . . . worship in the churches and preaching from the pulpits."[10] And on this basis parents have been held entitled to send their children to private, religious schools. *Pierce* v. *Society of Sisters*, 268 U.S. 510. Accordingly, daily religious education commingled with secular is "religion" within the guaranty's comprehensive scope. So are religious training and teaching in whatever form. The word connotes the broadest content, determined not by the form or formality of the teaching or where it occurs, but by its essential nature regardless of those details.

"Religion" has the same broad significance in the twin prohibition concerning "an establishment." The Amendment was not duplicitous. "Religion" and "establishment" were not used in any formal or technical sense. The prohibition broadly forbids state support, financial or other, of religion in any guise, form or degree. It outlaws all use of public funds for religious purposes.

II

No provision of the Constitution is more closely tied to or given content by its generating history than the religious clause of the First Amendment. It is at once the refined product and the terse summation of that history. The history includes not only Madison's authorship and the proceedings before the First Congress, but also the long and intensive struggle for religious freedom in America, more especially in Virginia,[11] of which the Amendment was the direct culmination.[12] In the documents of the times, particularly of Madison, who was leader in the Virginia struggle before he became the Amendment's sponsor, but also in the writings of Jefferson and others and in the issues which engendered them is to be found irrefutable confirmation of the Amendment's sweeping content.

For Madison, as also for Jefferson, religious freedom was the crux of the struggle for freedom in general. Remonstrance, Par. 15, Appendix hereto. Madison was coauthor with George Mason of the religious clause in Virginia's great Declaration of Rights of 1776. He is credited with changing it from a mere statement of the principle of tolerance to the first official legislative pronouncement that freedom of conscience and religion are inherent rights of the individual.[13] He sought also to have the Declaration expressly condemn the existing Virginia establishment.[14] But the forces supporting it were then too strong.

Accordingly Madison yielded on this phase but not for long. At once he resumed the fight, continuing it before succeeding legislative sessions. As a member of the General Assembly in 1779 he threw his full weight behind Jefferson's historic Bill for Establishing Religious Freedom. That bill was a prime phase of Jefferson's broad program of democratic reform undertaken on his return from the Continental Congress in 1776 and submitted for the General Assembly's consideration in 1779 as his proposed revised Virginia code.[15] With Jefferson's departure for Europe in 1784, Madison became the Bill's prime sponsor.[16] Enactment failed in successive legislatures from its introduction in June, 1779, until its adoption in January, 1786. But during all this time the fight for religious freedom moved forward in Virginia on various fronts with growing intensity. Madison led throughout, against Patrick Henry's powerful opposing leadership until Henry was elected governor in November, 1784.

The climax came in the legislative struggle of 1784–1785 over the Assessment Bill. See Supplemental Appendix hereto. This was nothing more nor less than a taxing measure for the support of religion, designed to revive the payment of tithes suspended since 1777. So long as it singled out a particular sect for preference it incurred the active and general hostility of dissentient groups. It was broadened to include them, with the result that some subsided temporarily in their opposition.[17] As altered, the bill gave to each taxpayer the privilege of designating which church should receive his share of the tax. In default of designation the legislature applied it to pious uses.[18] But what is of the utmost significance here, "in its final form the bill left the taxpayer the option of giving his tax to education."[19]

Madison was unyielding at all times, opposing with all his vigor the general and nondiscriminatory as he had the earlier particular and discriminatory assessments proposed.

Footnotes at end of article.

The modified Assessment Bill passed second reading in December, 1784, and was all but enacted. Madison and his followers, however, maneuvered deferment of final consideration until November, 1785. And before the Assembly reconvened in the fall he issued his historic Memorial and Remonstrance.[20]

This is Madison's complete, though not his only, interpretation of religious liberty.[21] It is a broadside attack upon all forms of "establishment" of religion, both general and particular, nondiscriminatory or selective. Reflecting not only the many legislative conflicts over the Assessment Bill and the Bill for Establishing Religious Freedom but also, for example, the struggles for religious incorporations and the continued maintenance of the glebes, the Remonstrance is at once the most concise and the most accurate statement of the views of the First Amendment's author concerning what is "an establishment of religion." Because it behooves us in the dimming distance of time not to lose sight of what he and his coworkers had in mind when, by a single sweeping stroke of the pen, they forbade an establishment of religion and secured its free exercise, the text of the Remonstrance is appended at the end of this opinion for its wider current reference, together with a copy of the bill against which it was directed.

The Remonstrance, stirring up a storm of popular protest, killed the Assessment Bill.[22] It collapsed in committee shortly before Christmas, 1785. With this, the way was cleared at last for enactment of Jefferson's Bill for Establishing Religious Freedom. Madison promptly drove it through in January of 1786, seven years from the time it was first introduced. This dual victory substantially ended the fight over establishments, settling the issue against them. See note 33.

The next year Madison became a member of the Constitutional Convention. Its work done, he fought valiantly to secure the ratification of its great product in Virginia as elsewhere, and nowhere else more effectively.[23] Madison was certain in his own mind that under the Constitution "there is not a shadow of right in the general government to intermeddle with religion" [24] and that "this subject is, for the honor of America, perfectly free and unshackled. The government has no jurisdiction over it . . . ." [25] Nevertheless he pledged that he would work for a Bill of Rights, including a specific guaranty of religious freedom, and Virginia, with other states, ratified the Costitution on this assurance.[26]

Ratification thus accomplished, Madison was sent to the first Congress. There he went at once about performing his pledge to establish freedom for the nation as he had done in Virginia. Within a little more than three years from his legislative victory at home he had proposed and secured the submission and ratification of the First Amendment as the first article of our Bill of Rights.[27]

All the great instruments of the Virginia struggle for religious liberty thus became warp and woof of our constitutional tradition, not simply by the course of history, but by the common unifying force of Madison's life, thought and sponsorship. He epitomized the whole of that tradition in the Amendment's compact, but nonetheless comprehensive, phrasing.

As the Remonstrance discloses throughout, Madison opposed every form and degree of official relation between religion and civil authority. For him religion was a wholly private matter beyond the scope of civil power either to restrain or to support.[28] Denial or abridgment of religious freedom was a violation of rights both of conscience and of natural equality. State aid was no less obnoxious or destructive to freedom and to religion itself than other forms of state interference. "Establishment" and "free exercise" were correlative and coexistensive ideas, representing only different facets of the single and fundamental freedom. The Remonstrance, following the Virginia statute's example, referred to the history of religious conflicts and the effects of all sorts of establishments, current and historical, to suppress religion's free exercise. With Jefferson, Madison believed that to tolerate any fragment of establishment would be by so much to perpetuate restraint upon that freedom. Hence he sought to tear out the institution not partially but root and branch, and to bar its return forever.

In no phase was he more unrelentingly absolute than in opposing state support or aid by taxation. Not even "three pence" contribution was thus to be exacted from any citizen for such a purpose. Remonstrance, Par. 3.[29] Tithes had been the lifeblood of establishment before and after other compulsions disappeared. Madison and his coworkers made no exceptions or abridgements to the complete separation they created. Their objection was not to small tithes. It was to any tithes whatsoever. "If it were lawful to impose a small tax for religion, the admission would pave the way for oppressive levies." [30] Not the amount but "the principle of assessment was wrong." And the principle was as much to prevent "the interference of law in religion" as to restrain intervention in political matters.[31] In this field the authors of our freedom would not tolerate "the first experiment on our liberties" or "wait till usurped power had strengthened itself by exercise, and entangled the question in precedents." Remonstrance, Par. 3. Nor should we.

In view of this history no further proof is needed that the Amendment forbids any appropriation, large or small, from public funds to aid or support any and all religious exercises. But if more were called for, the debates in the First Congress and this Court's consistent expressions, whenever it has touched on the matter directly,[32] supply it.

By contrast with the Virginia history, the congressional debates on consideration of the Amendment reveal only sparse discussion, reflecting the fact that the essential issues had been settled.[33] Indeed the matter had become so well understood as to have been taken for granted in all but formal phrasing. Hence, the only enlightening reference shows concern, not to preserve any power to use public funds in aid of religion, but to prevent the Amendment from outlawing private gifts inadvertently by virtue of the breadth of its wording.[34] In the margin are noted also the principal decisions in which expressions of this Court confirm the Amendment's broad prohibition.[35]

III

Compulsory attendance upon religious exercises went out early in the process of separating church and state, together with forced observance of religious forms and ceremonies.[36] Test oaths and religious qualification for office followed later.[37] These things none devoted to our great tradition of religious liberty would think of bringing back. Hence today, apart from efforts to inject religious training or exercises and sectarian issues into the public schools, the only serious surviving threat to maintaining that complete and permanent separation of religion and civil power which the First Amendment commands is through use of the taxing power to support religion, religious establishments, or establishments having a religious foundation whatever their form or special religious function

Does New Jersey's action furnish support for religion by use of the taxing power? Certainly it does, if the test remains undiluted as Jefferson and Madison made it, that money taken by taxation from one is not to be used or given to support another's religious training or belief, or indeed one's own.[38] Today as then the furnishing of "contributions of money for the propagation of opinions which he disbelieves" is the forbidden exaction; and the prohibition is absolute for whatever measure brings that consequence and whatever amount may be sought or given to that end.

The funds used here were raised by taxation. The Court does not dispute, nor could it, that their use does in fact give aid and encouragement to religious instruction. It only concludes that this aid is not "support" in law. But Madison and Jefferson were concerned with aid and support in fact, not as a legal conclusion "entangled in precedents." Remonstrance, Par. 3. Here parents pay money to send their children to parochial schools and funds raised by taxation are used to reimburse them. This not only helps the children to get to school and the parents to send them. It aids them in a substantial way to get the very thing which they are sent to the particular school to secure, namely, religious training and teaching.

Believers of all faiths, and others who do not express their feeling toward ultimate issues of existence in any creedal form, pay the New Jersey tax. When the money so raised is used to pay for transportation to religious schools, the Catholic taxpayer to the extent of his proportionate share pays for the transportation of Lutheran, Jewish and otherwise religious affiliated children to receive their non-Catholic religious instruction. Their parents likewise pay proportionately for the transportation of Catholic children to receive Catholic instruction. Each thus contributes to "the propagation of opinions which he disbelieves" in so far as their religions differ, as do others who accept no creed without regard to those differences. Each thus pays taxes also to support the teaching of his own religion, an exaction equally forbidden since it denies "the comfortable liberty" of giving one's contribution to the particular agency of instruction he approves.[39]

New Jersey's action therefore exactly fits the type of exaction and the kind of evil at which Madison and Jefferson struck. Under the test they framed it cannot be said that the cost of transportation is no part of the cost of education or of the religious instruction given. That it is a substantial and a necessary element is shown most plainly by the continuing and increasing demand for the state to assume it. Nor is there pretense that it relates only to the secular instruction given in religious schools or that any attempt is or could be made toward allocating proportional shares as between the secular and the religious instruction. It is precisely because the instruction is religious and relates to a particular faith, whether one or another, that parents send their children to religious schools under the *Pierce* doctrine. And the very purpose of the state's contribution is to defray the cost of conveying the pupil to the place where he will receive not simply secular, but also and primarily religious, teaching and guidance.

Indeed the view is sincerely avowed by many of various faiths,[40] that the basic purpose of all education is or should be religious, that the secular cannot be and should not be separated from the religious phase and emphasis. Hence, the inadequacy of public or secular education and the necessity for sending the child to a school where religion is taught. But whatever may be the philosophy or its justification, there is undeniably an admixture of religious with secular teaching in all such institutions. That is the very reason for their being. Certainly for purposes of constitutionality we cannot contradict the whole basis of the ethical and educational convictions of people who believe in religious schooling.

Yet this very admixture is what was disestablished when the First Amendment for-

Footnotes at end of article.

bade "an establishment of religion." Commingling the religious with the secular teaching does not divest the whole of its religious permeation and emphasis or make them of minor part, if proportion were material. Indeed, on any other view, the constitutional prohibition always could be brought to naught by adding a modicum of the secular.

An approriation from the public treasury to pay the cost of transportation to Sunday school, to weekday special classes at the church or parish house, or to the meetings of various young people's religious societies, such as the Y. M. C. A., the Y. W. C . A., the Y. M. H. A., the Epworth League, could not withstand the constitutional attack. This would be true, whether or not secular activities were mixed with the religious. If such an appropriation could not stand, then it is hard to see how one becomes valid for the same thing upon the more extended scale of daily instruction. Surely constitutionality does not turn on where or how often the mixed teaching occurs.

Finally, transportation, where it is needed, is as essential to education as any other element. Its cost is as much a part of the total expense, except at times in amount, as the cost of textbooks, of school lunches, of athletic equipment, of writing and other materials; indeed of all other items composing the total burden. Now as always the core of the educational process is the teacher-pupil relationship. Without this the richest equipment and facilities would go for naught. See *Judd* v. *Board of Education*, 278 N.Y. 200, 212, 15 N.E. 2d 576, 582. But the proverbial Mark Hopkins conception no longer suffices for the country's requirements. Without buildings, without equipment, without library, textbooks and other materials, and without transportation to bring teacher and pupil together in such an effective teaching environment, there can be not even the skeleton of what our times require. Hardly can it be maintained that transportation is the least essential of these items, or that it does not in fact aid, encourage, sustain and support, just as they do, the very process which is its purpose to accomplish. No less essential is it, or the payment of its cost, than the very teaching in the classroom or payment of the teacher's sustenance. Many types of equipment, now considered essential, better could be done without.

For me, therefore, the feat is impossible to select so indispensable an item from the composite of total costs, and characterize it as not aiding, contributing to, promoting or sustaining the propagation of beliefs which it is the very end of all to bring about. Unless this can be maintained, and the Court does not maintain it, the aid thus given is outlawed. Payment of transportation is no more, nor is it any the less essential to education, whether religious or secular, than payment for tuitions, for teachers' salaries, for buildings, equipment and necessary materials. Nor is it any the less directly related, in a school giving religious instruction, to the primary religious objective all those essential items of cost are intended to achieve. No rational line can be drawn between payment for such larger, but not more necessary, items and payment for transportation. The only line that can be so drawn is one between more dollars and less. Certainly in this realm such a line can be no valid constitutional measure. *Murdock* v. *Pennsylvania*, 319 U.S. 105; *Thomas* v. *Collins*, 323 U.S. 516.[41] Now, as in Madison's time, not the amount but the principle of assessment is wrong. Remonstrance, Par. 3.

IV

But we are told that the New Jersey statute is valid in its present application because the appropriation is for a public, not a private purpose, namely, the promotion of education, and the majority accept this idea in the conclusion that all we have here is "public welfare legislation." If that is true and the Amendment's force can be thus destroyed, what has been said becomes all the more pertinent. For then there could be no possible objection to more extensive support of religious education by New Jersey.

If the fact alone be determinative that religious schools are engaged in education, thus promoting the general and individual welfare, together with the legislature's decision that the payment of public moneys for their aid makes their work a public function, then I can see no possible basis, except one of dubious legislative policy, for the state's refusal to make full appropriation for support of private, religious schools, just as is done for public instruction. There could not be, on that basis, valid constitutional objection.[42]

Of course paying the cost of transportation promotes the general cause of education and the welfare of the individual. So does paying all other items of educational expense. And obviously, the the majority say, it is much too late to urge that legislation designed to facilitate the opportunities of children to secure a secular education serves no public purpose. Our nation-wide system of public education rests on the contrary view, as do all grants in aid of education, public or private, which is not religious in character.

These things are beside the real question. They have no possible materiality except to obscure the all-pervading, inescapable issue. *Cf. Cochran* v. *Board of Education, supra.* Stripped of its religious phase, the case presents no substantial federal question. *Ibid.* The public function argument, by casting the issue in terms of promoting the general cause of education and the welfare of the individual, ignores the religious factor and its essential connection with the transportation, thereby leaving out the only vital element in the case. So of course do the "public welfare" and "social legislation" ideas, for they come to the same thing.

We have here then one substantial issue, not two. To say that New Jersey's appropriation and her use of the power of taxation for raising the funds appropriated are not for public purposes but are for private ends, is to say that they are for the support of religion and religious teaching. Conversely, to say that they are for public purposes is to say that they are not for religious ones.

This is precisely for the reason that education which includes religious training and teaching, and its support, have been made matters of private right and function, not public, by the very terms of the First Amendment. That is the effect not only in its guaranty of religion's free exercise, but also in the prohibition of establishments. It was on this basis of the private character of the function of religious education that this Court held parents entitled to send their children to private, religious schools. *Pierce* v. *Society of Sisters, supra.* Now it declares in effect that the appropriation of public funds to defray part of the cost of attending those schools is for a public purpose. If so, I do not understand why the state cannot go farther or why this case approaches the verge of its power.

In truth this view contradicts the whole purpose and effect of the First Amendment as heretofore conceived. The "public function"—"public welfare"—"social legislation" argument seeks, in Madison's words, to "employ Religion [that is, here, religious education] as an engine of Civil policy." Remonstrance, Par. 5. It is of one piece with the Assessment Bill's preamble, although with the vital difference that it wholly ignores what that preamble explicitly states.[43]

Our constitutional policy is exactly the opposite. It does not deny the value or the necessity for religious training, teaching or observance. Rather it secures their free exercise. But to that end it does deny that the state can undertake or sustain them in any form or degree. For this reason the sphere of religious activity, as distinguished from the secular intellectual liberties, has been given the twofold protection and, as the state cannot forbid, neither can it perform or aid in performing the religious function. The dual prohibition makes that function altogether private. It cannot be made a public one by legislative act. This was the very heart of Madison's Remonstrance, as it is of the Amendment itself.

It is not because religious teaching does not promote the public or the individual's welfare, but because neither is furthered when the state promotes religious education, that the Constitution forbids it to do so. Both legislatures and courts are bound by that distinction. In failure to observe it lies the fallacy of the "public function"—"social legislation" argument, a fallacy facilitated by easy transference of the argument's basing from due process unrelated to any religious aspect to the First Amendment.

By no declaration that a gift of public money to religious uses will promote the general or individual welfare, or the cause of education generally, can legislative bodies overcome the Amendment's bar. Nor may the courts sustain their attempts to do so by finding such consequences for appropriations which in fact give aid to or promote religious uses. *Cf. Norris* v. *Alabama*, 294 U.S. 587, 590; *Hooven & Allison Co.* v. *Evatt*, 324 U.S. 652, 659; *Akins* v. *Texas*, 325 U.S. 398, 402. Legislatures are free to make, and courts to sustain, appropriations only when it can be found that in fact they do not aid, promote, encourage or sustain religious teaching or observances, be the amount large or small. No such finding has been or could be made in this case. The Amendment has removed this form of promoting the public welfare from legislative and judicial competence to make a public function. It is exclusively a private affair.

The reasons underlying the Amendment's policy have not vanished with time or diminished in force. Now as when it was adopted the price of religious freedom is double. It is that the church and religion shall live both within and upon that freedom. There cannot be freedom of religion, safeguarded by the state, and intervention by the church or its agencies in the state's domain or dependency on its largesse. Madison's Remonstrance, Par. 6, 8.[44] The great condition of religious liberty is that it be maintained free from sustenance, as also from other interferences, by the state. For when it comes to rest upon that secular foundation it vanishes with the resting. *Id.*, Par. 7, 8.[45] Public money devoted to payment of religious costs, educational or other, brings the quest for more. It brings too the struggle of sect against sect for the larger share or for any. Here one by numbers alone will benefit most, there another. That is precisely the history of societies which have had an established religion and dissident groups. *Id.*, Par 8, 11. It is the very thing Jefferson and Madison experienced and sought to guard against, whether in its blunt or in its more screened forms. *Ibid.* The end of such strife cannot be other than to destroy the cherished liberty. The dominating group will achieve the dominant benefit; or all will embroil the state in their dissensions. *Id.*, Par. 11.[46]

Exactly such conflicts have centered of late around providing transportation to religious schools from public funds.[47] The issue and the dissension work typically, in Madison's phrase, to "destroy that moderation and harmony which the forbearance of our laws to intermeddle with Religion, has produced amongst its several sects." *Id.*, Par. 11. This occurs, as he well knew, over measures at the very threshold of departure from the principle. *Id.*, Par. 3, 9, 11.

In these conflicts wherever success has been

Footnotes at end of article.

obtained it has been upon the contention that by providing the transportation the general cause of education, the general welfare, and the welfare of the individual will be forwarded; hence that the matter lies within the realm of public function, for legislative determination.[48] State courts have divided upon the the issue, some taking the view that only the individual, others that the institution receives the benefit.[49] A few have recognized that this dichotomy is false, that both in fact are aided.[50]

The majority here does not accept in terms any of those views. But neither does it deny that the individual or the school, or indeed both, are benefited directly and substantially.[51] To do so would cut the ground from under the public function—social legislation thesis. On the contrary, the opinion concedes that the children are aided by being helped to get to the religious schooling. By converse necessary implication as well as by the absence of express denial, it must be taken to concede also that the school is helped to reach the child with its religious teaching. The religious enterprise is common to both, as is the interest in having transportation for its religious purposes provided.

Notwithstanding the recognition that this two-way aid is given and the absence of any denial that religious teaching is thus furthered, the Court concludes that the aid so given is not "support" of religion. It is rather only support of education as such, without reference to its religious content, and thus becomes public welfare legislation. To this elision of the religious element from the case is added gloss in two respects, one that the aid extended partakes of the nature of a safety measure, the other that failure to provide it would make the state unneutral in religious matters, discriminating against or hampering such children concerning public benefits all others receive.

As will be noted, the one gloss is contradicted by the facts of record and the other is of whole cloth with the "public function" argument's excision of the religious factor.[52] But most important is that this approach, if valid, supplies a ready method for nullifying the Amendment's guaranty, not only for this case and others involving small grants in aid for religious education, but equally for larger ones. The only thing needed will be for the Court again to transplant the "public welfare—public function" view from its proper nonreligious due process bearing to First Amendment application, holding that religious education is not "supported" though it may be aided by the appropriation, and that the cause of education generally is furthered by helping the pupil to secure that type of training.

This is not therefore just a little case over bus fares. In paraphrase of Madison, distant as it may be in its present form from a complete establishment of religion, it differs from it only in degree; and is the first step in that direction. *Id.*, Par. 9.[53] Today as in his time "the same authority which can force a citizen to contribute three pence only . . . for the support of any one [religious] establishment, may force him" to pay more; or "to conform to any other establishment in all cases whatsoever." And now, as then, "either . . . we must say, that the will of the Legislature is the only measure of their authority; and that in the plenitude of this authority, they may sweep away all our fundamental rights; or, that they are bound to leave this particular right untouched and sacred." Remonstrance, Par. 15.

The realm of religious training and belief remains, as the Amendment made it, the kingdom of the individual man and his God. It should be kept inviolately private, not "entangled . . . in precedents" [54] or confounded with what legislatures legitimately may take over into the public domain.

V

No one conscious of religious values can be unsympathetic toward the burden which our constitutional separation puts on parents who desire religious instruction mixed with secular for their children. They pay taxes for others' children's education, at the same time the added cost of instruction for their own. Nor can one happily see benefits denied to children which others receive, because in conscience they or their parents for them desire a different kind of training others do not demand.

But if those feelings should prevail, there would be an end to our historic constitutional policy and command. No more unjust or discriminatory in fact is it to deny attendants at religious schools the cost of their transportation than it is to deny them tuitions, sustenance for their teachers, or any other educational expense which others receive at public cost. Hardship in fact there is which none can blink. But, for assuring to those who undergo it the greater, the most comprehensive freedom, it is one written by design and firm intent into our basic law.

Of course discrimination in the legal sense does not exist. The child attending the religious school has the same right as any other to attend the public school. But he foregoes exercising it because the same guaranty which assures this freedom forbids the public school or any agency of the state to give or aid him in securing the religious instruction he seeks.

Were he to accept the common school, he would be the first to protest the teaching there of any creed or faith not his own. And it is precisely for the reason that their atmosphere is wholly secular that children are not sent to public schools under the *Pierce* doctrine. But that is a constitutional necessity, because we have staked the very existence of our country on the faith that complete separation between the state and religion is best for the state and best for religion. Remonstrance, Par. 8, 12.

That policy necessarily entails hardship upon persons who forego the right to educational advantages the state can supply in order to secure others it is precluded from giving. Indeed this may hamper the parent and the child forced by conscience to that choice. But it does not make the state unneutral to withhold what the Constitution forbids it to give. On the contrary it is only by observing the prohibition rigidly that the state can maintain its neutrality and avoid partisanship in the dissensions inevitable when sect opposes sect over demands for public moneys to further religious education, teaching or training in any form or degree, directly or indirectly. Like St. Paul's freedom, religious liberty with a great price must be bought. And for those who exercise it most fully, by insisting upon religious education for their children mixed with secular, by the terms of our Constitution the price is greater than for others.

The problem then cannot be cast in terms of legal discrimination or its absence. This would be true, even though the state in giving aid should treat all religious instruction alike. Thus, if the present statute and its application were shown to apply equally to all religious schools of whatever faith,[55] yet in the light of our tradition it could not stand. For then the adherent of one creed still would pay for the support of another, the childless taxpayer with others more fortunate. Then too there would seem to be no bar to making appropriations for transportation and other expenses of children attending public or other secular schools, after hours in separate places and classes for their exclusively religious instruction. The person who embraces no creed also would be forced to pay for teaching what he does not believe. Again, it was the furnishing of "contributions of money for the propagation of opinions which he disbelieves" that the fathers outlawed. That consequence and effect are not removed by multiplying to all-inclusiveness the sects for which support is exacted. The Constitution requires, not comprehensive identification of state with religion, but complete separation.

VI

Short treatment will dispose of what remains. Whatever might be said of some other application of New Jersey's statute, the one made here has no semblance of bearing as a safety measure or, indeed, for securing expeditious conveyance. The transportation supplied is by public conveyance, subject to all the hazards and delays of the highway and the streets incurred by the public generally in going about its multifarious business.

Nor is the case comparable to one of furnishing fire or police protection, or access to public highways. These things are matters of common right, part of the general need for safety.[56] Certainly the fire department must not stand idly by while the church burns. Nor is this reason why the state should pay the expense of transportation or other items of the cost of religious education.[57]

Needless to add, we have no such case as *Green* v. *Frazier*, 253 U.S. 233, or *Carmichael* v. *Southern Coal Co.*, 301 U.S. 495, which dealt with matters wholly unrelated to the First Amendment, involving only situations where the "public function" issue was determinative.

I have chosen to place my dissent upon the broad ground I think decisive, though strictly speaking the case might be decided on narrower issues. The New Jersey statute might be held invalid on its face for the exclusion of children who attend private, profit-making schools.[58] I cannot assume, as does the majority, that the New Jersey courts would write off this explicit limitation from the statute. Moreover, the resolution by which the statute was applied expressly limits its benefits to students of public and Catholic schools.[59] There is no showing that there are no other private or religious schools in this populous district.[60] I do not think it can be assumed there were none.[61] But in the view I have taken, it is unnecessary to limit grounding to these matters.

Two great drives are constantly in motion to abridge, in the name of education, the complete division of religion and civil authority which our forefathers made. One is to introduce religious education and observances into the public schools. The other, to obtain public funds for the aid and support of various private religious schools. See Johnson, The Legal Status of Church-State Relationships in the United States (1934); Thayer, Religion in Public Education (1947); Note (1941) 50 Yale L. J. 917. In my opinion both avenues were closed by the Constitution. Neither should be opened by this Court. The matter is not one of quantity, to be measured by the amount of money expended. Now as in Madison's day it is one of principle, to keep separate the separate spheres as the First Amendment drew them; to prevent the first experiment upon our liberties; and to keep the question from becoming entangled in corrosive precedents. We should not be less strict to keep strong and untarnished the one side of the shield of religious freedom than we have been of the other.

The judgment should be reversed.

FOOTNOTES

[1] "A Bill for Establishing Religious Freedom," enacted by the General Assembly of Virginia, January 19, 1786. See 1 Randall, The Life of Thomas Jefferson (1858) 219–220; XII Hening's Statutes of Virginia (1823) 84.

[2] *Schneider* v. *State*, 308 U.S. 147; *Cantwell* v. *Connecticut*, 310 U.S. 296; *Murdock* v. *Pennsylvania*, 319 U.S. 105; *Prince* v. *Massachusetts*, 321 U.S. 158; *Thomas* v. *Collins*, 323 U.S. 516, 530.

[3] The briefs did not raise the First Amendment issue. The only one presented was whether the state's action involved a public or an exclusively private function under the due process clause of the Fourteenth Amendment. See Part IV *infra*. On the facts, the cost of transportation here is inseparable from both religious and secular teaching at the religious school. In the *Cochran* case the state furnished secular textbooks only. But see text *infra* at note 40 *et seq.*, and Part IV.

[4] Cf. note 3 and text Part IV; see also note 35.

[5] The statute reads: "Whenever in any district there are children living remote from any schoolhouse, the board of education of the district may make rules and contracts for the transportation of such children to and from school . . . other than a public school, except such school as is operated for profit in whole or in part.

"When any school district provides any transportation for public school children to and from school, transportation from any point in such established school route to any other point in such established school route shall be supplied to school children residing in such school district in going to and from school other than a public school, except such school as is operated for profit in whole or in part." Laws of New Jersey (1941) c. 191.

[6] The full text of the resolution is given in note 59 *infra*.

[7] The public schools attended were the Trenton Senior High School, the Trenton Junior High School and the Pennington High School. Ewing Township itself provides no public high schools affording only elementary public schools which stop with the eighth grade. The Ewing school board pays for both transportation and tuitions of pupils attending the public high schools. The only private schools, all Catholic covered in application of the resolution are St. Mary's Cathedral High School, Trenton Catholic Boys High School, and two elementary parochial schools, St. Hedwig's Parochial School and St. Francis School. The Ewing board pays only for transportation to these schools, not for tuitions. So far as the record discloses, the board does not pay for or provide transportation to any other elementary school, public or private. See notes, 58, 59 and text *infra*.

[8] IX Writings of James Madison (ed. by Hunt, 1910) 288; Padover, Jefferson (1942) 74. Madison's characterization related to Jefferson's entire revision of the Virginia Code, of which the Bill for Establishing Religious Freedom was part. See note 15.

[9] See *Reynolds* v. *United States*, 98 U.S. 145; *Davis* v. *Beason*, 133 U.S. 333; *Mormon Church* v. *United States*, 136 U.S. 1; *Jacobson* v. *Massachusetts*, 197 U.S. 11; *Prince* v. *Massachusetts*, 321 U.S. 158; also *Cleveland* v. *United States*, 329 U.S. 14.

Possibly the first official declaration of the "clear and present danger" doctrine was Jefferson's declaration in the Virginia Statute for Establishing Religious Freedom: "That it is time enough for the rightful purposes of civil government for its officers to interfere when principles break out into overt acts against peace and good order." 1 Randall, The Life of Thomas Jefferson (1858) 220; Padover, Jefferson (1942) 81. For Madison's view to the same effect, see note 28 *infra*.

[10] *Murdock* v. *Pennsylvania*, 319 U.S. 105, 109; *Martin* v. *Struthers*, 319 U.S. 141; *Jamison* v. *Texas*, 318 U.S. 413; *Marsh* v. *Alabama*, 326 U.S. 501; *Tucker* v. *Texas*, 326 U.S. 517.

[11] Conflicts in other states, and earlier in the colonies, contributed much to generation of the Amendment, but none so directly as that in Virginia or with such formative influence on the Amendment's content and wording. See Cobb, Rise of Religious Liberty in America (1902); Sweet, The Story of Religion in America (1939). The Charter of Rhode Island of 1663, II Poore, Constitutions (1878) 1595, was the first colonial charter to provide for religious freedom.

The climactic period of the Virginia struggle covers the decade 1776–1786, from adoption of the Declaration of Rights to enactment of the Statute for Religious Freedom. For short accounts see Padover, Jefferson (1942) c. V; Brant, James Madison, The Virginia Revolutionist (1941) cc. XII, XV; James, The Struggle for Religious Liberty in Virginia (1900) cc. X, XI; Eckenrode, Separation of Church and State in Virginia (1910). These works and Randall, see note 1, will be cited in this opinion by the names of their authors. Citations to "Jefferson" refer to The Works of Thomas Jefferson (ed. by Ford, 1904–1905); to "Madison," to The Writings of James Madison (ed. by Hunt, 1901–1910).

[12] See Brant, cc. XII, XV; James, cc. X, XI; Eckenrode.

[13] See Brant, c. XII, particularly at 243. Cf. Madison's Remonstrance, Appendix to this opinion. Jefferson of course held the same view. See note 15.

"Madison looked upon . . . religious freedom, to judge from the concentrated attention he gave it, as the fundamental freedom." Brant, 243; and see Remonstrance, Par. 1, 4, 15, Appendix.

[14] See Brant, 245–246. Madison quoted liberally from the Declaration in his Remonstrance and the use made of the quotations indicates that he considered the Declaration to have outlawed the prevailing establishment in principle, if not technically.

[15] Jefferson was chairman of the revising committee and chief draftsman. Corevisers were Wythe, Pendleton, Mason and Lee. The first enacted portion of the revision, which became known as Jefferson's Code, was the statute barring entailments. Primogeniture soon followed. Much longer the author was to wait for enactment of the Bill for Religious Freedom; and not until after his death was the corollary bill to be accepted in principle which he considered most important of all, namely, to provide for common education at public expense. See V Jefferson, 153. However, he linked this with disestablishment as corollary prime parts in a system of basic freedoms. I Jefferson, 78.

Jefferson, and Madison by his sponsorship, sought to give the Bill for Establishing Religious Freedom as nearly constitutional status as they could at the time. Acknowledging that one legislature could not "restrain the acts of succeeding Assemblies . . . and that therefore to declare this act irrevocable would be of no effect in law," the Bill's concluding provision as enacted nevertheless asserted: "Yet we are free to declare and do declare, that the rights hereby asserted are of the natural rights of mankind, and that if any act shall be hereafter passed to repeal the present or to narrow its operation, such act will be an infringement of natural right." 1 Randall, 220.

[16] See I Jefferson, 70–71; XII Jefferson, 447; Padover, 80.

[17] Madison regarded this action as desertion. See his letter to Monroe of April 12, 1785; II Madison, 129, 131–132; James, cc. X, XI. But see Eckenrode, 91, suggesting it was surrender to the inevitable.

The bill provided: "That for every sum so paid, the Sheriff or Collector shall give a receipt, expressing therein to what society of Christians the person from whom he may receive the same shall direct the money to be paid . . . ." See also notes 19, 43 *infra*.

A copy of the Assessment Bill is to be found among the Washington manuscripts in the Library of Congress. Papers of George Washington, Vol. 231. Because of its crucial role in the Virginia struggle and bearing upon the First Amendment's meaning, the text of the Bill is set forth in the Supplemental Appendix to this opinion.

[18] Eckenrode, 99, 100.

[19] *Id.*, 100; II Madison, 113. The bill directed the sheriff to pay "all sums which . . . may not be appropriated by the person paying the same . . . into the public Treasury, to be disposed of under the direction of the General Assembly, for the encouragement of seminaries of learning within the Counties whence such sums shall arise, and to no other use or purpose whatsoever." Supplemental Appendix.

[20] See generally Eckenrode, c. V; Brant, James, and other authorities cited in note 11 above.

[21] II Madison, 183; and the Appendix to this opinion. Eckenrode, 100 ff. See also Fleet, Madison's "Detached Memoranda" (1946) III William & Mary Q. (3d Series) 534, 554–562.

[22] The major causes assigned for its defeat include the elevation of Patrick Henry to the governorship in November of 1784; the blunder of the proponents in allowing the Bill for Incorporations to come to the floor and incur defeat before the Assessment Bill was acted on; Madison's astute leadership, taking advantage of every "break" to convert his initial minority into a majority, including the deferment of action on the third reading to the fall; the Remonstrance, bringing a flood of protesting petitions; and the general poverty of the time. See Eckenrode, c. V, for an excellent short, detailed account.

[23] See James, Brant, *op. cit. supra* note 11.

[24] V Madison, 176. Cf. notes 33, 37.

[25] V Madison, 132.

[26] Brant, 250. The assurance made first to his constituents was responsible for Madison's becoming a member of the Virginia Conventon which ratified the Constitution. See James, 154–158.

[27] The amendment with respect to religious liberties read, as Madison introduced it: "The civil rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established, nor shall the full and equal rights of conscience be in any manner, or any pretext, infringed." 1 Annals of Congress 434. In the process of debate this was modified to its present form. See especially 1 Annals of Congress 729–731, 765; also note 34.

[28] See text of the Remonstrance, Appendix; also notes 13, 15, 24, 25 *supra* and text.

Madison's one exception concerning restraint was for "preserving public order." Thus he declared in a private letter, IX Madison, 484, 487, written after the First Amendment was adopted: "The tendency to a usurpation on one side or the other, or to a corrupting coalition or alliance between them, will be best guarded agst. by an entire abstinance of the Govt. from interference in any way whatever, beyond the necessity of preserving public order, & protecting each sect agst. trespasses on its legal rights by others." Cf. note 9.

[29] The third ground of remonstrance, see the Appendix, bears repetition for emphasis here: "Because, it is proper to take alarm at the first experiment on our liberties . . . The freemen of America did not wait till usurped power had strengthened itself by exercise, and entangled the question in precedents. They saw all the consequences in the principle, and they avoided the consequences by denying the principle. We revere this lessen too much, soon to forget it. Who does not see that . . . the same authority which can force a citizen to *contribute three pence* only of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever?" (Emphasis added.) II Madison 183, 185–186.

[30] Eckenrode, 105, in summary of the Remonstrance.

[31] "Because the bill implies either that the Civil Magistrate is a competent Judge of

Religious truth; or that he may employ Religion as an engine of Civil policy. The first is an arrogant pretention falsified by the contradictory opinions of Rulers in all ages, and throughout the world: The second an unhallowed perversion of the means of salvation." Remonstrance, Appendix, Par. 5; II Madison 183, 187.

[32] As is pointed out above, note 3, and in Part IV *infra*, *Cochran* v. *Board of Education*, 281 U.S. 370, was not such a case.

[33] See text *supra* at notes 24, 25. Madison, of course, was but one of many holding such views, but nevertheless agreeing to the common understanding for adoption of a Bill of Rights in order to remove all doubt engendered by the absence of explicit guaranties in the original Constitution.

By 1791 the great fight over establishments had ended, although some vestiges remained then and later, even in Virginia. The glebes, for example, were not sold there until 1802. Cf. Eckenrode, 147. Fixing an exact date for "disestablishment" is almost impossible, since the process was piecemeal. Although Madison failed in having the Virginia Bill of Rights declare explicitly against establishment in 1776, cf. note 14 and text *supra*, in 1777 the levy for support of the Anglican clergy was suspended. It was never resumed. Eckenrode states: "This act, in effect, destroyed the establishment. Many dates have been given for its end, but it really came on January 1, 1777, when the act suspending the payment of tithes became effective. This was not seen at the time. . . . But in freeing almost half of the taxpayers from the burden of the state religion, the state religion was at an end. Nobody could be forced to support it, and an attempt to levy tithes upon Anglicans alone would be to recruit the ranks of dissent." P. 53. See also pp. 61, 64. The question of assessment however was revived "with far more strength than ever, in the summer of 1784." *Id.*, 64. It would seem more factual therefore to fix the time of disestablishment as of December, 1785–January, 1786, when the issue in large was finally settled.

[34] At one point the wording was proposed: "No religion shall be established by law, nor shall the equal rights of conscience be infringed." 1 Annals of Congress 729. Cf. note 27. Representative Huntington of Connecticut feared this might be construed to prevent judicial enforcement of private pledges. He stated "that he feared . . . that the words might be taken in such latitude as to be extremely hurtful to the cause of religion. He understood the amendment to mean what had been expressed by the gentleman from Virginia; but others might find it convenient to put another construction upon it. The ministers of their congregations to the Eastward were maintained by the contributions of those who belonged to their society; the expense of building meeting-houses was contributed in the same manner. These things were regulated by by-laws. If an action was brought before a Federal Court on any of these cases, the person who had neglected to perform his engagements could not be compelled to do it; for a support of ministers or building of places of worship might be construed into a religious establishment." 1 Annals of Congress 730.

To avoid any such possibility, Madison suggested inserting the word "national" before "religion," thereby not only again disclaiming intent to bring about the result Huntington feared but also showing unmistakably that "establishment" meant public "support" of religion in the financial sense. 1 Annals of Congress 731. See also IX Madison, 484–487

[35] The decision most closely touching the question, where it was squarely raised, is *Quick Bear* v. *Leupp*, 210 U.S. 50. The Court distinguished sharply between appropriations from public funds for the support of religious education and appropriations from funds held in trust by the Government essentially as trustee for private individuals, Indian wards, as beneficial owners. The ruling was that the latter could be disbursed to private, religious schools at the designation of those patrons for paying the cost of their education. But it was stated also that such a use of public moneys would violate both the First Amendment and the specific statutory declaration involved, namely, that "it is hereby declared to be the settled policy of the Government to hereafter make no appropriation whatever for education in any sectarian school," 210 U.S. at 79, Cf. *Ponce* v. *Roman Catholic Apostolic Church*, 210 U.S. 296, 322. And see *Bradfield* v. *Roberts*, 175 U.S. 291, an instance of highly artificial grounding to support a decision sustaining an appropriation for the care of indigent patients pursuant to a contract with a private hospital. Cf. also the authorities cited in note 9.

[36] See text at note 1.

[37] ". . . but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States." Const., Art. VI, § 3. See also the two forms prescribed for the President's Oath or Affirmation. Const., Art. II, § 1. Cf. *Ex parte Garland*, 4 Wall. 333; *Cummings* v. *Missouri*, 4 Wall. 277; *United States* v. *Lovett*, 328 U.S. 303.

[38] In the words of the Virginia statute, following the portion of the preamble quoted at the beginning of this opinion: ". . . even the forcing him to support this or that teacher of his own religious persuasion, is depriving him of the comfortable liberty of giving his contributions to the particular pastor, whose morals he would make his pattern, and whose powers he feels most persuasive to righteousness, and is withdrawing from the ministry those temporary rewards, which proceeding from an approbation of their personal conduct, are an additional incitement to earnest and unremitting labours for the instruction of mankind. . . ." Cf. notes 29, 30, 31 and text *supra*.

[39] See note 38.

[40] See Bower, Church and State in Education (1944) 58: ". . . the fundamental division of the education of the whole self into the secular and the religious could not be justified on the grounds of either a sound educational philosophy or a modern functional concept of the relation of religion to personal and social experience." See also Vere, The Elementary School, in Essays on Catholic Education in the United States (1942) 110–111; Gabel, Public Funds for Church and Private Schools (1937) 737–739.

[41] It would seem a strange ruling that a "reasonable," that is, presumably a small, license fee cannot be placed upon the exercise of the right of religious instruction, yet that under the correlative constitutional guaranty against "an establishment" taxes may be levied and used to aid and promote religious instruction, if only the amounts so used are small. See notes 30–31 *supra* and text.

Madison's objection to "three pence" contributions and his stress upon "denying the principle" without waiting until "usurped power had . . . entangled the question in precedents," note 29, were reinforced by his further characterization of the Assessment Bill: "Distant as it may be, in its present form, from the Inquisition it differs from it only in degree. The one is the first step, the other the last in the career of intolerance." Remonstrance, Par. 9; II Madison 183, 188.

[42] If it is part of the state's function to supply to religious schools or their patrons the smaller items of educational expense, because the legislature may say they perform a public function, it is hard to see why the larger ones also may not be paid. Indeed, it would seem even more proper and necessary for the state to do this. For if one class of expenditures is justified on the ground that it supports the general cause of education or benefits the individual, or can be made to do so by legislative declaration, so even more certainly would be the other. To sustain payment for transportation to school, for textbooks, for other essential materials, or perhaps for school lunches, and not for what makes all these things effective for their intended end, would be to make a public function of the smaller items and their cumulative effect, but to make wholly private in character the larger things without which the smaller could have no meaning or use.

[43] "Whereas the general diffusion of Christian knowledge hath a natural tendency to correct the morals of men, restrain their vices, and preserve the peace of society; which cannot be effected without a competent provision for learned teachers, who may be thereby enabled to devote their time and attention to the duty of instructing such citizens, as from their circumstances and want of education, cannot otherwise attain such knowledge; and it is judged that such provision may be made by the Legislature, without counteracting the liberal principle heretofore adopted and intended to be preserved by abolishing all distinctions of preeminence amongst the different societies of communities of Christians; . . ." Supplemental Appendix; Foote, Sketches of Virginia (1850) 340.

[44] "Because the establishment proposed by the Bill is not requisite for the support of the Christian Religion. To say that it is, is a contradiction to the Christian Religion itself; for every page of its disavows a dependence on the powers of this world . . . Because the establishment in question is not necessary for the support of Civil Government . . . What influence in fact have ecclesiastical establishments had on Civil Society? . . . in no instance have they been seen the guardians of the liberties of the people." II Madison 183, 187, 188.

[45] "Because experience witnesseth that ecclesiastical establishments, instead of maintaining the purity and efficacy of Religion, have had a contrary operation." II Madison 183, 187.

[46] "At least let warning be taken at the first fruits of the threatened innovation. The very appearance of the Bill has transformed that 'Christian forbearance, love and charity,' which of late mutually prevailed, into animosities and jealousies, which may not soon be appeased." II Madison 183, 189.

[47] In this case briefs *amici curiae* have been filed on behalf of various organizations representing three religious sects, one labor union, the American Civil Liberties Union, and the states of Illinois, Indiana, Louisiana, Massachusetts, Michigan and New York. All these states have laws similar to New Jersey's and all of them, with one religious sect, support the constitutionality of New Jersey's action. The others oppose it. Maryland and Mississippi have sustained similar legislation. Note 49 *infra*. No state without legislation of this sort has filed an opposing brief. But at least six states have held such action invalid, namely, Delaware, Oklahoma, New York, South Dakota, Washington and Wisconsin. Note 49 *infra*. The New York ruling was overturned by amendment to the state constitution in 1938. Constitution of New York, Art. XI, 4.

Furthermore, in this case the New Jersey courts divided, the Supreme Court holding the statute and resolution invalid, 132 N.J.L. 98, 39 A. 2d 75, the Court of Errors and Appeals reversing that decision, 133 N. J. L. 350, 44 A. 2d 333. In both courts, as here, the judges split, one of three dissenting in the Supreme Court, three of nine in the Court of Errors and Appeals. The division is typical. See the cases cited in note 49.

[48] See the authorities cited in note 49; and see note 54.

[49] Some state courts have sustained statutes granting free transportation or free school books to children attending denominational schools on the theory that the aid was a benefit to the child rather than to the

school. See *Nichols* v. *Henry*, 301 Ky. 434, 191 S. W. 2d 930, with which compare *Sherrard* v. *Jefferson County Board of Education*, 294 Ky. 469, 171 S. W. 2d 963; *Cochran* v. *Board of Education*, 168 La. 1030, 123 So. 664, aff'd, 281 U. S. 370; *Borden* v. *Board of Education* 168 La. 1005, 123 So. 655; *Board of Education* v. *Wheat*, 174 Md. 314, 199 A. 628; *Adams* v. *St. Mary's County*, 180 Md. 550, 26 A. 2d 377; *Chance* v. *State Textbook R. & P. Board*, 190 Miss. 453, 200 So. 706. See also *Bowker* v. *Baker*, 73 Cal. App. 2d 653, 167 P. 2d 256. Other courts have held such statutes unconstitutional under state constitutions as aid to the schools. *Judd* v. *Board of Education*, 278 N. Y. 200, 15 N. E. 2d 576, but see note 47 *supra*; *Smith* v. *Donahue*, 202 App. Div. 656, 195 N. Y. S. 715; *State ex rel. Traub* v. *Brown*, 36 Del. 181, 172 A. 835; *Gurney* v. *Ferguson*, 190 Okla. 254, 122 P. 2d 1002; *Mitchell* v. *Consolidated School District*, 17 Wash. 2d 61, 135 P. 2d 79; *Van Straten* v. *Milquet*, 180 Wis. 109, 192 N. W. 392. And cf. *Hlebanja* v. *Brewe*, 58 S. D. 351, 236 N. W. 296. And since many state constitutions have provisions forbidding the appropriation of public funds for private purposes, in these and other cases the issue whether the statute was for a "public" or "private" purpose has been present. See Note (1941) 50 Yale L. J. 917, 925.

[50] *E.g.*, *Gurney* v. *Ferguson*, 190 Okla. 254, 255, 122 P. 2d 1002, 1003; *Mitchell* v. *Consolidated School District*, 17 Wash. 2d 61, 68, 135 P. 2d 79, 82; *Smith* v. *Donahue*, 202 App. Div. 656, 664, 195 N. Y. S. 715, 722; *Board of Education* v. *Wheat*, 174 Md. 314, dissenting opinion at 340, 199 A. 628 at 639. This is true whether the appropriation and payment are in form to the individual or to the institution. *Ibid.* Questions of this gravity turn upon the purpose and effect of the state's expenditure to accomplish the forbidden object, not upon who receives the amount and applies it to that end or the form and manner of the payment.

[51] The payments here averaged roughly $40.00 a year per child.

[52] See Part V.

[53] See also note 46 *supra* and Remonstrance, Par. 3.

[54] Thus each brief filed here by the supporters of New Jersey's action, see note 47, not only relies strongly on *Cochran* v. *Board of Education*, 281 U.S. 370, but either explicitly or in effect maintains that it is controlling in the present case.

[55] See text at notes 17–19 *supra* and authorities cited; also Foote, Sketches of Virginia (1850) c. XV. Madison's entire thesis, as reflected throughout the Remonstrance and in his other writings, as well as in his opposition to the final form of the Assessment Bill, see note 43, was altogether incompatible with acceptance of general and "nondiscriminatory" support. See Brant, c. XII.

[56] The protections are of a nature which does not require appropriations specially made from the public treasury and earmarked, as is New Jersey's here, particularly for religious institutions or uses. The First Amendment does not exclude religious property or activities from protection against disorder or the ordinary accidental incidents of community life. It forbids support, not protection from interference or destruction.

It is a matter not frequently recalled that President Grant opposed tax exemption of religious property as leading to a violation of the principle of separation of church and state. See President Grant's Seventh Annual Message to Congress, December 7, 1875, in IX Messages and Papers of the Presidents (1897) 4288–4289. Garfield, in a letter accepting the nomination for the presidency said: ". . . it would be unjust to our people, and dangerous to our institutions, to apply any portion of the revenues of the nation, or of the States, to the support of sectarian schools. The separation of the Church and the State in everything relating to taxation should be absolute." II The Works of James Abram Garfield (ed. by Hinsdale, 1883) 783.

[57] Neither do we have here a case of ratemaking by which a public utility extends reduced fares to all school children, including patrons of religious schools. Whether or not legislative compulsion upon a private utility to extend such an advantage would be valid, or its extension by a municipally owned system, we are not required to consider. In the former instance, at any rate, and generally if not always in the latter, the vice of using the taxing power to raise funds for the support of religion would not be present.

[58] It would seem at least a doubtfully sufficient basis for reasonable classification that some children should be excluded simply because the only school feasible for them to attend, in view of geographic or other situation, might be one conducted in whole *or in part* for profit. Cf. note 5.

[59] See note 7 *supra*. The resolution was as follows, according to the school board's minutes read in proof: "The transportation committee recommended the transportation of pupils of Ewing to the Trenton and Pennington High Schools *and Catholic Schools* by way of public carrier as in recent years. On Motion of Mr. Ralph Ryan and Mr. M. French the same was adopted." (Emphasis added.) The New Jersey court's holding that the resolution was within the authority conferred by the state statute is binding on us. *Reinman* v. *Little Rock*, 237 U.S. 171, 176; *Hadacheck* v. Sebastian, 239 U.S. 394, 414.

[60] The population of Ewing Township, located near the City of Trenton, was 10,146 according to the census of 1940. Sixteenth Census of the United States, Population, Vol. 1,674.

[61] In *Thomas* v. *Collins*, 323 U.S. 516, 530, it was said that the preferred place given in our scheme to the great democratic freedoms secured by the First Amendment gives them "a sanctity and a sanction not permitting dubious intrusions." Cf. Remonstrance, Par. 3, 9. And in other cases it has been held that the usual presumption of constitutionality will not work to save such legislative excursions in this field. *United States* v. *Carolene Products Co.*, 304 U.S. 144, 152, note 4; see Wechsler, Stone and the Constitution (1946) 46 Col. L. Rev. 764, 795 *et seq.*

Apart from the Court's admission that New Jersey's present action approaches the verge of her power, it would seem that a statute, ordinance or resolution which on its face singles out one sect only by name for enjoyment of the same advantages as public schools or their students, should be held discriminatory on its face by virtue of that fact alone, unless it were positively shown that no other sects sought or were available to receive the same advantages.

Appendix. Memorial and Remonstrance Against Religious Assessments

To the Honorable the General Assembly of the Commonwealth of Virginia. A Memorial and Remonstrance.

We, the subscribers, citizens of the said Commonwealth, having taken into serious consideration, a Bill printed by order of the last Session of General Assembly, entitled "A Bill establishing a provision for Teachers of the Christian Religion," and conceiving that the same, if finally armed with the sanctions of a law, will be a dangerous abuse of power, are bound as faithful members of a free State, to remonstrate against it, and to declare the reasons by which we are determined. We remonstrate against the said Bill.

1. Because we hold it for a fundamental and undeniable truth, "that Religion or the duty which we owe to our Creator and the Manner of discharging it, can be directed only by reason and conviction, not by force or violence." [1] The Religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate. This right is in its nature an unalienable right. It is unalienable; because the opinions of men, depending only on the evidence contemplated by their own minds, cannot follow the dictates of other men: It is unalienable also; because what is here a right towards men, is a duty towards the Creator. It is the duty of every man to render to the Creator such homage, and such only, as he believes to be acceptable to him. This duty is precedent both in order of time and degree of obligation, to the claims of Civil Society. Before any man can be considered as a member of Civil Society, he must be considered as a subject of the Governor of the Universe: And if a member of Civil Society, who enters into any subordinate Association, must always do it with a reservation of his duty to the general authority; much more must every man who becomes a member of any particular Civil Society, do it with a saving of his allegiance to the Universal Sovereign. We maintain therefore that in matters of Religion, no man's right is abridged by the institution of Civil Society, and that Religion is wholly exempt from its cognizance. True it is, that no other rule exists, by which any question which may divide a Society, can be ultimately determined, but the will of the majority; but it is also true, that the majority may trespass on the rights of the minority.

2. Because if religion be exempt from the authority of the Society at large, still less can it be subject to that of the Legislative Body. The latter are but the creatures and vicegerents of the former. Their jurisdiction is both derivative and limited: it is limited with regard to the coordinate departments, more necessarily it is limited with regard to the constituents. The preservation of a free government requires not merely, that the metes and bounds which separate each department of power may be invariably maintained; but more especially, that neither of them be suffered to overlap the great Barrier which defends the rights of the people. The Rulers who are guilty of such an encroachment, exceed the commission from which they derive their authority, and are Tyrants. The People who submit to it are governed by laws made neither by themselves, nor by an authority derived from them, and are slaves.

3. Because, it is proper to take alarm at the first experiment on our liberties. We hold this prudent jealousy to be the first duty of citizens, and one of [the] noblest characteristics of the late Revolution. The freemen of America did not wait till usurped power had strengthened itself by exercise, and entangled the question in precedents. They saw all the consequences in the principle, and they avoided the consequences by denying the principle. We revere this lesson too much, soon to forget it. Who does not see that the same authority which can establish Christianity, in exclusion of all other Religions, may establish with the same ease any particular sect of Christians, in exclusion of all other Sects? That the same authority which can force a citizen to contribute three pence only of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever?

4. Because, the bill violates that equality which ought to be the basis of every law, and which is more indispensable, in proportion as the validity or expediency of any law is more liable to be impeached. If "all men are by nature equally free and independent," [2] all men are to be considered as entering into Society on equal conditions; as relinquishing no more, and therefore retaining no less, one than another, of their natural rights. Above all are they to be considered as retaining an *"equal* title to the free exercise of Religion according to the

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Footnotes at end of article.

dictates of conscience" [3] Whilst we assert for ourselves a freedom to embrace, to profess and to observe the Religion which we believe to be of divine origin, we cannot deny an equal freedom to those whose minds have not yet yielded to the evidence which has convinced us. If this freedom be abused, it is an offense against God, not against man: To God, therefore, not to men, must an account of it be rendered. As the Bill violates equality by subjecting some to peculiar burdens; so it violates the same principle, by granting to others peculiar exemptions. Are the Quakers and Mennonites the only sects who think a compulsive support of their religions unnecessary and unwarrantable? Can their piety alone be intrusted with the care of public worship? Ought their Religions to be endowed above all others, with extraordinary privileges, by which proselytes may be enticed from all others? We think too favorably of the justice and good sense of these denominations, to believe that they either covet preeminences over their fellow citizens, or that they will be seduced by them, from the common opposition to the measure.

5. Because the bill implies either that the Civil Magistrate is a competent Judge of Religious truth; or that he may employ Religion as an engine of Civil policy. The first is an arrogant pretension falsified by the contradictory opinions of Rulers in all ages, and throughout the world: The second an unhallowed perversion of the means of salvation.

6. Because the establishment proposed by the Bill is not requisite for the support of the Christian Religion. To say that it is, is a contradiction to the Christian Religion itself; for every page of it disavows a dependence on the powers of this world: it is a contradiction to fact; for it is known that this Religion both existed and flourished, not only without the support of human laws, but in spite of every opposition from them; and not only during the period of miraculous aid, but long after it had been left to its own evidence, and the ordinary care of Providence: Nay, it is a contradiction in terms; for a Religion not invented by human policy, must have pre-existed and been supported, before it was established by human policy. It is moreover to weaken in those who profess this Religion a pious confidence in its innate excellence, and the patronage of its Author; and to foster in those who still reject it, a suspicion that its friends are too conscious of its fallacies, to trust it to its own merits.

7. Because experience witnesseth that ecclesiastical establishments, instead of maintaining the purity and efficacy of Religion, have had a contrary operation. During almost fifteen centuries, has the legal establishment of Christianity been on trial. What have been its fruits? More or less in all places, pride and indolence in the Clergy; ignorance and servility in the laity; in both, superstition, bigotry and persecution. Enquire of the Teachers of Christianity for the ages in which it appeared in its greatest lustre; those of every sect, point to the ages prior to its incorporation with Civil policy. Propose a restoration of this primitive state in which its Teachers depended on the voluntary rewards of their flocks; many of them predict its downfall. On which side ought their testimony to have greatest weight, when for or when against their interest?

8. Because the establishment in question is not necessary for the support of Civil Government. If it be urged as necessary for the support of Civil Government only as it is a means of supporting Religion, and it be not necessary for the latter purpose, it cannot be necessary for the former. If Religion be not within [the] cognizance of Civil Government, how can its legal establishment be said to be necessary to civil Government? What influence in fact have ecclesiastical establishments had on Civil Society? In some instances they have been seen to erect a spiritual tyranny on the ruins of Civil authority; in many instances they have been seen upholding the thrones of political tyranny; in no instance have they been seen the guardians of the liberties of the people. Rulers who wished to subvert the public liberty, may have found an established clergy convenient auxiliaries. A just government, instituted to secure & perpetuate it, needs them not. Such a government will be best supported by protecting every citizen in the enjoyment of his Religion with the same equal hand which protects his person and his property; by neither invading the equal rights of any Sect, nor suffering any Sect to invade those of another.

9. Because the proposed establishment is a departure from that generous policy, which, offering an asylum to the persecuted and oppressed of every Nation and Religion, promised a lustre to our country, and an accession to the number of its citizens. What a melancholy mark is the Bill of sudden degeneracy? Instead of holding forth an asylum to the persecuted, it is itself a signal of persecution. It degrades from the equal rank of Citizens all those whose opinions in Religion do not bend to those of the Legislative authority. Distant as it may be, in its present form, from the Inquisition it differs from it only in degree. The one is the first step, the other the last in the career of intolerance. The magnanimous sufferer under this cruel scourge in foreign Regions, must view the Bill as a Beacon on our Coast, warning him to seek some other haven, where liberty and philanthrophy in their due extent may offer a more certain repose from his troubles.

10. Because, it will have a like tendency to banish our Citizens. The allurements presented by other situations are every day thinning their number. To superadd a fresh motive to emigration, by revoking the liberty which they now enjoy, would be the same species of folly which has dishonoured and depopulated flourishing kingdoms.

11. Because, it will destroy that moderation and harmony which the forbearance of our laws to intermeddle with Religion, has produced amongst its several sects. Torrents of blood have been spilt in the old world, by vain attempts of the secular arm to extinguish Religious discord, by proscribing all difference in Religious opinions. Time has at length revealed the true remedy. Every relaxation of narrow and rigorous policy, wherever it has been tried, has been found to assuage the disease. The American Theatre has exhibited proofs, that equal and compleat liberty, if it does not wholly eradicate it, sufficiently destroys its malignant influence on the health and prosperity of the State. If with the salutary effects of this system under our own eyes, we begin to contract the bonds of Religious freedom, we know no name that will too severely reproach our folly. At least let warning be taken at the first fruits of the threatened innovation. The very appearance of the Bill has transformed that "Christian forbearance,[4] love and charity," which of late mutually prevailed, into animosities and jealousies, which may not soon be appeased. What mischiefs may not be dreaded should this enemy to the public quiet be armed with the force of a law?

12. Because, the policy of the bill is adverse to the diffusion of the light of Christianity. The first wish of those who enjoy this precious gift, ought to be that it may be imparted to the whole race of mankind. Compare the number of those who have as yet received it with the number still remaining under the dominion of false Religions; and how small is the former! Does the policy of the Bill tend to lessen the disproportion? No; it at once discourages those who are strangers to the light of [revelation] from coming into the Region of it; and countenances, by example the nations who continue in darkness, in shutting out those who might convey it to them. Instead of levelling as far as possible, every obstacle to the victorious progress of truth, the Bill with an ignoble and unchristian timidity would circumscribe it, with a wall of defence, against the encroachments of error.

13. Because attempts to enforce by legal sanctions, acts obnoxious to so great a proportion of Citizens, tend to enervate the laws in general, and to slacken the bands of Society. If it be difficult to execute any law which is not generally deemed necessary or salutary, what must be the case where it is deemed invalid and dangerous? and what may be the effect of so striking an example of impotency in the Government, on its general authority.

14. Because a measure of such singular magnitude and delicacy ought not to be imposed, without the clearest evidence that it is called for by a majority of citizens: and no satisfactory method is yet proposed by which the voice of the majority in this case may be determined, or its influence secured. "The people of the respective counties are indeed requested to signify their opinion respecting the adoption of the Bill to the next Session of Assembly." But the representation must be made equal, before the voice either of the Representatives or of the Counties, will be that of the people. Our hope is that neither of the former will, after due consideration, espouse the dangerous principle of the Bill. Should the event disappoint us, it will still leave us in full confidence, that a fair appeal to the latter will reverse the sentence against our liberties.

15. Because, finally, "the equal right of every citizen to the free exercise of his Religion according to the dictates of conscience" is held by the same tenure with all our other rights. If we recur to its origin it is equally the gift of nature; if we weigh its importance, it cannot be less dear to us; if we consult the Declaration of those rights which pertain to the good people of Virginia, as the "basis and foundation of Government," [5] it is enumerated with equal solemnity, or rather studied emphasis. Either then, we must say, that the will of the Legislature is the only measure of their authority; and that in the plentitude of this authority, they may sweep away all our fundamental rights; or, that they are bound to leave this particular right untouched and sacred: Either we must say, that they may control the freedom of the press, may abolish the trial by jury, may swallow up the Executive and Judiciary Powers of the State; nay that they may despoil us of our very right of suffrage, and erect themselves into an independent and hereditary assembly; or we must say, that they have no authority to enact into law the Bill under consideration. We the subscribers say, that the General Assembly of this Commonwealth have no such authority: And that no effort may be omitted on our part against so dangerous an usurpation, we oppose to it, this remonstrance; earnestly praying, as we are in duty bound, that the Supreme Lawgiver of the Universe, by illuminating those to whom it is addressed, may on the one hand, turn their councils from every act which would affront his holy prerogative, or violate the trust committed to them: and on the other, guide them into every measure which may be worthy of his [blessing, may re]dound to their own praise, and may establish more firmly the liberties, the prosperity, and the Happiness of the Commonwealth.

II Madison, 183–191.

FOOTNOTES

[1] Decl. Rights, Art: 16. [Note in the original.]

[2] Decl. Rights, Art. 1. [Note in the original.]

[3] Art: 16. [Note in the original.]

[4] Art. 16. [Note in the original.]

[5] Decl. Rights-title. [Note in the original.]

SUPPLEMENTAL APPENDIX. A BILL ESTABLISHING A PROVISION FOR TEACHERS OF THE CHRISTIAN RELIGION

Whereas the general diffusion of Christian knowledge hath a natural tendency to correct the morals of men, restrain their vices, and preserve the peace of society; which cannot be effected without a competent provision for learned teachers, who may be thereby enabled to devote their time and attention to the duty of instructing such citizens, as from their circumstances and want of education, cannot otherwise attain such knowledge; and it is judged that such provision may be made by the Legislature, without counteracting the liberal principle heretofore adopted and intended to be preserved by abolishing all distinctions of pre-eminence amongst the different societies or communities of Christians;

Be it therefore enacted by the General Assembley, That for the support of Christian teachers, per centum on the amount, or in the pound on the sum payable for tax on the property within this Commonwealth, is hereby assessed, and shall be paid by every person chargeable with the said tax at the time the same shall become due; and the Sheriffs of the several Counties shall have power to levy and collect the same in the same manner and under the like restrictions and limitations, as are or may be prescribed by the laws for raising the Revenues of this State.

And be it enacted, That for every sum so paid, the Sheriff or Collector shall give a receipt, expressing therein to what society of Christians the person from whom he may receive the same shall direct the money to be paid, keeping a distinct account thereof in his books. The Sheriff of every County, shall, on or before the ——— day of ——— in every year, return to the Court, upon oath, two alphabetical lists of the payments to him made, distinguishing in columns opposite to the names of the persons who shall have paid the same, the society to which the money so paid was by them appropriated; and one column for the names where no appropriation shall be made. One of which lists, after being recorded in a book to be kept for that purpose, shall be filed by the Clerk in his office; the other shall by the Sheriff be fixed up in the Court-house, there to remain for the inspection of all concerned. And the Sheriff, after deducting five per centum for the collection, shall forthwith pay to such person or persons as shall be appointed to receive the same by the Vestry, Elders, or Directors, however denominated of each such society, the sum so stated to be due to that society; or in default thereof, upon the motion of such person or persons to the next or any succeeding Court, execution shall be awarded for the same against the Sheriff and his security, his and their executors or administrators; provided that ten days previous notice be given of such motion. And upon every such execution, the Officer serving the same shall proceed to immediate sale of the estate taken, and shall not accept of security for payment at the end of three months, nor to have the goods forthcoming at the day of sale; for his better direction wherein, the Clerk shall endorse upon every such execution that no security of any kind shall be taken.

And be it further enacted, That the money to be raised by virtue of this Act, shall be by the Vestries, Elders, or Directors of each religious society, appropriated to a provision for a Minister or Teacher of the Gospel of their denomination, or the providing places of divine worship, and to none other use whatsoever; except in the denominations of Quakers and Menonists, who may receive what is collected from their members, and place it in their general fund to be disposed of in a manner which they shall think best calculated to promote their particular mode of worship.

And be it enacted, That all sums which at the time of payment to the Sheriff or Collector may not be appropriated by the person paying the same, shall be accounted for with the Court in manner as by this Act is directed; and after deducting for his collection, the Sheriff shall pay the amount thereof (upon account certified by the Court to the Auditors of Public Accounts, and by them to the Treasurer) into the public Treasury, to be disposed of under the direction of the General Assembly, for the encouragement of seminaries of learning within the Counties whence such sums shall arise, and to no other use or purpose whatsoever.

THIS Act shall commence, and be in force, from and after the day of in the year

A Copy from the Engrossed Bill.

JOHN BECKLEY, C.H.D.

*Washington Mss. (Papers of George Washington, Vol. 231); Library of Congress.**

Mr. ERVIN. Mr. President, there are several other notable decisions which set forth with rare eloquence the purpose of the first amendment. One of these is the case of *Illinois Ex Rel. McCollum* v. *Board of Education of School District No. 71, Champaign County, Illinois, et al.*, 333 U.S. 203.

I want to read just one excerpt from this case, a statement by Justice Frankfurter which appears in his concurring opinion on pages 231 and 232 of the report. That statement reads:

"The great American principle of eternal separation"—Elihu Root's phrase bears repetition—is one of the vital reliances of our Constitutional system for assuring unities among our people stronger than our diversities. It is the Court's duty to enforce this principle in its full integrity.

We renew our conviction that "we have staked the very existence of our country on the faith that complete separation between the state and religion is best for the state and best for religion."

This particular case and the various opinions in it deserve the thoughtful study of every American who believes in religious freedom. For this reason I ask unanimous consent that the entire report of the McCollum case be printed in the RECORD.

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

[McCollum v. Board of Education, No. 90. Argued December 8, 1947.—Decided March 8, 1948.]

ILLINOIS EX REL. MCCOLLUM *v.* BOARD OF EDUCATION OF SCHOOL DISTRICT NO. 71, CHAMPAIGN COUNTY, ILLINOIS, ET AL.

With the permission of a board of education, granted under its general supervisory powers over the use of public school buildings, religious teachers, employed subject to the approval and supervision of the superintendent of schools by a private religious group including representatives of the Catholic, Protestant and Jewish faiths, gave religious instruction in public school buildings once each week. Pupils whose parents so requested were excused from their secular classes during the periods of religious instruction and were required to attend the religious classes; but other pupils were not released from their public school duties, which were compulsory under state law. A resident and taxpayer of the school district whose child was enrolled in the public schools sued in a state court for a writ of mandamus requiring the board of education to terminate this practice. *Held:*

1. A judgment of the State Supreme Court sustaining denial of the writ of mandamus on the ground that the state statutes granted the board of education authority to establish such a program drew into question "the validity of a statute" of the State within the meaning of § 237 of the Judicial Code, and was appealable to this Court. P. 206.

2. As a resident and taxpayer of the school district and the parent of a child required by state law to attend the school, appellant had standing to maintain the suit. P. 206.

3. Both state courts having ruled expressly on appellant's claim that the state program violated the Federal Constitution, a motion to dismiss the appeal on the ground that appellant failed properly to present that question in the State Supreme Court cannot be sustained. P. 207.

4. This utilization of the State's tax-supported public school system and its machinery for compulsory public school attendance to enable sectarian groups to give religious instruction to public school pupils in public school buildings violates the First Amendment of the Constitution, made applicable to the states by the Fourteenth Amendment. Pp. 209–212.

396 Ill. 14, 71 N. E. 2d 161, reversed.

The Supreme Court of Illinois affirmed a denial of a petition for a writ of mandamus requiring a board of education to terminate the giving of religious instruction by private teachers in the public schools. 396 Ill. 14, 71 N. E. 2d 161. On appeal to this Court, *reversed and remanded*, p. 212.

Walter F. Dodd and *Edward R. Burke* argued the cause for appellant. *Mr. Dodd* also filed a brief.

John L. Franklin and *Owen Rall* argued the cause and filed a brief for appellees.

Briefs of *amici curiae* urging reversal were filed by *Henry Epstein, Leo Pfeffer* and *Samuel Rothstein* for the Synagogue Council of America et al.; *Herbert A. Wolff* for the American Ethical Union; *E. Hilton Jackson, Challen B. Ellis, W. D. Jamieson* and *Kahl K. Spriggs* for the Joint Conference Committee on Public Relations of several Baptist conventions; *Edward C. Park* for the American Unitarian Association; *Kenneth W. Greenawalt, Leon Despres, Russell Whitman, John D. Miller, William L. Marbury, Thomas H. Eliot, Winthrop Wadleigh, Whitney N. Seymour* and *Gurney Edwards* for the American Civil Liberties Union; and *Homer Cummings* and *William D. Donnelly* for the General Conference of Seventh Day Adventists.

George F. Barrett, Attorney General of Illinois, and *William C. Wines*, Assistant Attorney General, filed a brief as *amici curiae*, urging affirmance.

Charles H. Tuttle filed a brief for the Protestant Council of New York City, as *amicus curiae*.

MR. JUSTICE BLACK delivered the opinion of the Court.

This case relates to the power of a state to utilize its tax-supported public school system in aid of religious instruction insofar as that power may be restricted by the First and Fourteenth Amendments to the Federal Constitution.

The appellant, Vashti McCollum, began this action for mandamus against the Champaign Board of Education in the Circuit Court of Champaign County, Illinois. Her

*This copy of the Assessment Bill is from one of the handbills which on December 24, 1784, when the third reading of the bill was postponed, were ordered distributed to the Virginia counties by the House of Delegates. See Journal of the Virginia House of Delegates, December 24, 1784; Eckenrode, 102–103. The bill is therefore in its final form, for it never again reached the floor of the House. Eckenrode, 113.

asserted interest was that of a resident and taxpayer of Champaign and of a parent whose child was then enrolled in the Champaign public schools. Illinois has a compulsory education law which, with exceptions, requires parents to send their children, aged seven to sixteen, to its tax-supported public schools where the children are to remain in attendance during the hours when the schools are regularly in session. Parents who violate this law commit a misdemeanor punishable by fine unless the children attend private or parochial schools which meet educational standards fixed by the State. District boards of education are given general supervisory powers over the use of the public school buildings within the school districts. Ill. Rev. Stat. ch. 122, §§ 123, 301 (1943).

Appellant's petition for mandamus alleged that religious teachers, employed by private religious groups, were permitted to come weekly into the school buildings during the regular hours set apart for secular teaching, and then and there for a period of thirty minutes substitute their religious teaching for the secular education provided under the compulsory education law. The petitioner charged that this joint public-school religious-group program violated the First and Fourteenth Amendments to the United States Constitution. The prayer of her petition was that the Board of Education be ordered to "adopt and enforce rules and regulations prohibiting all instruction in and teaching of religious education in all public schools in Champaign School District Number 71, . . . and in all public school houses and buildings in said district when occupied by public schools."

The board first moved to dismiss the petition on the ground that under Illinois law appellant had no standing to maintain the action. This motion was denied. An answer was then filed, which admitted that regular weekly religious instruction was given during school hours to those pupils whose parents consented and that those pupils were released temporarily from their regular secular classes for the limited purpose of attending the religious classes. The answer denied that this coordinated program of religious instruction violated the State or Federal Constitution. Much evidence was heard, findings of fact were made, after which the petition for mandamus was denied on the ground that the school's religious instruction program violated neither the federal nor state constitutional provisions invoked by the appellant. On appeal the State Supreme Court affirmed. 396 Ill. 14, 71 N.E. 2d 161. Appellant appealed to this Court under 28 U.S.C. § 344(a), and we noted probable jurisdiction on June 2, 1947.

The appellees press a motion to dismiss the appeal on several grounds, the first of which is that the judgment of the State Supreme Court does not draw in question the "validity of a statute of any State" as required by 28 U.S.C. § 344(a). This contention rests on the admitted fact that the challenged program of religious instruction was not expressly authorized by statute. But the State Supreme Court has sustained the validity of the program on the ground that the Illinois statutes granted the board authority to establish such a program. This holding is sufficient to show that the validity of an Illinois statute was drawn in question within the meaning of 28 U.S.C. § 344(a). *Hamilton* v. *Regents of U. of Cal.*, 293 U.S. 245, 258. A second ground for the motion to dismiss is that the appellant lacks standing to maintain the action, a ground which is also without merit. *Coleman* v. *Miller*, 307 U.S. 433, 443, 445, 464.

A third ground for the motion is that the appellant failed properly to present in the State Supreme Court her challenge that the state program violated the Federal Constitution. But in view of the express rulings of both state courts on this question, the argument cannot be successfully maintained. The motion to dismiss the appeal is denied.

Although there are disputes between the parties as to various inferences that may or may not properly be drawn from the evidence concerning the religious program, the following facts are shown by the record without dispute.[1] In 1940 interested members of the Jewish, Roman Catholic, and a few Protestant faiths formed a voluntary association called the Champaign Council on Religious Education. They obtained permission from the Board of Education to offer classes in religious instruction to public school pupils in grades four to nine inclusive. Classes were made up of pupils whose parents signed printed cards requesting that their children be permitted to attend;[2] they were held weekly, thirty minutes for the lower grades, forty-five minutes for the higher. The council employed the religious teachers at no expense to the school authorities, but the instructors were subject to the approval and supervision of the superintendent of schools.[3] The classes were taught in three separate religious groups by Protestant teachers,[4] Catholic priests, and a Jewish rabbi, although for the past several years there have apparently been no classes instructed in the Jewish religion. Classes were conducted in the regular classrooms of the school building. Students who did not choose to take religious instruction were not released from public school duties; they were required to leave their classrooms and go to some other place in the school building for pursuit of their secular studies. On the other hand, students who were released from secular study for the religious instructions were required to be present at the religious classes. Reports of their presence or absence were to be made to their secular teachers.[5]

The foregoing facts, without reference to others that appear in the record, show the use of tax-supported property for religious instruction and the close cooperation between the school authorities and the religious council in promoting religious education. The operation of the State's compulsory education system thus assists and is integrated with the program of religious instruction carried on by separate religious sects. Pupils compelled by law to go to school for secular education are released in part from their legal duty upon the condition that they attend the religious classes. This is beyond all question a utilization of the tax-established and tax-supported public school system to aid religious groups to spread their faith. And it falls squarely under the ban of the First Amendment (made applicable to the States by the Fourteenth) as we interpreted it in *Everson* v. *Board of Education*, 330 U.S. 1. There we said: "Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another.[6] Neither can force or influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion.[7] Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and *vice versa*. In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between church and State.'" *Id.* at 15–16. The majority in the *Everson* case, and the minority as shown by quotations from the dissenting views in our notes 6 and 7, agreed that the First Amendment's language, properly interpreted, had erected a wall of separation between Church and State. They disagreed as to the facts shown by the record and as to the proper application of the First Amendment's language to those facts.

Recognizing that the Illinois program is barred by the First and Fourteenth Amendments if we adhere to the views expressed both by the majority and the minority in the *Everson* case, counsel for the respondents challenge those views as dicta and urge that we reconsider and repudiate them. They argue that historically the First Amendment was intended to forbid only government preference to one religion over another, not an impartial governmental assistance of all religions. In addition they ask that we distinguish or overrule our holding in the *Everson* case that the Fourteenth Amendment made the "establishment of religion" clause of the First Amendment applicable as a prohibition against the States. After giving full consideration to the arguments presented we are unable to accept either of these contentions.

To hold that a state cannot consistently with the First and Fourteenth Amendments utilize its public school system to aid any or all religious faiths or sects in the dissemination of their doctrines and ideals does not, as counsel urge, manifest a governmental hostility to religion or religious teachings. A manifestation of such hostility would be at war with our national tradition as embodied in the First Amendment's guaranty of the free exercise of religion. For the First Amendment rests upon the premise that both religion and government can best work to achieve their lofty aims if each is left free from the other within its respective sphere. Or, as we said in the *Everson* case, the First Amendment has erected a wall between Church and State which must be kept high and impregnable.

Here not only are the State's tax-supported public school buildings used for the dissemination of religious doctrines. The State also affords sectarian groups an invaluable aid in that it helps to provide pupils for their religious classes through use of the State's compulsory public school machinery. This is not separation of Church and State.

The cause is reversed and remanded to the State Supreme Court for proceedings not inconsistent with this opinion.

Reversed and remanded.

FOOTNOTES

[1] Appellant, taking issue with the facts found by the Illinois courts, argues that the religious education program in question, is invalid under the Federal Constitution for any one of the following reasons: (1) In actual practice certain Protestant groups have obtained an overshadowing advantage in the propagation of their faiths over other Protestant sects; (2) the religious education program was voluntary in name only because in fact subtle pressures were brought to bear on the students to force them to participate in it; and (3) the power given the school superintendent to reject teachers selected by religious groups and the power given the local Council on Religious Education to determine which religious faiths should participate in the program was a prior censorship of religion.

In view of our decision we find it unnecessary to consider these arguments or the disputed facts upon which they depend.

[2] The Supreme Court described the request card system as follows: ". . . Admission to the classes was to be allowed only upon the express written request of parents, and then only to classes designated by the parents. . . . Cards were distributed to the parents of elementary students by the public-school teachers requesting them to indicate whether they desired their children to receive religious

education. After being filled out, the cards were returned to the teachers of religious education classes either by the public-school teachers or the children. . . ." On this subject the trial court found that ". . . those students who have obtained the written consent of their parents therefor are released by the school authorities from their secular work, and in the grade schools for a period of thirty minutes' instruction in each week during said school hours, and forty-five minutes during each week in the junior high school, receive training in religious education. . . . Certain cards are used for obtaining permission of parents for their children to take said religious instruction courses, and they are made available through the offices of the superintendent of schools and through the hands of principals and teachers to the pupils of the school district. Said cards are prepared at the cost of the council of religious education. The handling and distribution of said cards does not interfere with the duties or suspend the regular secular work of the employees of the defendant. . . ."

[3] The State Supreme Court said: "The record further discloses that the teachers conducting the religious classes were not teachers in the public schools but were subject to the approval and supervision of the superintendent. . . ." The trial court found: "Before any faith or other group may obtain permission from the defendant for the similar, free and equal use of rooms in the public school buildings said faith or group must make application to the superintendent of schools of said School District Number 71, who in turn will determine whether or not it is practical for said group to teach in said school system." The president of the local school board testified: ". . . The Protestants would have one group and the Catholics, and would be given a room where they would have the class and we would go along with the plan of the religious people. They were all to be treated alike, with the understanding that the teachers they would bring into the school were approved by the superintendent. . . . The superintendent was the last word so far as the individual was concerned. . . ."

[4] There were two teachers of the Protestant faith. One was a Presbyterian and had been a foreign missionary for that church. The second testified as follows: "I am affiliated with the Christian church. I also work in the Methodist Church and I taught at the Presbyterian. I am married to a Lutheran."

[5] The director of the Champaign Council on Religious Education testified: " . . . If any pupil is absent we turn in a slip just like any teacher would to the superintendent's office. The slip is a piece of paper with a number of hours in the school day and a square, and the teacher of the particular room for the particular hour records the absentees. It has their names and the grade and the section to which they belong. It is the same sheet that the geography and history teachers and all the other teachers use, and is furnished by the school. . . ."

[6] The dissent, agreed to by four judges, said: "The problem then cannot be cast in terms of legal discrimination or its absence. This would be true, even though the state in giving aid should treat all religious instruction alike . . . Again, it was the furnishing of 'contributions of money for the propagation of opinions which he disbelieves' that the fathers outlawed. That consequence and effect are not removed by multiplying to all-inclusiveness the sects for which support is exacted. The Constitution requires, not comprehensive identification of state with religion, but complete separation." *Everson* v. *Board of Education,* 330 U.S. 1, 59, 60.

[7] The dissenting judges said: "In view of this history no further proof is needed that the Amendment forbids any appropriation, large or small, from public funds to aid or support any and all religious exercises. . . . Legislatures are free to make, and courts to sustain, appropriations only when it can be found that in fact they do not aid, promote, encourage or sustain religious teaching or observances, be the amount large or small." *Everson* v. *Board of Education,* 330 U.S. 1, 41, 52–53.

OPINION OF JUSTICE FRANKFURTER

MR. JUSTICE FRANKFURTER delivered the following opinion, in which MR. JUSTICE JACKSON, MR. JUSTICE RUTLEDGE and MR. JUSTICE BURTON join.*

We dissented in *Everson* v. *Board of Education,* 330 U.S. 1, because in our view the Constitutional principle requiring separation of Church and State compelled invalidation of the ordinance sustained by the majority. Illinois has here authorized the commingling of sectarian with secular instruction in the public schools. The Constitution of the United States forbids this.

This case, in the light of the *Everson* decision, demonstrates anew that the mere formulation of a relevant Constitutional principle is the beginning of the solution of a problem, not its answer. This is so because the meaning of a spacious conception like that of the separation of Church from State is unfolded as appeal is made to the principle from case to case. We are all agreed that the First and the Fourteenth Amendments have a secular reach far more penetrating in the conduct of Government than merely to forbid an "established church." But agreement, in the abstract, that the First Amendment was designed to erect a "wall of separation between church and State," does not preclude a clash of views as to what the wall separates. Involved is not only the Constitutional principle but the implications of judicial review in its enforcement. Accommodation of legislative freedom and Constitutional limitations upon that freedom cannot be achieved by a mere phrase. We cannot illuminatingly apply the "wall-of-separation" metaphor until we have considered the relevant history of religious education in America, the place of the "released time" movement in that history, and its precise manifestation in the case before us.

To understand the particular program now before us as a conscientious attempt to accommodate the allowable functions of Government and the special concerns of the Church within the framework of our Constitution and with due regard to the kind of society for which it was designed, we must put this Champaign program of 1940 in its historic setting. Traditionally, organized education in the Western world was Church education. It could hardly be otherwise when the education of children was primarily study of the Word and the ways of God. Even in the Protestant countries, where there was a less close identification of Church and State, the basis of education was largely the Bible, and its chief purpose inculcation of piety. To the extent that the State intervened, it used its authority to further aims of the Church.

The emigrants who came to these shores brought this view of education with them. Colonial schools certainly started with a religious orientation. When the common problems of the early settlers of the Massachusetts Bay Colony revealed the need for common schools, the object was the defeat of "one chief project of that old deluder, Satan, to keep men from the knowledge of the Scriptures." The Laws and Liberties of Massachusetts, 1648 edition (Cambridge 1929) 47.[1]

The evolution of colonial education, largely in the service of religion, into the public school system of today is the story of changing conceptions regarding the American democratic society, of the functions of State-maintained education in such a society, and of the role therein of the free exercise of religion by the people. The modern public school derived from a philosophy of freedom reflected in the First Amendment. It is appropriate to recall that the Remonstance of James Madison, an event basic in the history of religious liberty, was called forth by a proposal which involves support to religious education. See MR. JUSTICE RUTLEDGE's opinion in the *Everson* case, *supra,* 330 U.S. at 36–37. As the momentum for popular education increased and in turn evoked strong claims for State support of religious education, contests not unlike that which in Virginia had produced Madison's Remonstrance appeared in various forms in other States. New York and Massachusetts provide famous chapters in the history that established dissociation of religious teaching from State-maintained schools. In New York, the rise of the common schools led, despite fierce sectarian opposition, to the barring of tax funds to church schools, and later to any school in which sectarian doctrine was taught.[2] In Massachusetts, largely through the efforts of Horace Mann, all sectarian teachings were barred from the common school to save it from being rent by denominational conflict.[3] The upshot of these controversies, often long and fierce, is fairly summarized by saying that long before the Fourteenth Amendment subjected the States to new limitations, the prohibition of furtherance by the State of religious instruction became the guiding principle, in law and feeling, of the American people. In sustaining Stephen Girard's will, this Court referred to the inevitable conflicts engendered by matters "connected with religious polity" and particularly "in a country composed of such a variety of religious sects as our country." *Vidal* v. *Girard's Executors,* 2 How. 127, 198. That was more than one hundred years ago.

Separation in the field of education, then, was not imposed upon unwilling States by force of superior law. In this respect the Fourteenth Amendment merely reflected a principle then dominant in our national life. To the extent that the Constitution thus made it binding upon the States, the basis of the restriction is the whole experience of our people. Zealous watchfulness against fusion of secular and religious activities by Government itself, through any of its instruments but especially through its educational agencies, was the democratic response of the American community to the particular needs of a young and growing nation, unique in the composition of its people.[4] A totally different situation elsewhere, as illustrated for instance by the English provisions for religious education in State-maintained schools, only serves to illustrate that free societies are not cast in one mould. See the Education Act of 1944, 7 and 8 Geo. VI, c. 31. Different institutions evolve from different historic circumstances.

It is pertinent to remind that the establishment of this principle of Separation in the field of education was not due to any decline in the religious beliefs of the people. Horace Mann was a devout Christian, and the deep religious feeling of James Madison is stamped upon the Remonstrance. The secular public school did not imply indifference to the basic role of religion in the life of the people, nor rejection of religious education as a means of fostering it. The claims of religion were not minimized by refusing to make the public schools agencies for their assertion. The non-sectarian or secular public school was the means of reconciling freedom in general with religious freedom. The sharp confinement of the public schools to secular education was a recognition of the need of a democratic society to educate its children, insofar as the State undertook to do so, in an atmosphere free from pressures in a realm in which pressures are

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*MR. JUSTICE RUTLEDGE and MR. JUSTICE BURTON concurred also in the Court's opinion.

Footnotes at end of article.

most resisted and where conflicts are most easily and most bitterly engendered. Designed to serve as perhaps the most powerful agency for promoting cohesion among a heterogeneous democratic people, the public school must keep scrupulously free from entanglement in the strife of sects. The preservation of the community from divisive conflicts, of Government from irreconcilable pressures by religious groups, of religion from censorship and coercion however subtly exercised, requires strict confinement of the State to instruction other than religious, leaving to the individual's church and home, indoctrination in the faith of his choice.

This development of the public school as a symbol of our secular unity was not a sudden achievement nor attained without violent conflict.[5] While in small communities of comparatively homogeneous religious beliefs, the need for absolute separation presented no urgencies, elsewhere the growth of the secular school encountered the resistance of feeling strongly engaged against it. But the inevitability of such attempts is the very reason for Constitutional provisions primarily concerned with the protection of minority groups. And such sects are shifting groups, varying from time to time, and place to place, thus representing in their totality the common interest of the nation.

Enough has been said to indicate that we are dealing not with a full-blown principle, nor one having the definiteness of a surveyor's metes and bounds. But by 1875 the separation of public education from Church entanglements, of the State from the teaching of religion, was firmly established in the consciousness of the nation. In that year President Grant made his famous remarks to the Convention of the Army of the Tennessee:

"Encourage free schools, and resolve that not one dollar appropriated for their support shall be appropriated to the support of any sectarian schools. Resolve that neither the State nor nation, nor both combined, shall support institutions of learning other than those sufficient to afford every child growing up in the land the opportunity of a good common-school education, unmixed with sectarian, pagan, or atheistical dogmas. Leave the matter of religion to the family altar, the church, and the private school, supported entirely by private contributions. Keep the church and the state forever separate." "The President's Speech at Des Moines," 22 *Catholic World* 433, 434–35 (1876).

So strong was this conviction, that rather than rest on the comprehensive prohibitions of the First and Fourteenth Amendments, President Grant urged that there be written into the United States Constitution particular elaborations, including a specific prohibition against the use of public funds for sectarian education,[6] such as had been written into many State constitutions.[7] By 1894, in urging the adoption of such a provision in the New York Constitution, Elihu Root was able to summarize a century of the nation's history: "It is not a question of religion, or of creed, or of party; it is a question of declaring and maintaining the great American principle of eternal separation between Church and State." Root, Addresses on Government and Citizenship, 137, 140.[8] The extent to which this principle was deemed a presupposition of our Constitutional system is strikingly illustrated by the fact that every State admitted into the Union since 1876 was compelled by Congress to write into its constitution a requirement that it maintain a school system "free from sectarian control."[9]

Prohibition of the commingling of sectarian and secular instruction in the public school is of course only half the story. A religious people was naturally concerned about the part of the child's education entrusted "to the family altar, the church, and the private school." The promotion of religious education took many forms. Laboring under financial difficulties and exercising only persuasive authority, various denominations felt handicapped in their task of religious education. Abortive attempts were therefore frequently made to obtain public funds for religious schools.[10] But the major efforts of religious inculcation were a recognition of the principle of Separation by the establishment of church schools privately supported. Parochial schools were maintained by various denominations. These, however, were often beset by serious handicaps, financial and otherwise, so that the religious aims which they represented found other directions. There were experiments with vacation schools, with Saturday as well as Sunday schools.[11] They all fell short of their purpose. It was urged that by appearing to make religion a one-day-a-week matter, the Sunday school, which acquired national acceptance, tended to relegate the child's religious education, and thereby his religion, to a minor role not unlike the enforced piano lesson.

Out of these inadequate efforts evolved the week-day church school, held on one or more afternoons a week after the close of the public school. But children continued to be children; they wanted to play when school was out, particularly when other children were free to do so. Church leaders decided that if the week-day church school was to succeed, a way had to be found to give the child his religious education during what the child conceived to be his "business hours."

The initiation of the movement[12] may fairly be attributed to Dr. George U. Wenner. The underlying assumption of his proposal, made at the Interfaith Conference on Federation held in New York City in 1905, was that the public school unduly monopolized the child's time and that the churches were entitled to their share of it.[13] This, the schools should "release." Accordingly, the Federation, citing the example of the Third Republic of France,[14] urged that upon the request of their parents children be excused from public school on Wednesday afternoon, so that the churches could provide "Sunday school on Wednesday." This was to be carried out on church premises under church authority. Those not desiring to attend church schools would continue their normal classes. Lest these public school classes unfairly compete with the church education, it was requested that the school authorities refrain from scheduling courses or activities of compelling interest or importance.

The proposal aroused considerable opposition and it took another decade for a "released time" scheme to become part of a public school system. Gary, Indiana, inaugurated the movement. At a time when industrial expansion strained the communal facilities of the city, Superintendent of Schools Wirt suggested a fuller use of the school buildings. Buildings on theories which had become more or less current, he also urged that education was more than instruction in a classroom. The school was only one of several educational agencies. The library, the playground, the home, the church, all have their function in the child's proper unfolding. Accordingly, Wirt's plan sought to rotate the schedules of the children during the school-day so that some were in class, others were in the library, still others in the playground. And some, he suggested to the leading ministers of the City, might be released to attend religious classes if the churches of the City cooperated and provided them. They did, in 1914, and thus was "released time" begun. The religious teaching was held on church premises and the public schools had no hand in the conduct of these church schools. They did not supervise the choice of instructors or the subject matter taught. Nor did they assume responsibility for the attendance, conduct or achievement of the child in a church school; and he received no credit for it. The period of attendance in the religious schools would otherwise have been a play period for the child, with the result that the arrangement did not cut into public school instruction or truly affect the activities or feelings of the children who did not attend the church schools.[15]

From such a beginning "released time" has attained substantial proportions. In 1914–15, under the Gary program, 619 pupils left the public schools for the church schools during one period a week. According to responsible figures almost 2,000,000 in some 2,200 communities participated in "released time" programs during 1947.[16] A movement of such scope indicates the importance of the problem to which the "released time" programs are directed. But to the extent that aspects of these programs are open to Constitutional objection, the more extensively the movement operates, the more ominous the breaches in the wall of separation.

Of course, "released time" as a generalized conception, undefined by differentiating particularities, is not an issue for Constitutional adjudication. Local programs differ from each other in many and crucial respects. Some "released time" classes are under separate denominational auspices, others are conducted jointly by several denominations, often embracing all the religious affiliations of a community. Some classes in religion teach a limited sectarianism; others emphasize democracy, unity and spiritual values not anchored in a particular creed. Insofar as these are manifestations merely of the free exercise of religion, they are quite outside the scope of judicial concern, except insofar as the Court may be called upon to protect the right of religious freedom. It is only when challenge is made to the share that the public schools have in the execution of a particular "released time" program that close judicial scrutiny is demanded of the exact relation between the religious instruction and the public educational system in the specific situation before the Court.[17]

The substantial differences among arrangements lumped together as "released time" emphasize the importance of detailed analysis of the facts to which the Constitutional test of Separation is to be applied. How does "released time" operate in Champaign? Public school teachers distribute to their pupils cards supplied by church groups, so that the parents may indicate whether they desire religious instruction for their children. For those desiring it, religious classes are conducted in the regular classrooms of the public schools by teachers of religion paid by the churches and appointed by them, but, as the State court found, "subject to the approval and supervision of the superintendent." The courses do not profess to give secular instruction in subjects concerning religion. Their candid purpose is sectarian teaching. While a child can go to any of the religious classes offered, a particular sect wishing a teacher for its devotees requires the permission of the school superintendent "who in turn will determine whether or not it is practical for said group to teach in said school system." If no provision is made for religious instruction in the particular faith of a child, or if for other reasons the child is not enrolled in any of the offered classes, he is required to attend a regular school class, or a study period during which he is often left to his own devices. Reports of attendance in the religious classes are submitted by the religious instructor to the school authorities, and the child who fails to attend is presumably deemed a truant.

Religious education so conducted on school time and property is patently woven into the working scheme of the school. The

Footnotes at end of article.

Champaign arrangement thus presents powerful elements of inherent pressure by the school system in the interest of religious sects. The fact that this power has not been used to discriminate is beside the point. Separation is a requirement to abstain from fusing functions of Government and of religious sects, not merely to treat them all equally. That a child is offered an alternative may reduce the constraint; it does not eliminate the operation of influence by the school in matters sacred to conscience and outside the school's domain. The law of imitation operates, and non-conformity is not an outstanding characteristic of children. The result is an obvious pressure upon children to attend.[18] Again, while the Champaign school population represents only a fraction of the more than two hundred and fifty sects of the nation, not even all the practicing sects in Champaign are willing or able to provide religious instruction. The children belonging to these non-participating sects will thus have inculcated in them a feeling of separatism when the school should be the training ground for habits of community, or they will have religious instruction in a faith which is not that of their parents. As a result, the public school system of Champaign actively furthers inculcation in the religious tenets of some faiths, and in the process sharpens the consciousness of religious differences at least among some of the children committed to its care. These are consequences not amenable to statistics. But they are precisely the consequences against which the Constitution was directed when it prohibited the Government common to all from becoming embroiled, however innocently, in the destructive religious conflicts of which the history of even this country records some dark pages.[19]

Mention should not be omitted that the integration of religious instruction within the school system as practiced in Champaign is supported by arguments drawn from educational theories as diverse as those derived from Catholic conceptions and from the writings of John Dewey.[20] Movements like "released time" are seldom single in origin or aim. Nor can the intrusion of religious instruction into the public school system of Champaign be minimized by saying that it absorbs less than an hour a week; in fact, that affords evidence of a design constitutionally objectionable. If it were merely a question of enabling a child to obtain religious instruction with a receptive mind, the thirty or forty-five minutes could readily be found on Saturday or Sunday. If that were all, Champaign might have drawn upon the French system, known in its American manifestation as "dismissed time," whereby one school day is shortened to allow all children to go where they please, leaving those who so desire to go to a religious school.[21] The momentum of the whole school atmosphere and school planning is presumably put behind religious instruction, as given in Champaign, precisely in order to secure for the religious instruction such momentum and planning. To speak of "released time" as being only half or three quarters of an hour is to draw a thread from a fabric.

We do not consider, as indeed we could not, school programs not before us which, though colloquially characterized as "released time," present situations differing in aspects that may well be constitutionally crucial. Different forms which "released time" has taken during more than thirty years of growth include programs which, like that before us, could not withstand the test of the Constitution; others may be found unexceptionable. We do not now attempt to weigh in the Constitutional scale every separate detail or various combination of factors which may establish a valid "released time" program. We find that the basic Constitutional principle of absolute Separation was violated when the State of Illinois, speaking through its Supreme Court, sustained the school authorities of Champaign in sponsoring and effectively furthering religious beliefs by its educational arrangement.

Separation means separation, not something less. Jefferson's metaphor in describing the relation between Church and State speaks of a "wall of separation," not of a fine line easily overstepped. The public school is at once the symbol of our democracy and the most pervasive means for promoting our common destiny. In no activity of the State is it more vital to keep out divisive forces than in its schools, to avoid confusing, not to say fusing, what the Constitution sought to keep strictly apart. "The great American principle of eternal separation"—Elihu Root's phrase bears repetition—is one of the vital reliances of our Constitutional system for assuring unities among our people stronger than our diversities. It is the Court's duty to enforce this principle in its full integrity.

We renew our conviction that "we have staked the very existence of our country on the faith that complete separation between the state and religion is best for the state and best for religion." *Everson* v. *Board of Education*, 330 U.S. at 59. If nowhere else, in the relation between Church and State, "good fences make good neighbors."

FOOTNOTES

[1] For an exposition of the religious origins of American education, see S. W. Brown, The Secularization of American Education (1912) cc. I, II; Knight, Education in the United States (2d rev. ed. 1941) cc. III, V; Cubberley, Public Education in the United States (1934) cc. II, III.

[2] See Boese, Public Education in the City of New York (1869) c. XIV; Hall, Religious Education in the Public Schools of the State and City of New York (1914) cc. VI, VII; Palmer, The New York Public School (1905) cc. VI, VII, X, XII. And see New York Laws 1842, c. 150, § 14, amended, New York Laws 1844, c. 320, § 12.

[3] S. M. Smith, The Relation of the States to Religious Education in Massachusetts (1926) c. VII; Culver, Horace Mann and Religion in the Massachusetts Public Schools (1929).

[4] It has been suggested that secular education in this country is the inevitable "product of 'the utter impossibility of harmonizing multiform creeds.' " T. W. M. Marshall, *Secular Education in England and the United States*, 1 American Catholic Quarterly Review 278, 308. It is precisely because of this "utter impossibility" that the fathers put into the Constitution the principle of complete "hands-off," for a people as religiously heterogeneous as ours.

[5] See Cubberley, Public Education in the United States (1934) pp. 230 *et seq.*; Zollmann, *The Relation of Church and State*, in Lotz and Crawford, Studies in Religious Education (1931) 403, 418 *et seq.*; Payson Smith, *The Public Schools and Religious Education*, in Religion and Education (Sperry, Editor, 1945) pp. 32 *et seq.*; also Mahoney, The Relation of the State to Religious Education in Early New York 1633–1825 (1941) c. VI; McLaughlin, A History of State Legislation Affecting Private Elementary and Secondary Schools in the United States, 1870–1945 (1946) c. I; and see note 10 *infra*.

[6] President Grant's Annual Message to Congress, December 7, 1875, 4 Cong. Rec. 175 *et seq.*; Ames, The Proposed Amendments to the Constitution of the United States during the First Century of its History, H.R. Doc. No. 353, Pt. 2, 54th Cong., 2d Sess., pp. 277–78. In addition to the first proposal, "The Blaine Amendment," five others to similar effect are cited by Ames. The reason for the failure of these attempts seems to have been in part that the "provisions of the State constitutions are in almost all instances adequate on this subject, and no amendment is likely to be secured." *Id.*

In the form in which it passed the House of Representatives, the Blaine Amendment read as follows: "No State shall make any law respecting an establishment of religion, or prohibiting the free exercise thereof; and no religious test shall ever be required as a qualification to any office or public trust under any State. No public property, and no public revenue of, nor any loan of credit by or under the authority of, the United States, or any State, Territory, District, or municipal corporation, shall be appropriated to, or made or used for, the support of any school, educational or other institution, under the control of any religious or anti-religious sect, organization, or denomination, or wherein the particular creed or tenets of any religious or anti-religious sect, organization, or denomination shall be taught. And no such particular creed or tenets shall be read or taught in any school or institution supported in whole or in part by such revenue or loan of credit; and no such appropriation or loan of credit shall be made to any religious or anti-religious sect, organization, or denomination, or to promote its interests or tenets. This article shall not be construed to prohibit the reading of the Bible in any school or institution; and it shall not have the effect to impair rights of property already vested. . . ." H. Res. 1, 44th Cong., 1st Sess. (1876).

[7] See *Constitutions of the States and United States*, III Report of the New York State Constitutional Convention Committee (1938) Index, pp. 1766–67.

[8] It is worthy of interest that another famous American lawyer, and indeed one of the most distinguished of American judges, Jeremiah S. Black, expressed similar views nearly forty years before Mr. Root: "The manifest object of the men who framed the institutions of this country was to have a *State without religion*, and a *Church without politics*—that is to say, they meant that one should never be used as an engine for any purpose of the other. . . . Our fathers seem to have been perfectly sincere in their belief that the members of the Church would be more patriotic, and the citizens of the State more religious, by keeping their respective functions entirely separate. For that reason they built up a wall of complete and perfect partition between the two." From *Religious Liberty* (1856) in Black, Essays and Speeches (1886) 51, 53; cf. Brigance, Jeremiah Sullivan Black (1934). While Jeremiah S. Black and Elihu Root had many things in common, there were also important difference between them, perhaps best illustrated by the fact that one became Secretary of State to President Buchanan, the other to Theodore Roosevelt. That two men, with such different political alignment, should have shared identic views on a matter so basic to the well-being of our American democracy affords striking proof of the respect to be accorded to that principle.

[9] 25 Stat. 676, 677, applicable to North Dakota, South Dakota, Montana and Washington, required that the constitutional conventions of those States "provide, by ordinances irrevocable without the consent of the United States and the people of said States . . . for the establishment and maintenance of systems of public school which shall be open to all the children of said States, and free from sectarian control. . . ." The same provision was contained in the Enabling Act for Utah, 28 Stat. 107, 108; Oklahoma, 34 Stat. 267, 270; New Mexico and Arizona, 36 Stat. 557, 559, 570. Idaho and Wyoming were admitted after adoption of their constitutions; that of Wyoming contained an irrevocable ordinance in the same terms. Wyoming Constitution, 1889, Ordinances, § 5. The Constitution of Idaho, while

it contained no irrevocable ordinance, had a provision even more explicit in its establishment of separation. Idaho Constitution, 1880, art. IX, § 5.

[10] See, *e.g.*, the New York experience, including, *inter alia*, the famous Hughes controversy of 1840–42, the conflict culminating in the Constitutional Convention of 1894, and the attempts to restore aid to parochial schools by revision of the New York City Charter, in 1901, and at the State Constitutional Convention of 1938. See McLaughlin, A History of State Legislation Affecting Private Elementary and Secondary Schools in the United States, 1870–1945 (1946) pp. 119–25; Mahoney, The Relation of the State to Religious Education in Early New York 1633–1825 (1941) c. VI; Hall, Religious Education in the Public Schools of the State and the City of New York (1914) pp. 46–47; Boese, Public Education in the City of New York (1869) c. XIV; compare New York Laws 1901, vol. 3, § 1152, p. 492, with amendment, *id.*, p. 668; see Nicholas Murray Butler, *Religious and Education* (Editorial) in 22 Educational Review 101, June, 1901; New York Times, April 8, 1901, p. 1, col. 1; April 9, 1901, p. 2, col. 5; April 19, 1901, p. 2, col. 2; April 21, 1901, p. 1, col. 3; Editorial, April 22, 1901, p. 6, col. 1.

Compare S. 2499, 79th Cong., 2d Sess., providing for Federal aid to education, and the controversy engendered over the inclusion in the aid program of sectarian schools, fully discussed in, e.g., "The Nation's Schools," January through June, 1947.

[11] For surveys of the development of private religious education, see, *e.g.*, A. A. Brown, A. History of Religious Education in Recent Times (1923); Athearn, Religious Education and American Democracy (1917); Burns and Kohlbrenner, A History of Catholic Education in the United States (1937); Lotz and Crawford, Studies in Religious Education (1931) Parts I and IV.

[12] Reference should be made to Jacob Gould Schurman, who in 1903 proposed a plan bearing close resemblance to that of Champaign. See Symposium, 75 The Outlook 635, 636, November 14, 1903; Crooker, Religious Freedom in American Education (1903) pp. 39 *et seq.*

[13] For the text of the resolution, a brief in its support, as well as an exposition of some of the opposition it inspired, see Wenner's book, Religious Education and the Public School (rev. ed. 1913).

[14] The French example is cited not only by Wenner but also by Nicholas Murray Butler, who thought released time was "restoring the American system in the state of New York." *The Place of Religious Instruction in Our Educational System*, 7 Vital Speeches 167, 168 (Nov. 28, 1940); see also Report of the President of Columbia University, 1934, pp. 22–24. It is important to note, however, that the French practice must be viewed as the result of the struggle to emancipate the French schools from control by the Church. The leaders of this revolution, men like Paul Bert, Ferdinand Buisson, and Jules Ferry, agreed to this measure as one part of a great step towards, rather than a retreat from, the principle of Separation. The history of these events is described in Muzzey, *State, Church, and School in France*, The School Review, March through June, 1911.

In effect, moreover, the French practice differs in crucial respects from both the Wenner proposal and the Champaign system. The law of 1882 provided that "Public elementary schools will be closed one day a week in addition to Sunday in order to permit parents, if they so desire, to have their children given religious instruction outside of school buildings," Law No. 11,696, March 28, 1882, Bulletin des Lois, No. 690. This then approximates that aspect of released time generally known as "dismissed time." No children went to school on that day, and the public school was therefore not an alternative used to impel the children towards the religious school. The religious education was given "outside of school buildings."

The Vichy Government attempted to introduce a program of religious instruction within the public school system remarkably similar to that in effect in Champaign. The proposal was defeated by intense opposition which included the protest of the French clergy, who apparently feared State control of the Church. See Schwartz, *Religious Instruction under Pétain*, 58 Christian Century 1170, Sept. 24, 1941.

[15] Of the many expositions of the Gary plan, see, *e.g.*, A. A. Brown, *The Week-Day Church Schools of Gary, Indiana*, 11 Religious Education 5 (1916); Wirt, *The Gary Public Schools and the Churches*, *id.* at 221 (1916).

[16] See the 1947 Yearbook, International Council of Religious Education, p. 76; also New York Times, September 21, 1947, p. 22, col. 1.

[17] Respects in which programs differ include, for example, the amount of supervision by the public school of attendance and performance in the religious class, of the course of study, of the selection of teachers; methods of enrollment and dismissal from the secular classes; the amount of school time devoted to operation of the program; the extent to which school property and administrative machinery are involved; the effect on the public school program of the introduction of "released time"; the proportion of students who seek to be excused; the effect of the program on non-participants; the amount and nature of the publicity for the program in the public schools.

The studies of detail in "released time" programs are voluminous. Most of these may be found in the issues of such periodicals as The International Journal of Religious Education, Religious Education, and Christian Century. For some of the more comprehensive studies found elsewhere, see Davis, Weekday Classes in Religious Education, U.S. Office of Education Bulletin 1941, No. 3; Gorham, A Study of the Status of Weekday Church Schools in the United States (1934); Lotz, *The Weekday Church School*, in Lotz and Crawford, Studies in Religious Education (1931) c. XII; Forsyth, Week-Day Church Schools (1930); Settle, The Weekday Church School, Educational Bulletin No. 601 of The International Council of Religious Education (1930); Shaver, Present-Day Trends in Religious Education (1928) cc. VII, VIII; Gove, Religious Education on Public School Time (1926).

[18] It deserves notice that in discussing with the relator her son's inability to get along with his classmates, one of his teachers suggested that "allowing him to take the religious education course might help him to become a member of the group."

[19] The divergent views expressed in the briefs submitted here on behalf of various religious organizations, as *amici curiae*, in themselves suggest that the movement has been a divisive and not an irenic influence in the community: The American Unitarian Association; The General Conference of Seventh Day Adventists; The Joint Conference Committee on Public Relations set up by the Southern Baptist Convention, The Northern Baptist Convention, The National Baptist Convention Inc., and the National Baptist Convention; The Protestant Council of the City of New York; and The Synagogue Council of America and National Community Relations Advisory Council.

[20] There is a prolific literature on the educational, social and religious merits of the "released time" movement. In support of "released time" the following may be mentioned: The International Council of Religious Education, and particularly the writings of Dr. Erwin L. Shaver, for some years Director of its Department of Weekday Religious Education, in publications of the Council and in numerous issues of The International Journal of Religious Education (*e.g.*, *They Reach One-Third*, Dec. 1943, p. 11; *Weekday Religious Education Today*, Jan., 1944, p. 6), and Religious Education (*e.g.*, *Survey of Week-Day Religious Education*, Feb. 1922, p. 51; *The Movement for Weekday Religious Education*, Jan.-Feb., 1946, p. 6); see also Information Service, Federal Council of Churches of Christ, May 29, 1943. See also Cutton, *Answering the Arguments*, The International Journal of Religious Education, June, 1930, p. 9, and *Released Time*, *id.*, Sept. 1942, p. 12; Hauser, *"Hands Off the Public School?"*, Religious Education, Mar.-Apr., 1942, p. 99; Collins, *Release Time for Religious Instruction*, National Catholic Education Association Bulletin, May, 1945, pp. 21, 27–28; Weigle, *Public Education and Religion*, Religious Education, Apr.-June, 1940, p. 67; Nicholas Murray Butler, *The Place of Religious Instruction in Our Educational System*, 7 Vital Speeches 167 (Nov. 28, 1940); Howlett, *Released Time for Religious Education in New York City*, 64 Education 523, May, 1944; Blair, *A Case for the Weekday Church School*, 7 Frontiers of Democracy 75, Dec. 15, 1940; cf. Allred, Legal Aspects of Release Time (National Catholic Welfare Conference, 1947). Favorable views are also cited in the studies in note 17, *supra*. Many not opposed to "released time" have declared it "hardly enough" or "pitifully inadequate." *E.g.*, Fleming, God in Our Public Schools (2d ed. 1944) pp. 80–86; Howlett, *Released Time for Religious Education in New York City*, Religious Education, Mar.-Apr., 1942, p. 104; Cavert, *Points of Tension Between Church and State in America Today*, in Church and State in the Modern World (1937) 161, 168; F. E. Johnson, The Church and Society (1935) 125; Hubner, Professional Attitudes toward Religion in the Public Schools of the United States Since 1900 (1944) 108–109, 113; cf. Ryan, *A Protestant Experiment in Religious Education*, The Catholic World, June, 1922; Elliott, *Are Weekday Church Schools the Solution?*, The International Journal of Religious Education, Nov., 1940, p. 8; Elliott, *Report of the Discussion*, Religious Education, July-Sept., 1940, p. 158.

For opposing views, see V. T. Thayer, Religion in Public Education (1947) cc. VII, VIII; Moehlman, The Church as Educator (1947) c. X; Chave, A Functional Approach to Religious Education (1947) 104–107; A. W. Johnson, The Legal Status of Church-State Relationships in the United States (1934) 129–130; Newman, The Sectarian Invasion of Our Public Schools (1925). See also Payson Smith, *The Public Schools and Religious Education*, in Religion and Education (Sperry, Editor, 1945) 32, 42–47; Herrick, *Religion in the Public Schools of America*, 46 Elementary School Journal 119, Nov., 1945; Kallen, *Churchmen's Claims on the Public School*, The Nation's Schools, May, 1942, p. 49; June, 1942, p. 52. And cf. John Dewey, *Religion in Our Schools* (1908), reprinted in 2 Characters and Events (1929) 504, 508, 514. "Released time" was introduced in the public schools of the City of New York over the opposition of organizations like the Public Education Association and the United Parents Associations.

The arguments and sources pro and con are collected in Hubner, Professional Attitudes toward Religion in the Public Schools in the United States since 1900 (1944) 94 *et seq.* And see the symposia, *Teaching Religion in a Democracy*, The International Journal of Religious Education, Nov., 1940, pp. 6–16; *The Aims of Week-Day Religious Education*, Religious Education, Feb., 1922, p. 11; *Released Time in New York City*, *id.*, Jan.–Feb., 1943, p. 15; *Progress in Weekday Religious Education*, *id.*, Jan.–Feb. 1946, p. 6; *Can Our Public Schools Do More About Religion?*, 125 Journal of Education 245, Nov., 1942, *id.* at 273, Dec., 1942; *Religious Instruction on School Time*, 7 Frontiers of De-

mocracy 72–77, Dec. 15, 1940; and the articles in 64 Education 519 *et seq.*, May, 1944.

[21] See note 14, *supra*. Indications are that "dismissed time" is used in an inconsiderable number of the communities employing released time. Davis, Weekday Classes in Religious Education, U.S. Office of Education Bulletin 1941, No. 3, p. 22; Shaver, *The Movement for Weekday Religious Education*, Religious Education, Jan.–Feb., 1946, pp. 6, 9.

JUSTICE JACKSON CONCURRING

MR. JUSTICE JACKSON, concurring.

I join the opinion of MR. JUSTICE FRANKFURTER, and concur in the result reached by the Court, but with these reservations: I think it is doubtful whether the facts of this case establish jurisdiction in this Court, but in any event that we should place some bounds on the demands for interference with local schools that we are empowered or willing to entertain. I make these reservations a matter of record in view of the number of litigations likely to be started as a result of this decision.

A Federal Court may interfere with local school authorities only when they invade either a personal liberty or a property right protected by the Federal Constitution. Ordinarily this will come about in either of two ways:

First. When a person is required to submit to some religious rite or instruction or is deprived or threatened with deprivation of his freedom for resisting such unconstitutional requirement. We may then set him free or enjoin his prosecution. Typical of such cases was *West Virginia State Board of Education* v. *Barnette*, 319 U.S. 624. There penalties were threatened against both parent and child for refusal of the latter to perform a compulsory ritual which offended his convictions. We intervened to shield them against the penalty. But here, complainant's son may join religious classes if he chooses and if his parents so request, or he may stay out of them. The complaint is that when others join and he does not, it sets him apart as a dissenter, which is humiliating. Even admitting this to be true, it may be doubted whether the Constitution which, of course, protects the right to dissent, can be construed also to protect one from the embarrassment that always attends noncomformity, whether in religion, politics, behavior or dress. Since no legal compulsion is applied to complainant's son himself and no penalty is imposed or threatened from which we may relieve him, we can hardly base jurisdiction on this ground.

Second. Where a complainant is deprived of property by being taxed for unconstitutional purposes, such as directly or indirectly to support a religious establishment. We can protect a taxpayer against such a levy. This was the *Everson Case*, 330 U.S. 1, as I saw it then and see it now. It was complained in that case that the school treasurer drew a check on public funds to reimburse parents for a child's bus fare if he went to a Catholic parochial school or a public school, but not if he went to any other private or denominational school. Reference to the record in that case will show that the School District was not operating busses, so it was not a question of allowing Catholic children to ride publicly owned busses along with others, in the interests of their safety, health or morals. The child had to travel to and from parochial school on commercial busses like other paying passengers and all other school children, and he was exposed to the same dangers. If it could, in fairness, have been said that the expenditure was a measure for the protection of the safety, health or morals of youngsters, it would not merely have been constitutional to grant it; it would have been unconstitutional to refuse it to any child merely because he was a Catholic. But in the *Everson Case* there was a direct, substantial and measurable burden on the complainant as a taxpayer to raise funds that were used to subsidize transportation to parochial schools. Hence, we had jurisdiction to examine the constitutionality of the levy and to protect against it if a majority had agreed that the subsidy for transportation was unconstitutional.

In this case, however, any cost of this plan to the taxpayers is incalculable and negligible. It can be argued, perhaps, that religious classes add some wear and tear on public buildings and that they should be charged with some expenses for heat and light, even though the sessions devoted to religious instruction do not add to the length of the school day. But the cost is neither substantial nor measurable, and no one seriously can say that the complainant's tax bill has been proved to be increased because of this plan. I think it is doubtful whether the taxpayer in this case has shown any substantial property injury.

If, however, jurisdiction is found to exist, it is important that we circumscribe our decision with some care. What is asked is not a defensive use of judicial power to set aside a tax levy or reverse a conviction, or to enjoin threats of prosecution or taxation. The relief demanded in this case is the extraordinary writ of mandamus to tell the local Board of Education what it must do. The prayer for relief is that a writ issue against the Board of Education "ordering it to immediately adopt and enforce rules and regulations prohibiting all instruction in and teaching of religious education in all public schools . . . and in all public school houses and buildings in said district when occupied by public schools." The plaintiff, as she has every right to be, is an avowed atheist. What she has asked of the courts is that they not only end the "released time" plan but also ban every form of teaching which suggests or recognizes that there is a God. She would ban all teaching of the Scriptures. She especially mentions as an example of invasion of her rights 'having pupils learn and recite such statements as, 'The Lord is my Sheperd, I shall not want.' " And she objects to teaching that the King James version of the Bible "is called the Christian's Guide Book, the Holy Writ and the Word of God," and many other similar matters. This Court is directing the Illinois courts generally to sustain plaintiff's complaint without exception of any of these grounds of complaint, without discriminating between them and without laying down any standards to define the limits of the effect of our decision.

To me, the sweep and detail of these complaints is a danger signal which warns of the kind of local controversy we will be required to arbitrate if we do not place appropriate limitation on our decision and exact strict compliance with jurisdictional requirements. Authorities list 256 separate and substantial religious bodies to exist in the continental United States. Each of them, through the suit of some discontented but unpenalized and untaxed representative, has as good a right as this plaintiff to demand that the courts compel the schools to sift out of their teaching everything inconsistent with its doctrines. If we are to eliminate everything that is objectionable to any of these warring sects or inconsistent with any of their doctrines, we will leave public education in shreds. Nothing but educational confusion and a discrediting of the public school system can result from subjecting it to constant law suits.

While we may and should end such formal and explicit instruction as the Champaign plan and can at all times prohibit teaching of creed and catechism and ceremonial and can forbid forthright proselyting in the schools, I think it remains to be demonstrated whether it is possible, even if desirable, to comply with such demands as plaintiff's completely to isolate and cast out of secular education all that some people may reasonably regard as religious instruction. Perhaps subjects such as mathematics, physics or chemistry are, or can be, completely secularized. But it would not seem practical to teach either practice or appreciation of the arts if we are to forbid exposure of youth to any religious influences. Music without sacred music, architecture minus the cathedral, or painting without the scriptural themes would be eccentric and incomplete, even from a secular point of view. Yet the inspirational appeal or religion in these guises is often stronger than in forthright sermon. Even such a "science" as biology raises the issues between evolution and creation as an explanation of our presence on this planet. Certainly a course in English literature that omitted the Bible and other powerful uses of our mother tongue for religious ends would be pretty barren. And I should suppose it is a proper, if not an indispensable, part of preparation for a wordly life to know the roles that religion and religions have played in the tragic story of mankind. The fact is that, for good or for ill nearly everything in our culture worth transmitting, everything which gives meaning to life, is saturated with religious influences, derived from paganism, Judaism, Christianity—both Catholic and Protestant—and other faiths accepted by a large part of the world's peoples. One can hardly respect a system of education that would leave the student wholly ignorant of the currents of religious thought that move the world society for a part in which he is being prepared.

But how one can teach, with satisfaction or even with justice to all faiths, such subjects as the story of the Reformation, the Inquisition, or even the New England effort to found "a Church without a Bishop and a State without a King," is more than I know. It is too much to expect that mortals will teach subjects about which their contemporaries have passionate controversies with the detachment they may summon to teaching about remote subjects such as Confucius or Mohammed. When instruction turns to proselyting and imparting knowledge becomes evangelism is, except in the crudest cases, a subtle inquiry.

The opinions in this case show that public educational authorities have evolved a considerable variety of practices in dealing with the religious problem. Neighborhoods differ in racial, religious and cultural compositions. It must be expected that they will adopt different customs which will give emphasis to different values and will induce different experiments. And it must be expected that, no matter what practice prevails, there will be many discontented and possibly belligerent minorities. We must leave some flexibility to meet local conditions, some chance to progress by trial and error. While I agree that the religious classes involved here go beyond permissible limits, I also think the complaint demands more than plaintiff is entitled to have granted. So far as I can see this Court does not tell the State court where it may stop, nor does it set up any standards by which the State court may determine that question for itself.

The task of separating the secular from the religious in education is one of magnitude, intricacy and delicacy. To lay down a sweeping constitutional doctrine as demanded by complainant and apparently approved by the Court, applicable alike to all school boards of the nation, "to immediately adopt and enforce rules and regulations prohibiting all instruction in and teaching of religious education in all public schools," is to decree a uniform, rigid and, if we are consistent, an unchanging standard for countless school boards representing and serving highly localized groups which not only differ from each other but which themselves from time to time change attitudes. It seems to me

that to do so is to allow zeal for our own ideas of what is good in public instruction to induce us to accept the role of a super board of education for every school district in the nation.

It is idle to pretend that this task is one for which we can find in the Constitution one word to help us as judges to decide where the secular ends and the sectarian begins in education. Nor can we find guidance in any other legal source. It is a matter on which we can find no law but our own prepossessions. If with no surer legal guidance we are to take up and decide every variation of this controversy, raised by persons not subject to penalty or tax but who are dissatisfied with the way schools are dealing with the problem, we are likely to have much business of the sort. And, more importantly, we are likely to make the legal "wall of separation between church and state" as winding as the famous serpentine wall designed by Mr. Jefferson for the University he founded.

JUSTICE REED DISSENTING

MR. JUSTICE REED, dissenting.

The decisions reversing the judgment of the Supreme Court of Illinois interpret the prohibition of the First Amendment against the establishment of religion, made effective as to the states by the Fourteenth Amendment, to forbid pupils of the public schools electing, with the approval of their parents, courses in religious education. The courses are given, under the school laws of Illinois as approved by the Supreme Court of that state, by lay or clerical teachers supplied and directed by an interdenominational, local council of religious education.[1] The classes are held in the respective school buildings of the pupils at study or released time periods so as to avoid conflict with recitations. The teachers and supplies are paid for by the interdenominational group.[2] As I am convinced that this interpretation of the First Amendment is erroneous, I feel impelled to express the reasons for my disagreement. By directing attention to the many instances of close association of church and state in American society and by recalling that many of these relations are so much a part of our tradition and culture that they are accepted without more, this dissent may help in an appraisal of the meaning of the clause of the First Amendment concerning the establishment of religion and of the reasons which lead to the approval or disapproval of the judgment below.

The reasons for the reversal of the Illinois judgment, as they appear in the respective opinions, may be summarized by the following excerpts. The opinion of the Court, after stating the facts, says: "The foregoing facts, without reference to others that appear in the record, show the use of tax-supported property for religious instruction and the close cooperation between the school authorities and the religious council in promoting religious education. . . . And it falls squarely under the ban of the First Amendment (made applicable to the States by the Fourteenth) as we interpreted it in *Everson* v. *Board of Education*, 330 U.S. 1." Another opinion phrases it thus: "We do not now attempt to weigh in the Constitutional scale every separate detail or various combination of factors which may establish a valid 'released time' program. We find that the basic Constitutional principle of absolute separation was violated when the State of Illinois, speaking through its Supreme Court, sustained the school authorities of Champaign in sponsoring and effectively furthering religious beliefs by its educational arrangement." These expressions in the decisions seem to leave open for further litigation variations from the Champaign plan. Actually, however, future cases must run the gauntlet not only of the judgment entered but of the accompanying words of the opinions. I find it difficult to extract from the opinions any conclusion as to what it is in the Champaign plan that is unconstitutional. Is it the use of school buildings for religious instruction; the release of pupils by the schools for religious instruction during school hours; the so-called assistance by teachers in handing out the request cards to pupils, in keeping lists of them for release and records of their attendance; or the action of the principals in arranging an opportunity for the classes and the appearance of the Council's instructors? None of the reversing opinions say whether the purpose of the Champaign plan for religious instruction during school hours is unconstitutional or whether it is some ingredient used in or omitted from the formula that makes the plan unconstitutional.

From the tenor of the opinions I conclude that their teachings are that any use of a pupil's school time, whether that use is on or off the school grounds, with the necessary school regulations to facilitate attendance, falls under the ban. I reach this conclusion notwithstanding one sentence of indefinite meaning in the second opinion: "We do not consider, as indeed we could not, school programs not before us which, though colloquially characterized as 'released time,' present situations differing in aspects that may well be constitutionally crucial." The use of the words "cooperation," "fusion," "complete hands-off," "integrate" and "integrated" to describe the relations between the school and the Council in the plan evidences this. So does the interpretation of the word "aid" The criticized "momentum of the whole school atmosphere," "feeling of separatism" engendered in the non-participating sects, "obvious pressure . . . to attend," and "divisiveness" lead to the stated conclusion. From the holding and the language of the opinions, I can only deduce that religious instruction of public school children during school hours is prohibited. The history of American education is against such an interpretation of the First Amendment.

The opinions do not say in words that the condemned practice of religious education is a law respecting an establishment of religion contrary to the First Amendment. The practice is accepted as a state law by all. I take it that when the opinion of the Court says that "The operation of the state's compulsory education system thus assists and is integrated with the program of religious instruction carried on by separate religious sects" and concludes "This is beyond all question a utilization of the tax-established and tax-supported public school system to aid religious groups to spread their faith," the intention of its author is to rule that this practice is a law "respecting an establishment of religion." That was the basis of *Everson* v. *Board of Education*, 330 U.S. 1. It seems obvious that the action of the School Board in permitting religious education in certain grades of the schools by all faiths did not prohibit the free exercise of religion. Even assuming that certain children who did not elect to take instruction are embarassed to remain outside of the classes, one can hardly speak of that embarassment as a prohibition against the free exercise of religion. As no issue of prohibition upon the free exercise of religion is before us, we need only examine the School Board's action to see if it constitutes an establishment of religion.

The facts, as stated in the reversing opinions, are adequately set out if we interpret the abstract words used in the light of the concrete incidents of the record. It is correct to say that the parents "consented" to the religious instruction of the children, if we understand "consent" to mean the signing of a card like the one in the margin.[3] It is correct to say that "instructors were subject to the approval and supervision of the superintendent of schools," if it is understood that there were no definitive written rules and that the practice was as is shown in the excerpts from the findings below.[4] The substance of the religious education course is determined by the members of the various churches on the council, not by the superintendent.[5] The evidence and findings set out in the two preceding notes convince me that the "approval and supervision" referred to above are not of the teachers and the course of studies but of the orderly presentation of the courses to those students who may elect the instruction. The teaching largely covered Biblical incidents.[6] The religious teachers and their teachings, in every real sense, were financed and regulated by the Council of Religious Education, not the School Board.

"CHAMPAIGN COUNCIL OF RELIGIOUS EDUCATION 1945–1946 [3]

Parent's request card

Please permit ——— in Grade — at —— School to attend a class in Religious Education one period a week under the Auspices of the Champaign Council of Religious Education.

(Check which)

Date ———, Interdenominational, Protestant, Roman Catholic, Jewish.

Signed ———, ———.
(Parent Name)

Parent's Church ———
Telephone No. ———
Address ———

A fee of 25 cents a semester is charged each pupil to help cover the cost of material used.

If you wish your child to receive religious instruction, please sign this card and return to the school.

MAE CHAPIN, *Director*."

Mae Chapin, the Director, was not a school employee.

The phrase "an establishment of religion" may have been intended by Congress to be aimed only at a state church. When the First Amendment was pending in Congress in substantially its present form, "Mr. Madison said, he apprehended the meaning of the words to be, that Congress should not establish a religion, and enforce the legal observation of it by law, nor compel men to worship God in any manner contrary to their conscience." [7] Passing years, however, have brought about acceptance of a broader meaning, although never until today, I believe, has this Court widened its interpretation to any such degree as holding that recognition of the interest of our nation in religion, through the granting, to qualified representatives of the principal faiths, of opportunity to present religion as an optional, extracurricular subject during released school time in public school buildings, was equivalent to an establishment of religion. A reading of the general statements of eminent statesmen of former days, referred to in the opinions in this case and in *Everson* v. *Board of Education, supra*, will show that circumstances such as those in this case were far from the minds of the authors. The words and spirit of those statements may be wholeheartedly accepted without in the least impunging the judgment of the State of Illinois.[8]

Mr. Jefferson, as one of the founders of the University of Virginia, a school which from its establishment in 1819 has been wholly governed, managed and controlled by the State of Virginia,[9] was faced with the same problem that is before this Court today: the question of the constitutional limitation upon religious education in public schools. In his annual report as Rector, to the President and Directors of the Literary Fund, dated October 7, 1822, approved by the Visitors of the University of whom Mr. Madison was one,[10] Mr. Jefferson set forth his views at some length.[11] These suggestions of Mr. Jefferson were adopted [12] and ch. II, § 1,

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of the Regulations of the University of October 4, 1824, provided that:

"Should the religious sects of this State, or any of them, according to the invitation held out to them, establish within, or adjacent to, the precincts of the University, schools for instruction in the religion of their sect, the students of the University will be free, and expected to attend religious worship at the establishment of their respective sects, in the morning, and in time to meet their school in the University at its stated hour." [13]

Thus, the "wall of separation between church and State" that, Mr. Jefferson built at the University which he founded did not exclude religious education from that school. The difference between the generality of his statements on the separation of church and state and the specificity of his conclusions on education are considerable. A rule of law should not be drawn from a figure of speech.

Mr. Madison's *Memorial and Remonstrance against Religious Assessments,* [14] relied upon by the dissenting Justices in *Everson,* is not applicable here.[15] Mr. Madison was one of the principal opponents in the Virginia General Assembly of *A Bill Establishing a Provision for Teachers of the Christian Religion.* The monies raised by the taxing section [16] of that bill were to be appropriated "by the Vestries, Elders, or Directors of each religious society, . . . to a provision for a Minister or Teacher of the Gospel of their denomination, or the providing places of divine worship, and to none other use whatsoever. . . . ." The conclusive legislative struggle over this act took place in the fall of 1785, before the adoption of the Bill of Rights. The *Remonstrance* had been issued before the General Assembly convened and was instrumental in the final defeat of the act, which died in committee. Throughout the *Remonstrance,* Mr. Madison speaks of the "establishment" sought to be effected by the act. It is clear from its historical setting and its language that the *Remonstrance* was a protest against an effort by Virginia to support Christian sects by taxation. Issues similar to those raised by the instant case were not discussed. Thus, Mr. Madison's approval of Mr. Jefferson's report as Rector gives, in my opinion, a clearer indication of his views on the constitutionality of religious education in public schools than his general statements on a different subject.

This Court summarized the amendment's accepted reach into the religious field, as I understand its scope, in *Everson* v. *Board of Education, supra.* The Court's opinion quotes the gist of the Court's reasoning in *Everson.* I agree, as there stated, that none of our governmental entities can "set up a church." I agree that they cannot "aid" all or any religions or prefer one "over another." But "aid" must be understood as a purposeful assistance directly to the church itself or to some religious group or organization doing religious work of such a character that it may fairly be said to be performing ecclesiastical functions. "Prefer" must give an advantage to one "over another." I agree that pupils cannot "be released in part from their legal duty" of school attendance upon condition that they attend religious classes. But as Illinois has held that it is within the discretion of the School Board to permit absence from school for religious instruction no legal duty of school attendance is violated. 396 Ill. 14, 71 N. E. 2d 161. If the sentence in the Court's opinion, concerning the pupils' release from legal duty, is intended to mean that the Constitution forbids a school to excuse a pupil from secular control during school hours to attend voluntarily a class in religious education, whether in or out of school buildings, I disagree. Of course, no tax can be levied to support organizations intended "to teach or practice religion." I agree too that the state cannot influence one toward religion against his will or punish him for his beliefs. Champaign's religious education course does none of these things.

It seems clear to me that the "aid" referred to by the Court in the *Everson* case could not have been those incidental advantages that religious bodies, with other groups similarly situated, obtain as a by-product of organized society. This explains the well-known fact that all churches receive "aid" from government in the form of freedom from taxation. The *Everson* decision itself justified the transportation of children to church schools by New Jersey for safety reasons. It accords with *Cochran* v. *Louisiana State Board of Education,* 281 U. S. 370, where this Court upheld a free textbook statute of Louisiana against a charge that it aided private schools on the ground that the books were for the education of the children, not to aid religious schools. Likewise the National School Lunch Act aids all school children attending tax-exempt schools.[17] In *Bradfield* v. *Roberts,* 175 U.S. 291, this Court held proper the payment of money by the Federal Government to build an addition to a hospital, chartered by individuals who were members of a Roman Catholic sisterhood, and operated under the auspices of the Roman Catholic Church. This was done over the objection that it aided the establishment of religion.[18] While obviously in these instances the respective churches, in a certain sense, were aided, this Court has never held that such "aid" was in violation of the First or Fourteenth Amendment.

Well-recognized and long-established practices support the validity of the Illinois statute here in question. That statute, as construed in this case, is comparable to those in many states.[19] All differ to some extent. New York may be taken as a fair example.[20] In many states the program is under the supervision of a religious council composed of delegates who are themselves communicants of various faiths.[21] As is shown by *Bradfield* v. *Roberts, supra,* the fact that the members of the council have religious affiliations is not significant. In some, instruction is given outside of the school buildings; in others, within these buildings. Metropolitan centers like New York usually would have available quarters convenient to schools. Unless smaller cities and rural communities use the school building at times that do not interfere with recitations, they may be compelled to give up religious education. I understand that pupils not taking religious education usually are given other work of a secular nature within the schools.[22] Since all these states use the facilities of the schools to aid the religious education to some extent, their desire to permit religious education to school children is thwarted by this Court's judgment.[23] Under it, as I understand its language, children cannot be released or dismissed from school to attend classes in religion while other children must remain to pursue secular education. Teachers cannot keep the records as to which pupils are to be dismissed and which retained. To do so is said to be an "aid" in establishing religion; the use of public money for religion.

Cases running into the scores have been in the state courts of last resort that involved religion and the schools. Except where the exercises with religious significance partook of the ceremonial practice of sects or groups, their constitutionality has been generally upheld.[24] Illinois itself promptly struck down as violative of its own constitution required exercises partaking of a religious ceremony. *People ex rel. Ring* v. *Board of Education,* 245 Ill. 334, 92 N. E. 251. In that case compulsory religious exercises—a reading from the King James Bible, the Lord's Prayer and the singing of hymns—were forbidden as "worship services." In this case, the Supreme Court of Illinois pointed out that in the *Ring* case, the activities in the school were ceremonial and compulsory; in this, voluntary and educational. 396 Ill. 14, 20–21, 71 N. E. 2d 161, 164.

The practices of the federal government offer many examples of this kind of "aid" by the state to religion. The Congress of the United States has a chaplain for each House who daily invokes divine blessings and guidance for the proceedings.[25] The armed forces have commissioned chaplains from early days.[26] They conduct the public services in accordance with the liturgical requirements of their respective faiths, ashore and afloat, employing for the purpose property belonging to the United States and dedicated to the services of religion.[27] Under the Servicemen's Readjustment Act of 1944, eligible veterans may receive training at government expense for the ministry in denominational schools.[28] The schools of the District of Columbia have opening exercises which "include a reading from the Bible without note or comment, and the Lord's prayer." [29]

In the United States Naval Academy and the United States Military Academy, schools wholly supported and completely controlled by the federal government, there are a number of religious activities. Chaplains are attached to both schools. Attendance at church services on Sunday is compulsory at both the Military and Naval Academies.[30] At West Point the Protestant services are held in the Cadet Chapel, the Catholic in the Catholic Chapel, and the Jewish in the Old Cadet Chapel; at Annapolis only Protestant services are held on the reservation, midshipmen of other religious persuasions attend the churches of the city of Annapolis. These facts indicate that both schools since their earliest beginnings have maintained and enforced a pattern of participation in formal worship.

With the general statements in the opinions concerning the constitutional requirement that the nation and the states, by virtue of the First and Fourteenth Amendments,[31] may "make no law respecting an establishment of religion," I am in agreement. But, in the light of the meaning given to those words by the precedents, customs, and practices which I have detailed above, I cannot agree with the Court's conclusion that when pupils compelled by law to go to school for secular education are released from school so as to attend the religious classes, churches are unconstitutionally aided. Whatever may be the wisdom of the arrangement as to the use of the school buildings made with the Champaign Council of Religious Education, it is clear to me that past practice shows such cooperation between the schools and a non-eccelesiastical body is not forbidden by the First Amendment. When actual church services have always been permitted on government property, the mere use of the school buildings by a non-sectarian group for religious education ought not to be condemned as an establishment of religion. For a non-sectarian organization to give the type of instruction here offered cannot be said to violate our rule as to the establishment of religion by the state. The prohibition of enactments respecting the establishment of religion do not bar every friendly gesture between church and state. It is not an absolute prohibition against every conceivable situation where the two may work together, any more than the other provisions of the First Amendment—free speech, free press—are absolutes.[32] If abuses occur, such as the use of the instruction hour for sectarian purposes, I have no doubt, in view of the *Ring* case, that Illinois will promptly correct them. If they are of a kind that tend to the establishment of a church or interfere with the free exercise of religion, this Court is open for a review of any erroneous decision. This Court cannot to be cautious in upsetting practices embedded in our society by many years of

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experience. A state is entitled to have great leeway in its legislation when dealing with the important social problems of its population.[33] A definite violation of legislative limits must be established. The Constitution should not be stretched to forbid national customs in the way courts act to reach arrangements to avoid federal taxation.[34] Devotion to the principle of religious liberty should not lead us into a rigid interpretation of the constitutional guarantee that conflicts with accepted habits of our people. This is an instance where, for me, the history of past practices is determinative of the meaning of a constitutional clause, not a decorous introduction to the study of its text. The judgment should be affirmed.

FOOTNOTES

[1] The trial court found that: " 'The Champaign Council of Religious Education' [is] a voluntary association made up of the representatives of the Jewish, Roman Catholic and Protestant faiths in the school district."

[2] There is no extra cost to the state but as a theoretical accounting problem it may be correct to charge to the classes their comparable proportion of the state expense for buildings, operation and teachers. In connection with the classes, the teachers need only keep a record of the pupils who attend. Increased custodial requirements are likewise nominal. It is customary to use school buildings for community activities when not needed for school purposes. See Ill. Rev. Stat., ch. 122, § 123.

[4] The superintendent testified that Jehovah's Witnesses or any other sect would be allowed to teach provided their teachers had proper educational qualifications, so that bad grammar, for instance, would not be taught to the pupils. A similar situation developed with reference to the Missouri Synod of the Lutheran Church. The evidence tends to show that during the course of the trial that group indicated it would affiliate with the Council of Religious Education.

"Before any faith or other group may obtain permission from the defendant for the similar, free and equal use of rooms in the public school buildings said faith or group must make application to the superintendent of schools of said School District Number 71, who in turn will determine whether or not it is practical for said group to teach in said school system.

"The court feels from all the facts in the record that an honest attempt has been made and is being made to permit religious instruction to be given by qualified outside teachers of any sect to people of their own faith in the manner above outlined. The evidence shows that no sect or religious group has ever been denied the right to use the schools in this manner."

[5] A finding reads: "The curriculum of studies in the Protestant classes is determined by a committee of the Protestant members of the council of religious education after consultation with representatives of all the different faiths included in said council. The Jewish classes of course would deny the divinity of Jesus Christ. The teaching in the Catholic classes of course explains to Catholic pupils the teaching of the Catholic religion, and are not shared by other students who are Protestants or Jews. The teachings in the Protestant classes would undoubtedly, from the evidence, teach some doctrines that would not be accepted by the other two religions."

[6] It was found: "The testimony shows that sectarian differences between the sects are not taught or emphasized in the actual teaching as it is conducted in the schools. The testimony of the religious education teachers, the secular teachers who testified, and the many children, mostly from Protestant families, who either took or did not take religious education courses, is to the effect that religious education classes have fostered tolerance rather than intolerance."

The Supreme Court of Illinois said: "The religious education courses do not go to the extent of being worship services and do not include prayers or the singing of hymns." 396 Ill. 14, 21, 71 N.E. 2d 161, 164.

[7] 1 Annals of Congress 730.

[8] For example, Mr. Jefferson's striking phrase as to the "wall of separation between church and State" appears in a letter acknowledging "The affectionate sentiments of esteem and approbation" included in a testimonial to himself. In its context it reads as follows:

"Believing with you that religion is a matter which lies solely between man and his God, that he owes account to none other for his faith or his worship, that the legislative powers of government reach actions only, and not opinions, I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should 'make no law respecting an establishment of religion, or prohibiting the free exercise thereof,' thus building a wall of separation between church and State." 8 The Writings of Thomas Jefferson (Washington ed., 1861) 113.

[9] Acts of the Assembly of 1818–19 (1819) 15; *Phillips* v. *The Rector and Visitors of the University of Virginia*, 97 Va. 472, 474–75, 34 S.E. 66, 67.

[10] 19 The Writings of Thomas Jefferson (Memorial edition, 1904) 408, 409.

[11] *Id.*, pp. 414–17:

"It was not, however, to be understood that instruction in religious opinion and duties was meant to be precluded by the public authorities, as indifferent to the interests of society. On the contrary, the relations which exist between man and his Maker, and the duties resulting from those relations, are the most interesting and important to every human being, and the most incumbent on his study and investigation. The want of instruction in the various creeds of religious faith existing among our citizens presents, therefore, a chasm in a general institution of the useful sciences. . . . A remedy, however, has been suggested of promising aspect, which, while it excludes the public authorities from the domain of religious freedom, will give to the sectarian schools of divinity the full benefit the public provisions made for instruction in the other branches of science. . . . It has, therefore, been in contemplation, and suggested by some pious individuals, who perceive the advantages of associating other studies with those of religion, to establish their religious schools on the confines of the University, so as to give to their students ready and convenient access and attendance on the scientific lectures of the University; and to maintain, by that means, those destined for the religious professions on as high a standing of science, and of personal weight and respectability, as may be obtained by others from the benefits of the University. Such establishments would offer the further and greater advantage of enabling the students of the University to attend religious exercises with the professor of their particular sect, either in the rooms of the building still to be erected, and destined to that purpose under impartial regulations, as proposed in the same report of the commissioners, or in the lecturing room of such professor. . . . Such an arrangement would complete the circle of the useful sciences embraced by this institution, and would fill the chasm now existing, on principles which would leave inviolate the constitutional freedom of religion, the most inalienable and sacred of all human rights, over which the people and authorities of this state, individually and publicly, have ever manifested the most watchful jealousy: and could this jealousy be now alarmed, in the opinion of the legislature, by what is here suggested, the idea will be relinquished on any surmise of disapprobation which they might think proper to express."

Mr. Jefferson commented upon the report on November 2, 1822, in a letter to Dr. Thomas Cooper, as follows: "And by bringing the sects together, and mixing them with the mass of other students, we shall soften their asperities, liberalize and neutralize their prejudices, and make the general religion a religion of peace, reason, and morality." 12 Ford, *The Works of Thomas Jefferson*, (Fed. ed., 1905). 272.

[12] 3 Randall, Life of Thomas Jefferson (1858) 471.

[13] 19 The Writings of Thomas Jefferson (Memorial edition, 1904) 449.

[14] The texts of the *Memorial and Remonstrance* and the bill against which it was aimed, to wit, *A Bill Establishing a Provision for Teachers of the Christian Religion* are set forth in *Everson* v. *Board of Education*, 330 U.S. 1, 28, 63–74.

[15] See, generally, the dissent of Mr. Justice Rutledge, 330 U.S. 1, 28.

[16] 330 U.S. at 72–73:

"Be it therefore enacted by the General Assembly, That for the support of Christian teachers, — per centum on the amount, or in the pound on the sum payable for tax on the property within this Commonwealth, is hereby assessed, and shall be paid by every person chargeable with the said tax at the time the same shall become due; and the Sheriffs of the several Counties shall have power to levy and collect the same in the manner and under the like restrictions and limitations, as are or may be prescribed by the laws for raising the Revenues of this State.

"And be it enacted, That for every sum so paid, the Sheriff or Collector shall give a receipt, expressing therein to what society of Christians the person from whom he may receive the same shall direct the money to be paid, keeping a distinct account thereof in his books. . . ."

[17] 60 Stat. 230, ch. 281, §§ 4, 11(d) (3).

[18] See *Selective Draft Law Cases*, 245 U.S. 366, 390; *Quick Bear* v. *Leupp*, 210 U.S. 50.

[19] Ed. Code of Cal. (Deering, 1944) § 8286; 6 Ind. Stat. Ann. (Burns, 1933) 1945 Supp. § 28–505a; 1 Code of Iowa ch. 299, § 299.2 (1946); Ky. Rev. Stat. (1946) § 158.220; 1 Rev. Stat. of Maine (1944) ch. 37, § 131; 2 Ann. Laws of Mass. (1945) ch. 76, § 1; Minn. Stat. (1945) § 132.05; N. Y. Education Law § 3210 (1); 8 Ore. Comp. Laws Ann. (1940) §111–3014; 24 Pa. Stat. Ann. (Purdon, 1930) 1947 Supp. § 1563; 1 Code of S. D. (1939) § 15.3202; 1 Code of W. Va. (1943) § 1847.

[20] Education Law § 3210 (1) provides that: "a. A minor required by the provisions of part one of this article to attend upon instruction shall attend regularly as prescribed where he resides or is employed, for the entire time the appropriate public schools or classes are in session and shall be subordinate and orderly while so attending.

"b. Absence for religious observance and education shall be permitted under rules that the commissioner shall establish."

Acting under the authority of the New York law, the State Commissioner of Education issued, on July 4, 1940, these regulations:

"1 Absence of a pupil from school during school hours for religious observance and education to be had outside the school building and grounds will be excused upon the request in writing signed by the parent or guardian of the pupil.

"2 The courses in religious observance and education must be maintained and operated by or under the control of a duly constituted religious body or of duly religious bodies.

"3 Pupils must be registered for the courses and a copy of the registration filed with the local public school authorities.

"4 Reports of attendance of pupils upon such courses shall be filed with the principal or teacher at the end of each week.

"5 Such absence shall be for not more than one hour each week at the close of a session at a time to be fixed by the local school authorities.

"6 In the event that more than one school for religious observance and education is maintained in any district, the hour for absence for each particular public school in such district shall be the same for all such religious schools."

On November 13, 1940, rules to govern the released time program of the New York City schools were adopted by the Board of Education of the City of New York. Under these rules the practice of the religious education program is this: classes in religious education are to be held outside of school buildings; establishment of the program rests in the initiative of the church and home; enrollment is voluntary and accomplished by this technique: the church distributes cards to the parents and these are filled out and presented to the school; records of enrollment and arrangements for release are handled by school authorities; discipline is the responsibility of the church; and children who do not attend are kept at school and given other work. See Rules of the Board of Education of the City of New York adopted Nov. 13, 1940; Public Education Association, *Released Time for Religious Education in New York City's Schools* (1943); *id.* (1945).

Constitutional approval by the New York Court of Appeals of these practices was given before the passage of Education Law § 3210 (1). *People ex rel. Lewis* v. *Graves*, 245 N. Y. 195, 156 N. E. 663.

[21] The New York City program is supervised by The Greater New York Coordinating Committee on Released Time, a group of laymen drawn from Jews, Protestants and Roman Catholics. This Committee is an example of a broad national effort to bring about religious education of children through cooperative action of schools and groups of members of various religious denominations. The methods vary in different states and cities but are basically like the work of the New York City Committee. See *Brief Sketches of Weekday Church Schools*, Department of Weekday Religious Education, International Council of Religious Education, Chicago, Illinois (1944).

[22] See note 20 *supra*.

[23] The use of school buildings is not unusual. See Davis, *Weekday Classes in Religious Education*, U.S. Office of Education (Bulletin 1941, No. 3) 27; National Education Association, *The State and Sectarian Education*, Research Bulletin (Feb. 1946) 36. The International Council of Religious Education advises that church buildings be used if possible. Shaver, *Remember the Weekday*, International Council of Religious Education (1946).

"Today, approximately two thousand communities in all but two states provide religious education in cooperation with the public schools for more than a million and a half of pupils." Shaver, *The Movement for Weekday Religious Education*, Religious Education (Jan.–Feb. 1946), p. 7.

[24] Many uses of religious material in the public schools in a manner that has some religious significance have been sanctioned by state courts. These practices have been permitted: reading selections from the King James Bible without comment; reading the Bible and repeating the Lord's Prayer; teaching the Ten Commandments; saying prayers; and using textbooks based upon the Bible and emphasizing its fundamental teachings. When conducted in a sectarian manner reading from the Bible and singing hymns in the school's morning exercise have been prohibited as has using the Bible as a textbook. There is a conflict of authority on the question of the constitutionality of wearing religious garb while teaching in the public schools. It has been held to be constitutional for school authorities to prohibit the reading of the Bible in the public schools. There is a conflict of authority on the constitutionality of the use of public school buildings for religious services held outside of school hours. The constitutionality, under state constitutions, of furnishing free textbooks and free transportation to parochial school children is in conflict. See *Nichols* v. *Henry*, 301 Ky. 434, 191 S.W. 2d 930; *Findley* v. *City of Conneaut*, 12 Ohio Supp. 161. The earlier cases are collected in 5 A.L.R. 866 and 141 A.L.R. 1144.

[25] Rules of the House of Representatives (1943) Rule VII; Senate Manual (1947) 6, fn. 2.

[26] 3 Stat. 297 (1816).

[27] Army Reg., No. 60–5 (1944); U.S. Navy Reg. (1920), ch. 1, § 2 and ch. 34, §§ 1–2.

[28] 58 Stat. 289.

[29] Board of Education Rules, ch. VI, § 4.

[30] Reg. for the U.S. Corps of Cadets (1947) 47: "Attendance at chapel is part of a cadet's training; no cadet will be exempted. Each cadet will receive religious training in one of the three principal faiths: Catholic, Protestant, or Jewish." U.S. Naval Academy Reg., Art. 4301(b): "Midshipmen shall attend church services on Sundays at the Naval Academy Chapel or at one of the regularly established churches in the city of Annapolis."

Morning prayers are also required at Annapolis. U.S. Naval Academy Reg., Art. 4301 (a): "Daily, except on Sundays, a Chaplain will conduct prayers in the messhall, immediately before breakfast." Protestant and Catholic Chaplains take their turn in leading these prayers.

[31] The principles of the First Amendment were absorbed by the Fourteenth Amendment. *Pennekamp* v. *Florida*, 328 U.S. 331, 335.

[32] See *Whitney* v. *California*, 274 U.S. 357, 371; *Reynolds* v. *United States*, 98 U.S. 145, 166; *Cantwell* v. *Connecticut*, 310 U.S. 296, 303; *Cox* v. *New Hampshire*, 312 U.S. 569, 574, 576; *Chaplinsky* v. *New Hampshire*, 315 U.S. 568, 571; *Prince* v. *Massachusetts*, 321 U.S. 158.

[33] Cf. *Bob-Lo Excursion Co.* v. *Michigan*, 333 U.S. 28.

[34] *Higgins* v. *Smith*, 308 U.S. 473; *Helvering* v. *Clifford*, 309 U.S. 331; *Comm'r* v. *Tower*, 327 U.S. 280; *Lusthaus* v. *Comm'r*, 327 U.S. 293.

Mr. ERVIN. Mr. President, another great decision shedding much light upon this matter is the case of Zorach, et al, versus Clauson, and others, 343 U.S. 306, constituting the Board of Education of the city of New York. I wish to read three brief extracts from this case. One of the extracts is by Justice Black and appears on pages 318 and 319 of the report. Justice Black was pointing out that the provisions of the first amendment prohibiting the use of tax moneys to support religious institutions in their efforts to teach religion was not based on the fact that Americans were a nonreligious people, but on precisely the contrary. He said:

It was precisely because Eighteenth Century Americans were a religious people divided into many fighting sects that we were given the constitutional mandate to keep Church and State completely separate. Colonial history had already shown that, here as elsewhere zealous sectarians entrusted with governmental power to further their causes would sometimes torture, maim and kill those they branded "heretics," "atheists" or "agnostics." The First Amendment was therefore to insure that no one powerful sect or combination of sects could use political or governmental power to punish dissenters whom they could not convert to their faith. Now as then, it is only by wholly isolating the state from the religious sphere and compelling it to be completely neutral, that the freedom of each and every denomination and of all nonbelievers can be maintained.

He stated further on page 320:

State help to religion injects political and party prejudices into a holy field. It too often substitutes force for prayer, hate for love, and persecution for persuasion. Government should not be allowed, under cover of the soft euphemism of "co-operation," to steal into the sacred area of religious choice.

Mr. President, the Bible tells us that on one occasion people seeking to entrap the Master came to him and presented to him a coin and asked him whether it was lawful to pay tribute unto Caesar. Christ pointed out to them that the coin presented to him bore the inscription of Caesar and he said that they should render unto Caesar the things that are Caesar's and unto God the things that are God's.

Now, manifestly we should not take the things that belong to Caesar, that is, tax monies, even to support the things that belong to God.

In the Zorach case Justice Jackson made this very sage observation that appears on page 324:

My evangelistic brethren confuse an objection to compulsion with an objection to religion. It is possible to hold a faith with enough confidence to believe that what should be rendered to God does not need to be decided and collected by Caesar.

He went on to say:

The day that this country ceases to be free for irreligion it will cease to be free for religion—except for the sect that can win political power.

He adds another wise observation, concerning schools. He said:

We start down a rough road when we begin to mix compulsory education with compulsory godliness.

Mr. President, this case also merits the study of all Americans who are concerned with religious freedom and who are concerned with the necessity of keeping the church and the state separate, if America is to remain a country in which either political freedom or religious freedom exist.

Mr. President, for this reason I ask unanimous consent that a complete copy of the text in the case of Zorach against Clauson be printed in the RECORD.

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

[No. 431. Argued January 31–February 1, 1952—Decided April 28, 1952]

ZORACH ET AL. *v.* CLAUSON ET AL., CONSTITUTING THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, ET AL.—APPEAL FROM THE COURT OF APPEALS OF NEW YORK

Under § 3210 of the New York Education Law and the regulations thereunder, New York City permits its public schools to release students during school hours, on written requests of their parents, so that they

may leave the school buildings and grounds and go to religious centers for religious instruction or devotional exercises. The same section makes school attendance compulsory; students not released stay in the classrooms; and the churches report to the schools the names of children released from public schools who fail to report for religious instruction. The program involves neither religious instruction in public schools nor the expenditure of public funds. *Held:* This program does not violate the First Amendment, made applicable to the States by the Fourteenth Amendment. *McCollum* v. *Board of Education*, 333 U. S. 203, distinguished. Pp. 308–315.

(a) By this system, New York has neither prohibited the "free exercise" of religion nor made a law "respecting an establishment of religion" within the meaning of the First Amendment. Pp. 310–315.

(b) There is no evidence in the record in this case to support a conclusion that the system involves the use of coercion to get public school students into religious classrooms. Pp. 311–312.

303 N. Y. 161, 100 N. E. 2d 463, affirmed.

The New York Court of Appeals sustained N. Y. Education Law § 3210 and the regulations thereunder permitting absence of students from the public schools for religious observance and education, against the claim that the program thereunder violated the Federal Constitution. 303 N. Y. 161, 100 N. E. 2d 463. On appeal to this Court *affirmed*, p. 315.

COUNCIL FOR PARTIES

Kenneth W. Greenawalt argued the cause for appellants. With him on the brief were *Leo Pfeffer* and *Edwin J. Lukas*.

Wendell P. Brown, Solicitor General, argued the cause for the Commissioner of Education of the State of New York, appellee. With him on the brief were *Nathaniel L. Goldstein*, Attorney General, and *Ruth Kessler Toch* and *John P. Power, Assistant* Attorneys General.

Michael A. Castaldi argued the cause for the Board of Education of the City of New York, appellee. With him on the brief were *Denis M. Hurley, Seymour B. Quel, Daniel T. Scannell* and *Arthur H. Kahn*.

Charles H. Tuttle argued the cause for the Greater New York Coordinating Committee on Released Time of Jews, Protestants and Roman Catholics, appellee. With him on the brief was *Porter R. Chandler*.

Briefs of *amici curiae* supporting appellees were filed on behalf of the States of California, by *Edmund G. Brown*, Attorney General, *William V. O'Connor*, Chief Deputy Attorney General, and *Howard S. Goldin*, Deputy Attorney General; Indiana, by *J. Emmett McManamon*, Attorney General; Kentucky, by *J. D. Buckman, Jr.*, Attorney General, and *M. B. Holifield*, Assistant Attorney General; Maine, by *Alexander A. LaFleur*, Attorney General; Massachusetts, by *Francis E. Kelly*, Attorney General, *Charles H. Walters*, Assistant Attorney General, and *William F. Marcella;* Oregon, by *George Neuner*, Attorney General, *Robert F. Maguire* and William E. *Dougherty;* Pennsylvania, by *Robert E. Woodside*, Attorney General, and *Harry F. Stambaugh;* and West Virginia, by *William C. Marland*, Attorney General, and *Thomas J. Gillooly, T. D. Kauffelt* and *Eston B. Stephenson*, Assistant Attorneys General.

OPINION OF THE COURT

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

New York City has a program which permits its public schools to release students during the school day so that they may leave the school buildings and school grounds and go to religious centers for religious instruction or devotional exercises. A student is released on written request of his parents. Those not released stay in the classrooms. The churches make weekly reports to the schools, sending a list of children who have been released from public school but who have not reported for religious instruction.[1]

This "released time" program involves neither religious instruction in public school classrooms nor the expenditure of public funds. All costs, including the application blanks, are paid by the religious organizations. The case is therefore unlike *McCollum* v. *Board of Education*, 333 U.S. 203, which involved a "released time" program from Illinois. In that case the classrooms were turned over to religious instructors. We accordingly held that the program violated the First Amendment[2] which (by reason of states from establishing religion or prohibiting its free exercise.

Appellants, who are taxpayers and residents of New York City and whose children attend its public schools,[4] challenge the present law, contending it is in essence not different from the one involved in the *McCollum case*. Their argument, stated elaborately in various ways, reduces itself to this: the weight and influence of the school is put behind a program for religious instruction; public school teachers police it, keeping tabs on students who are released; the classroom activities come to a halt while the students who are released for religious instruction are on leave; the school is a crutch on which the churches are leaning for support in their religious training; without the cooperation of the schools this "released time" program, like the one in the *McCollum case*, would be futile and ineffective. The New York Court of Appeals sustained the law against this claim of unconstitutionality. 303 N.Y. 161, 100 N.E. 2d 463. The case is here on appeal. 28 U.S.C. § 1257 (2).

The briefs and arguments are replete with data bearing on the merits of this type of "released time" program. Views *pro* and *con* are expressed, based on practical experience with these programs and with their implications.[5] We do not stop to summarize these materials nor to burden the opinion with an analysis of them. For they involve considerations not germane to the narrow constitutional issue presented. They largely concern the wisdom of the system, its efficiency from an educational point of view, and the political considerations which have motivated its adoption or rejection in some communities. Those matters are of no concern here, since our problem reduces itself to whether New York by this system has either prohibited the "free exercise" of religion or has made a law "respecting an establishment of religion" within the meaning of the First Amendment.

It takes obtuse reasoning to inject any issue of the "free exercise" of religion into the present case. No one is forced to go to the religious classroom and no instruction is brought to the classrooms of the public schools. A student need not take religious instruction. He is left to his own desires as to the manner or time of his religious devotions, if any.

There is a suggestion that the system involves the use of coercion to get public school students into religious classrooms. There is no evidence in the record before us that supports that conclusion.[6] The present record indeed tells that the school authorities are neutral in this regard and do no more than release students whose parents so request. If in fact coercion were used, if it were established that any one or more teachers were using their office to persuade or forces students to take the religious instruction, a

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[1] The New York City released time program is embodied in the following provisions:

(a) N. Y. Education Law, § 3210, subdiv. 1 (b), which provides that "Absence for religious observance and education shall be permitted under rules that the commissioner shall establish."

(b) Regulations of the Commissioner of Education of the State of New York, Art. 17, § 154 (1 N. Y. Official Code Comp. 683), which provide for absence during school hours for religious observance and education outside the school grounds [par. 1], where conducted by or under the control of a duly constituted religious body [par. 2]. Students must obtain written requests from their parents or guardians to be excused for such training [par. 1], and must register for the training and have a copy of their registration filed with the public school authorities [par. 3]. Weekly reports of their attendance at such religious schools must be filed with their principal or teacher [par. 4]. Only one hour a week is to be allowed for such training, at the end of a class session [par. 5], and where more than one religious school is conducted, the hour of release shall be the same for all religious schools [par. 6].

(c) Regulations of the Board of Education of the City of New York, which provide similar rules supplementing the State Commissioner's regulations, with the following significant amplifications: No announcement of any kind will be made in the public schools relative to the program [rule 1]. The religious organizations and parents will assume full responsibility for attendance at the religious schools and will explain any failures to attend on the weekly attendance reports [rule 3]. Students who are released will be dismissed from school in the usual way [rule 5]. There shall be no comment by any principal or teacher on attendance or nonattendance of any pupil upon religious instruction [rule 6].

[2] The First Amendment reads in relevant part, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."
the Fourteenth Amendment)[3] prohibits the

[3] See *Stromberg* v. *California*, 283 U.S. 359; *Cantwell* v. *Connecticut*, 310 U.S. 296; *Murdock* v. *Pennsylvania*, 319 U.S. 105.

[4] No problem of this Court's jurisdiction is posed in this case since, unlike the appellants in *Doremus* v. *Board of Education*, 342 U.S. 429, appellants here are parents of children currently attending schools subject to the released time program.

[5] See, *e. g.*, Beckes, Weekday Religious Education (National Conference of Christians and Jews, Human Relations Pamphlet No. 6); Butts, American Tradition in Religion and Education, pp. 188, 199; Moehlman, The Wall of Separation between Church and State, pp. 123, 155 ff.; Moehlman, The Church as Educator, pp. 103 ff.; Moral and Spiritual Values in the Public Schools (Educational Policies Commission, 1951); Newman, The Sectarian Invasion of Our Public Schools; Public School Time for Religious Education, 12 Jewish Education 130 (January, 1941); Religious Instruction On School Time, 7 Frontiers of Democracy 72 (1940); Released Time for Religious Education in New York City's Schools (Public Education Association, June 30, 1943); Released Time for Religious Education in New York City's Schools (Public Education Association, June 30, 1945); Released Time for Religious Education in New York City Schools (Public Education Association, 1949); 2 Stokes, Church and State in the United States, pp. 523–548; The Status Of Religious Education In The Public Schools (National Education Association).

[6] Nor is there any indication that the public schools enforce attendance at religious schools by punishing absentees from the released time programs for truancy.

wholly different case would be presented.[7] Hence we put aside that claim of coercion both as respects the "free exercise" of religion and "an establishment of religion" within the meaning of the First Amendment.

Moreover, apart from that claim of coercion, we do not see how New York by this type of "released time" program has made a law respecting an establishment of religion within the meaning of the First Amendment. There is much talk of the separation of Church and State in the history of the Bill of Rights and in the decisions clustering around the First Amendment. See *Everson* v. *Board of Education*, 330 U.S. 1; *McCollum* v. *Board of Education, supra*. There cannot be the slightest doubt that the First Amendment reflects the philosophy that Church and State should be separated. And so far as interference with the "free exercise" of religion and an "establishment" of religion are concerned, the separation must be complete and unequivocal. The First Amendment within the scope of its coverage permits no exception; the prohibition is absolute. The First Amendment, however, does not say that in every and all respects there shall be a separation of Church and State. Rather, it studiously defines the manner, the specific ways, in which there shall be no concert or union or dependency one on the other. That is the common sense of the matter. Otherwise the state and religion would be aliens to each other—hostile, suspicious, and even unfriendly. Churches could not be required to pay even property taxes. Municipalities would not be permitted to render police or fire protection to religious groups. Policemen who helped parishioners into their places of worship would violate the Constitution. Prayers in our legislative halls; the appeals to the Almighty in the messages of the Chief Executive; the proclamations making Thanksgiving Day a holiday; "so help me God" in our courtroom oaths—these and all other references to the Almighty that run through our laws, our public rituals, our ceremonies would be flouting the First Amendment. A fastidious atheist or agnostic could even object to the supplication with which the Court opens each session: "God save the United States and this Honorable Court."

We would have to press the concept of separation of Church and State to these extremes to condemn the present law on constitutional grounds. The nullification of this law would have wide and profound effects. A Catholic student applies to his teacher for permission to leave the school during hours on a Holy Day of Obligation to attend a mass. A Jewish student asks his teacher for permission to be excused for Yom Kippur. A Protestant wants the afternoon off for a family baptismal ceremony. In each case the teacher requires parental consent in writing. In each case the teacher, in order to make sure the student is not a truant, goes further and requires a report from the priest, the rabbi, or the minister. The teacher in other words cooperates in a religious program to the extent of making it possible for her students to participate in it. Whether she does it occasionally for a few students, regularly for one, or pursuant to a systematized program designed to further the religious needs of all the students does not alter the character of the act.

We are a religious people whose institutions presuppose a Supreme Being. We guarantee the freedom to worship as one chooses. We make room for as wide a variety of beliefs and creeds as the spiritual needs of man deem necessary. We sponsor an attitude on the part of government that shows no partiality to any one group and that lets each fluorish according to the zeal of its adherents and the appeal of its dogma. When the state encourages religious instruction or cooperates with religious authorities by adjusting the schedule of public events to sectarian needs, it follows the best of our traditions. For it then respects the religious nature of our people and accommodates the public service to their spiritual needs. To hold that it may not would be to find in the Constitution a requirement that the government show a callous indifference to religious groups. That would be preferring those who believe in no religion over those who do believe. Government may not finance religious groups nor undertake religious instruction nor blend secular and sectarian education nor use secular institutions to force one or some religion on any person. But we find no constitutional requirement which makes it necessary for government to be hostile to religion and to throw its weight against efforts to widen the effective scope of religious influence. The government must be neutral when it comes to competition between sects. It may not thrust any sect on any person. It may not make a religious observance compulsory. It may not coerce anyone to attend church, to observe a religious holiday, or to take religious instruction. But it can close its doors or suspend its operations as to those who want to repair to their religious sanctuary for worship or instruction. No more than that is undertaken here.

This program may be unwise and improvident from an educational or a community viewpoint. That appeal is made to us on a theory, previously advanced, that each case must be decided on the basis of "our own prepossessions." See *McCollum* v. *Board of Education, supra*, p. 238. Our individual preferences, however, are not the constitutional standard. The constitutional standard is the separation of Church and State. The problem, like many problems in constiutional law, is one of degree. See *McCollum* v. *Board of Education, supra*, p. 231.

In the *McCollum* case the classrooms were used for religious instruction and the force of the public school was used to promote that instruction. Here, as we have said, the public schools do no more than accommodate their schedules to a program of outside religious instruction. We follow the *McCollum* case.[8] But we cannot expand it to cover the present released time program unless separation of Church and State means that public institutions can make no adjustments of their schedules to accommodate the religious needs of the people. We cannot read into the Bill of Rights such a philosophy of hostility to religion.

Affirmed.

MR. JUSTICE BLACK, dissenting.

Illinois ex rel. McCollum v. *Board of Education*, 333 U.S. 203, held invalid as an "establishment of religion" an Illinois system under which school children, compelled by law to go to public schools, were freed from some hours of required school work on condition that they attend special religious classes held in the school buildings. Although the classes were taught by sectarian teachers neither employed nor paid by the state, the state did use its power to further the program by releasing some of the children from regular class work, insisting that those released attend the religious classes, and requiring that those who remained behind do some kind of academic work while the others received their religious training. We said this about the Illinois system:

"Pupils compelled by law to go to school for secular education are released in part from their legal duty upon the condition that they attend the religious classes. This is beyond all question a utilization of the tax-established and tax-supported public school system to aid religious groups to spread their faith. And it falls squarely under the ban of the First Amendment. . . . " *McCollum* v. *Board of Education, supra*, at pp. 209–210.

I see no significant difference between the invalid Illinois system and that of New York here sustained. Except for the use of the school buildings in Illinois, there is no difference between the systems which I consider even worthy of mention. In the New York program, as in that of Illinois, the school authorities release some of the children on the condition that they attend the religious classes, get reports on whether they attend, and hold the other children in the school building until the religious hour is over. As we attempted to make categorically clear, the *McCollum* decision would have been the same if the religious classes had not been held in the school buildings. We said:

"Here *not only* are the State's tax-supported public school buildings used for the dissemination of religious doctrines. The State *also* affords sectarian groups an invaluable aid in that it helps to provide pupils for their religious classes through use of the State's compulsory public school machinery. *This* is not separation of Church and State." (Emphasis supplied.) *McCollum* v. *Board of Education, supra*, at p. 212.

McCollum thus held that Illinois could not constitutionally manipulate the compelled classroom hours of its compulsory school machinery so as to channel children into

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[7] Appellants contend that they should have been allowed to prove that the system is in fact administered in a coercive manner. The New York Court of Appeals declined to grant a trial on this issue, noting, *inter alia*, that appellants had not properly raised their claim in the manner required by state practice. 303 N. Y. 161, 174, 100 N. E. 2d 463, 469. This independent state ground for decision precludes appellants from raising the issue of maladministration in this proceeding. See *Louisville & Nashville R. Co.* v. *Woodford*, 243 U.S. 46, 51; *Atlantic Coast Line R. Co.* v. *Mims*, 242 U.S. 532, 535; *American Surety Co.* v. *Baldwin*, 287 U. S. 156, 169.

The only allegation in the complaint that bears on the issue is that the operation of program "has resulted and inevitably results in the exercise of pressure and coercion upon parents and children to secure attendance by the children for religious instruction." But this charge does not even implicate the school authorities. The New York Court of Appeals was therefore generous in labeling it a "conclusory" allegation. 303 N.Y., at 174, 100 N. E. 2d, at 469. Since the allegation did not implicate the school authorities in the use of coercion, there is no basis for holding that the New York Court of Appeals under the guise of local practice defeated a federal right in the manner condemned by *Brown* v. *Western R. of Alabama*, 338 U. S. 294, and related cases.

[8] Three of us—THE CHIEF JUSTICE, MR. JUSTICE DOUGLAS and MR. JUSTICE BURTON—who join this opinion agreed that the "released time" program involved in the *McCollum* case was unconstitutional. It was our view at the time that the present type of "released time" program was not prejudged by the *McCollum* case, a conclusion emphasized by the reservation of the question in the separate opinion by MR. JUSTICE FRANKFURTER in which MR. JUSTICE BURTON joined. See 333 U.S., at 225 where it was said, "Of course, 'released time' as a generalized conception, undefined by differentiating particularities, is not an issue for Constitutional adjudication. Local programs differ from each other in many and crucial respects . . . It is only when challenge is made to the share that the public schools have in the execution of a particular 'released time' program that close judicial scrutiny is demanded of the exact relation between the religious instruction and the public educational system in the specific situation before the Court."

sectarian classes. Yet that is exactly what the Court holds New York can do.

I am aware that our *McCollum* decision on separation of Church and State has been subjected to a most searching examination throughout the country. Probably few opinions from this Court in recent years have attracted more attention or stirred wider debate. Our insistence on "a wall between Church and State which must be kept high and impregnable" has seemed to some a correct exposition of the philosophy and a true interpretation of the language of the First Amendment to which we should strictly adhere.[1] With equal conviction and sincerity, others have thought the *McCollum* decision fundamentally wrong [2] and have pledged continuous warfare against it.[3] The opinions in the courtbelow and the briefs here reflect these diverse viewpoints. In dissenting today, I mean to do more than give routine approval to our *McCollum* decision. I mean also to reaffirm my faith in the fundamental philosophy expressed in *McCollum and Everson* v. *Board of Education*, 330 U.S. 1. That reaffirmation can be brief because of the exhaustive opinions in those recent cases.

Difficulty of decision in the hypothetical situations mentioned by the Court, but not now before us, should not confuse the issues of this case. Here the sole question is whether New York can use its compulsory education laws to help religious sects get attendants presumably too unenthusiastic to go unless moved to do so by the pressure of this state machinery. That this is the plan, purpose, design and consequence of the New York program cannot be denied. The state thus makes religious sects beneficiaries of its power to compel children to attend secular schools. Any use of such coercive power by the state to help or hinder some religious sects or to prefer all religious sects over nonbelievers or vice versa is just what I think the First Amendment forbids. In considering whether a state has entered this forbidden field the question is not whether it has entered too far but whether it has entered at all. New York is manipulating its compulsory education laws to help religious sects get pupils. This is not separation but combination of Church and State.

The Court's validation of the New York system rests in part on its statement that Americans are "a religious people whose institutions presuppose a Supreme Being." This was at least as true when the First Amendment was adopted; and it was just as true when eight Justices of this Court invalidated the released time system in *McCollum* on the premise that a state can no more "aid all religions" than it can aid one.[4] It was precisely because Eighteenth Century Americans were a religious people divided into many fighting sects that we were given the constitutional mandate to keep Church and State completely separate. Colonial history had already shown that, here as elsewhere zealous sectarians entrusted with governmental power to further their causes would sometimes torture, maim and kill those they branded "heretics," "atheists" or "agnostics." [5] The First Amendment was therefore to insure that no one powerful sect or combination of sects could use political or governmental power to punish dissenters whom they could not convert to their faith. Now as then, it is only by wholly isolating the state from the religious sphere and compelling it to be completely neutral, that the freedom of each and every denomination and of all nonbelievers can be maintained. It is this neutrality the Court abandons today when it treats New York's coercive system as a program which *merely* "encourages religious instruction or cooperates with religious authorities." The abandonment is all the more dangerous to liberty because of the Court's legal exaltation of the orthodox and its derogation of unbelievers.

Under our system of religious freedom, people have gone to their religious sancturaries not because they feared the law but because they loved their God. The choice of all has been as free as the choice of those who answered the call to worship moved only by the music of the old Sunday morning church bells. The spiritual mind of man has thus been free to believe, disbelieve, or doubt, without repression, great or small, by the heavy hand of government. Statutes authorizing such repression have been stricken. Before today, our judicial opinions have refrained from drawing invidious distinctions between those who believe in no religion and those who do believe. The First Amendment has lost much if the religious follower and the athiest are no longer to be judicially regarded as entitled to equal justice under law.

State help to religion injects political and party prejudices into a holy field. It too often substitutes force for prayer, hate for love, and persecution for persuasion. Government should not be allowed, under cover of the soft euphemism of "co-operation," to steal into the sacred area of religious choice.

MR. JUSTICE FRANKFURTER, dissenting.

By way of emphasizing my agreement with MR. JUSTICE JACKSON'S dissent, I add a few words.

The Court tells us that in the maintenance of its public schools, "[The State government] can close its doors or suspend its operations" so that its citizens may be free for religious devotions or instruction. If that were the issue, it would not rise to the dignity of a constitutional controversy. Of course, a State may provide that the Classes in its schools shall be dismissed, for any reason, or no reason, on fixed days, or for special occasions. The essence of this case is that the school system did not "close its doors" and did not "suspend its operations." There is all the difference in the world between letting the children out of school and letting some of them out of school into religious classes. If every one is free to make what use he will of time wholly unconnected from schooling required by law—those who wish sectarian instruction devoting it to that purpose, those who have ethical instruction at home, to that, those who study music, to that—then of course there is no conflict with the Fourteenth Amendment.

The pith of the case is that formalized religious instruction is substituted for other school activity which those who do not participate in the released-time program are compelled to attend. The school system is very much in operation during this kind of released time. If its doors are closed, they are closed upon those students who do not attend the religious instruction, in order to keep them within the school. That is the very thing which raises the constitutional issue. It is not met by disregarding it. Failure to discuss this issue does not take it out of the case.

Again, the Court relies upon the absence from the record of evidence of coercion in the operation of the system. "If in fact coercion were used," according to the Court, "if it were established that any one or more teachers were using their office to persuade or force students to take the religious instruction, a wholly different case would be presented." Thus, "coercion" in the abstract is acknowledged to be fatal. But the Court disregards the fact that as the case comes to us, there could be no proof of coercion, for the appellants were not allowed to make proof of it. Appellants alleged that "The operation of the released time program has resulted and inevitably results in the exercise of pressure and coercion upon parents and children to secure attendance by the children for religious instruction." This allegation—that coercion was in fact present and is inherent in the system, no matter what disavowals might be made in the operating regulations—was denied by appellees. Thus were drawn issues of fact which cannot be determined, on any conceivable view of judicial notice, by judges out of their own knowledge or experience. Appellants sought an opportunity to adduce evidence in support of these allegations at an appropriate trial. And though the courts below cited the concurring opinion in *McCollum* v. *Board of Education*, 333 U.S. 203, 226, to "emphasize the importance of detailed analysis of the facts to which the Constitutional test of Separation is to be applied," they denied that opportunity on the ground that such proof was irrelevant to the issue of constitutionality. See 198 Misc. 631, 641, 99 N.Y.S. 2d 339, 348–349; 303 N.Y. 161, 174–175, 100 N.E. 2d 463, 469.[1]

When constitutional issues turn on facts it is a strange procedure indeed not to permit the facts to be established. When such is the case, there are weighty considerations for us to require the State court to make its determination only after a thorough canvass of all the circumstances and not to bar them from consideration. Cf. *Chastleton Corp.* v. *Sinclair*, 264 U.S. 543; *Hammond* v. *Schappi Bus Line*, 275 U.S. 164. If we are to decide this case on the present record, however, a strict adherence to the usage of courts in ruling on the sufficiency of pleadings would require us to take as admitted the facts pleaded in the appellants' complaint, including the fact of coercion, actual and inherent. See Judge Fuld, dissenting below, 303 N. Y., at 185, 100 N. E. 2d, at 475. Even on a more latitudinarian view, I cannot see how a finding that coercion was absent, deemed critical by this Court in sustaining the practice, can be made here, when appellants were prevented from making a timely showing of coercion because the courts below thought it irrelevant.

The result in the *McCollum* case, 333 U. S. 203, was based on principles that received unanimous acceptance by this Court, barring

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[1] See, *e.g.*, Newman, The Sectarian Invasion of Our Public Schools; Moehlman, The Wall of Separation between Church and State; Thayer, The Attack upon the American Secular School, pp. 179–199; Butts, The American Tradition in Religion and Education, pp. 201–208. See also Symposium on Religion and the State, 14 Law & Contempt. Prob. 1–159.

[2] See, *e.g.*, O'Neill, Religion and Education Under the Constitution, pp. 219–253; Parsons, The First Freedom, pp. 158–178; Van Dusen, God in Education. See also Symposium on Religion and the State, *supra*.

[3] See Moehlman, *supra*, n. 1, at p. 42. O'Neill, *supra*, n. 2, at pp. 254–272.

[4] A state policy of aiding "all religions" necessarily requires a governmental decision as to what constitutes "a religion." Thus is created a governmental power to hinder certain religious beliefs by denying their character as such. See, *e.g.*, the Regulations of the New York Commissioner of Education providing that, "The courses in religious observance and education must be maintained and operated by or under the control of *duly constituted* religious bodies." (Emphasis added.) Art. 17, § 154, 1 N.Y. Official Code Comp. 683. This provides precisely the kind of censorship which we have said the Constitution forbids. *Cantwell* v. *Connecticut*, 310 U.S. 296, 305.

[5] Wertenbaker, The Puritan Oligarchy, 213–214.

[1] Issues that raise federal claims cannot be foreclosed by the State court treating the allegations as "conclusory in character." 303 N.Y. 161, 174, 100 N.E. 2d 463, 469. This is so even when a federal statute is involved. *Brown* v. *Western R. of Alabama*, 338 U.S. 294. *A fortiori* when the appeal is to the Constitution of the United States.

only a single vote. I agree with MR. JUSTICE BLACK that those principles are disregarded in reaching the result in this case.[2] Happily they are not disavowed by the Court. From this I draw the hope that in future variations of the problem which are bound to come here, these principles may again be honored in the observance.

The deeply divisive controversy aroused by the attempts to secure public school pupils for sectarian instruction would promptly end if the advocates of such instruction were content to have the school "close its doors or suspend its operations"—that is, dismiss classes in their entirety, without discrimination—instead of seeking to use the public schools as the instrument for securing attendance at denominational classes. The unwillingness of the promoters of this movement to dispense with such use of the public schools betrays a surprising want of confidence in the inherent power of the various faiths to draw children to outside sectarian classes—an attitude that hardly reflects the faith of the greatest religious spirits.

MR. JUSTICE JACKSON, dissenting.

This released time program is founded upon a use of the State's power of coercion, which, for me, determines its unconstitutionality. Stripped to its essentials, the plan has two stages: first, that the State compel each student to yield a large part of his time for public secular; and, second, that some of it be "released" to him on condition that he devote it to sectarian religious purposes.

No one suggests that the Constitution would permit the State directly to require this "released" time to be spent "under the control of a duly constituted religious body." This program accomplishes that forbidden result by indirection. If public education were taking so much of the pupils' time as to injure the public or the students' welfare by encroaching upon their religious opportunity, simply shortening everyone's school day would facilitate voluntary and optional attendance at Church classes. But that suggestion is rejected upon the ground that if they are made free many students will not go to the Church. Hence, they must be deprived of freedom for this period, with Church attendance put to them as one of the two permissible ways of using it.

The greater effectiveness of this system over voluntary attendance after school hours is due to the truant officer who, if the youngster fails to go to the Church school, dogs him back to the public schoolroom. Here schooling is more or less suspended during the "released time" so the nonreligious attendants will not forge ahead of the church-going absentees. But it serves as a temporary jail for a pupil who will not go to Church. It takes more subtlety of mind than I possess to deny that this is governmental constraint in support of religion. It is as unconstitutional, in my view, when exerted by indirection as when exercised forthrightly.

As one whose children, as a matter of free choice, have been sent to privately supported Church schools. I may challenge the Court's suggestion that opposition to this plan can only be antireligious, atheistic, or agnostic. My evangelistic brethren confuse an objection to compulsion with an objection to religion. It is possible to hold a faith with enough confidence to believe that what should be rendered to God does not need to be decided and collected by Caesar.

The day that this country ceases to be free for irreligion it will cease to be free for religion—except for the sect that can win political power. The same epithetical jurisprudence used by the Court today to beat down those who oppose pressuring children into some religion can devise as good epithets tomorrow against those who object to pressuring them into a favored religion. And, after all, if we concede to the State power and wisdom to single out "duly constituted religious" bodies as exclusive alternatives for compulsory secular instruction, it would be logical to also uphold the power and wisdom to choose the true faith among those "duly constituted." We start down a rough road when we begin to mix compulsory public education with compulsory godliness.

A number of Justices just short of a majority of the majority that promulgates today's passionate dialectics joined in answering them in *Illinois ex rel. McCollum* v. *Board of Education*, 333 U.S. 203. The distinction attempted between that case and this is trivial, almost to the point of cynicism, magnifying its nonessential details and disparaging compulsion which was the underlying reason for invalidity. A reading of the Court's opinion in that case along with its opinion in this case will show such difference of overtones and undertones as to make clear that the *McCollum* case has passed like a storm in a teacup. The wall which the Court was professing to erect between Church and State has become even more warped and twisted than I expected. Today's judgment will be more interesting to students of psychology and of the judicial processes than to students of constitutional law.

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[2] The reservation made by four of the Justices in the *McCollum* case did not, of course, refer to the New York situation any more than it referred to that form of "released time" under which the whole student body is dismissed. This was the reservation:

"We do not consider, as indeed we could not, school programs not before us which, though colloquially characterized as 'released time,' present situations differing in aspects that may well be constitutionally crucial. Different forms which 'released time' has taken during more than thirty years of growth include programs which, like that before us, could not withstand the test of the Constitution; others may be found unacceptable." 333 U.S., at 231.

Mr. ERVIN. Mr. President, in 1961 and 1962 the Supreme Court handed down two other notable decisions in this field. One of them was *Engel* v. *Vitale*, 370 U.S. 421, and the other was *School District of Abington Township, Pennsylvania* v. *Edward Louis Schempp*, 374 U.S. 203. These were the cases in which it was held that the government—the government involved in these particular cases being the State government—could not use public school property even for 30 seconds for the purpose of teaching religion.

Yet the pending bill proposes that the Government take tax money and give it to church schools operated by the religious denominations which establish and conduct those schools for the purpose of teaching religion in substantial part.

Now, my brethen may say, "This money is to be used for secular purposes; it is not to be used to teach religion of the denominations which conduct these schools." As a matter of fact, it is impossible in the church school to divorce the teaching of sectarian matters from the teaching of secular matters. Therefore, this excuse does not make constitutional the allocation of tax funds for secular purposes to a church school conducted by a religion denomination.

In the Everson case, one of the most learned men who ever graced the Supreme Court, Justice Rutledge, wrote the following on this proposition. I read from pages 46 and 47 of his opinion, a reading of which I commend to every thoughtful American who is concerned about our remaining faithful to the first amendment:

> Indeed the view is sincerely avowed by many of various faiths, that the basic purpose of all education is or should be religious, that the secular cannot be and should not be separated from the religious phase and emphasis. Hence, the inadequacy of public or secular education and the necessity for sending the child to a school where religion is taught. But whatever may be the philosophy or its justification, there is undeniably an admixture of religious with secular teaching in all such institutions. That is the very reason for their being. Certainly for purposes of constitutionality we cannot contradict the whole basis of the ethical and educational convictions of people who believe in religious schooling.
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> Yet this very admixture is what was disestablished when the First Amendment forbade "an establishment of religion." Commingling the religious with the secular teaching does not divest the whole of its religious permeation and emphasis or make them of minor part, if proportion were material. Indeed, on any other view, the constitutional prohibition always could be brought to naught by adding a modicum of the secular

He adds, in the next paragraph:

> Surely constitutionality does not turn on where or how often the mixed teaching occurs.

The Zorach case has something to say on this same point. The opinion of the Court in the Zorach case, which expressed the opinion of all the Justices, and which was written by Mr. Justice Douglas, made this statement on page 314:

> Government may not finance religious groups nor undertake religious instruction nor blend secular and sectarian education nor use secular institutions to force one or some religion on any person.

This bill undertakes to blend secular and sectarian education, in violation of the interpretation placed upon the first amendment in the Everson case and also in the Zorach case.

Now I come to the Abington Township School District case, where we find the most illuminating statement of the principle—that tax moneys cannot be used where they result in the blending of secular and sectarian education. As I have already stated, this opinion and the opinion in the Engel case are very illuminating opinions on the subject of using public property or public moneys to teach such nondenominational things as the Lord's Prayer. In order that these two opinions may be made available with the other court opinions on this subject, I ask unanimous consent that the complete record in these two cases be printed at this point in the body of the RECORD.

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

[Supreme Court of the United States—No. 468—October Term, 1961]

STEVEN I. ENGEL ET AL., PETITIONERS, V. WILLIAM J. VITALE, JR., ET AL.

(On Writ of Certiorari to the Court of Appeals of New York, June 25, 1962)

MR. JUSTICE BLACK delivered the opinion of the Court.

The respondent Board of Education of Union Free School District No. 9, New Hyde

Park, New York, acting in its official capacity under state law, directed the School District's principal to cause the following prayer to be said aloud by each class in the presence of a teacher at the beginning of each school day:

"Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our country."

This daily procedure was adopted on the recommendation of the State Board of Regents, a governmental agency created by the State Constitution to which the New York Legislature has granted broad supervisory, executive, and legislative powers over the State's public school system.[1] These state officials composed the prayer which they recommended and published as a part of their "Statement on Moral and Spiritual Training in the Schools," saying: "We believe that this Statement will be subscribed to by all men and women of good will, and we call upon all of them to aid in giving life to our program."

Shortly after the practice of reciting the Regents' prayer was adopted by the School District, the parents of ten pupils brought this action in a New York State Court insisting that use of this official prayer in the public schools was contrary to the beliefs, religions, or religious practices of both themselves and their children. Among other things, these parents challenged the constitutionality of both the state law authorizing the School District to direct the use of prayer in public schools and the School District's regulations ordering the recitation of this particular prayer on the ground that these actions of official governmental agencies violate that part of the First Amendment of the Federal Constitution which commands that "Congress shall make no law respecting an establishment of religion"—a command which was "made applicable to the State of New York by the Fourteenth Amendment of the said Constitution." The New York Court of Appeals, over the dissents of Judges Dye and Fuld, sustained an order of the lower state courts which had upheld the power of New York to use the Regents' prayer as a part of the daily procedures of its public schools so long as the schools did not compel any pupil to join in the prayer over his or his parents' objection.[2] We granted certiorari to review this important decision involving rights protected by the First and Fourteenth Amendments.[3]

We think that by using its public school system to encourage recitation of the Regents' prayer, the State of New York has adopted a practice wholly inconsistent with the Establishment Clause. There can, of course, be no doubt that New York's program of daily classroom invocation of God's blessings as prescribed in the Regents' prayer is a religious activity. It is a solemn avowal of divine faith and supplication for the blessings of the Almighty. The nature of such a prayer has always been religious, none of the respondents has denied this and the trial court expressly so found:

"The religious nature of prayer was recognized by Jefferson and has been concurred in by theological writers, the United States Supreme Court and State courts and administrative officials, including New York's Commissioner of Education. A committee of the New York Legislature has agreed.

"The Board of Regents as *amicus curiae*, the respondents and intervenors all conceded the religious nature of prayer, but seek to distinguish this prayer because it is based on our spiritual heritage. . . ."[4]

The petitioners contend among other things that the state laws requiring or permitting use of the Regents' prayer must be struck down as a violation of the Establishment Clause because that prayer was composed by governmental officials as a part of a governmental program to further religious beliefs. For this reason, petitioners argue, the State's use of the Regents' prayer in its public school system breaches the constitutional wall of separation between Church and State. We agree with that contention since we think that the constitutional prohibition against laws respecting an establishment of religion must at least mean that in this country it is no part of the business of government to compose official prayers for any group of the American people to recite as a part of a religious program carried on by government.

It is a matter of history that this very practice of establishing governmentally composed prayers for religious services was one of the reasons which caused many of our early colonists to leave England and seek religious freedom in America. The Book of Common Prayer, which was created under governmental direction and which was approved by Acts of Parliament in 1548 and 1549,[5] set out in minute detail the accepted form and content of prayer and other religious ceremonies to be used in the established, tax-supported Church of England.[6] The controversies over the Book and what should, be its content repeatedly threatened to disrupt the peace of that country as the accepted forms of prayer in the established church changed with the views of the particular ruler that happened to be in control at the time.[7] Powerful groups representing some of the varying religious views of the people struggled among themselves to impress their particular views upon the Government and obtain amendments of the Book more suitable to their respective notions of how religious services should be conducted in order that the official religious establishment would advance their particular religious beliefs.[8] Other groups, lacking the necessary political power to influence the Government on the matter, decided to leave England and its established church and seek freedom in America from England's governmentally ordained and supported religion.

It is an unfortunate fact of history that when some of the very groups which had most strenuously opposed the established Church of England found themselves sufficiently in control of colonial governments in this country to write their own prayers into law, they passed laws making their own religion the official religion of their respective colonies.[9] Indeed, as late as the time of the Revolutionary War, there were established churches in at least eight of the thirteen former colonies and established religions in at least four of the other five.[10] But the successful Revolution against English political domination was shortly followed by intense opposition to the practice of establishing religion by law. This opposition crystallized rapidly into an effective political force in Virginia where the minority religious groups such as Presbyterians, Lutherans, Quakers and Baptists had gained such strength that the adherents to the established Episcopal Church were actually a minority themselves. In 1785–1786, those opposed to the established Church, led by James Madison and Thomas Jefferson, who, though themselves not members of any of these dissenting religious groups, opposed all religious establishments by law on grounds of principle, obtained the enactment of the famous "Virginia Bill for Religious Liberty" by which all religious groups were placed on an equal footing so far as the State was concerned.[11] Similar though less far-reaching legislation was being considered and passed in other States.[12]

By the time of the adoption of the Constitution, our history shows that there was a widespread awareness among many Americans of the dangers of a union of Church and State. These people knew, some of them from bitter personal experience, that one of the greatest dangers to the freedom of the individual to worship in his own way lay in the Government's placing its official stamp of approval upon one particular kind of prayer or one particular form of religious services. They knew the anguish, hardship and bitter strife that could come when zealous religious groups struggled with one another to obtain the Government's stamp of approval from each King, Queen, or Protector that came to temporary power. The Constitution was intended to avert a part of this danger by leaving the government of this country in the hands of the people rather than in the hands of any monarch. But this safeguard was not enough. Our Founders were no more willing to let the content of their prayers and their privilege of praying whenever they pleased be influenced by the ballot box than they were to let these vital matters of personal conscience depend upon the succession of monarchs. The First Amendment was added to the Constitution to stand as a guarantee that neither the power nor the prestige of the Federal Government would be used to control, support or influence the kinds of prayer the American people can say—that the people's religions must not be subjected to the pressures of government for change each time a new political administration is elected to office. Under that Amendment's prohibition against governmental establishment of religion, as reinforced by the provisions of the Fourteenth Amendment, government in this country, be it state or federal, is without power to prescribe by law any particular form of prayer which is to be used as an official prayer in carrying on any program of governmentally sponsored religious activity.

There can be no doubt that New York's state prayer program officially establishes the religious beliefs embodied in the Regents' prayer. The respondents' argument to the contrary, which is largely based upon the contention that the Regents' prayer is "nondenominational" and the fact that the program, as modified and approved by state courts, does not require all pupils to recite the prayer but permits those who wish to do so to remain silent or be excused from the room, ignores the essential nature of the program's constitutional defects. Neither the fact that the prayer may be denominationally neutral, nor the fact that its observance on the part of the students is voluntary can serve to free it from the limitations of the Establishment Clause, as it might from the Free Exercise Clause, of the First Amendment, both of which are operative against the States by virtue of the Fourteenth Amendment. Although these two clauses may in certain instances overlap, they forbid two quite different kinds of governmental encroachment upon religious freedom. The Establishment Clause, unlike the Free Exercise Clause, does not depend upon any showing of direct governmental compulsion and is violated by the enactment of laws which establish an official religion whether those laws operate directly to coerce nonobserving individuals or not. This is not to say, of course, that laws officially prescribing a particular form of religious worship do not involve coercion of such individuals. When the power, prestige and financial support of government is placed behind a particular religious belief, the indirect coercive pressure upon religious minorities to conform to the prevailing officially approved religion is plain. But the purposes underlying the Establishment Clause go much further than that. Its first and most immediate purpose rested on the belief that a union of government and religion tends to destroy government and to degrade religion. The history of governmentally established religion, both in England and in this country, showed that whenever government had allied itself with one particular form of religion, the inevitable result had been that it had incurred the hatred, disrespect and even contempt of those

Footnotes at end of article.

who held contrary beliefs.[13] That same history showed that many people had lost their respect for any religion that had relied upon the support of government to spread its faith.[14] The Establishment Clause thus stands as an expression of principle on the part of the Founders of our Constitution that religion is too personal, too sacred, too holy, to permit its "unhallowed perversion" by a civil magistrate.[15] Another purpose of the Establishment Clause rested upon an awareness of the historical fact that governmentally established religions and religious persecutions go hand in hand.[16] The Founders knew that only a few years after the Book of Common Prayer became the only accepted form of religious services in the established Church of England, an Act of Uniformity was passed to compel All Englishmen to attend those services and to make it a criminal offense to conduct or attend religious gatherings of any other kind[17]—a law which was consistently flouted by dissenting religious groups in England and which contributed to widespread persecutions of people like John Bunyan who persisted in holding "unlawful [religious] meetings . . . to the great disturbance and distraction of the good subjects of this kingdom. . . ." [18] And they knew that similar persecutions had received the sanction of law in several of the colonies in this country soon after the establishment of official religions in those colonies.[19] It was in large part to get completely away from this sort of systematic religious persecution that the Founders brought into being our Nation, our Constitution, and our Bill of Rights with its prohibition against any governmental establishment of religion. The New York laws officially prescribing the Regents' prayer are inconsistent with both the purposes of the Establishment Clause and with the Establishment Clause itself.

It has been argued that to apply the Constitution in such a way as to prohibit state laws respecting an establishment of religious services in public schools is to indicate a hostility toward religion or toward prayer. Nothing, of course, could be more wrong. The history of man is inseparable from the history of religion. And perhaps it is not too much to say that since the beginning of that history many people have devoutly believed that "More things are wrought by prayer than this world dreams of." It was doubtless largely due to men who believed this that there grew up a sentiment that caused men to leave the cross-currents of officially established state religions and religious persecution in Europe and come to this country filled with the hope that they could find a place in which they could pray when they pleased to the God of their faith in the language they chose.[20] And there were men of this same faith in the power of prayer who led the fight for adoption of our Constitution and also for our Bill of Rights with the very guarantee of religious freedom that forbid the sort of governmental activity which New York has attempted here. These men knew that the First Amendment, which tried to put an end to governmental control of religion and of prayer, was not written to destroy either. They knew rather that it was written to quiet well-justified fears which nearly all of them felt arising out of an awareness that governments of the past had shackled men's tongues to make them speak only the religious thoughts that government wanted them to speak and to pray only to the God that government wanted them to pray to. It is neither sacrilegious nor anti-religious to say that each separate government in this country should stay out of the business of writing or sanctioning official prayers and leave that purely religious function to the people themselves and to those the people choose to look to for religious guidance.[21]

It is true that New York's establishment of its Regents' prayer as an officially approved religious doctrine of that State does not amount to a total establishment of one particular religious sect to the exclusion of all others—that, indeed, the governmental endorsement of that prayer seems relatively insignificant when compared to the governmental encroachments upon religion which were commonplace 200 years ago. To those who may subscribe to the view that because the Regents' official prayer is so brief and general there can be no danger to religious freedom in its governmental establishment, however, it may be appropriate to say in the words of James Madison, the author of the First Amendment:

"[I]t is proper to take alarm at the first experiment on our liberties. . . . Who does not see that the same authortiy which can establish Christianity, in exclusion of all other Religions, may establish with the same ease any particular sect of Christians, in exclusion of all other Sects? That the same authority which can force a citizen to contribute three percent only of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever?" [22]

The judgment of the Court of Appeals of New York is reversed and the cause remanded for further proceedings not inconsistent with this opinion.

Reversed and remanded.

MR. JUSTICE FRANKFURTER took no part in the decision of this case.

MR. JUSTICE WHITE took no part in the consideration or decision of this case.

FOOTNOTES

[1] See New York Constitution, Art. V, § 4; New York Education Law, §§ 101, 120 *et seq.*, 202, 214–219, 224, 245 *et seq.*, 704, and 801 *et seq.*

[2] 10 N.Y. 2d 174, 176 N.E. 2d 579. The trial court's opinion, which is reported at 18 Misc. 2d 659, 191 N.Y.S. 2d 453, had made it clear that the Board of Education must set up some sort of procedures to protect those who objected to reciting the prayer: "This is not to say that the rights accorded petitioners and their children under the 'free exercise' clause do not mandate safeguards against such embarrassments and pressures. It is enough on this score, however, that regulations, such as were adopted by New York City's Board of Education in connection with its released time program, be adopted, making clear that neither teachers nor any other school authority may comment on participation or nonparticipation in the exercise nor suggest or require that any posture or language be used or dress be worn or be not used or not worn. Nonparticipation may take the form either of remaining silent during the exercise, or if the parent or child so desires, of being excused entirely from the exercise. Such regulations must also make provision for those nonparticipants who are to be excused from the prayer exercise. The exact provision to be made is a matter for decision by the board, rather than the court, within the framework of constitutional requirements. Within that framework would fall a provision that prayer participants proceed to a common assembly while non-participants attend other rooms, or that nonparticipants be permitted to arrive at school a few minutes late or to attend separate opening exercises, or any other method which treats with equality both participants and nonparticipants." 18 Misc. 2d, at 696, 191 N.Y.S. 2d, at 492–493. See also the opinion of the Appellate Division affirming that of the trial court, reported at 11 App. Div. 2d 340, 206 N.Y.S. 2d 183.

[3] 368 U.S. 924.

[4] 18 Misc. 2d, at 671–672, 191 N.Y.S. 2d, at 468–469.

[5] 2 & 3 Edward VI, c. 1, entitled "An Act for Uniformity of Service and Administration of the Sacraments throughout the Realm"; 3 & 4 Edward VI, c. 10, entitled "An Act for the abolishing and putting away of divers Books and Images."

[6] The provisions of the various versions of the Book of Common Prayer are set out in broad outline in the Encyclopedia Britannica, Vol. 18 (1957 ed.), pp. 420–423. For a more complete description, see Pullan, The History of the Book of Common Prayer (1900).

[7] The first major revision of the Book of Common Prayer was made in 1552 during the reign of Edward VI. 5 & 6 Edward VI, c. 1. In 1553, Edward VI died and was succeeded by Mary who abolished the Book of Common Prayer entirely. 1 Mary, c. 2. But upon the accession of Elizabeth in 1558, the Book was restored with important alterations from the form it had been given by Edward VI. 1 Elizabeth, c. 2. The resentment to this amended form of the Book was kept firmly under control during the reign of Elizabeth but, upon her death in 1603, a petition signed by more than 1,000 Puritan ministers was presented to King James I asking for further alterations in the Book. Some alterations were made and the Book retained substantially this form until it was completely suppressed again in 1645 as a result of the successful Puritan Revolution. Shortly after the restoration in 1660 of Charles II, the Book was again reintroduced, 13 & 14 Charles II, c. 4, and again with alterations. Rather than accept this form of the Book some 2,000 Puritan ministers vacated their benefices. See generally Pullan, The History of the Book of Common Prayer (1900), pp. vii–xvi; Encyclopedia Britannica (1957 ed.), Vol. 18, pp. 421–422.

[8] For example, the Puritans twice attempted to modify the Book of Common Prayer and once attempted to destroy it. The story of their struggle to modify the Book in the reign of Charles I is vividly summarized in Pullan, History of the Book of Common Prayer at p. xiii: "The King actively supported those members of the Church of England who were anxious to vindicate its Catholic character and maintain the ceremonial which Elizabeth had approved. Laud, Archbishop of Canterbury, was the leader of this school. Equally resolute in his opposition to the distinctive tenets of Rome and of Geneva, he enjoyed the hatred of both Jesuit and Calvinist. He helped the Scottish bishops, who had made large concessions to the uncouth habits of Presbyterian worship, to draw up a Book of Common Prayer for Scotland. It contained a Communion Office resembling that of the book of 1549. It came into use in 1637, and met with a bitter and barbarous opposition. The vigour of the Scottish Protestants strengthened the hands of their English sympathisers. Laud and Charles were executed, Episcopacy was abolished, the use of the Book of Common Prayer was prohibited."

[9] For a description of some of the laws enacted by early theocratic governments in New England, see Parrington, Main Currents in American Thought (1930), Vol. 1, pp. 5–50; Whipple, Our Ancient Liberties (1927), pp. 63–78; Wertenbaker, The Puritan Oligarchy (1947).

[10] The Church of England was the established church of at least five colonies: Maryland, Virginia, North Carolina, South Carolina and Georgia. There seems to be some controversy as to whether that church was officially established in New York and New Jersey but there is no doubt that it received substantial support from those states. See Cobb, The Rise of Religious Liberty in America (1902), pp. 338, 408. In Massachusetts, New Hampshire and Connecticut, the Congregationalist Church was officially established. In Pennsylvania and Delaware, all Christian sects were treated equally in most situations but Catholics were discriminated against in some respects. See generally Cobb, The Rise of Religious Liberty in America (1902). In Rhode Island all protestants

enjoyed equal privileges but it is not clear whether Catholics were allowed to vote. Compare Fiske, The Critical Period in American History (1899), p. 76 with Cobb, The Rise of Religious Liberty in America (1902), pp. 437–438.

[11] 12 Hening, Statutes of Virginia (1823), 84, entitled "An Act for establishing religious freedom." The story of the events surrounding the enactment of this law was reviewed in *Everson* v. *Board of Education*, 330 U.S. 1, both by the Court, at pp. 11–13, and in the dissenting opinion of Mr. Justice Rutledge, at pp. 33–42. See also Fiske, The Critical Period in American History (1899), pp. 78–82; James, The Struggle for Religious Liberty in Virginia (1900); Thom, The Struggle for Religious Freedom in Virginia: The Baptists (1900); Cobb, The Rise of Religious Liberty in America (1902), pp. 74–115, 482–499.

[12] See Cobb, The Rise of Religious Liberty in America (1902), pp. 482–509.

[13] "[A]ttempts to enforce by legal sanctions, acts obnoxious to so great a proportion of Citizens, tend to enervate the laws in general, and to slacken the bands of Society. If it be difficult to execute any law which is not generally deemed necessary or salutary, what must be the case where it is deemed invalid and dangerous? and what may be the effect of so striking an example of impotency in the Government, on its general authority." Memorial and Remonstrance against Religious Assessments, II Writings of Madison 183, 190.

[14] "It is moreover to weaken in those who profess this Religion a pious confidence in its innate excellence, and the patronage of its Author; and to foster in those who still reject it, a suspicion that its friends are too conscious of its fallacies, to trust it to its own merits. . . . [E]xperience witnesseth that ecclesiastical establishments, instead of maintaining the purity and efficacy of Religion, have had a contrary operation. During almost fifteen centuries, has the legal establishment of Christianity been on trial. What have been its fruits? More or less in all places, pride and indolence in the Clergy; ignorance and servility in the laity; in both, superstition, bigotry and persecution. Enquire of the Teachers of Christianity for the ages in which it appeared in its greatest lustre; those of every sect, point to the ages prior to its incorporation with Civil policy." *Id.*, at 187.

[15] Memorial and Remonstrance against Religious Assessments, II Writings of Madison, at 187.

[16] "[T]he proposed establishment is a departure from that generous policy, which, offering an asylum to the persecuted and oppressed of every Nation and Religion, promised a lustre to our country, and an accession to the number of its citizens. What a melancholy mark is the Bill of sudden degeneracy? Instead of holding forth an asylum to the persecuted, it is itself a signal of persecution. . . . Distant as it may be, in its present form, from the Inquisition it differs from it only in degree. The one is the first step, the other the last in the career of intolerance. The magnanimous sufferer under this cruel scourge in foreign Regions, must view the Bill as a Beacon on our Coast, warning him to seek some other haven, where liberty and philanthropy in their due extent may offer a more certain repose from his troubles." *Id.*, at 188.

[17] 5 & 6 Edward VI, c. 1, entitled "An Act for the Uniformity of Service and Administration of Sacraments throughout the Realm." This Act was repealed during the reign of Mary but revived upon the accession of Elizabeth. See note, 7, *supra*. The reasons which led to the enactment of this statute were set out in its preamble: "Where there hath been a very godly Order set forth by the Authority of Parliament, for Common Prayer and Administration of Sacraments to be used in the Mother Tongue within the Church of *England*, agreeable to the Word of God and the Primitive Church, very comfortable to all good People desiring to live in Christian Conversation, and most profitable to the Estate of this Realm, upon which the Mercy, Favour and Blessing of Almighty God is in no wise so readily and plenteously poured as by Common Prayers, due using of the Sacraments, and often preaching of the Gospel, with the Devotion of the Hearers: (1) And yet this notwithstanding, a great Number of People in divers Parts of this Realm, following their own Sensuality, and living either without Knowledge or due Fear of God, do wilfully and damnably before Almighty God abstain and refuse to come to their Parish Churches and other Places where Common Prayer, Administration of the Sacraments, and Preaching of the Word of God, is used upon *Sundays* and other Days ordained to be Holydays."

[18] Bunyan's own account of his trial is set forth in A Relation of the Imprisonment of Mr. John Bunyan, reprinted in Grace Abounding and The Pilgrim's Progress (Brown ed. 1907), at 103–132.

[19] For a vivid account of some of these persecutions, see Wertenbaker, The Puritan Oligarchy (1947).

[20] Perhaps the best example of the sort of men who came to this country for precisely that reason is Roger Williams, the founder of Rhode Island, who has been described as "the truest Christian amongst many who sincerely desired to be Christian." Parrington, Main Currents of American Thought (1930), Vol. 1, at p. 74. Williams, who was one of the earliest exponents of the doctrine of separation of church and state, believed that separation was necessary in order to protect the church from the danger of destruction which he thought inevitably flowed from control by even the best-intentioned civil authorities: "The unknowing zeale of *Constantine* and other Emperours, did more hurt to *Christ Jesus* his Crowne and Kingdome, then the raging fury of the most bloody *Neroes*. In the *persecutions* of the later, *Christians* were sweet and fragrant, like spice pounded and beaten in morters: But those *good* Emperours, persecuting some erroneous persons, *Arrius, &c.* and advancing the professours of some Truths of Christ (for there was no small number of *Truths* lost in those times) and maintaining their *Religion* by the materiall Sword, I say by this means *Christianity* was *ecclipsed*, and the Professors of it fell asleep . . ." Williams, The Bloudy Tenent, of Persecution, for cause of Conscience, discussed, in A Conference betweene Truth and Peace (London, 1644), reprinted in Naragansett Club Publications, Vol. III, p. 184. To Williams, it was no part of the business or competence of a civil magistrate to interfere in religious matters:

"[W]hat imprudence and *indiscretion* is it in the most common affaires of Life, to conceive that *Emperours, Kings* and *Rulers* of the earth must not only be qualified with *politicall* and *state abilities* to *make* and *execute* such *Civill Lawes* which may concerne the common *rights, peace* and *safety* (which is worke and businesse, load and burthen enough for the ablest shoulders in the Commonweal) but also furnished with such *Spirituall* and heavenly *abilities* to governe the *Spirituall* and *Christian Commonweale. . . .*" *Id.*, at 366. See also, *id.*, at 136–137.

[21] There is of course nothing in the decision reached here that is inconsistent with the fact that school children and others are officially encouraged to express love for our country by reciting historical documents such as the Declaration of Independence which contain references to the Deity or by singing officially espoused anthems which include the composer's professions of faith in a Supreme Being, or with the fact that there are many manifestations in our public life of belief in God. Such patriotic or ceremonial occasions bear no true resemblance to the unquestioned religious exercise that the State of New York has sponsored in this instance.

[22] Memorial and Remonstrance against Religious Assessments, II Writings of Madison 183, at 185–186.

[Supreme Court of the United States—No. 468—October Term, 1961]

STEVEN I. ENGEL, PETITIONERS, *v.* WILLIAM J. VITALE, JR., ET AL.

(On Writ of Certiorari to the Court of Appeals of New York)

June 25, 1962

Mr. JUSTICE DOUGLAS, concurring.

It is customary in deciding a constitutional question to treat it in its narrowest form. Yet at times the setting of the question gives it a form and content which no abstract treatment could do. The point for decision is whether the Government can constitutionally finance a religious exercise. Our system at the federal and state levels is presently honeycombed with such financing.[1] Nevertheless, I think it is an unconstitutional undertaking whatever form it takes.

First, a word as to what this case does not involve.

Plainly, our Bill of Rights would not permit a State or the Federal Government to adopt an official prayer and penalize anyone who would not utter it. This, however, is not that case, for there is no element of compulsion or coercion in New York's regulation requiring that public schools be opened each day with the following prayer:

"Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our Country."

The prayer is said upon the commencement of the school day, immediately following the pledge of allegiance to the flag. The prayer is said aloud in the presence of a teacher, who either leads the recitation or selects a student to do so. No student, however, is compelled to take part. The respondents have adopted a regulation which provides that "neither teachers nor any school authority shall comment on participation or non-participation . . . nor suggest or request that any posture or language be used or dress be worn or be not used or not worn." Provision is also made for excusing children, upon written request of a parent or guardian, from the saying of the prayer or from the room in which the prayer is said. A letter implementing and explaining this regulation has been sent to each taxpayer and parent in the school district. As I read this regulation, a child is free to stand or not stand, to recite or not recite, without fear of reprisal or even comment by the teacher or any other school official.

In short, the only one who need utter the prayer is the teacher; and no teacher is complaining of it. Students can stand mute or even leave the classroom, if they desire.[2]

McCollum v. *Board of Education*, 333 U.S. 203, does not decide this case. It involved the use of public school facilities for religious education of students. Students either had to attend religious instruction or "go to some other place in the school building for pursuit of their secular studies. . . . Reports of their presence or absence were to be made to their secular teachers." *Id.*, at 209. The influence of the teaching staff was therefore brought to bear on the student body, to support the instilling religious principles. In the present case, school facilities are used to say the prayer and the teaching staff is employed to lead the pupils in it. There is, however, no effort at indoctrination and no attempt at exposition. Prayers of course may be so long and of such a character as to amount to an attempt at the religious in-

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Footnotes at end of article.

struction that was denied the public schools by the *McCollum* case. But New York's prayer is of a character that does not involve any ment of proselytizing as in the *McCollum* case.

The question presented by this case is therefore an extremely narrow one. It is whether New York oversteps the bounds when it finances a religious exercise.

What New York does on the opening of its public schools is what we do when we open court. Our Marshal has from the beginning announced the convening of the Court and then added "God save the United States and this honorable court." That utterance is a supplication, a prayer in which we, the judges, are free to join, but which we need not recite any more than the students need recite the New York prayer.

What New York does on the opening of its public schools is what each House of Congress [3] does at the opening of each day's business.[4] Reverend Frederick B. Harris is Chaplain of the Senate; Reverend Bernard Braskamp is Chaplain of the House. Guest chaplains of various denominations also officiate.[5]

In New York the teacher who leads in prayer is on the public payroll; and the time she takes seems minuscule as compared with the salaries appropriated by state legislatures and Congress for chaplains to conduct prayers in the legislative halls. Only a bare fraction of the teacher's time is given to reciting this short 22-word prayer, about the same amount of time that our Marshal spends announcing the opening of our sessions and offering a prayer for this Court. Yet for me the principle is the same, no matter how briefly the prayer is said, for in each of the instances given the person praying is a public official on the public payroll, performing a religious exercise in a governmental institution.[6] It is said that the element of coercion is inherent in the giving of this prayer. If that is true here, it is also true of the prayer with which this Court is convened, and with those that open the Congress. Few adults, let alone children, would leave our courtroom or the Senate or the House while those prayers are being given. Every such audience is in a sense a "captive" audience.

At the same time I cannot say that to authorize this prayer is to establish a religion in the strictly historic meaning of those words.[7] A religion is not established in the usual sense merely by letting those who chose to do so say the prayer that the public school teacher leads. Yet once government finances a religious exercise it inserts a divisive influence into our communities.[8] The New York court said that the prayer given does not conform to all of the tenets of the Jewish, Unitarian, and Ethical Culture groups. One of petitioners is an agnostic.

"We are a religious people whose institutions presupposes a Supreme Being." *Zorach* v. *Clauson*, 343 U.S. 306, 313. Under our Bill of Rights free play is given for making religion an active force in our lives.[9] But "if a religious leaven is to be worked into the affairs of our people, it is to be done by individuals and groups, not by the Government." *McGowan* v. *Maryland*, 366 U.S. 420, 563 (dissenting opinion). By reason of the First Amendment government is commanded "to have no interest in theology or ritual" (*id.*, at 564), for on those matters "government must be neutral." *Ibid.* The First Amendment leaves the Government in a position not of hostility to religion but of neutrality. The philosophy is that the atheist or agnostic—the nonbeliever—is entitled to go his own way. The philosophy is that if government interferes in matters spiritual, it will be a divisive force. The First Amendment teaches that a government neutral in the field of religion better serves all religious interests.

My problem today would be uncomplicated but for *Everson v. Board of Education*, 330 U.S. 1, 17, which allowed taxpayers' money to be used to pay "the bus fares of parochial school pupils as a part of a general program under which" the fares of pupils attending public and other schools were also paid. The *Everson* case seems in retrospect to be out of line with the First Amendment. Its result is appealing, as it allows aid to be given to needy children. Yet by the same token, public funds could be used to satisfy other needs of children in parochial schools—lunches, books, and tuition being obvious examples. Mr. Justice Rutledge stated in dissent what I think is durable First Amendment philosophy:

"The reasons underlying the Amendment's policy have not vanished with time or diminished in force. Now as when it was adopted the price of religious freedom is double. It is that the church and religion shall live both within and upon that freedom. There cannot be freedom of religion, safeguarded by the state, and intervention by the church or its agencies in the state's domain or dependency on its largesse. Madison's Remonstrance, Par. 6, 8. The great condition of religious liberty is that it be maintained free from sustenance, as also from interferences, by the state. For when it comes to rest upon that secular foundation it vanishes with the resting. *Id.*, Par. 7, 8. Public money devoted to payment of religious costs, educational or other, brings the quest for more. It brings too the struggle of sect against sect for the larger share or for any. Here one by numbers alone will benefit most, there another. That is precisely the history of societies which have had an established religion and dissident groups. *Id.* Par. 8, 11. It is the very thing Jefferson and Madison experienced and sought to guard against, whether in its blunt or in its more screened forms. *Ibid.* The end of such strife cannot be other than to destroy the cherished liberty. The dominating group will achieve the dominant benefit; or all will embroil the state in their dissensions. *Id.* Par. 11." *Id.*, pp. 53–54.

What New York does with this prayer is a break with that tradition. I therefore join the Court in reversing the judgment below.

FOOTNOTES

[1] "There are many 'aids' to religion in this country at all levels of government. To mention but a few at the federal level, one might begin by observing that the very First Congress which wrote the First Amendment provided for chaplains in both Houses and in the armed services. There is compulsory chapel at the service academies, and religious services are held in federal hospitals and prisons. The President issues religious proclamations. The Bible is used for the administration of oaths. N. Y. A. and W. P. A. funds were available to parochial schools during the depression. Veterans receiving money under the 'G. I.' Bill of 1944 could attend denominational schools, to which payments were made directly by the government. During World War II, federal money was contributed to denominational schools for the training of nurses. The benefits of the National School Lunch Act are available to students in private as well as public schools. The Hospital Survey and Construction Acts of 1946 specifically made money available to non-public hospitals. The slogan 'In God We Trust' is used by the Treasury Department, and Congress recently added God to the pledge of allegiance. There is Bible-reading in the schools of the District of Columbia, and religious instruction is given in the District's National Training School for Boys. Religious organizations are exempt from the federal income tax and are granted postal privileges. Up to defined limits—15 per cent of the adjusted gross income of individuals and 5 per cent of the net income of corporations—contributions to religious organizations are deductible for federal income tax purposes. There are limits to the deductibility of gifts and bequests to religious institutions made under the federal gift and estate tax laws. This list of federal 'aids' could easily be expanded, and of course, there is a long list in each state." Fellman, The Limits of Freedom (1959), pp. 40–41.

[2] West Point Cadets are required to attend chapel each Sunday. Reg., c. 21, § 2101. The same requirement obtains at the Naval Academy (Reg., c. 9, § 0901, (1)(a)), and at the Air Force Academy except First Classmen. Catalogue, 1962–1963, p. 110. And see Honeywell, Chaplains of the United States Army (1958); Jorgensen, The Service of Chaplains to Army Air Units, 1917–1946, Vol. I (1961).

[3] The New York Legislature follows the same procedure. See, *e.g.*, Vol. 1, N. Y. Assembly Jour., 184th Sess., 1961, p. 8; Vol. 1, N. Y. Senate Jour., 184th Sess., 1961, p. 5.

[4] Rules of the Senate provide that each calendar day's session shall open with prayer. See Rule III, Senate Manual, S. Doc. No. 2, 87th Cong., 1st Sess. The same is true of the Rules of the House. See Rule VII, Rules of the House of Representatives, H. R. Doc. No. 459, 86th Cong., 2d Sess. The Chaplains of the Senate and of the House receive $8,810 annually. See 75 Stat. 320, 324.

[5] It would, I assume, make no difference in the present case if a different prayer were said every day or if the ministers of the community rotated, each giving his own prayer. For some of the petitioners in the present case profess no religion.

The Pledge of Allegiance, like the prayer, recognizes the existence of a Supreme Being. Since 1954 it has contained the words "one nation *under God*, indivisible, with liberty and justice for all." 36 U.S.C. 172. The House Report, recommending the addition of the words "under God" stated that those words in no way run contrary to the First Amendment but recognize "only the guidance of God in our national affairs." H.R. Rep. No. 1693, 83d Cong., 2d Sess., p. 3. And see S. Rep. No. 1287, 83d Cong., 2d Sess. Senator Ferguson, who sponsored the measure in the Senate, pointed out that the words "In God We Trust" are over the entrance to the Senate Chamber. 100 Cong. Rec. 6348. He added:

"I have felt that the Pledge of Allegiance to the Flag which stands for the United States of America should recognize the Creator who we really believe is in control of the destinies of this great Republic.

"It is true that under the Constitution no power is lodged anywhere to establish a religion. This is not an attempt to establish a religion; it has nothing to do with anything of that kind. It relates to belief in God, in whom we sincerely repose our trust. We know that America cannot be defended by guns, planes, and ships alone. Appropriations and expenditures for defense will be of value only if the God under whom we live believes that we are in the right. We should at all times recognize God's province over the lives of our people and over this great Nation." *Ibid.* And see 100 Cong. Rec. 7757 *et seq.* for the debates in the House.

The Act of March 3, 1865, 13 Stat. 517, 518, authorized the phrase "In God We Trust" to be placed on coins. And see 17 Stat. 427. The first mandatory requirement for the use of that motto on coins was made by the Act of May 18, 1908, 35 Stat. 164. See H.R. Rep. No. 1106, 60th Cong., 1st Sess.; 42 Cong. Rec. 3384 *et seq.* The use of the motto on all currency and coins was directed by the Act of July 11, 1955, 69 Stat. 290. See H.R. Rep. No. 662, 84th Cong., 1st Sess.; S. Rep. No. 637, 84th Cong., 1st Sess. Moreover, by the Joint Resolution of July 30, 1956, our national motto was declared to be "In God We Trust." 70 Stat. 732. In reporting the Joint Resolution, the Senate Judiciary Committee stated:

"Further official recognition of this motto was given by the adoption of the Star-Spangled Banner as our national anthem. One stanza of our national anthem is as follows:

'O thus be it ever when freemen shall stand
Between their lov'd home and the war's desolation;
Blest with vict'ry and peace may the heav'n rescued land
Praise the power that hath made and preserved us a nation!
Then conquer we must when our cause it is just,
And, this be our motto—"In God is our trust."
And the Star-Spangled Banner in triumph shall wave
O'er the land of the free and the home of the brave.'

"In view of these words in our national anthem, it is clear that 'In God we trust' has a strong claim as our national motto." S. Rep. No. 2703, 84th Cong., 2nd Sess., p. 2.

[6] The fact that taxpayers do not have standing in the federal courts to raise the issue (*Frothingham* v. *Mellon*, 262 U.S. 447) is of course no justification for drawing a line between what is done in New York on one hand and on the other what we do and what Congress does in this matter of prayer.

[7] The Court analogizes the present case to those involving the traditional Established Church. We once had an Established Church, the Anglican. All baptisms and marriages had to take place there. That church was supported by taxation. In these and other ways the Anglican Church was favored over the others. The First Amendment put an end to placing any one church in a preferrred position. It ended support of any church or all churches by taxation. It went further and prevented secular sanction to any religious ceremony, dogma, or rite. Thus, it prevents civil penalties from being applied against recalcitrants or nonconformists.

[8] Some communities, including Washington, D.C., have a Christmas tree purchased with the taxpayers' money. The tree is sometime decorated with the words "Peace on earth, goodwill to men." At other times the authorities draw from a different version of the Bible which says "Peace on earth to men of goodwill." Christmas I suppose, is still a religious celebration, not merely a day put on the calendar for the benefit of merchants.

[9] Religion was once deemed to be a function of the public school system. The Northwest Ordinance, which antedated the First Amendment, provided in Article 3 that "Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged."

[Supreme Court of the United States—No. 468—October Term, 1961]

STEVEN I. ENGEL ET AL., PETITIONERS *v.* WILLIAM J. VITALE, JR., ET AL

(On Writ of Certiorari to the Court of Appeals of New York)

June 25, 1962

MR. JUSTICE STEWART, dissenting.

A local school board in New York has provided that those pupils who wish to do so may join in a brief prayer at the beginning of each school day, acknowledging their dependence upon God and asking His blessing upon them and upon their parents, their teachers, and their country. The Court today decides that in permitting this brief nondenominational prayer the school board has violated the Constitution of the United States. I think this decision is wrong.

The Court does not hold, nor could it, that New York has interfered with the free exercise of anybody's religion. For the state courts have made clear that those who object to reciting the prayer must be entirely free of any compulsion to do so, including any "embarrassments and pressures." Cf. *West Virginia State Board of Education* v. *Barnette*, 319 U. S. 624. But the Court says that in permitting school children to say this simple prayer, the New York authorities have established "an official religion."

With all respect, I think the Court has misapplied a great constitutional principle. I cannot see how an "official religion" is established by letting those who want to say a prayer say it. On the contrary, I think that to deny the wish of these school children to join in reciting this prayer is to deny them the opportunity of sharing in the spiritual heritage of our Nation.

The Court's historical review of the quarrels over the Book of Common Prayer in England throws no light for me on the issue before us in this case. England had then and has now an established church. Equally unenlightening, I think, is the history of the early establishment and later rejection of an official church in our own States. For we deal here not with the establishment of a state church, which would, of course, be constitutionally impermissible, but with whether school children who want to begin their day by joining in prayer must be prohibited from dong so. Moreover, I think that the Court's task, in this as in all areas of constitutional adjudication, is not responsibly aided by the uncritical invocation of metaphors like the "wall of separation," a phrase nowhere to be found in the Constitution. What is relevant to the issue here is not the history of an established church in sixteenth century England or in eighteenth century America, but the history of the religious traditions of our people, reflected in countless practices of the institutions and officials of our government.

At the opening of each day's Session of this Court we stand, while one of our officials invokes the protection of God. Since the days of John Marshall our Crier has said "God save the United States and this Honorable Court." [1] Both the Senate and the House of Representatives open their daily Sessions with prayer.[2] Each of our Presidents, from George Washington to John F. Kennedy, has upon assuming his Office asked the protection and help of God.[3]

The Court today says that the state and Federal governments are without constitutional power to prescribe any particular form of words to be recited by any group of the American people on any subject touching religion.[4] The third stanza of "The Star-Spangled Banner," made our National Anthem by Act of Congress in 1931,[5] contains these verses:

"Blest with victory and peace, may the heav'n rescued land
Praise the Pow'r that hath made and preserved us a nation!
Then conquer we must, when our cause it is just,
And this be our motto 'In God is our Trust.' "

In 1954 Congress added a phase to the Pledge of Allegiance to the Flag so that it now contains the words "one nation *under* God, indivisible, with liberty and justice for all." [6] In 1952 Congress enacted legislation calling upon the President each year to proclaim a National Day of Prayer.[7] Since 1865 the words "IN GOD WE TRUST" have been impressed on our coins.[8]

Countless similar examples could be listed, but there is no need to belabor the obvious.[9] It was all summed up by this Court just ten years ago in a single sentence: "We are a religious people whose institutions presuppose a Supreme Being." *Zorach* v. *Clauson*, 343 U.S. 306, 313.

I do not believe that this Court, or the Congress, or the President has by the actions and practices I have mentioned established an "official religion" in violation of the Constitution. And I do not believe the State of New York has done so in this case. What each has done has been to recognize and to follow the deeply entrenched and highly cherished spiritual traditions of our Nation—traditions which come down to us from those who almost two hundred years ago avowed their "firm reliance on the Protection of Divine Providence" when they proclaimed the freedom and independence of this brave new world.[10]

I dissent.

FOOTNOTES

[1] See Warren, The Supreme Court in United States History, Vol. 1, p. 469.

[2] See Rule III, Senate Manual, S. Doc. No. 2, 87th Cong., 1st Sess. See Rule VII, Rules of the House of Representatives, H.R. Doc. No. 459, 86th Cong., 2d Sess.

[3] For example:

On April 30, 1789, President George Washington said: ". . . it would be peculiarly improper to omit in this first official act my fervent supplications to that Almighty Being who rules over the universe, who presides in the councils of nations, and whose providential aids can supply every human defect, that His benediction may consecrate to the liberties and happiness of the people of the United States a Government instituted by themselves for these essential purposes, and may enable every instrument employed in its administration to execute with success the functions allotted to His charge. In tendering this homage to the Great Author of every public and private good, I assure myself that it expresses your sentiments not less than my own, nor those of my fellow-citizens at large less than either. No people can be bound to acknowledge and adore the Invisible Hand which conducts the affairs of men more than those of the United States.

* * * * *

"Having thus imparted to you my sentiments as they have been awakened by the occasion which brings us together, I shall take my present leave; but not without resorting once more to the benign Parent of the Human Race in humble supplication that, since He has been pleased to favor the American people with opportunities for deliberating in perfect tranquillity, and dispositions for deciding with unparalleled unanimity on a form of government for the security of their union and the advancement of their happiness, so His divine blessing may be equally *conspicuous* in the enlarged views, the temperate consultations, and the wise measures on which the success of this Government must depend."

On March 4, 1797, President John Adams said: "And may that Being who is supreme over all, the Patron of Order, the Fountain of Justice, and the Protector in all ages of the world of virtuous liberty, continue His blessing upon this nation and its Government and give it all possible success and duration consistent with the ends of His Providence."

On March 4, 1805, President Thomas Jefferson said: "I shall need, too, the favor of that Being in whose hands we are, who led our fathers, as Israel of old, from their native land and planted them in a country flowing with all the necessaries and comforts of life; who has covered our infancy with His providence and our riper years with His wisdom and power, and to whose goodness I ask you to join in supplications with me that He will so enlighten the minds of your servants, guide their councils, and prosper their measures that whatsoever they do shall result in your good, and shall secure to you the peace, friendship, and approbation of all nations."

On March 4, 1809, President James Madison said: "But the source to which I look . . . is in . . . my fellow-citizens, and in the counsels of those representing them in the other departments associated in the care of the national interests. In these my confidence will under every difficulty be best placed, next to that which we have all been encouraged to

feel in the guardianship and guidance of that Almighty Being whose power regulates the destiny of nations, whose blessings have been so conspicuously dispensed to this rising Republic, and to whom we are bound to address our devout gratitude for the past, as well as our fervent supplications and best hopes for the future."

On March 4, 1865, President Abraham Lincoln said: "Fondly do we hope, fervently do we pray, that this mighty scourge of war may speedily pass away. Yet, if God wills that it continue until all the wealth piled by the bondsman's two hundred and fifty years of unrequited toil shall be sunk, and until every drop of blood drawn with the lash shall be paid by another drawn with the sword, as was said three thousand years ago, so still it must be said 'the judgments of the Lord are true and righteous altogether.'

"With malice toward none, with charity for all, with firmness in the right as God gives us to see the right, let us strive on to finish the work we are in, to bind up the nation's wounds, to care for him who shall have borne the battle and for his widow and his orphan, to do all which may achieve and cherish a just and lasting peace among ourselves and with all nations."

On March 4, 1885, President Grover Cleveland said: "And let us not trust to human effort alone, but humbly acknowledging the power and goodness of Almighty God, who presides over the destiny of nations, and who has at all times been revealed in our country's history, let us invoke His aid and His blessing upon our labors."

On March 5, 1917, President Woodrow Wilson said: "I pray God I may be given the wisdom and the prudence to do my duty in the true spirit of this great people."

On March 4, 1933, President Franklin D. Roosevelt said: "In this dedication of a Nation we humbly ask the blessing of God. May He protect each and every one of us. May He guide me in the days to come."

On January 21, 1957, President Dwight D. Eisenhower said: "Before all else, we seek, upon our common labor as a nation, the blessings of Almighty God. And the hopes in our hearts fashion the deepest prayers of our whole people."

On January 20, 1961, President John F. Kennedy said: "The world is very different now. . . . And yet the same revolutionary beliefs for which our forebears fought are still at issue around the globe—the belief that the rights of man come not from the generosity of the state, but from the hand of God.

* * * * *

"With a good conscience our only sure reward, with history the final judge of our deeds, let us go forth to lead the land we love, asking His blessing and His help, but knowing that here on earth God's work must truly be our own."

[4] My brother DOUGLAS says that the only question before us is whether government "can constitutionally finance a religious exercise." The official chaplains of Congress are paid with public money. So are military chaplains. So are state and federal prison chaplains.

[5] 36 U.S.C. § 170.

[6] 36 U.S.C. § 172.

[7] 36 U.S.C. § 185.

[8] 13 Stat. 517, 518; 17 Stat. 427; 35 Stat. 164; 69 Stat. 290. The current provisions are embodied in 31 U.S.C. §§ 324, 324a.

[9] I am at a loss to understand the Court's unsupported *ipse dixit* that these official expressions or religious faith in and reliance upon a Supreme Being "bear no true resemblance to the unquestioned religious exercise that the State of New York has sponsored in this instance." See p. —, *supra*, n. 21. I can hardly think that the Court means to say that the First Amendment imposes a lesser restriction upon the Federal Government than does the Fourteenth Amendment upon the States. Or is the Court suggesting that the Constitution permits judges and Congressmen and Presidents to join in prayer, but prohibits school children from doing so?

[10] The Declaration of Independence ends with this sentence: "And for the support of this Declaration, with a firm reliance on the Protection of Divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor."

[Supreme Court of the United States—Nos. 142 and 119—October Term, 1962]

SCHOOL DISTICT OF ABINGTON TOWNSHIP, PENNSYLVANIA, ET AL., APPELLANTS (142), v. EDWARD LEWIS SCHEMPP ET AL.

(On Appeal from the United States District Court for the Eastern District of Pennsylvania)

WILLIAM J. MURRAY III, ETC., ET AL, PETITIONERS, v. JOHN N. CURLETT, PRESIDENT, ET AL., INDIVIDUALLY, AND CONSTITUTING THE BOARD OF SCHOOL COMMISSIONERS OF BALTIMORE CITY

(On Writ of Certiorari to the Court of Appeals of Maryland)

June 17, 1963

Mr. JUSTICE CLARK delivered the opinion of the Court.

Once again we are called upon to consider the scope of the provision of the First Amendment to the United States Constitution which declares that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof . . ." These companion cases present the issues in the context of state action requiring that schools begin each day with readings from the Bible. While raising the basic questions under slightly different factual situations, the cases permit of joint treatment. In light of the history of the First Amendment and of our cases interpreting and applying its requirements, we hold that the practices at issue and the laws requiring them are unconstitutional under the Establishment Clause, as applied to the states through the Fourteenth Amendment.

I

The Facts in Each Case: No. 142. The Commonwealth of Pennsylvania by law, 24 Pa. Stat. § 15–1516, as amended, Pub. Law 1928 (Supp. 1960) Dec. 17, 1959, requires that "At least ten verses from the Holy Bible shall be read, without comment, at the opening of each public school on each school day. Any child shall be excused from such Bible reading, or attending such Bible reading, upon the written request of his parent or guardian." The Schempp family, husband and wife and two of their three children, brought suit to enjoin enforcement of the statute, contending that their rights under the Fourteenth Amendment to the Constitution of the United States are, have been, and will continue to be violated unless this statute be declared unconstitutional as violative of these provisions of the First Amendment. They sought to enjoin the appellant school district, wherein the Schempp children attend school, and its officers and the Superintendent of Public Instruction of the Commonwealth from continuing to conduct such readings and recitation of the Lord's Prayer in the public schools of the district pursuant to the statute. A three-judge statutory District Court for the Eastern District of Pennsylvania held that the statute is violative of the Establishment Clause of the First Amendment as applied to the States by the Due Process Clause of the Fourteenth Amendment and directed that appropriate injunctive relief issue. 201 F. Supp. 815.[1] On appeal by the District, its officials and the Superintendent, under 28 U.S.C. § 1253, we noted probable jurisdiction. 371 U.S. 807.

The appellees Edward Lewis Schempp, his wife Sidney, and their children, Roger and Donna, are of the Unitarian faith and are members of the Unitarian Church in Germantown, Philadelphia, Pennsylvania, where they, as well as another son, Ellory, regularly attend religious services. The latter was originally a party but having graduated from the school system *pendente lite* was voluntarily dismissed from the action. The other children attend the Abington Senior High School, which is a public school operated by appellant district.

On each school day at the Abingdon Senior High School between 8:15 and 8:30 a.m., while the pupils are attending their home rooms or advisory sections, opening exercises are conducted pursuant to the statute. The exercises are broadcast into each room in the school building through an intercommunications system and are conducted under the supervision of a teacher by students attending the school's radio and television workshop. Selected students from this course gather each morning in the school's workshop studio for the exercises, which include readings by one of the students of 10 verses of the Holy Bible, broadcast to each room in the building. This is followed by the recitation of the Lord's Prayer, likewise over the intercommunications system, but also by the students in the various classrooms, who are asked to stand and join in repeating the prayer in unison. The exercises are closed with the flag salute and such pertinent announcements as are of interest to the students. Participation in the opening exercises, as directed by the statute, is voluntary. The student reading the verses from the Bible may select the passages and read from any version he chooses, although the only copies furnished by the school are the King James version, copies of which were circulated to each teacher by the school district. During the period in which the exercises have been conducted the King James, the Douay and the Revised Standard versions of the Bible have been used, as well as the Jewish Holy Scriptures. There are no prefatory statements, no questions asked or solicited, no comments or explanations made and no interpretations given at or during the exercises. The students and parents are advised that the student may absent himself from the classroom or, should he elect to remain, not participate in the exercises.

It appears from the record that in schools not having an intercommunications system the Bible reading and the recitation of the Lord's Prayer were conducted by the homeroom teacher,[2] who chose the text of the verses and read them herself or had students read them in rotation or by volunteers. This was followed by a standing recitation of the Lord's Prayer, together with the Pledge of Allegiance to the flag by the class in unison and a closing announcement of routine school items of interest.

At the first trial Edward Schempp and the children testified as to specific religious doctrines purveyed by a literal reading of the Bible "which were contrary to the religious beliefs which they held and to their familial teaching." 177 F. Supp. 398, 400. The children testified that all of the doctrines to which they referred were read to them at various times as part of the exercises. Edward Schempp testified at the second trial that he had considered having Roger and Donna excused from attendance at the exercises but decided against it for several reasons, including his belief that the children's relationships with their teachers and classmates would be adversely affected.[3]

Expert testimony was introduced by both appellants and appellees at the first trial, which testimony was summarized by the trial court as follows:

"Dr. Solomon Grayzel testified that there were marked differences between the Jewish

Footnotes at end of article.

Holy Scriptures and the Christian Holy Bible, the most obvious of which was the absence of the New Testament in the Jewish Holy Scriptures. Dr. Grayzel testified that portions of the New Testament were offensive to Jewish tradition and that, from the standpoint of Jewish faith, the concept of Jesus Christ as the Son of God was 'practically blasphemous.' He cited instances in the New Testament which, assertedly, were not only sectarian in nature but tended to bring the Jews into ridicule or scorn. Dr. Grayzel gave as his expert opinion that such material from the New Testament could be explained to Jewish children in such a way as to do no harm to them. But if portions of the New Testament were read without explanation, they could be, and in his specific experience with children Dr. Grayzel observed, had been, psychologically harmful to the child and had caused a divisive force within the social media of the school.

"Dr. Grayzel also testified that there was significant difference in attitude with regard to the respective Books of the Jewish and Christian Religions in that Judaism attaches no special significance to the reading of the Bible *per se* and that the Jewish Holy Scriptures are source materials to be studied. But Dr. Grayzel did state that many portions of the New, as well as the Old, Testament contained passages of great literary and moral value.

"Dr. Luther A. Weigle, an expert witness for the defense, testified in some detail as to the reasons for and the methods employed in developing the King James and the Revised Standard Versions of the Bible. On direct examination, Dr. Weigle stated that the Bible was non-sectarian. He later stated that the phase 'non-sectarian' meant to him nonsectarian within the Christian faiths. Dr. Weigle stated that his definition of the Holy Bible would include the Jewish Holy Scriptures, but also stated that the 'Holy Bible' would not be complete without the New Testament. He stated that the New Testament 'conveyed the message of Christians.' In his opinion, reading of the Holy Scriptures to the exclusion of the New Testament would be a sectarian practice. Dr. Weigle stated that the Bible was of great moral, historical and literary value. This is conceded by all the parties and is also the view of the court." 177 F. Supp. 398, 401–402.

The trial court, in striking down the practices and the statute requiring them, made specific findings of fact that the children's attendance at Abington Senior High School is compulsory and that the practice of reading 10 verses from the Bible is also compelled by law. It also found that:

"The reading of the verses, even without comment, possesses a devotional and religious character and constitutes in effect a religious observance. The devotional and religious nature of the morning exercises is made all the more apparent by the fact that the Bible reading is followed immediately by a recital in unison by the pupils of the Lord's Prayer. The fact that some pupils, or theoretically all pupils, might be excused from attendance at the exercises does not mitigate the obligatory nature of the ceremony for . . . Section 1516 . . . unequivocally requires the exercises to be held every school day in every school in the Commonwealth. The exercises are held in the school buildings and perforce are conducted by and under the authority of the local school authorities and during school sessions. Since the statute requires the reading of the 'Holy Bible,' a Christian document, the practice . . . prefers the Christian religion. The record demonstrates that it was the intention of . . . the Commonwealth . . . to introduce a religious ceremony into the public schools of the Commonwealth." 201 F. Supp., at 819.

No. 119. In 1905 the Board of School Commissioners of Baltimore City adopted a rule pursuant to Art. 77, § 202 of the Annotated Code of Maryland. The rule provided for the holding of opening exercises in the schools of the city consisting primarily of the "reading, without comment, of a chapter in the Holy Bible and/or the use of the Lord's Prayer.' The petitioners, Mrs. Madalyn Murray and her son, William J. Murray, III, are both professed atheists. Following unsuccessful attempts to have the respondent school board rescind the rule this suit was filed for mandamus to compel its rescission and cancellation. It was alleged that William was a student in a public school of the city and Mrs. Murray, his mother, was a taxpayer therein; that it was the practice under the rule to have a reading on each school morning from the King James version of the Bible; that at petitioners' insistence the rule was amended [4] to permit children to be excused from the exercise on request of the parent and that William had been excused pursuant thereto; that nevertheless the rule as amended was in violation of the petitioners' rights "to freedom of religion under the First and Fourteenth Amendments" and in violation of "the principle of separation between church and state, contained therein. . . ."

The petition particularized the petitioners' atheistic beliefs and stated that the rule, as practiced, violated their rights "in that it threatens their religious liberty by placing a premium on belief as against non-belief and subjects their freedom of conscience to the rule of the majority; it pronounces belief in God as the source of all moral and spiritual values, equating these values with religious values, and thereby renders sinister, alien, and suspect the beliefs and ideals of . . . Petitioners, promoting doubt and question of their morality, good citizenship and good faith."

The respondents demurred and the trial court, recognizing that the demurrer admitted all facts well pleaded, sustained it without leave to amend. The Maryland Court of Appeals affirmed, the majority of four justices holding the exercise not in violation of the First and Fourteenth Amendments, with three justices dissenting. 228 Md. 239, 179 A. 2d 698. We granted certiorari. 371 U.S. 809.

II

It is true that religion has been closely identified with our history and government. As said in *Engel* v. *Vitale*, 370 U.S. 421, 434 (1962), "The history of man is inseparable from the history of religion. And . . . since the beginning of that history many people have devoutly believed that 'More things are wrought by prayer than this world dreams of.' " In *Zorach* v. *Clausen*, 343 U.S. 306, 313 (1952), we gave specific recognition to the proposition that "[w]e are a religious people whose institutions presuppose a Supreme Being." The fact that the Founding Fathers believed devotedly that there was a God and that the unalienable rights of man were rooted in Him is clearly evidenced in their writings from the Mayflower Compact to the Constitution itself. This background is evidenced today in our public life through the continuance in our oaths of office from the Presidency to the Alderman of the final supplication, "So help me God." Likewise each House of the Congress provides through its Chaplain an opening prayer, and the sessions of this Court are declared open by the crier in a short ceremony, the final phrase of which invokes the grace of God. Again, there are such manifestations in our military forces, where those of our citizens who are under the restrictions of military service wish to engage in voluntary worship.

Indeed, only last year an official survey of the country indicated that 64% of our people have church membership, Bureau of Census, U.S. Department of Commerce, Statistical Abstract of the United States, (83d ed. 1948), while less than 3% profess no religion whatever. *Id.*, at p. 46. It can be truly said, therefore, that today, as in the beginning, our national life reflects a religious people who, in the words of Madison, are "earnestly praying, as . . . in duty bound, that the Supreme Lawgiver of the Universe . . . guide them into every measure which may be worthy of his . . . blessing. . . ." Memorial and Remonstrance Against Religious Assessments, quoted in *Everson* v. *Board of Education*, 330 U.S. 1, 71–72 (1947) (Appendix to dissenting opinion of Rutledge, J.).

This is not to say, however, that religion has been so identified with our history and government that religious freedom is not likewise as strongly imbedded in our public and private life. Nothing but the most telling of personal experiences in religious persecution suffered by our forebears, see *Everson* v. *Board of Education*, *supra*, at 8–11, could have planted our belief in liberty of religious opinion any more deeply in our heritage. It is true that this liberty frequently was not realized by the colonists, but this is readily accountable by their close ties to the Mother Country.[5] However, the views of Madison and Jefferson, preceded by Roger Williams,[6] came to be incorporated not only in the Federal Constitution but likewise in those of most of our States. This freedom to worship was indispensable in a country whose people came from the four quarters of the earth and brought with them a diversity of religious opinion. Today authorities list 83 separate religious bodies, each with memberships exceedings 50,000, existing among our people, as well as innumerable smaller groups. Bureau of Census, *op. cit.*, supra, at 46–47.

III

Almost a hundred years ago in *Minor* v. *Board of Education of Cincinnati*,[7] Judge Alphonzo Taft, father of the revered Chief Justice, in an unpublished opinion stated the ideal of our people as to religious freedom as one of "absolute equality before the law of all religious opinions and sects. . . ."

"The government is neutral, and, while protecting all, it prefers none, and it disparages none."

Before examining this "neutral" position in which the Establishment and Free Exercise Clauses of the First Amendment place our government it is well that we discuss the reach of the Amendment under the cases of this Court.

First, this Court has decisively settled that the First Amendment's mandate that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof" has been made wholly applicable to the states by the Fourteenth Amendment. Twenty-three years ago in *Cantwell* v. *Connecticut*, 310 U.S. 296, 303 (1940), this Court, through Mr. Justice Roberts, said:

"The fundamental concept of liberty embodied in that [Fourteenth] Amendment embraces the liberties guaranteed by the First Amendment. The First Amendment declares that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. The Fourteenth Amendment has rendered the legislatures of the states as incompetent as Congress to enact such laws. . . ." [8]

In a series of cases since *Cantwell* the Court has repeatedly reaffirmed that doctrine, and we do so now. *Murdock* v. *Pennsylvania*, 319 U. S. 105, 108 (1943); *Everson* v. *Board of Education*, *supra*; *Illinois ex rel. McCollum* v. *Board of Education*, 333 U.S. 203, 210–211 (1948); *Zorach* v. *Clauson*, *supra*; *McGowan* v. *Maryland*, 366 U. S. 420 (1961); *Torcaso* v. *Watkins*, 367 U. S. 488 (1961); and *Engel* v. *Vitale*, *supra*.

Footnotes at end of article.

Second, this Court has rejected unequivocally the contention that the establishment clause forbids only governmental preference of one religion over another. Almost 20 years ago in *Everson, supra,* at 15, the Court said that "[n]either a state nor the Federal government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another." And Mr. Justice Jackson, dissenting, agreed:

"There is no answer to the proposition . . . that the effect of the religious freedom Amendment to our Constitution was to take every form of propagation of religion out of the realm of things which could directly or indirectly be made public business and thereby be supported in whole or in part at taxpayers' expense . . . . This freedom was first in the Bill of Rights because it was first in the forefathers' minds; it was set forth in absolute terms, and its strength is its rigidity." *Id.,* at 26.

Further, Mr. Justice Rutledge, joined by Justices Frankfurter, Jackson and Burton, declared:

"The [First] Amendment's purpose was not to strike merely at the official establishment of a single sect, creed or religion, outlawing only a formal relation such as had prevailed in England and some of the Colonies. Necessarily it was to uproot all such relationships. But the object was broader than separating church and state in this narrow sense. It was to create a complete and permanent separation of the spheres of religious activity and civil authority by comprehensively forbidding every form of public aid or support for religion." *Id.,* at 31–32.

The same conclusion has been firmly maintained ever since that time, see *Illinois ex rel. McCollum, supra,* at pp. 210–211; *McGowan* v. *Maryland, supra,* at 442–443; *Torcaso* v. *Watkins, supra,* 492–493, 495, and we reaffirm it now.

While none of the parties to either of these cases has questioned these basic conclusions of the Court, both of which have been long established, recognized and consistently reaffirmed, others continue to question their history, logic and efficacy. Such contentions, in the light of the consistent interpretation in cases of the Court, seem entirely untendable and of value only as academic exercises.

IV

The interrelationship of the Establishment and the Free Exercise Clauses was first touched upon by Mr. Justice Roberts for the Court in *Cantwell* v. *Connecticut, supra,* at 304, where it was said that their "inhibition of legislation" had "a double aspect. On the one hand, it forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. Freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law. On the other hand, it safeguards the free exercise of the chosen form of religion. Thus the Amendment embraces two concepts—freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be."

A half dozen years later in *Everson* v. *Board of Education, supra,* at 14–15, this Court, through Mr. JUSTICE BLACK, stated that the "scope of the First Amendment . . . was designed forever to suppress" the establishment of religion or the prohibition of the free exercise thereof. In short, the Court held that the Amendment "requires the state to be a neutral in its relations with groups of religious believers and non-believers; it does not require the state to be their adversary. State power is no more to be used so as to handicap religions than it is to favor them. *Id.,* at 18.

And Mr. Justice Jackson, in dissent, declared that public schools are organized "on the premise that secular education can be isolated from all religious teaching so that the school can inculcate all needed temporal knowledge and also maintain a strict and lofty neutrality as to religion. The assumption is that after the individual has been instructed in worldly wisdom he will be better fitted to choose his religion." *Id.,* at 23–24.

Moreover, all of the four dissenters, speaking through Mr. Justice Rutledge, agreed that

"Our constitutional policy . . . . [D]oes not deny the value or necessity for religious training, teaching or observance. Rather it secures their free exercise. But to that end it does deny that the state can undertake or sustain them in any form or degree. For this reason the sphere of religious activity, as distinguished from the secular intellectual liberties, has been given the two-fold protection and, as the state cannot forbid, neither can it perform or aid in performing the religious function. The dual prohibition makes that function altogether private." *Id.,* at 52.

Only one year later the Court was asked to reconsider and repudiate the doctrine of these cases in *McCollum* v. *Board of Education.* It was argued that "historically the First Amendment was intended to forbid only government preference of one religion over another . . . . In addition they ask that we distinguish or overrule our holding in the *Everson* case that the Fourteenth Amendment made the 'establishment of religion' clause of the First Amendment applicable as a prohibition against the States." 333 U.S., at 211. The Court, with Mr. Justice Reed alone dissenting, was unable to "accept either of these contentions." *Ibid.* Mr. Justice Frankfurter, joined by Justices Jackson, Rutledge and Burton, wrote a very comprehensive and scholarly concurrence in which he said that "[s]eparation is a requirement to abstain from fusing functions of government and of religious sects, not merely to treat them all equally." *Id.,* at 227. Continuing, he stated that:

"The Constitution . . . prohibited the government common to all from becoming embroiled, however innocently, in the destructive religious conflicts of which the history of even this country records some dark pages." *Id.,* at 228.

In 1952 in *Zorach* v. *Clauson, supra,* MR. JUSTICE DOUGLAS for the Court reiterated:

"There cannot be the slightest doubt that the First Amendment reflects the philosophy that Church and State should be separated. And so far as interference with the 'free exercise' of religion and an 'establishment' of religion are concerned, the separation must be complete and unequivocal. The First Amendment within the scope of its coverage permits no exception; the prohibition is absolute. The First Amendment, however, does not say that in every and all respects there shall be a separation of Church and State. Rather, it studiously defines the manner, the specific ways, in which there shall be no concert or union or dependency one on the other. That is the common sense of the matter." 343 U.S., at 312.

And then in 1961 in *McGowan* v. *Maryland* and in *Torcaso* v. *Watkins* each of these cases was discussed and approved. CHIEF JUSTICE WARREN in *McGowan,* for a unanimous Court on this point, said:

"But, the First Amendment, in its final form, did not simply bar a congressional enactment *establishing a church;* it forbade all laws *respecting an establishment of religion.* Thus this Court has given the Amendment a 'broad interpretation . . . in the light of its history and the evils it was designed forever to suppress. . . .'" 366 U.S., at 441–442.

And MR. JUSTICE BLACK for the Court in *Torcaso,* without dissent but with Justices FRANKFURTER and HARLAN concurring in the result, used this language:

"We repeat and again reaffirm that neither a State nor the Federal Government can constitutionally force a person 'to profess a belief or disbelief in any religion.' Neither can they constitutionally pass laws or impose requirements which aid all religions as against non-believers, and neither can aid those religions based on a belief in the existence of God as against those religions founded on different beliefs." 367 U.S., at 495.

Finally, in *Engel* v. *Vitale,* only last year, these principles were so universally recognized that the Court without the citation of a single case and over the sole dissent of MR. JUSTICE STEWART reaffirmed them. The Court found the 22-word prayer used in "New York's program of daily classroom invocation of God's blessings as prescribed in the Regents' prayer . . . [to be] a religious activity." 370 U.S., at 424. It held that "it is no part of the business of government to compose official prayers for any group of the American people to recite as a part of a religious program carried on by the government." *Id.,* at 425. In discussing the reach of the Establishment and Free Exercise Clauses of the First Amendment the Court said:

"Although these two clauses may in certain instances overlap, they forbid two quite different kinds of governmental encroachment upon religious freedom. The Establishment Clause, unlike the Free Exercise Clause, does not depend upon any showing of direct governmental compulsion and is violated by the enactment of laws which establish an official religion whether those laws operate directly to coerce nonobserving individuals or not. This is not to say, of course, that laws officially prescribing a particular form of religious worship do not involve coercion of such individuals. When the power, prestige and financial support of government is placed behind a particular religious belief, the indirect coercive pressure upon religious minorities to conform to the prevailing officially approved religion is plain." *Id.,* at 430–431.

And in further elaboration the Court found that the "first and most immediate purpose (of the Establishment Clause) rested on a belief that a union of government and religion tends to destroy government and to degrade religion." *Id.,* at 431. When government, the Court said, allies itself with one particular form of religion, the inevitable result is that it incurs "the hatred, disrespect and even contempt of those who held contrary beliefs." *Ibid.*

V

The wholesome "neutrality" of which this Court's cases speak thus stems from a recognition of the teachings of history that powerful sects or groups might bring about a fusion of governmental and religious functions or a concert or dependency of one upon the other to the end that official support of the State or Federal Government would be placed behind the tenets of one or of all orthodoxies. This the Establishment Clause prohibits. And a further reason for neutrality is found in the Free Exercise Clause, which recognizes the value of religious training, teaching and observance and, more particularly, the right of every person to freely choose his own course with reference thereto, free of any compulsion from the state. This the Free Exercise Clause guarantees. Thus, as we have seen, the two clauses may overlap. As we have indicated, the Establishment Clause has been directly considered by this Court eight times in the past score of years and, with only one Justice dissenting on the point, it has consistently held that the clause withdrew all legislative power respecting religious belief or the expression thereof.

The test may be stated as follows: what are the purpose and the primary effect of the enactment? If either is the advancement or inhibition of religion then the enactment exceeds the scope of legislative power as circumscribed by the Constitution.

That is to say that to withstand the strictures of the Establishment Clause there must be a secular legislative purpose and a primary effect that neither advances nor inhibits religion. *Everson* v. *Board of Education, supra; McGowan* v. *Maryland, supra,* at 442. The Free Exercise Clause, likewise considered many times here, withdraws from legislative power, state and federal, the exertion of any restraint on the free exercise of religion. Its purpose is to secure religious liberty in the individual by prohibiting any invasions thereof by civil authority. Hence it is necessary in a free exercise case for one to show the coercive effect of the enactment as it operates against him in the practice of his religion. The distinction between the two clauses is apparent—a violation of the Free Exercise Clause is predicated on coercion while the Establishment Clause violation need not be so attended.

Applying the Establishment Clause principles to the cases at bar we find that the States are requiring the selection and reading at the opening of the school day of verses from the Holy Bible and the recitation of the Lord's Prayer by the students in unison. These exercises are prescribed as part of the curricular activities of students who are required by law to attend school. They are held in the school buildings under the supervision and with the participation of teachers employed in those schools. None of these factors other than compulsory school attendance, was present in the program upheld in *Zorach* v. *Clauson*. The trial court in No. 142 has found that such an opening exercise is a religious ceremony and was intended by the State to be so. We agree with the trial court's finding as to the religious character of the exercises. Given that finding the exercises and the law requiring them are in violation of the Establishment Clause.

There is no such specific finding as to the religious character of the exercises in No. 119, and the State contends (as does the State in No. 142) that the program is an effort to extend its benefits to all public school children without regard to their religious belief. Included within its secular purposes, it says, are the promotion of moral values, the contradiction to the materialistic trends of our times, the perpetuation of our institutions and the teaching of literature. The case came up on demurrer, of course, to a petition which alleged that the uniform practice under the rule had been to read from the King James version of the Bible and that the exercise was sectarian.

The short answer, therefore, is that the religious character of the exercise was admitted by the State. But even if its purpose is not strictly religious, it is sought to be accomplished through readings, without comment, from the Bible. Surely the place of the Bible as an instrument of religion cannot be gainsaid, and the State's recognition of the pervading religious character of the ceremony is evident from the rule's specific permission of the alternative use of the Catholic Douay version as well as the recent amendment permitting nonattendance at the exercises. None of these factors is consistent with the contention that the Bible is here used either as an instrument for nonreligious moral inspiration or as a reference for the teaching of secular subjects.

The conclusion follows that in both cases the laws require religious exercises and such exercises are being conducted in direct violation of the rights of the appellees and petitioners.[9] Nor are these required exercises mitigated by the fact that individual students may absent themselves upon parental request, for that fact furnishes no defense to a claim of unconstitutionality under the Establishment Clause. See *Engel* v. *Vitale, supra,* at 430. Further, it is no defense to urge that the religious practices here may be relatively minor encroachments on the First Amendment. The breach of neutrality that is today a trickling stream may all too soon become a raging torrent and, in the words of Madison, "it is proper to take alarm at the first experiment on our liberties." Memorial and Remonstrance Against Religious Assessments, quoted in *Everson, supra,* at 65.

It is insisted that unless these religious exercises are permitted a "religion of secularism" is established in the schools. We agree of course that the State may not establish a "religion of secularism" in the sense of affirmatively opposing or showing hostility to religion, thus "preferring those who believe in no religion over those who do believe." *Zorach* v. *Clauson, supra,* at 314. We do not agree, however, that this decision in any sense has that effect. In addition, it might well be said that one's education is not complete without a study of comparative religion or the history of religion and its relationship to the advancement of civilization. It certainly may be said that the Bible is worthy of study for its literary and historic qualities. Nothing we have said here indicates that such study of the Bible or of religion, when presented objectively as part of a secular program of education, may not be effected consistently with the First Amendment. But the exercises here do not fall into those categories. They are religious exercises, required by the States in violation of the command of the First Amendment that the Government maintain strict neutrality, neither aiding nor opposing religion.

Finally, we cannot accept that the concept of neutrality, which does not permit a State to require a religious exercise even with the consent of the majority of those affected, collides with the majority's right to free exercise of religion.[10] While the Free Exercise Clause clearly prohibits the use of state action to deny the rights of free exercise to *anyone,* it has never meant that a majority could use the machinery of the State to practice its beliefs. Such a contention was effectively answered by Mr. Justice Jackson for the Court in *West Virginia Board of Education* v. *Barnette,* 319 U.S. 624, 638 (1943):

"The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to . . . freedom of worship . . . and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections."

The place of religion in our society is an exalted one, achieved through a long tradition of reliance on the house, the church and the inviolable citadel of the individual heart and mind. We have come to recognize through bitter experience that it is not within the power of government to invade that citadel, whether its purpose or effect be to aid or oppose, to advance or retard. In the relationship between man and religion, the State is firmly committed to a position of neutrality. Though the application of that rule requires interpretation of a delicate sort, the rule itself is clearly and concisely stated in the words of the First Amendment. Applying that rule to the facts of these cases, we affirm the judgment in No. 142. In No. 119, the judgment is reversed and the cause remanded to the Maryland Court of Appeals for further proceedings consistent with this opinion.

It is so ordered.

FOOTNOTES

[1] The action was brought in 1958, prior to the 1959 amendment of § 15–1516 authorizing a child's nonattendance at the exercises upon parental request. The three-judge court held the statute and the practices complained of unconstitutional under both the Establishment Clause and the Free Exercise Clause. 177 F. Supp. 398. Pending appeal to this Court by the school district, the statute was so amended, and we vacated the judgment and remanded for further proceedings. 364 U.S. 298. The same three-judge court granted appellees' motion to amend the pleadings, 195 F. Supp. 518, held a hearing on the amended pleadings and rendered the judgment, 201 F. Supp. 815, from which appeal is now taken.

[2] The statute as amended imposes no penalty upon a teacher refusing to obey its mandate. However, it remains to be seen whether one refusing could have his contract of employment terminated for "willful violation of the school laws." 24 Pa. Stat. (Supp. 1960) § 11–1122.

[3] The trial court summarized his testimony as follows:

"Edward Schempp, the children's father, testified that after careful consideration he had decided that he should not have Roger or Donna excused from attendance at these morning ceremonies. Among his reasons were the following. He said that he thought his children would be 'labeled as "odd balls" ' before their teachers and classmates every school day; that children, like Roger's and Donna's classmates, were liable 'to lump all particular religious difference[s] or religious objections [together] as "atheism" ' and that today the word 'atheism' is often connected with 'atheistic communism,' and has 'very bad' connotations, such as 'un-American' or 'anti-Red,' with overtones of possible immorality Mr. Schempp pointed out that due to the events of the morning exercises following in rapid succession, the Bible reading, the Lord's Prayer, the Flag Salute, and the announcements, excusing his children from the Bible reading would mean that probably they would miss hearing the announcements so important to children. He testified also that if Roger and Donna were excused from Bible reading they would have to stand in the hall outside their 'homeroom' and that this carried with it the imputation of punishment for bad conduct." 201 F. Supp., at 818.

[4] The rule as amended provides as follows:

"Opening Exercise. Each school, either collectively or in classes, shall be opened by the reading, without comment, of a chapter in the Holy Bible and/or the use of the Lord's Prayer. The Douay version may be used by those pupils who prefer it. Appropriate patriotic exercises should be held as a part of the general opening exercise of the school or class. Any child shall be excused from participating in the opening exercises or from attending the opening exercises upon written request of his parent or guardian."

[5] There were established churches in at least eight of the original colonies, and various degrees of religious support in others as late as the Revolutionary War. See *Engel* v. *Vitale, supra,* at 428, n. 10.

[6] "There goes many a ship to sea, with many hundred souls in one ship, whose weal and woe is common, and is a true picture of a commonwealth, or human combination, or society. It hath fallen out sometimes, that both Papists and Protestants, Jews and Turks, may be embarked in one ship; upon which supposal, I affirm that all the liberty of conscience I ever pleaded for, turns upon these two hinges, that none of the Papists, Protestants, Jews, or Turks be forced to come to the ship's prayers or worship, nor compelled from their own particular prayers or worship, if they practice any."

[7] Superior Court of Cincinnati, February 1870. The opinion is not reported but is published under the title, The Bible in the Common Schools (Cincinnati: Robert Clarke & Co. 1870). Judge Taft's views, expressed in dissent, prevailed on appeal. See *Board of Education of Cincinnati* v. *Minor,* 23 Ohio St. 211, 253 (1872), in which the Ohio Supreme Court held that:

"The great bulk of human affairs and human interests is left by any free government to individual enterprise and individual ac-

tion. Religion is eminently one of these interests, lying outside the true and legitimate province of government."

[9] Application to the States of other clauses of the First Amendment obtained even before *Cantwell*. Almost 40 years ago in the opinion of the Court in *Gitlow* v. *New York*, 268 U.S. 652, 666 (1925), Mr. Justice Sanford said: "For present purposes we may and do assume that freedom of speech and of the press—which are protected by the First Amendment from abridgment by Congress—are among the fundamental personal rights and 'liberties' protected by the Due Process Clause of the Fourteenth Amendment from impairment by the States."

[9] It goes without saying that the laws and practices involved here can be challenged only by persons having standing to complain. But the requirements for standing to challenge state action under the Establishment Clause, unlike those relating to the Free Exercise Clause, do not include proof that particular religious freedoms are infringed. *McGowan* v. *Maryland*, *supra*, at 429–30. The parties here are school children and their parents, who are directly affected by the laws and practices against which their complaints are directed. These interests surely suffice to give the parties standing to complain. See *Engle* v. *Vitale*, *supra*. *Cf. McCollum* v. *Board of Education*, *supra*; *Everson v. Board of Education*, *supra*. Compare *Doremus* v. *Board of Education*, 342 U.S. 429 (1952), which involved the same substantive issues presented here. The appeal was there dismissed upon the graduation of the school child involved and because of the appellants' failure to establish standing as taxpayers.

[10] We are not of course presented with and therefore do not pass upon a situation such as military service, where the Government regulates the temporal and geographic environment of individuals to a point that, unless it permits voluntary religious services to be conducted with the use of government facilities, military personnel would be unable to engage in the practice of their faiths.

[Supreme Court of the United States—Nos. 142 and 119—October Term, 1962]

SCHOOL DISTRICT OF ABINGTON TOWNSHIP, PENNSYLVANIA, ET AL., APPELLANTS (142) v. EDWARD LEWIS SCHEMPP ET AL.

(On Appeal From the United States District Court for the Eastern District of Pennsylvania)

WILLIAM J. MURRAY III, ETC., ET AL., PETITIONERS (119) v. JOHN N. CURLETT, PRESIDENT, ET AL., INDIVIDUALLY, AND CONSTITUTING THE BOARD OF SCHOOL COMMISSIONERS OF BALTIMORE CITY

(On Writ of Certiorari to the Court of Appeals of Maryland)

June 17, 1963

MR. JUSTICE DOUGLAS, concurring.

I join the opinion of the Court and add a few words in explanation.

While the Free Exercise Clause of the First Amendment is written in terms of what the State may not require of the individual, the Establishment Clause, serving the same goal of individual religious freedom, is written in different terms.

Establishment of a religion can be achieved in several ways. The church and state can be one; the church may control the state or the state may control the church; or the relationship may take one of several possible forms of a working arrangement between the two bodies.[1] Under all of these arrangements the church typically has a place in the state's budget, and church law usually governs such matters as baptism, marriage, divorce and separation, at least for its members and sometimes for the entire body politic.[2] Education, too, is usually high on the priority list of church interests.[3] In the past schools were often made the exclusive responsibility of the church. Today in some state-church countries the state runs the public schools, but compulsory religious exercises are often required of some or all students. Thus, under the agreement Franco made with the Holy See when he came to power in Spain, "The Church regained its place in the national budget. It insists on baptising all children and has made the catechism obligatory in state schools."[4]

The vice of all such arrangements under the Establishment Clause is that the state is lending its assistance to a church's effort to gain and keep adherents. Under the First Amendment it is strictly a matter for the individual and his church as to what church he will belong to and how much support, in the way of belief, time, activity or money, he will give to it. "This pure Religious Liberty" "declared . . . [all forms of church-state relationships] and their fundamental idea to be oppressions of conscience and abridgments of that liberty which God and nature had conferred on every living soul."[5]

In these cases we have no coercive religious exercise aimed at making the students conform. The prayers announced are not compulsory, though some may think they have that indirect effect because the nonconformist student may be induced to participate for fear of being called an "odd-ball." But that coercion, if it be present, has not been shown; so the vices of the present regimes are different.

These regimes violate the Establishment Clause in two different ways. In each case the State is conducting a religious exercise; and, as the Court holds, that cannot be done without violating the "neutrality" required of the State by the balance of power between individual, church and state that has been struck by the First Amendment. But the Establishment Clause is not limited to precluding the State itself from conducting religious exercises. It also forbids the State to employ its facilities or funds in a way that gives any church, or all churches, greater strength in our society than it would have by relying on its members alone. Thus, the present regimes must fall under that clause for the additional reason that public funds, though small in amount, are being used to promote a religious exercise. Through the mechanism of the State, all of the people are being required to finance a religious exercise that only some of the people want and that violates the sensibilities of others.

The most effective way to establish any institution is to finance it; and this truth is reflected in the appeals by church groups for public funds to finance their religious schools.[6] Financing a church either in its strictly religious activities or in its other activities is equally unconstitutional, as I understand the Establishment Clause. Budgets for one activity may be technically separable from budgets for others.[7] But the institution is an inseparable whole, a living organism, which is strengthened in proselytizing when it is strengthened in any department by contributions from other than its own members.

Such contributions may not be made by the State even in a minor degree without violating the Establishment Clause. It is not the amount of public funds expended; as this case illustrates, it is the use to which public funds are put that is controlling. For the First Amendment does not say that some forms of establishment are allowed; it says that "no law respecting an establishment of religion" shall be made. What may not be done directly may not be done indirectly lest the Establishment Clause become a mockery.

FOOTNOTES

[1] See Bates, Religious Liberty: An Inquiry (1945), 9–14, 239–252; Cobb, Religious Liberty in America (1902), 1–2, cc. IV, V; Gledhill, Pakistan, The Development of its Laws and Constitution (8 British Commonwealth, 1957), 11–15; Keller, Church and State on the European Continent (1936), c. 2; Pfeffer, Church, State, and Freedom (1953), c. 2; 1 Stokes, Church and State in the United States (1950), 151–169.

[2] See III Stokes, *op. cit.*, *supra*, n. 1, 42–67; Bates, *op. cit.*, *supra*, n. 1, 9–11, 58–59, 98, 245; Gledhill, *op. cit.*, *supra*, n. 1, 128, 192, 205, 208; Rackman, Israel's Emerging Constitution (1955), 120–134; Drinan, Religious Freedom in Israel, America (Apr. 6, 1963), 456–457.

[3] See II Stokes, *op. cit.*, *supra*, n. 1, 488–548; Boles, The Bible, Religion, and the Public Schools (2d ed. 1963), 4–10; Rackman, *op. cit.*, *supra*, n. 2, at 136–141; O'Brien, The *Engel* Case From A Swiss Perspective, 61 Mich. L. Rev. 1069; Freund, Muslim Education in West Pakistan, 56 Religious Education 31.

[4] Bates, *op. cit.*, *supra*, n. 1, at 18; Pfeffer, *op. cit.*, *supra*, n. 1, at 28–31; Thomas, The Balance of Forces in Spain, 41 Foreign Affairs, 208, 210.

[5] Cobb, *op. cit.*, *supra*, n. 1, at 2.

[6] See II Stokes, *op. cit.*, *supra*, n. 1, at 681–695.

[7] See Accountants' Handbook (4th ed. 1956) 4.8–4.15.

[Supreme Court of the United States—Nos. 142 and 119—October Term, 1962]

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(On Writ of Certiorari to the Court of Appeals of Maryland)

June 17, 1963

MR. JUSTICE BRENNAN, concurring.

Almost a century and a half ago, John Marshall, in *M'Culloch* v. *Maryland*, enjoined: ". . . we must never forget, that it is a *constitution* we are expounding." 4 Wheat. 316, 407. The Court's historic duty to expound the meaning of the Constitution has encountered few issues more intricate or more demanding than that of the relationship between religion and the public schools. Since undoubtedly we are "a religious people whose institutions presuppose a Supreme Being," *Zorach* v. *Clauson*, 343 U.S. 306, 313, deep feelings are aroused when aspects of that relationship are claimed to violate the injunction of the First Amendment that government may make "no law respecting an establishment of religion, or prohibiting the free exercise thereof . . ." Americans regard the public schools as a most vital civic institution for the preservation of a democratic system of government. It is therefore understandable that the constitutional prohibitions encounter their severest test when they are sought to be applied in the school classroom. Nevertheless it is this Court's inescapable duty to declare whether exercises in the public schools of the States, such as those of Pennsylvania and Maryland questioned here, are involvements of religion in public institutions of a kind which offends the First and Fourteenth Amendments.

When John Locke ventured in 1689, "I esteem it above all things necessary to distinguish exactly the business of civil government from that of religion and to settle the just bounds that lie between the one and the other,"[1] he anticipated the necessity which would be thought by the Framers to require adoption of a First Amendment, but not the difficulty that would be experienced in defining those "just bounds." The fact is

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Footnotes at end of article.

that the line which separates the secular from the sectarian in American life is elusive. The difficulty of defining the boundary with precision inheres in a paradox central to our scheme of liberty. While our institutions reflect a firm conviction that we are a religious people, those institutions by solemn constitutional injunction may not officially involve religion in such a way as to prefer, discriminate against, or oppress, a particular sect or religion. Equally the Constitution enjoins those involvements of religious with secular institutions which (a) serve the essentially religious activities of religious institutions; (b) employ the organs of government for essentially religious purposes; or (c) use essentially religious means to serve governmental ends where secular means would suffice. The constitutional mandate expresses a deliberate and considered judgment that such matters are to be left to the conscience of the citizen, and declares as a basic postulate of the relation between the citizen and his government that "the rights of conscience are, in their nature, of peculiar delicacy, and will little bear the gentlest touch of governmental hand . . . ."[2]

I join fully in the opinion and the judgment of the Court. I see no escape from the conclusion that the exercises called in question in these two cases violate the constitutional mandate. The reasons we gave only last Term in *Engel* v. *Vitale*, 370 U.S. 421, for finding in the New York Regents' prayer an impermissible establishment of religion, compel the same judgment of the practices at bar. The involvement of the secular with the religious is no less intimate here; and it is constitutionally irrelevant that the State has not composed the material for the inspirational exercises presently involved. It should be unnecessary to observe that our holding does not declare that the First Amendment manifests hostility to the practice or teaching of religion, but only applies prohibitions incorporated in the Bill of Rights in recognition of historic needs shared by Church and State alike. While it is my view that not every involvement of religion in public life is unconstitutional, I consider the exercises at bar a form of involvement which clearly violates the Establishment Clause.

The importance of the issue and the deep conviction with which views on both sides are held seem to me to justify detailing at some length my reasons for joining the Court's judgment and opinion.

I

The First Amendment forbids both the abridgment of the free exercise of religion and the enactment of laws "respecting an establishment of religion." The two clauses, although distinct in their objectives and their applicability, emerged together from a common panorama of history. The inclusion of both restraints upon the power of Congress to legislate concerning religious matters shows unmistakably that the Framers of the First Amendment were not content to rest the protection of religious liberty exclusively upon either clause. "In assuring the free exercise of religion," Mr. Justice Frankfurter has said, "the Framers of the First Amendment were sensitive to the then recent history of those persecutions and impositions of civil disability with which sectarian majorities in virtually all of the Colonies had visited deviation in the matter of conscience. This protection of unpopular creeds, however, was not to be the full extent of the Amendment's guarantee of freedom from governmental intrusion in matters of faith. The battle in Virginia, hardly four years won, where James Madison had led the forces of disestablishment in successful opposition to Patrick Henry's proposed Assessment Bill levying a general tax for the support of Christian teachers, was a vital and compelling memory in 1789." *McGowan* v. *Maryland*, 366 U.S. 420, 464–465.

It is true that the Framers' immediate concern was to prevent the setting up of an official federal church of the kind which England and some of the Colonies had long supported. But nothing in the text of the Establishment Clause supports the view that the prevention of the setting up of an official church was meant to be the full extent of the prohibitions against official involvements in religion. It has rightly been said:

"If the framers of the Amendment meant to prohibit Congress merely from the establishment of a 'church,' one might properly wonder why they didn't so state. That the words *church* and *religion* were regarded as synonymous seems highly improbable, particularly in view of the fact that the contemporary state constitutional provisions dealing with the subject of establishment used definite phrases such as 'religious sect,' 'sect,' or 'denomination.' . . . With such specific wording in contemporary state constitutions, why was not a similar wording adopted for the First Amendment if its framers intended to prohibit nothing more than the States were prohibiting?" Lardner, How Far Does the Constitution Separate Church and State?, 45 Am. Pol. Sci. Rev. 110, 112 (1951).

Plainly, the Establishment Clause, in the contemplation of the Framers, "did not limit the constitutional proscription to any particular, dated form of state-supported theological venture." "What Virginia had long practiced, and what Madison, Jefferson and others fought to end, was the extension of civil government's support to religion in a manner which made the two in some degree interdependent, and thus threatened the freedom of each. The purpose of the Establishment Clause was to assure that the national legislature would not exert its power in the service of any purely religious end; that it would not, as Virginia and virtually all of the Colonies had done, make of religion, as religion, an object of legislation. . . . The Establishment Clause withdrew from the sphere of legitimate legislative concern and competence a specific, but comprehensive, area of human conduct: man's belief or disbelief in the verity of some transcendental idea and man's expression in action of that belief or disbelief." *McGowan v. Maryland, supra*, at 465–466 (opinion of Frankfurter, J.).

In sum, the history which our prior decisions have summoned to aid interpretation of the Establishment Clause permits little doubt that its prohibition was designed comprehensively to prevent those official involvements of religion which would tend to foster or discourage religious worship or belief.

But an awareness of history and an appreciation of the aims of the Founding Fathers do not always resolve concrete problems. The specific question before us has, for example, aroused vigorous dispute whether the architects of the First Amendment—James Madison and Thomas Jefferson particularly—understood the prohibition against any "law respecting an establishment of religion" to reach devotional exercises in the public schools.[3] It may be that Jefferson and Madison would have held such exercises to be permissible—although even in Jefferson's case serious doubt is suggested by his admonition against "putting the Bible and Testament into the hands of the children at an age when their judgments are not sufficiently matured for religious inquiries. . . ."[4] But I doubt that their view, even if perfectly clear one way or the other, would supply a dispositive answer to the question presented by these cases. A more fruitful inquiry, it seems to me, is whether the practices here challenged threaten those consequences which the Framers deeply feared; whether, in short, they tend to promote that type of interdependence between religion and state which the First Amendment was designed to prevent.[5] Our task is to translate "the majestic generalities of the Bill of Rights, conceived as part of the pattern of liberal government in the eighteenth century, into concrete restraints on officials dealing with the problems of the twentieth century. . . ." *West Virginia State Board of Education* v. *Barnette*, 319 U.S. 624, 639.

A too literal quest for the advice of the Founding Fathers upon the issues of these cases seems to me futile and misdirected for several reasons: First, on our precise problem the historical record is at best ambiguous, and statements can readily be found to support either side of the proposition. The ambiguity of history is understandable if we recall the nature of the problems uppermost in the thinking of the statesmen who fashioned the religious guarantees; they were concerned with far more flagrant intrusions of government into the realm of religion than any that our century has witnessed.[6] While it is clear to me that the Framers meant the Establishment Clause to prohibit more than the creation of an established federal church such as existed in England, I have no doubt that, in their preoccupation with the imminent question of established churches, they gave no distinct consideration to the particular question whether the clause also forbade devotional exercises in public institutions.

Second, the structure of American education has greatly changed since the First Amendment was adopted. In the context of our modern emphasis upon public education available to all citizens, any views of the eighteenth century as to whether the exercises at bar are an "establishment" offer little aid to decision. Education, as the Framers knew it, was in the main confined to private schools more often than not under strictly sectarian supervision. Only gradually did control of education pass largely to public officials.[7] It would, therefore, hardly be significant if the fact was that the nearly universal devotional exercises in the schools of the young Republic did not provoke criticism; even today religious ceremonies in church-supported private schools are constitutionally unobjectionable.

Third, our religious composition makes us a vastly more diverse people than were our forefathers. They knew differences chiefly among Protestant sects. Today the Nation is far more heterogenous religiously, including as it does substantial minorities not only of Catholics and Jews but as well of those who worship according to no version of the Bible and those who worship no God at all.[8] See *Torcaso* v. *Watkins*, 367 U.S. 488, 495. In the face of such profound changes, practices which may have been objectionable to no one in the time of Jefferson and Madison may today be highly offensive to many persons, the deeply devout and the nonbelievers alike.

Whatever Jefferson or Madison would have thought of Bible reading or the recital of the Lord's Prayer in what few public schools existed in their day, our use of the history of their time must limit itself to broad purposes, not specific practices. By such a standard, I am persuaded, as is the Court, that the devotional exercises carried on in the Baltimore and Abington schools offend the First Amendment because they sufficiently threaten in our day those substantive evils the fear of which called forth the Establishment Clause of the First Amendment. It is *"a constitution* we are expounding," and our interpretation of the First Amendment must necessarily be responsive to the much more highly charged nature of religious questions in contemporary society.

Fourth, the American experiment in free

Footnotes at end of article.

public education available to all children has been guided in large measure by the dramatic evolution of the religious diversity among the population which our public schools serve. The interaction of these two important forces in our national life has placed in bold relief certain positive values in the consistent application to public institutions generally, and public schols particularly, of the constitutional decree against official involvements of religion which might produce the evils the Framers meant the Establishment Clause to forestall. The public schools are supported entirely, in most communities, by public funds—funds exacted not only from parents, nor alone from those who hold particular religious views, nor indeed from those who subscribe to any creed at all. It is implicit in the history and character of American public education that the public schools serve a uniquely *public* function: the training of American citizens in an atmosphere free of parochial, divisive, or separatist influences of any sort—an atmosphere in which children may assimilate a heritage common to all American groups and religions. See *Illinois ex rel. McCollum* v. *Board of Education*, 333 U.S. 203. This is a heritage neither theistic nor atheistic, but simply civic and patriotic. See *Meyer* v. *Nebraska*, 262 U.S. 390, 400–403.

Attendance at the public schools has never been compulsory; parents remain morally and constitutionally free to choose the academic environment in which they wish their children to be educated. The relationship of the Establishment Clause of the First Amendment to the public school system is preeminently that of reserving such a choice to the individual parent, rather than vesting it in the majority of voters of each State or school district. The choice which is thus preserved is between a public secular education with its uniquely democratic values, and some form of private, or sectarian education, which offers values of its own. In my judgment the First Amendment forbids the State to inhibit that freedom of choice by diminishing the attractiveness of either alternative—either by restricting the liberty of the private schools to inculcate whatever values they wish, or by jeopardizing the freedom of the public school from private or sectarian pressures. The choice between these very different forms of education is one—very much like the choice of whether or not to worship—which our Constitution leaves to the individual parent. It is no proper function of the state or local government to influence or restrict that election. The lesson of history—drawn more from the experiences of other countries than from our own—is that a system of free public education forfeits its unique contribution to the growth of democratic citizenship when that choice ceases to be freely available to each parent.

II

The exposition by this Court of the religious guarantees of the First Amendment has consistently reflected and reaffirmed the concerns which impelled the Framers to write those guarantees into the Constitution. It would be neither possible nor appropriate to review here the entire course of our decisions on religious questions. There emerge from those decisions, however, three principles of particular relevance to the issue presented by the cases at bar, and some attention to those decisions is therefore appropriate.

First. One line of decisions derives from contests for control of a church property or other internal ecclesiastical disputes. This line has settled the proposition that in order to give effect to the First Amendment's purpose of requiring on the part of all organs of government a strict neutrality toward theological questions, courts should not undertake to decide such questions. These principles were first expounded in the case of *Watson* v. *Jones*, 13 Wall. 679, which declared that judicial intervention in such a controversy would open up "the whole subject of the doctrinal theology, the usages and customs, the written laws, and fundamental organization of every religious denomination . . . ." 13 Wall., at 733. Courts above all must be neutral, for "[t]he law knows no heresy, and is committed to the support of no dogma, the establishment of no sect."[9] 13 Wall., at 728. This principle has recently been reaffirmed in *Kedroff* v. *St. Nicholas Cathedral*, 344 U.S. 94; and *Kreshik* v. *St. Nicholas Cathedral*, 363 U.S. 190.

The mandate of judicial neutrality in theological controversies met its severest test in *United States* v. *Ballard*, 322 U.S. 78. That decision put in sharp relief certain principles which bear directly upon the questions presented in these cases. Ballard was indicted for fraudulent use of the mails in the dissemination of religious literature. He requested that the trial court submit to the jury the question of the truthfulness of the religious views he championed. The requested charge was refused, and we upheld that refusal, reasoning that the First Amendment foreclosed any judicial inquiry into the truth or falsity of the defendant's religious beliefs. We said: "Man's relation to his God was made no concern of the state. He was granted the right to worship as he pleased and to answer to no man for the verity of his religious views." "Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. . . . Many take their gospel from the New Testament. But it would hardly be supposed that they could be tried before a jury charged with the duty of determining whether those teachings contained false representations." 322 U.S., at 86–87.

The dilemma presented by the case was severe. While the alleged truthfulness of *nonreligious* publications could ordinarily have been submitted to the jury, Ballard was deprived of that defense only because the First Amendment forbids governmental inquiry into the verity of *religious* beliefs. In dissent Mr. Justice Jackson expressed the concern that under this construction of the First Amendment "[p]rosecutions of this character easily could degenerate into religious persecution." 322 U.S., at 95. The case shows how elusive is the line which enforces the Amendment's injunction of strict neutrality, while manifesting no official hostility toward religion—a line which must be considered in the cases now before us.[10] Some might view the result of the *Ballard* case as a manifestation of hostility—in that the conviction stood because the defense could not be raised. To others it might represent merely strict adherence to the principle of neutrality already expounded in the cases involving doctrinal disputes. Inevitably, insistence upon neutrality, vital as it surely is for untrammelled religious liberty, may appear to border upon religious hostility. But in the long view the independence of both church and state in their respective spheres will be better served by close adherence to the neutrality principle. If the choice is often difficult, the difficulty is endemic to issues implicating the religious guarantees of the First Amendment. Freedom of religion will be seriously jeopardized if we admit exceptions for no better reason than the difficulty of delineating hostility from neutrality in the closest cases.

Second. It is only recently that our decisions have dealt with the question whether issues arising under the Establishment Clause may be isolated from problems implicating the Free Exercise Clause. *Everson* v. *Board of Education*, 330 U.S. 1, is in my view the first of our decisions which treats a problem of asserted unconstitutional involvement as raising questions purely under the Establishment Clause. A scrutiny of several earlier decisions said by some to have etched the contours of the clause shows that such cases neither raised nor decided any constitutional issues under the First Amendment. *Bradfield* v. *Roberts*, 175 U.S. 291, for example, involved challenges to a federal grant to a hospital administered by a Roman Catholic order. The Court rejected the claim for lack of evidence that any sectarian influence changed its character as a secular institution chartered as such by the Congress.[11]

Quick Bear v. *Leupp*, 210 U.S. 50, is also illustrative. The immediate question there was one of statutory construction, although the issue had originally involved the constitutionality of the use of federal funds to support sectarian education on Indian reservations. Congress had already prohibited federal grants for the purpose, thereby removing the broader issue, leaving only the question whether the statute authorized the appropriation for religious teaching of Treaty funds held by the Government in trust for the Indians. Since these were the Indians' own funds, the Court held only that the Indians might direct their use for such educational purposes as they chose, and that the administration by the Treasury of the disbursement of the funds did not inject into the case any issue of the propriety of the use of federal moneys.[12] Indeed, the Court expressly approved the reasoning of the Court of Appeals that to deny the Indians the right to spend their own moneys for religious purposes of their choice might well infringe the free exercise of their religion: "it seems inconceivable that Congress should have intended to prohibit them from receiving religious education at their own cost if they so desired it. . . ." 210 U.S., at 82. This case forecast, however, an increasingly troublesome First Amendment paradox: that the logical interrelationship between the establishment and free exercise clauses may produce situations where an injunction against an apparent establishment must be withheld in order to avoid infringement of rights of free exercise. That paradox was not squarely presented in *Quick Bear*, but the care taken by the Court to avoid a constitutional confrontation discloses an awareness of possible conflicts between the two clauses. I shall come back to this problem later, *infra*, p. 67–71.

A third case in this group is *Cochran* v. *Louisiana State Board*, 281 U.S. 370, which involved a challenge to a state statute providing public funds to support a loan of free text books to pupils of both public and private schools. The constitutional issues in this Court extended no further than the claim that this program amounted to a taking of private property for nonpublic use. The Court rejected the claim on the ground that no private use of property was involved; ". . . we can not doubt that the taxing power of the State is exerted for a public purpose." 281 U.S., at 375. The case therefore raised no issue under the First Amendment.[13]

In *Pierce* v. *Society of Sisters*, 268 U.S. 510, a Catholic parochial school and a private but nonsectarian military academy challenged a state law requiring all children between certain ages to attend the public schools. This Court held the law invalid as an arbitrary and unreasonable interference both with the rights of the schools and with the liberty of the parents of the children who attended them. The due process guarantee of the Fourteenth Amendment "excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only." 268 U.S. at 535. While one of the plaintiffs was indeed a parochial school, the case obviously decided no First Amendment question but recognized only the constitutional right to establish and patronize private schools—including paro-

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chial schools—which meet the state's reasonable minimum curricular requirements.

Third. It is true, as the Court says, that the "two clauses [Establishment and Free Exercise] may overlap." Because of the overlap, however, our decisions under the Free Exercise Clause bear considerable relevance to the problem now before us, and should be briefly reviewed. The early free exercise cases generally involved the objections of religious minorities to the application to them of general nonreligious legislation governing conduct. *Reynolds* v. *United States,* 98 U.S. 145, involved the claim that a belief in the sanctity of plural marriage precluded the conviction of members of a particular sect under nondiscriminatory legislation against such marriage. The Court rejected the claim, saying:

"Laws are made for the government of actions, and while they cannot interfere with mere religious beliefs and opinions, they may with practices. . . . Can a man excuse his practices to the contrary because of his religious belief? To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances.[14] 98 U.S., at 166–167.

Davis v. *Beason,* 133 U.S. 333, similarly involved the claim that the First Amendment insulated from civil punishment certain practices inspired or motivated by religious beliefs. The claim was easily rejected: "It was never intended or supposed that the amendment could be invoked as a protection against legislation for the punishment of acts inimical to the peace, good order and morals of society." 133 U.S., at 342. See also *Mormon Church* v. *United States,* 136 U.S. 1; *Jacobson* v. *Massachusetts,* 197 U.S. 11; *Prince* v. *Massachusetts,* 321 U.S. 158; *Cleveland* v. *United States,* 329 U.S. 14.

But we must not confuse the issue of governmental power to regulate or prohibit conduct *motivated by religious beliefs* with the quite different problem of governmental authority to compel behavior *offensive to religious principles.* In *Hamilton* v. *Regents of the University of California,* 293 U.S. 245, the question was that of the power of a State to compel students at the State University to participate in military training instruction against their religious convictions. The validity of the statute was sustained against claims based upon the First Amendment. But the decision rested on a very narrow principle: since there was neither a constitutional right nor a legal obligation to attend the State University, the obligation to participate in military training courses, reflecting a legitimate state interest, might properly be imposed upon those who chose to attend. Although the rights protected by the First and Fourteenth Amendments were presumed to include "the right to entertain the beliefs, to adhere to the principles and to teach the doctrines on which these students base their objections to the order prescribing military training," those Amendments were construed not to free such students from the military training obligations if they chose to attend the University. Justices Brandeis, Cardozo and Stone, concurring separately, agreed that the requirement infringed no constitutionally protected liberties. Thy added, however, that the case presented no question under the Establishment Clause. The military instruction program was not an establishment since it in no way involved "instruction in the practice or tenets of a religion." 293 U.S., at 266. Since the only question was one of free exercise, they concluded, like the majority, that the strong state interest in training a citizen militia justified the restraints imposed, at least so long as attendance at the University was voluntary.[15]

Hamilton has not been overruled, although *United States* v. *Schwimmer,* 279 U.S. 644, and *United States* v. *Macintosh,* 283 U.S. 605, upon which the Court, in *Hamilton* relied, have since been overruled by *Girouard* v. *United States,* 328 U.S. 61. But if *Hamilton* retains any vitality with respect to higher education, we recognized its inapplicability to cognate questions in the public primary and secondary schools when we held in *West Virginia Board of Education* v. *Barnette, supra,* that a State had no power to expel from public schools students who refused on religious grounds to comply with a daily flag salute requirement. Of course, such a requirement was no more a law "respecting an establishment of religion" than the California law compelling the college students to take military training. The *Barnette* plaintiffs, moreover, did not ask that the whole exercise be enjoined, but only that an excuse or exemption be provided for those students whose religious beliefs forbade them to participate in the ceremony. The key to the holding that such a requirement abridged rights of free exercise lay in the fact that attendance at school was not voluntary but compulsory. The Court said:

"This issue is not prejudiced by the Court's previous holding that where a State, without compelling attendance, extends college facilities to pupils who voluntarily enroll, it may prescribe military training as part of the course without offense to the Constitution. . . . *Hamilton* v. *Regents,* 293 U.S. 245. In the present case attendance is not optional." 319 U.S., at 631–632.

The *Barnette* decision made another significant point. The Court held that the State must make participation in the exercise voluntary for all students and not alone for those who found participation obnoxious on religious grounds. In short, there was simply no need to "inquire whether nonconformist beliefs will exempt from the duty to salute" because the Court found no state "power to make the salute a legal duty." 319 U.S., at 635.

The distinctions between *Hamilton* and *Barnette* are, I think, crucial to the resolution of the cases before us. The different results of those cases are attributable only in part to a difference in the strength of the particular state interests which the respective statutes were designed to serve. Far more significant is the fact that *Hamilton* dealt with the voluntary attendance at college of young adults, while *Barnette* involved the compelled attendance of young children at elementary and secondary schools.[16] This distinction warrants a difference in constitutional results. And it is with the involuntary attendance of young school children that we are exclusively concerned in the cases now before the Court.

III

No one questions that the Framers of the First Amendment intended to restrict exclusively the powers of the Federal Government.[17] Whatever limitations that Amendment now imposes upon the States derive from the Fourteenth Amendment. The process of absorption of the religious guarantees of the First Amendment as protections against the States under the Fourteenth Amendment began with the Free Exercise Clause. In 1923 the Court held that the protections of the Fourteenth included at least a person's freedom "to worship God according to the dictates of his own conscience . . ."[18] *Meyer* v. *Nebraska,* 262 U.S. 390, 399. See also *Hamilton* v. *Regents, supra,* at 262. *Cantwell* v. *Connecticut,* 310 U.S. 296, completed in 1940 the process of absorption of the Free Exercise Clause and recognized its dual aspect: the Court affirmed freedom of belief as an absolute liberty, but recognized that conduct, while it may also be comprehended by the Free Exercise Clause, "remains subject to regulation for the protection of society." 310 U.S., at 303–304. This was a distinction already drawn by *Reynolds* v. *United States, supra.* From the beginning this Court has recognized that while government may regulate the behavioral manifestations of religious beliefs, it may not interfere at all with the beliefs themselves.

The absorption of the Establishment Clause has, however, come later and by a route less easily charted. It has been suggested, with some support in history, that absorption of the First Amendment's ban against congressional legislation "respecting an establishment of religion" is conceptually impossible because the Framers meant the Establishment Clause also to foreclose any attempt by Congress to disestablish the existing official state churches.[19] Whether or not such was the understanding of the Framers, and whether such a purpose would have been inhibited the absorption of the Establishment Clause at the threshold of the Nineteenth Century are questions not dispositive of our present inquiry. For it is clear on the record of history that the last of the formal state establishments was dissolved more than three decades before the Fourteenth Amendment was ratified, and thus the problem of protecting official state churches from federal encroachments could hardly have been any concern of those who framed the post-Civil War Amendments.[20] Any such objective of the First Amendment, having become historical anachronism by 1868, cannot be thought to have deterred the absorption of the Establishment Clause to any greater degree than it would, for example, have deterred the absorption of the Free Exercise Clause. That no organ of the Federal Government possessed in 1791 any power to restrain the interference of the States in religious matters is indisputable. See *Permoli* v. *New Orleans,* 3 How. 589. It is equally plain, on the other hand, that the Fourteenth Amendment created a panoply of new federal rights for the protection of citizens of the various States. And among those rights was freedom from such state governmental involvement in the affairs of religion as the Establishment Clause had originally foreclosed on the part of Congress.

It has also been suggested that the "liberty" guaranteed by the Fourteenth Amendment logically cannot absorb the Establishment Clause because that clause is not one of the provisions of the Bill of Rights which in terms protects a "freedom" of the individual. See Corwin, A Constitution of Powers in a Secular State (1951), 113–116. The fallacy in this contention, I think, is that it underestimates the role of the Establishment Clause as a coguarantor, with the Free Exercise Clause, of religious liberty. The Framers did not entrust the liberty of religious beliefs to either clause alone. The Free Exercise Clause "was not to be the full extent of the Amendment's guarantee of freedom from governmental intrusion in matters of faith." *McGowan* v. *Maryland, supra,* at 464 (opinion of Frankfurter, J.).

Finally, it has been contended that absorption of the Establishment Clause is precluded by the absence of any intention on the part of the Framers of the Fourteenth Amendment to circumscribe the residual powers of the States to aid religious activities and institutions in way which fell short of formal establishments.[21] That argument relies in part upon the express terms of the abortive Blaine Amendment—proposed several years after the adoption of the Fourteenth Amendment—which would have added to the First Amendment a provision that "[n]o state shall make any law respecting an establishment of religion. . . ." Such a restriction would have been superfluous, it is said, if the Fourteenth Amendment had already made the Establishment Clause binding upon the States.

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The argument proves too much, for the Fourteenth Amendment's protection of the free exercise of religion can hardly be questioned; yet the Blaine Amendment would also have added an explicit protection against state laws abridging that liberty.[22] Even if we assume that the draftsmen of the Fourteenth Amendment saw no immediate connection between its protections against state action infringing personal liberty and the guarantees of the First Amendment, it is certainly too late in the day to suggest that their assumed inattention to the question dilutes the force of these constitutional guarantees in their application to the States.[23] It is enough to conclude that the religious liberty embodied in the Fourteenth Amendment would not be viable if the Constitution were interpreted to forbid only establishments ordained by Congress.[24]

The issue of what particular activities the Establishment Clause forbids the States to undertake is our more immediate concern. In *Everson* v. *Board of Education*, 330 U. S. 1, 15–16, a careful study of the relevant history led the Court to the view, consistently recognized in decisions since *Everson*, that the Establishment Clause embodied the Framers' conclusion that government and religion have discrete interests which are mutually best served when each avoids too close a proximity to the other. It is not only the nonbeliever who fears the injection of sectarian doctrines and controversies into the civil polity, but in as high degree it is the devout believer who fears the secularization of a creed which becomes too deeply involved with and dependent upon the government.[25] It has rightly been said of the history of the Establishment Clause that "our tradition of civil liberty rests not only on the secularism of a Thomas Jefferson but also on the fervent sectarianism . . . of a Roger Williams." Freund, The Supreme Court of the United States (1961), 84.

Our decisions on questions of religious education or exercises in the public schools have consistently reflected this dual aspect of the Establishment Clause. *Engel* v. *Vitale* unmistakably has its roots in three earlier cases which, on cognate issues, shaped the contours of the Establishment Clause. First, in *Everson* the Court held that reimbursement by the town of parents for the cost of transporting their children by public carrier to parochial (as well as public and private nonsectarian) schools did not offend the Establishment Clause. Such reimbursement, by easing the financial burden upon Catholic parents, may indirectly have fostered the operation of the Catholic Schools, and may thereby indirectly have facilitated the teaching of Catholic principles, thus serving ultimately a religious goal. But this form of governmental assistance was difficult to distinguish from myriad other incidental if not insignificant government benefits enjoyed by religious institutions—fire and police protection, tax exemptions, and the pavement of streets and sidewalks, for example. "The State contributes no money to the schools. It does not support them. Its legislation, as applied does no more than provide a general program to help parents get their children, regardless of their religion, safely and expeditiously to and from accredited schools." 330 U.S., at 18. Yet even this form of assistance was thought by four Justices of the *Everson* Court to be barred by the Establishment Clause because too perilously close to that public support of religion forbidden by the First Amendment.

The other two cases, *Illinois ex rel. McCollum* v. *Board of Education*, 333 U.S. 203, and *Zorach* v. *Clauson*, 343 U.S. 306, can best be considered together. Both involved programs of released time for religious instruction of public school students. I reject the suggestion that *Zorach* overruled *McCollum* in silence.[26] The distinction which the Court drew in *Zorach* between the two cases is in my view faithful to the function of the Establishment Clause.

I should first note, however, that *McCollum* and *Zorach* do not seem to me distinguishable in terms of the free exercise claims advanced in both cases.[27] The nonparticipant in the *McCollum* program was given secular instruction in a separate room during the times his classmates had religious lessons; the nonparticipant in any *Zorach* program also received secular instruction, while his classmates repaired to a place outside the school for religious instruction.

The crucial difference, I think, was that the *McCollum* program offended the Establish- Clause while the *Zorach* program did not. This was not, in my view, because of the difference in public expenditures involved. True, the *McCollum* program involved the regular use of school facilities, classrooms, heat and light and time from the regular school day—even though the actual incremental cost may have been negligible. All religious instruction under the *Zorach* program, by contrast, was carried on entirely off the school premises, and the teacher's part was simply to facilitate the children's release to the churches. The deeper difference was that the *McCollum* program placed the religious instructor in the public school classroom in precisely the position of authority held by the regular teachers of secular subjects, while the *Zorach* program did not.[28] The *McCollum* program, in lending to the support of sectarian instruction all the authority of the governmentally operated public school system, brought government and religion into that proximity which the Establishment Clause forbids. To be sure, a religious teacher presumably commands substantial respect and merits attention in his own right. But the Constitution does not permit that prestige and capacity for influence to be augmented by investiture of all symbols of authority at the command of the lay teacher for the enhancement of secular instruction.

More recent decisions have further etched the contours of Establishment. In the *Sunday Law Cases*, we found in state laws compelling a uniform day of rest from worldly labor no violation of the Establishment Clause (*McGowan* v. *Maryland*, 366 U.S. 420). The basic ground of our decision was that, granted the Sunday Laws were first enacted for religious ends, they were continued in force for reasons wholly secular, namely, to provide a universal day of rest and ensure the health and tranquility of the community. In other words, government may originally have decreed a Sunday day of rest for the impermissible purpose of supporting religion but abandoned that purpose and retained the laws for the permissible purpose of furthering overwhelmingly secular ends.

Such was the evolution of the contours of the Establishment Clause before *Engel* v. *Vitale*. There, a year ago, we held that the daily recital of the state composed Regents' Prayer constituted an establishment of religion because, although the prayer itself revealed no *sectarian* content or purpose, its nature and meaning were quite clearly *religious*. New York, in authorizing its recitation, had not maintained that distance between the public and the religious sectors commanded by the Establishment Clause when it placed the "power, prestige and financial support of government" behind the prayer. In *Engel*, as in *McCollum*, it did not matter that the amount of time and expense allocated to the daily recitation was small so long as the exercise itself was manifestly religious. Nor did it matter that few children had complained of the practice, for the measure of the seriousness of a breach of the Establishment Clause has never been thought to be the number of people who complain of it.

We also held two Terms ago in *Torcaso* v. *Watkins*, *supra*, that a State may not constitutionally require an applicant for the office of Notary Public to swear or affirm that he believes in God. The problem of that case was strikingly similar to the issue presented 18 years before in the flag salute case, *West Virginia Board of Education* v. *Barnette*, *supra*. In neither case was there any claim of establishment of religion, but only of infringement of the individual's religious liberty—in the one case that of the nonbeliever who could not attest to a belief in God; in the other, that of the child whose creed forbade him to salute the flag. But *Torcaso* added a new element not present in *Barnette*. The Maryland test oath involved an attempt to employ essentially religious (albeit non-sectarian) means to achieve a secular goal to which the means bore no reasonable relationship. No one doubted the State's interest in the integrity of its Notaries Public, but that interest did not warrant the screening of applicants by means of a religious test. The *Sunday Law Cases* were different in that respect. Even if Sunday Laws retain certain religious vestiges, they are enforced today for essentially secular objectives which cannot be effectively achieved in modern society except by designating Sunday as the universal day of rest. The Court's opinions cited very substantial problems in selecting or enforcing an alternative day of rest. But the teaching of both *Torcaso* and the *Sunday Law Cases* is that government may not employ religious means to serve secular interests, however legitimate they may be, at least without the clearest demonstration that nonreligious means will not suffice.[29]

IV

I turn now to the cases before us.[30] The religious nature of the exercises here challenged seems plain. Unless *Engel* v. *Vitale* is to be overruled, or we are to engage in wholly disingenuous distinction, we cannot sustain these practices. Daily recital of the Lord's Prayer and the reading of passages of Scripture are quite as clearly breaches of the command of the Establishment Clause as was the daily use of the rather bland Regents' Prayer in the New York public schools. Indeed, I would suppose that if anything the Lord's Prayer and the Holy Bible are more clearly sectarian, and the present violation of the First Amendment consequently more serious. But the religious exercises challenged in these cases have a long history. And almost from the beginning, Bible reading and daily prayer in the schools have been the subject of debate, criticism by educators and other public officials, and proscription by courts and legislative councils. At the outset, then, we must carefully canvass both aspects of this history.

The use of prayers and Bible readings at the opening of the school day long antedates the founding of our Republic. The Rules of the New Haven Hopkins Grammar School required in 1684 "[t]hat the Scholars being called together, the Mr. shall every morning begin his work with a short prayer for a blessing on his Laboures and their learning . . ."[31] More rigorous was the provision in a 1682 contract with a Dutch schoolmaster in Flatbush, New York:

"When the school begins, one of the children shall read the morning prayer, as it stands in the catechism, and close with the prayer before dinner; in the afternoon it shall begin with the prayer after dinner, and end with the evening prayer. The evening school shall begin with the Lord's Prayer, and close by singing a psalm."[32]

After the Revolution, the new States uniformly continued these long established practices in the private and the few public grammar schools. The school committee of Boston in 1789, for example, required the city's several schoolmasters "daily to commence the duties of their office by prayer and reading

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a portion of the Sacred Scriptures. . . ." [33] That requirement was mirrored throughout the original States, and exemplified the universal practice well into the nineteenth century. As the free public schools gradually supplanted the private academies and sectarian schools between 1800 and 1850, morning devotional exercises were retained with few alterations. Indeed, public pressures upon school administrators in many parts of the country would hardly have condoned abandonment of practices to which a century or more of private religious education had accustomed the American people.[34] The controversy centered, in fact, principally about the elimination of plainly sectarian practices and textbooks, and led to the eventual substitution of nonsectarian, though still religious, exercises and materials.[35]

Statutory provision for daily religious exercises is, however, of quite recent origin. At the turn of this century, there was but one State—Massachusetts—which had a law making morning prayer or Bible reading obligatory. Statutes elsewhere either permitted such practices or simply left the question to local option. It was not until after 1910 that 11 more States, within a few years, joined Massachusetts in making one or both exercises compulsory.[36] The Pennsylvania law with which we are concerned in the *Schempp* case, for example, took effect in 1913; and even the Rule of the Baltimore School Board involved in the *Murray* case dates only from 1905. In no State has there ever been a constitutional or statutory prohibition against the recital of prayers or the reading of scripture, although a number of States have outlawed these practices by judicial decision or administrative order. What is noteworthy about the panoply of state and local regulations from which these cases emerge is the relative recency of the statutory codification of practices which have ancient roots, and the rather small number of States which have ever prescribed compulsory religious exercises in the public schools.

The purposes underlying the adoption and perpetuation of these practices are somewhat complex. It is beyond question that the religious benefits and values realized from daily prayer and Bible reading have usually been considered paramount, and sufficient to justify the continuation of such practices. To Horace Mann, embroiled in an intense controversy over the role of *sectarian* instruction and textbooks in the Boston public schools, there was little question that the regular use of the Bible—which he thought essentially nonsectarian—would bear fruit in the spiritual enlightenment of his pupils.[37] A contemporary of Mann's, the Commissioner of Education of a neighboring State, expressed a view which many enlightened educators of that day shared:

"As a textbook of morals the Bible is pre-eminent, and should have a prominent place in our schools, either as a reading book or as a source of appeal and instruction. Sectarianism, indeed, should not be countenanced in the schools; but the Bible is not sectarian. . . . The Scriptures should at least be read at the opening of the school, if no more. Prayer may also be offered with the happiest effects." [38]

Wisconsin's Superintendent of Public Instruction, writing a few years later in 1858, reflected the attitude of his eastern colleagues, in that he regarded "with special favor the use of the Bible in public schools, as pre-eminently first in importance among text-books for teaching the noblest principles of virue, morality, patriotism and good order—love and reverence for God—charity and good will to man." [39]

Such statements reveal the understanding of educators that the daily religious exercises in the schools served broader goals than compelling formal worship of God or fostering church attendance. The religious aims of the educators who adopted and retained such exercises were comprehensive, and in many cases quite devoid of sectarian bias—but the crucial fact is that they were nonetheless religious. While it has been suggested, see pp. 50–53, *infra*, that daily prayer and reading of scripture now serve secular goals as well, there can be no doubt that the origins of these practices were unambiguously religious, even where the educator's aim was not to win adherents to a particular creed or faith.

Almost from the beginning religious exercises in the public schools have been the subject of intense criticism, vigorous debate, and judicial or administrative prohibition. Significantly, educators and school boards early entertained doubts about both the legality and the soundness of opening the school day with compulsory prayer or Bible reading. Particularly in the large Eastern cities, where immigration had exposed the public schools to religious diversities and conflicts unknown to the homogeneous academies of the eigtheenth century, local authorities found it necessary even before the Civil War to seek an accomodation. In 1843, the Philadelphia School Board adopted the following resolutions:

"Resolved, that no children be required to attend or unite in the reading of the Bible in the Public Schools, whose parents are conscientiously opposed thereto:

"Resolved, that those children whose parents conscientiously prefer and desire any particular version of the Bible, without note or comment, be furnished the same." [40]

A decade later, the Superintendent of Schools of New York State issued an even bolder decree that prayers could no longer be required as part of public school activities, and that where the King James Bible was read, Catholic students could not be compelled to attend.[41] This type of accommodation was not restricted to the East Coast; the Cincinnati Board of Education resolved in 1869 that "religious instruction and the reading of religious books, including the Holy Bible, are prohibited in the common schools of Cincinnati, it being the true object and intent of this rule to allow the children of the parents of all sects and opinions, in matters of faith and worship, to enjoy alike the benefit of the common-school fund." [42] The Board repealed at the same time an earlier regulation which had required the singing of hymns and psalms to accompany the Bible reading at the start of the school day. And in 1889, one commentator ventured the view that "[t]here is not enough to be gained from Bible reading to justify the quarrel that has been raised over it." [43]

Thus a great deal of controversy over religion in the public schools had preceded the debate over the Blaine Amendment, precipitated by President Grant's insistence that matters of religion should be left "to the family altar, the church, and the private school, supported entirely by private contributions." [44] There was ample precedent, too, for Theodore Roosevelt's declaration that in the interest of "absolutely nonsectarian public schools" it was "not our business to have the Protestant Bible or the Catholic Vulgate or the Talmud read in those schools." [45] The same principle appeared in the message of an Ohio Governor who vetoed a compulsory Bible-reading bill in 1925:

"It is my belief that religious teaching in our homes, Sunday schools, churches, by the good mothers, fathers and ministers of Ohio is far preferable to compulsory teaching of religion by the state. The spirit of our federal and state constitutions from the beginning . . . [has] been to leave religious instruction to the discretion of parents." [46]

The same theme has recurred in the opinions of the Attorneys General of several States holding religious exercises or instruction to be in violation of the state or federal constitutional command of separation of church and state.[47] Thus the basic principle upon which our decision last year in *Engel* v. *Vitale* necessarily rested, and which we reaffirm today, can hardly be thought to be radical or novel.

Particularly relevant for our purposes are the decisions of the state courts on questions of religion in the public schools. Those decisions, while not, of course, authoritative in this Court, serve nevertheless to define the problem before us and to guide our inquiry. With the growth of religious diversity and the rise of vigorous dissent it was inevitable that the courts would be called upon to enjoin religious practices in the public schools which offended certain sects and groups. The earliest of such decisions declined to review the propriety of actions taken by school authorities, so long as those actions were within the purview of the administrators' powers.[48] Thus, where the local school board *required* religious exercises, the courts would not enjoin them; [49] and where, as in at least one case, the school officials *forbade* devotional practices, the court refused on similar grounds to overrule that decision.[50] Thus, whichever way the early cases came up, the governing principle of nearly complete deference to administrative discretion effectively foreclosed any consideration of constitutional questions.

The last quarter of the nineteenth century found the courts beginning to question the constitutionality of public school religious exercises. The legal context was still, of course, that of the state constitutions, since the First Amendment had not yet been held applicable to state action. And the state constitutional prohibitions against church-state cooperation or governmental aid to religion were generally less rigorous than the Establishment Clause of the First Amendment. It is therefore remarkable that the courts of a half dozen States found compulsory religious exercises in the public schools in violation of their respective state constitutions.[51] These courts attributed much significance to the clearly religious origins and content of the challenged practices, and to the impossibility of avoiding sectarian controversy in their conduct. The Illinois Supreme Court expressed in 1910 the principles which characterized these decisions:

"The public school is supported by taxes which each citizen, regardless of his religion or lack of it, is compelled to pay. The school, like the government, is simply a civil institution. It is secular, and not religious, in its purpose. The truths of the Bible are the truths of religion, which do not come within the province of the public school. . . . No one denies that they should be taught to the youth of the state. The Constitution and the law do not interfere with such teaching, but they do banish theological polemics from the school and the school districts. This is done, not from any hostility to religion, but simply because it is no part of the duty of the state to teach religion—to take the money of all, and apply it to teaching the children of all the religion of a part only. Instruction in religion must be voluntary." *People ex rel. Ring* v. *Board of Education*, 245 Ill. 334, 349, 92 N. E. 251, 256 (1910).

The Supreme Court of South Dakota, in banning devotional exercises from the public schools of that State, also cautioned that "[t]he state as an educator must keep out of this field, and especially is this true in the common schools, where the child is immature, without fixed religious convictions. . . ." *State ex rel. Finger* v. *Weedman*, 55 S. D. 343, 357, 226 N. W. 348, 354 (1929).

Even those state courts which have sustained devotional exercises under state law [52] have usually recognized the primarily religious character of prayers and bible readings. If such practices were not for that reason unconstitutional, it was necessarily be-

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cause the state constitution forbade only public expenditures for *sectarian* instruction, or for activities which made the schoolhouse a "place of worship," but said nothing about the subtler question of laws "respecting an establishment of religion."[53] Thus the panorama of history permits no other conclusion than that daily prayers and Bible readings in the public schools have always been designed to be, and have been regarded as, essentially religious exercises. Unlike the Sunday closing laws, these exercises appear neither to have been divorced from their religious origins nor deprived of their centrally religious character by the passage of time,[54] cf. *McGowan* v. *Maryland*, *supra*, at 442–445. On this distinction alone we might well rest a constitutional decision. But three further contentions have been pressed in the argument of these cases. These contentions deserve careful consideration for if the position of the school authorities were correct in respect to any of them, we would be misapplying the principles of *Engel* v. *Vitale*.

A

First, it is argued that however clearly religious may have been the origins and early nature of daily prayer and Bible reading, these practices today serve so clearly secular educational purposes that their religious attributes may be overlooked. I do not doubt, for example, that morning devotional exercises may foster better discipline in the classroom, and elevate the spiritual level on which the school day opens. The Pennsylvania Superintendent of Public Instruction, testifying by deposition in the *Schempp* case, offered his view that daily Bible reading "places upon the children or those hearing the reading of this, and the atmosphere which goes on in the reading . . . one of the last vestiges of moral value that we have left in our school system." The exercise thus affords, the Superintendent concluded, "a strong contradiction to the materialistic trends of our time." Baltimore's Superintendant of Schools expressed a similar view of the practices challenged in the *Murray* case, to the effect that "[t]he acknowledgment of the existence of God as symbolized in the opening exercises establishes a discipline tone which tends to cause each individual pupil to constrain his overt acts and to consequently conform to accepted standards of behavior during his attendance at school." These views are by no means novel, see, *e.g.*, *Billard* v. *Board of Education*, 69 Kan. 53, 57–58, 76 P. 422, 423 (1904).[55]

It is not the business of this Court to gainsay the judgments of experts on matters of pedagogy. Such decisions must be left to the discretion of those administrators charged with the supervision of the Nation's public schools. The limited province of the courts is to determine whether the means which the educators have chosen to achieve legitimate pedagogical ends infringe the constitutional freedoms of the First Amendment. The secular purposes which devotional exercises are said to serve fall into two categories—those which depend upon an immediately religious experience shared by the participating children; and those which appear sufficiently divorced from the religious content of the devotional material that they can be served equally by nonreligious materials. With respect to the first objective, much has been written about the moral and spiritual values of infusing some religious influence or instruction into the public school classroom.[56] To the extent that only religious materials will serve this purpose, it seems to me that the purpose as well as the means is so plainly religious that the exercise is necessarily forbidden by the Establishment Clause. The fact that purely secular benefits may eventually result does not seem to me to justify the exercises, for similar indirect nonreligious benefits could no doubt have been claimed for the released time program invalidated in *McCollum*.

The second justification assumes that religious exercises at the start of the school day may directly serve solely secular ends—for example, by fostering harmony and tolerance among the pupils, enhancing the authority of the teacher, and inspiring better discipline. To the extent that such benefits result not from the content of the readings and recitation, but simply from the holding of such a solemn exercise at the opening assembly or the first class of the day, it would seem that less sensitive materials might equally well serve the same purpose. I have previously suggested that *Torcaso* and the *Sunday Law Cases* forbid the use of religious means to achieve secular ends where nonreligious means will suffice. That principle is readily applied to these cases. It has not been shown that readings from the speeches and messages of great Americans, for example, or from the documents of our heritage of liberty, daily recitation of the Pledge of Allegiance, or even the observance of a moment of reverent silence at the opening of class, may not adequately serve the solely secular purposes of the devotional activities without jeopardizing either the religious liberties of any members of the community or the proper degree of separation between the spheres of religion and government.[57] Such substitutes would, I think, be unsatisfactory or inadequate only to the extent that the present activities do in fact serve religious goals. While I do not question the judgment of experienced educators that the challenged practices may well achieve valuable secular ends, it seems to me that the State acts unconstitutionally if it either sets about to attain even indirectly religious ends by religious means, or if it uses religious means to serve secular ends where secular means would suffice.

B

Second, it is argued that the particular practices involved in the two cases before us are unobjectionable because they prefer no particular sect or sects at the expense of others. Both the Baltimore and Abington procedures permit, for example, the reading of any of several versions of the Bible, and this flexibility is said to ensure neutrality sufficiently to avoid the constitutional prohibition. One answer, which might be dispositive, is that any version of the Bible is inherently sectarian, else there would be no need to offer a system of rotation or alternation of versions in the first place, that is, to allow different sectarian versions to be used on different days. The sectarian character of the Holy Bible has been at the core of the whole controversy over religious practices in the public schools throughout its long and often bitter history.[58] To vary the version as the Abington and Baltimore schools have done may well be less offensive than to read from the King James version every day, as once was the practice. But the result even of this relatively benign procedure is that majority sects are preferred in approximate proportion to their representation in the community and in the student body, while the smaller sects suffer commensurate discrimination. So long as the subject matter of the exercise is sectarian in character, these consequences cannot be avoided.

The argument contains, however, a more basic flaw. There are persons in every community—often deeply devout—to whom any version of the Judaeo-Christian Bible is offensive.[59] There are others whose reverence for the Holy Scriptures demands private study or reflection and to whom public reading or recitation is sacrilegious, as one of the expert witnesses at the trial of the *Schempp* case explained. To such persons it is not the fact of using the Bible in the public schools, nor the content of any particular version, that is offensive, but only the *manner* in which it is used.[60] For such persons, the anathema of public communion is even more pronounced when prayer is involved. Many deeply devout persons have always regarded prayer as a necessarily private experience.[61] One Protestant group recently commented, for example: "When one thinks of prayer as sincere outreach of a human soul to the Creator, 'required prayer' becomes an absurdity."[62] There is a similar problem with respect to comment upon the passages of scripture which are to be read. Most present statutes forbid comment, and this practice accords with the views of many religious groups as to the manner in which the Bible should be read. However, as a recent survey discloses, scriptural passages read without comment frequently convey no mesage to the younger children in the school. Thus there has developed a practice in some schools of bridging the gap between faith and understanding by means of "definitions," even where "comment" is forbidden by statute.[63] The present practice therefore poses a difficult dilemma: While Bible reading is almost universally required to be without comment, since only by such a prohibition can sectarian interpretation be excluded from the classroom, the rule breaks down at the point at which rudimentary definitions of Biblical terms are necessary for comprehension if the exercise is to be meaningful at all.

It has been suggested that a tentative solution to these problems may lie in the fashioning of a "common core" of theology tolerable to all creeds but preferential to none.[64] But as one commentator has recently observed, "[h]istory is not encouraging to" those who hope to fashion a "common denominator of religion detached from its manifestation in any organized church." Sutherland, Establishment According to *Engel*, 76 Harv. L. Rev. 25, 51 (1962). Thus, the notion of a "common core" litany or supplication offends many deeply devout worshippers who do not find clearly sectarian practices objectionable.[65] Father Gustave Weigel has recently expressed a widely shared view: "The moral code held by each separate religious community can reductively be unified, but the consistent particular believer wants no such reduction."[66] And, as the American Council on Education warned several years ago, "The notion of a common core suggests a watering down of the several faiths to the point where common essentials appear. This might easily lead to a new sect—a public school sect—which would take its place alongside the existing faiths and compete with them."[67] *Engel* is surely authority that nonsectarian religious practices, equally with sectarian exercises, violate the Establishment Clause. Moreover, even if the Establishment Clause were oblivious to nonsectarian religious practices, I think it quite likely that the "common core" approach would be sufficiently objectionable to many groups to be foreclosed by the prohibitions of the Free Exercise Clause.

C

A third element which is said to absolve the practices involved in these cases from the ban of the religious guarantees of the Constitution is the provision to excuse or exempt students who wish not to participate. Insofar as these practices are claimed to violate the Establishment Clause, I find the answer which the District Court gave after our remand of *Schempp* to be altogether dispositive:

"The fact that some pupils, or theoretically all pupils, might be excused from attendance at the exercises does not mitigate the obligatory nature of the ceremony . . . . The exercises are held in the school buildings and perforce are conducted by and under the authority of the local school authorities and during school sessions. Since the statute requires the reading of the 'Holy

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Bible,' a Christian document, the practice, as we said in our first opinion, prefers the Christian religion. The record demonstrates that it was the intention of the General Assembly of the Commonwealth of Pennsylvania to introduce a religious ceremony into the public schools of the Commonwealth." 201 F. Supp., at 819.

Thus the short, and to me sufficient, answer is that the availability of excusal or exemption simply has no relevance to the establishment question, if it is once found that these practices are essentially religious exercises designed at least in part to achieve religious aims through the use of public school facilities during the school day.

The more difficult question, however, is whether the availability of excusal for the dissenting child serves to refute challenges to these practices under the Free Exercise Clause. While it is enough to decide these cases to dispose of the establishment questions, questions of free exercise are so inextricably interwoven into the history and present status of these practices as to justify disposition of this second aspect of the excusal issue. The answer is that the excusal procedure itself necessarily operates in such a way as to infringe the rights of free exercise of those children who wish to be excused. We have held in *Barnette* and *Torcaso*, respectively, that a State may require neither public school students nor candidates for an office of public trust to profess beliefs offensive to religious principles. By the same token the State could not constitutionally require a student to profess publicly his disbelief as the prerequisite to the exercise of his constitutional right of abstention. And apart from *Torcaso* and *Barnette*, I think *Speiser* v. *Randall*, 357 U.S. 513, suggests a further answer. We held there that a State may not condition the grant of a tax exemption upon the willingness of those entitled to the exemption to affirm their loyalty to the Government, even though the exemption was itself a matter of grace rather than of constitutional right. We concluded that to impose upon the eligible taxpayers the affirmative burden of proving their loyalty impermissibly jeopardized the freedom to engage in constitutionally protected activities close to the area to which the loyalty oath related. *Speiser* v. *Randall* seems to me to dispose of two aspects of the excusal or exemption procedure now before us. First, by requiring what is tantamount in the eyes of teachers and schoolmates to a profession of disbelief, or at least nonconformity, the procedure may well deter those children who do not wish to participate for any reason based upon the dictates of conscience from exercising an indisputably constitutional right to be excused.[68] Thus the excusal provision in its operation subjects them to a cruel dilemma. In consequence, even devout children may well avoid claiming their right and simply continue to participate in exercises distasteful to them because of an understandable reluctance to be stigmatized as atheists or nonconformists simply on the basis of their request.

Such reluctance to seek exemption seems all the more likely in view of the fact that children are disinclined at this age to step out of line or to flout "peer-group norms." Such is the widely held view of experts who have studied the behaviors and attitudes of children.[69] This is also the basis of Mr. Justice Frankfurter's answer to a similar contention made in the *McCollum* case:

"That a child is offered an alternative may reduce the constraint; it does not eliminate the operation of influence by the school in matters sacred to conscience and outside the school's domain. The law of imitation operates, and non-conformity is not an outstanding characteristic of children. The result is an obvious pressure upon children to attend." 333 U.S., at 227.

Also apposite is the answer given more than 70 years ago by the Supreme Court of Wisconsin to the argument that an excusal provision saved a public school devotional exercise from constitutional invalidation:

". . . the excluded pupil tends to lose caste with his fellows, and is liable to be regarded with aversion, and subjected to reproach and insult. But it is a sufficient refutation of the argument that the practice in question tends to destroy the equality of the pupils which the constitution seeks to establish and protect, and puts a portion of them to serious disadvantage in many ways with respect to others." *State ex rel. Weiss* v. *District Board of School District No. 8*, 76 Wis. 177, 200, 44 N.W. 967, 975.

And 50 years ago a like answer was offered by the Louisiana Supreme Court:

"Under such circumstances, the children would be excused from the opening exercises because of their religious beliefs. And excusing such children on religious grounds, although the number excused might be very small, would be a distinct preference in favor of the religious beliefs of the majority, and would work a discrimination against those who were excused. The exclusion of a pupil under such circumstances puts him in a class by himself; it subjects him to a religious stigma; and all because of his religious belief. Equality in public education would be destroyed by such act, under a Constitution which seeks to establish equality and freedom in religious matters." *Herold* v. *Parish Board of School Directors*, 136 La. 1034, 1049–1050, 68 So. 116, 121. See also *Tudor* v. *Board of Education*, 14 N.J. 31, 48–52, 100 A. 2d 857, 867–868; *Brown* v. *Orange County Board of Public Instruction*, 128 So. 2d 181, 185 (Fla. App.).

Speiser v. *Randall* also suggests the answer to a further argument based on the excusal procedure. It has been suggested by the School Board, in *Schempp*, that we ought not pass upon the appellees' constitutional challenge at least until the children have availed themselves of the excusal procedure and found it inadequate to redress their grievances. Were the right to be excused not itself of constitutional stature, I might have some doubt about this issue. But we held in *Speiser* that the constitutional vice of the loyalty oath procedure discharged any obligation to seek the exemption before challenging the constitutionality of the conditions upon which it might have been denied. 357 U.S., at 529. Similarly, we have held that one need not apply for a permit to distribute constitutionally protected literature, *Lovell* v. *Griffin*, 303 U.S. 444, or to deliver a speech, *Thomas* v. *Collins*, 323 U.S. 516, before he may attack the constitutionality of a licensing system of which the defect is patent. Insofar as these cases implicate only questions of establishment, it seems to me that the availability of an excuse is constitutionally irrelevant. Moreover, the excusal procedure seems to me to operate in such a way as to discourage the free exercise of religion on the part of those who might wish to utilize it, thereby rendering it unconstitutional in an additional and quite distinct respect.

To summarize my views concerning the merits of these two cases: The history, the purpose and the operation of the daily prayer recital and Bible reading leave no doubt that these practices standing by themselves constitute an impermissible breach of the Establishment Clause. Such devotional exercises may well serve legitimate nonreligious purposes. To the extent, however, that such purposes are really without religious significance, it has never been demonstrated that secular means would not suffice. Indeed, I would suggest that patriotic or other nonreligious materials might provide adequate substitutes—inadequate only to the extent that the purposes now served as indeed directly or indirectly religious. Under such circumstances, the States may not employ religious means to reach a secular goal unless secular means are wholly unavailing. I therefore agree with the Court that the judgment in *Schempp*, No. 142, must be affirmed, and that in *Murray*, No. 119, must be affirmed, and that in *Murray*, No. 119, must be reversed.

V

These considerations bring me to a final contention of the school officials in these cases: that the invalidation of the exercises at bar permits this Court no alternative but to declare unconstitutional every vestige, however slight, of cooperation or accommodation between religion and government. I cannot accept that contention. While it is not, of course, appropriate for this Court to decide questions not presently before it, I venture to suggest that religious exercises in the public schools present a unique problem. For not every involvement of religion in public life violates the Establishment Clause. Our decision in these cases does not clearly forecast anything about the constitutionality of other types of interdependence between religious and other public institutions.

Specifically, I believe that the line we must draw between the permissible and the impermissible is one which accords with history and faithfully reflects the understanding of the Founding Fathers. It is a line which the Court has consistently sought to mark in its decisions expounding the religious guarantees of the First Amendment. What the Framers meant to foreclose, and what our decisions under the Establishment Clause have forbidden, are those involvements of religious with secular institutions which (a) serve the essentially religious activities of religious institutions; (b) employ the organs of government for essentially religious purposes; or (c) use essentially religious means to serve governmental ends, where secular means would suffice. When the secular and religious institutions become involved in such a manner, there inhere in the relationship precisely those dangers—as much to church as to state—which the Framers feared would subvert religious liberty and the strength of a system of secular government. On the other hand, there may be myriad forms of involvements of government with religion which do not import such dangers and therefore should not in my judgment be deemed to violate the Establishment Clause. Nothing in the Constitution compels the organs of government to be blind to what everyone else perceives—that religious differences among Americans have important and pervasive implications for our society. Likewise nothing in the Establishment Clause forbids the application of legislation having purely secular ends in such a way as to alleviate burdens upon the free exercise of an individual's religious beliefs. Surely the Framers would never have understood that such a construction sanctions that involvement which violates the Establishment Clause. Such a conclusion can be reached, I would suggest, only by using the words of the First Amendment to defeat its very purpose.

The line between permissible and impermissible forms of involvement between government and religion has already been considered by the lower federal and state courts. I think a brief survey of certain of these forms of accommodation will reveal that the First Amendment commands not official hostility toward religion, but only a strict neutrality in matters of religion. Moreover, it may serve to suggest that the scope of our holding today is to be measured by the special circumstances under which these cases have arisen, and by the particular dangers to church and state which religious exercises in the public schools present. It may

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be helpful for purposes of analysis to group these other practices and forms of accommodation into several rough categories.

A. *The Conflict Between Establishment and Free Exercise.*—There are certain practices, conceivably violative of the Establishment Clause, the striking down of which might seriously interfere with certain religious liberties also protected by the First Amendment.[70] Provisions for churches and chaplains at military establishments for those in the armed services may afford one such example.[71] The like provision by state and federal governments for chaplains in penal institutions may afford another example.[72] It is argued that such provisions may be assumed to contravene the Establishment Clause, yet be sustained on constitutional grounds as necessary to secure to the members of the Armed Forces and prisoners those rights of worship guaranteed under the Free Exercise Clause. Since government has deprived such persons of the opportunity to practice their faith at places of their choice, the argument runs, government may, in order to avoid infringing the free exercise guarantees, provide substitutes where it requires such persons to be. Such a principle might support, for example, the constitutionality of draft exemptions for ministers and divinity students,[73] cf. *Selective Draft Law Cases*, 245 U.S. 366, 389–390; of the excusal of children from school on their respective religious holidays; and of the allowance by government of temporary use of public buildings by religious organizations when their own churches have become unavailable because of a disaster or emergency.[74]

Such activities and practices seem distinguishable from the sponsorship of daily Bible reading and prayer recital. For one thing, there is no element of coercion present in the appointment of military or prison chaplains; the soldier or convict who declines the opportunities for worship would not ordinarily subject himself to the suspicion or obloquy of his peers. Of special significance to this distinction is the fact that we are here usually dealing with adults, not with impressionable children as in the public schools. Moreover, the school exercises are not designed to provide the pupils with general opportunities for worship denied them by the legal obligation to attend school. The student's compelled presence in school for five days a week in no way renders the regular religious facilities of the community less accessible to him than they are to others. The situation of the school child is therefore plainly unlike that of the isolated soldier or the prisoner.

The State must be steadfastly neutral in all matters of faith, and neither favor nor inhibit religion. In my view, government cannot sponsor religious exercises in the public schools without jeopardizing that neutrality. On the other hand, hostility, not neutrality, would characterize the refusal to provide chaplains and places of worship for prisoners and soldiers cut off by the State from all civilian opportunities for public communion, the withholding of draft exemptions for ministers and conscientious objectors, or the denial of the temporary use of an empty public building to a congregation whose place of worship has been destroyed by fire or flood. I do not say that government *must* provide chaplains or draft exemptions, or that the courts should intercede if it fails to do so.

B. *Establishment and Exercises in Legislative Bodies.*—The saying of invocational prayers in legislative chambers, state or federal, and the appointment of legislative chaplains, might well represent no involvements of the kind prohibited by the Establishment Clause.[75] Legislators, federal and state, are mature adults who may presumably absent themselves from such public and ceremonial exercises without incurring any penalty, direct or indirect. It may also be significant that, at least in the case of the Congress, Art. I, § 5, of the Constitution makes each House the monitor of the "Rules of its Proceedings" so that it is at least arguable whether such matters present "political questions" the resolution of which is exclusively confided to Congress. See *Baker* v. *Carr*, 369 U.S. 186, 232. Finally, there is the difficult question of who may be heard to challenge such practices. See *Elliott* v. *White*, 23 F. 2d 997.

C. *Non-Devotional Use of the Bible In the Public Schools.*—The holding of the Court today plainly does not foreclose teaching *about* the Holy Scriptures or about the differences between religious sects in classes in literature or history. Indeed, whether or not the Bible is involved, it would be impossible to teach meaningfully many subjects in the social sciences or the humanities without some mention of religion.[76] To what extent, and at what point in the curriculum religious materials should be cited, are matters which the courts ought to entrust very largely to the experienced officials who superintend our Nation's public schools. They are experts in such matters, and we are not. We should heed Mr. Justice Jackson's caveat that any attempt by this Court to announce curricular standards would be "to decree a uniform, rigid and, if we are consistent, an unchanging standard for countless school boards representing and serving highly localized groups which not only differ from each other but which themselves from time to time change attitudes." *Illinois ex rel. McCollum* v. *Board of Education, supra*, at 237.

We do not, however, in my view usurp the jurisdiction of school administrators by holding as we do today that morning devotional exercises in any form are constitutionally invalid. But there is no occasion now to go further, and anticipate problems we cannot judge with the material now before us. Any attempt to impose rigid limits upon the mention of God or references to the Bible in the classroom would be fraught with dangers. If it should sometime hereafter be shown that in fact religion can play no part in the teaching of a given subject without resurrecting the ghost of the practices we strike down today, it will then be time enough to consider questions we must now defer.

D. *Uniform Tax Exemptions Incidentally Available to Religious Institutions.*—Nothing we hold today questions the propriety of certain tax deductions or exemptions which incidentally benefit churches and religious institutions, along with many secular charities and nonprofit organizations. If religious institutions benefit, it is in spite of rather than because of their religious character. For religious institutions simply share benefits which government makes generally available to educational, charitable, and eleemosynary groups.[77] There is no indication that taxing authorities have used such benefits in any way to subsidize worship or foster belief in God. And as among religious beneficiaries, the tax exemption or deduction can be truly nondiscriminatory, available on equal terms to small as well as large religious bodies, to popular and unpopular sects, and to those organizations which reject as well as those which accept a belief in God.[78]

E. *Religious Considerations in Public Welfare Programs.*—Since government may not support or directly aid religious *activities* without violating the Establishment Clause, there might be some doubt whether nondiscriminatory programs of governmental aid may constitutionally include *individuals* who become eligible wholly or partially for religious reasons. For example, it might be suggested that where a State provides unemployment compensation generally to those who are unable to find suitable work, it may not extend such benefits to persons who are unemployed by reason of religious beliefs or practices without thereby establishing the religion to which those persons belong. Therefore, the argument runs, the State may avoid an establishment only by singling out and excluding such persons on the ground that religious beliefs or practices have made them potential beneficiaries. Such a construction would, it seems to me, require government to impose religious discriminations and disabilities, thereby jeopardizing the free exercise of religion, in order to avoid what is thought to constitute an establishment.

The inescapable flaw in the argument, I suggest, is its quite unrealistic view of the aims of the Establishment Clause. The Framers were not concerned with the effects of certain incidental aids to individual worshippers which come about as byproducts of general and nondiscriminatory welfare programs. If such benefits serve to make easier or less expensive the practice of a particular creed, or of all religions, it can hardly be said that the purpose of the program is in any way religious, or that the consequence of its nondiscriminatory application is to create the forbidden degree of interdependence between secular and sectarian institutions. I cannot therefore accept the suggestion, which seems to me implicit in the argument outlined here, that every judicial or administrative construction which is designed to prevent a public welfare program from abridging the free exercise of religious beliefs, is for that reason *ipso facto* an establishment of religion.

F. *Activities Which, Though Religious in Origin, Have Ceased to Have Religious Meaning.*—As we noted in our *Sunday Law* decisions, nearly every criminal law on the books can be traced to some religious principle or inspiration. But that does not make the present enforcement of the criminal law in any sense an establishment of religion, simply because it accords with widely held religious principles. As we said in *McGowan* v. *Maryland*, 366 U.S. 420, 442, "the 'Establishment' clause does not ban federal or state regulation of conduct whose reason or effect merely happens to coincide or harmonize with the tenets of some or all religions." This rationale suggests that the use of the motto "In God We Trust" on currency, on documents and public buildings and the like may not offend the clause. It is not that the use of those four words can be dismissed as "de minimis"—for I suspect there would be intense opposition to the abandonment of that motto. The truth is that we have simply interwoven the motto so deeply into the fabric of our civil polity that its present use may well not present that type of involvement which the First Amendment prohibits.

This general principle might also serve to insulate the various patriotic exercises and activities used in the public schools and elsewhere which, whatever may have been their origins, no longer have a religious purpose or meaning. The reference to divinity in the revised pledge of allegiance, for example, may merely recognize the historical fact that our Nation was believed to have been founded "under God." Thus reciting the pledge may be no more of a religious exercise than the reading aloud of Lincoln's Gettysburg Address, which contains an allusion to the same historical fact.

The principles which we reaffirm and apply today can hardly be thought novel or radical. They are, in truth, as old as the Republic itself, and have always been as integral a part of the First Amendment as the very words of that charter of religious liberty. No less applicable today than they were when first pronounced a century ago, one year after the very first court decision involving religious exercises in the public schools, are the

Footnotes at end of article.

words of a distinguished Chief Justice of the Commonwealth of Pennsylvania, Jeremiah S. Black:

"The manifest object of the men who framed the institutions of this country, was to have a *State without religion,* and a *Church without politics*—that is to say, they meant that one should never be used as an engine for any purpose of the other, and that no man's rights in one should be tested by his opinions about the other. As the Church takes no note of men's political differences, so the State looks with equal eye on all the modes of religious faith. . . . Our fathers seem to have been perfectly sincere in their belief that the members of the Church would be more patriotic, and the citizens of the State more religious, by keeping their respective functions entirely separate." Essay on Religious Liberty, in Black, ed., Essays and Speeches of Jeremiah S. Black (1886), 53.

FOOTNOTES

[1] Locke, A Letter Concerning Tolerance in 35 Great Books of the Western World (Hutchins ed. 1952), 2.

[2] Representative Daniel Carroll of Maryland during debate upon the proposed Bill of Rights in the First Congress, August 15, 1789, I Annals of Cong. 730.

[3] See Healey, Jefferson on Religion in Public Education (1962); Boles, The Bible, Religion, and the Public Schools (1961), 16–21; Butts, The American Tradition in Religion and Education (1950), 119–130; Cahn, On Government and Prayer, 37 N. Y. U. L. Rev. 981 (1962); Costanzo, Thomas Jefferson, Religious Education and Public Law, 8 J. Pub. Law 81 (1959); Comment, The Supreme Court, the First Amendment, and Religion in the Public Schools, 63 Col. L. Rev. 73, 79–83 (1963).

[4] Jefferson's caveat was in full:

"Instead, therefore, of putting the Bible and Testament into the hands of the children at an age when their judgments are not sufficiently matured for religious inquiries, their memories may here be stored with the most useful facts from Grecian, Roman, European and American history." 2 Writings of Thomas Jefferson (Memorial ed. 1903), 204.

Compare Jefferson's letter to his nephew, Peter Carr, when the latter was about to begin the study of law, in which Jefferson outlined a suggested course of private study of religion since "[y]our reason is now mature enough to examine this object." Letter to Peter Carr, August 10, 1787, in Padover, The Complete Jefferson (1943), 1058. Jefferson seems to have opposed sectarian instruction at any level of public education, see Healey, Jefferson on Religion in Public Education (1962), 206–210, 256, 264–265. The absence of any mention of religious instruction in the projected elementary and secondary schools contrasts significantly with Jefferson's quite explicit proposals concerning religious instruction at the University of Virginia. His draft for "A Bill for the More General Diffusion of Knowledge" in 1779, for example, outlined in some detail the secular curriculum for the public schools, while avoiding any references to religious studies. See Padover, *supra,* at 1048–1054. The later draft of an "Act for Establishing Elementary Schools" which Jefferson submitted to the Virginia General Assembly in 1817 provided that "no religious reading, instruction or exercise, shall be prescribed or practiced inconsistent with the tenets of any religious sect or denomination." Padover, *supra,* at 1076. Reliance upon Jefferson's apparent willingness to permit certain religious instruction at the University seems, therefore, to lend little support to such instruction in the elementary and secondary schools. Compare, *e.g.,* Corwin, A Constitution of Powers in a Secular State (1951), 104–106; Costanzo, Thomas Jefferson, Religious Education and Public Law, 8 J. Pub. Law 81, 100–106 (1959).

[5] Cf. Mr. Justice Rutledge's observations in *Everson* v. *Board of Education,* 330 U.S. 1, 53–54 (dissenting opinion). See also Fellman, Separation of Church and State in the United States: A Summary View, 1950 Wis. L. Rev. 427, 428–429; Rosenfield, Separation of Church and State in the Public Schools, 22 U. of Pitt. L. Rev. 561, 569 (1961); MacKinnon, Freedom?—or Toleration?, The Problem of Church and State in the United States, [1959] Pub. Law 374. One author has suggested these reasons for cautious application of the history of the Constitution's religious guarantees to contemporary problems:

"First, the brevity of Congressional debate and the lack of writings on the question by the framers make any historical argument inconclusive and open to serious question. Second, the amendment was designed to outlaw practices which had existed before its writing, but there is no authoritative declaration of the specific practices at which it was aimed. And third, most of the modern religious-freedom cases turn on issues which were at most academic in 1789 and perhaps did not exist at all. Public education was almost nonexistent in 1789, and the question of religious education in public schools may not have been foreseen." Beth, The American Theory of Church and State (1958), 88.

[6] See generally, for discussion of the early efforts for disestablishment of the established colonial churches, and of the conditions against which the proponents of separation of church and state contended, Sweet, The Story of Religion in America (1950), c. XIII; Cobb, The Rise of Religious Liberty in America (1902), c. IX; Eckenrode, Separation of Church and State in Virginia (1910); Brant, James Madison—The Nationalist, 1780–1787 (1948), c. XXII; Bowers, The Young Jefferson (1945), 193–199; Butts, The American Tradition in Church and State (1950), c. II; Kruse, The Historical Meaning and Judicial Construction of the Establishment of Religion Clause of the First Amendment, 2 Washburn L. J. 65, 79–83 (1962). Compare also Alexander Hamilton's conception of "the characteristic difference between a tolerated and established religion" and his grounds of opposition to the latter, in his remarks on the Quebec Bill in 1775, 2 Works of Alexander Hamilton (Hamilton ed. 1850), 133–138. Compare, for the view that contemporary evidence reveals a design of the Framers to forbid not only formal establishment of churches, but various forms of incidental aid to or support of religion, Lardner, How Far Does the Constitution Separate Church and State?, 45 Am. Pol. Sci. Rev. 110, 112–115 (1951).

[7] The origins of the modern movement for free state-supported education cannot be fixed with precision. In England, the Levellers unavailingly urged in their platform of 1649 the establishment of free primary education for all, or at least for boys. See Brailsford, The Levellers and the English Revolution (1961), 534. In the North American Colonies, education was almost without exception under private sponsorship and supervision, frequently in control of the dominant Protestant sects. This condition prevailed after the Revolution and into the first quarter of the nineteenth century. See generally Mason, Moral Values and Secular Education (1950), c. II; Thayer, The Role of the School in American Society (1960), c. X; Greene, Religion and the State: The Making and Testing of an American Tradition (1941), 120–122. Thus, Virginia's colonial Governor Berkeley exclaimed in 1671: "I thank God there are no free schools nor printing, and I hope we shall not have them these hundred years; for learning has brought disobedience, and heresy, and sects into the world. . . ." (Emphasis deleted.) Bates, Religious Liberty: An Inquiry (1945), 327.

The exclusively private control of American education did not, however, quite survive Berkeley's expectations. Benjamin Franklin's proposals in 1749 for a Philadelphia Academy heralded the dawn of publicly supported secondary education, although the proposal did not bear immediate fruit. See Johnson and Yost, Separation of Church and State in the United States (1948), 26–27. Jefferson's elaborate plans for a public school system in Virginia came to naught after the defeat in 1796 of his proposed Elementary School Bill, which found little favor among the wealthier legislators. See Bowers, The Young Jefferson (1945), 182–186. It was not until the 1820's and 1830's, under the impetus of Jacksonian democracy, that a system of public education really took root in the United States. See 1 Beard, The Rise of American Civilization (1937), 810–818. One force behind the development of secular public schools may have been a growing dissatisfaction with the tightly sectarian control over private education, see Harner, Religion's Place in General Education (1949), 29–30. Yet the burgeoning public school systems did not immediately supplant the old sectarian and private institutions; Alexis de Tocqueville, for example, remarked after his tour of the Eastern States in 1831 that "[a]lmost all education is entrusted to the clergy." 1 Democracy in America (Bradley ed. 1945) 309, n. 4. And compare Lord Bryce's observations, a half century later, on the still largely denominational character of American higher education, 2 The American Commonwealth (1933), 734–735.

Efforts to keep the public schools of the early nineteenth century free from sectarian influence were of two kinds. One took the form of constitutional provisions and statutes adopted by a number of States forbidding appropriations from the public treasury for the support of religious instruction in any manner. See Moehlman, The Wall of Separation Between Church and State (1951), 132–135; Lardner, How Far Does the Constitution Separate Church and State?, 45 Am. Pol. Sci. Rev. 110, 122 (1951). The other took the form of measures directed against the use of sectarian reading and teaching materials in the schools. The texts used in the earliest public schools had been largely taken over from the private academies, and retained a strongly religious character and content. See Nichols, Religion and American Democracy (1959), 64–80; Kinney, Church and State, The Struggle for Separation in New Hampshire, 1630–1900 (1955), 150–153. In 1827, however, Massachusetts enacted a statute providing that school boards might not thereafter "direct any school books to be purchased or used in any of the schools . . . which are calculated to favor any particular religious sect or tenet." 2 Stokes, Church and State in the United States (1950), 53. For further discussion of the background of the Massachusetts law and difficulties in its early application, see Dunn, What Happened to Religious Education? (1958), c. IV. As other States followed the example of Massachusetts, the use of sectarian texts was in time as widely prohibited as the appropriation of public funds for religious instruction.

Concerning the evolution of the American public school systems free of sectarian influence, compare Mr. Justice Frankfurter's account:

"It is pertinent to remind that the establishment of this principle of Separation in the field of education was not due to any decline in the religious beliefs of the people. Horace Mann was a devout Christian, and the deep religious feeling of James Madison is stamped upon the Remonstrance. The sec-

ular public school did not imply indifference to the basic role of religion in the life of the people, nor rejection of religious education as a means of fostering it. The claims of religion were not minimized by refusing to make the public schools agencies for their assertion. The non-sectarian or secular public school was the means of reconciling freedom in general with religious freedom. The sharp confinement of the public schools to secular education was a recognition of the need of a democratic society to educate its children, insofar as the State undertook to do so, in an atmosphere free from pressures in a realm in which pressures are most resisted and where conflicts are most easily and most bitterly engendered." *Illinois ex rel. McCollum* v. *Board of Education*, 333 U.S. 203, 216.

[8] The comparative religious homogeneity of the United States at the time the Bill of Rights was adopted has been considered in Haller, The Puritan Background of the First Amendment, in Read, ed., The Constitution Reconsidered (1938), 131, 133–134; Beth, The American Theory of Church and State (1958), 74; Kinney, Church and State, The Struggle for Separation in New Hampshire, 1630–1900 (1955), 155–161. However, Madison suggested in the Fifty-first Federalist that the religious diversity which existed at the time of the Constitutional Convention constituted a source of strength for religious freedom, much as the multiplicity of economic and political interests enhanced the security of other civil rights. The Federalist (Cooke ed. 1961), 351–352.

[9] See Comment, The Power of Courts Over the Internal Affairs of Religious Groups, 43 Calif. L. Rev. 322 (1955); Comment, Judicial Intervention in Disputes Within Independent Church Bodies, 54 Mich. L. Rev. 102 (1955); Note, Judicial Intervention in Disputes Over the Use of Church Property, 75 Harv. L. Rev. 1142 (1962). Compare *Vidal* v. *Girard's Executors*, 2 How. 127. The principle of judicial nonintervention in essentially religious disputes appears to have been reflected in the decisions of several state courts declining to enforce essentially private agreements concerning the religious education and worship of children of separated or divorced parents. See, *e. g., Hackett* v. *Hackett*, 78 Ohio Abs. 485, 150 N. E. 2d 431; *Stanton* v. *Stanton*, 213 Ga. 545, 100 S. E. 2d 289; Friedman, The Parental Right to Control the Religious Education of a Child, 29 Harv. L. Rev. 485 (1916); 72 Harv. L. Rev. 372 (1958); Note, 10 West. Res. L. Rev. 171 (1959).

Governmental nonintervention in religious affairs and institutions seems assured by Article 26 of the Constitution of India, which provides:

"Subject to public order, morality and health, every religious denomination or any sect thereof shall have the right—

"(a) to establish and maintain institutions for religious and charitable purposes;

"(b) to manage its own affairs in matters of religion;

"(c) to own and acquire movable and immovable property; and

"(d) to administer such property in accordance with law." See 1 Chaudhri, Constitutional Rights and Limitations (1955), 875. This Article does not, however, appear to have completely foreclosed judicial inquiry into the merits of intradenominational disputes. See Gledhill, Fundamental Rights in India (1955), 101–102.

[10] For a discussion of the difficulties inherent in the *Ballard* case, see *Kurland*, Religion and the Law (1962), 75–79. This Court eventually reversed the convictions on the quite unrelated ground that women had been systematically excluded from the jury, *Ballard* v. *United States*, 329 U.S. 187. For discussions of the difficulties in interpreting and applying the First Amendment so as to foster the objective of neutrality without hostility, see, *e.g.*, Katz, Freedom of Religion and State Neutrality, 20 U. of Chi. L. Rev. 426, 438 (1953); Kauper, Church, State and Freedom: A Review, 52 Mich. L. Rev. 829, 842 (1954). Compare, for an interesting apparent attempt to avoid the *Ballard* problem at the international level, Article 3 of the Multilateral Treaty between the United States and certain American Republics, which provides that extradition will not be granted, *inter alia*, when "the offense is . . . directed against religion." Blakely, American State Papers and Related Documents on Freedom in Religion (4th rev. ed. 1949), 316.

[11] See Kurland, Religion and the Law (1962), 32–34.

[12] Compare the treatment of an apparently very similar problem in Article 28 of the Constitution of India:

"(1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds.

"(2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution." 1 Chaudhri, Constitutional Rights and Limitations (1955), 875–876, 939.

[13] See Kurland, Religion and the Law (1962), 28–31; Fellman, Separation of Church and State in the United States: A Summary View, 1950 Wis. L. Rev. 427, 442.

[14] This distinction, implicit in the First Amendment, had been made explicit in the original Virginia Bill of Rights provision that "all men are equally entitled to the free exercise of religion, according to the dictates of conscience, unpunished and unrestrained by the magistrates, unless, under color of religion, any man disturb the peace and happiness or safety of society." See Cobb, The Rise of Religious Liberty in America (1902), 491. Concerning various legislative limitations and restraints upon religiously motivated behavior which endangers or offends society, see Manwaring, Render Unto Caesar: The Flag-Salute Controversy (1962), 41–52. Various courts have applied this principle to proscribe certain religious exercises or activities which were thought to threaten the safety or morals of the participants or the rest of the community, *e.g., State* v. *Massey*, 229 N.C. 734, 51 S.E. 2d 179; *Harden* v. *State*, 188 Tenn. 17, 216 S.W. 708; *Lawson* v. *Commonwealth*, 291 Ky. 437, 164 S.W. 2d 972; cf. *Sweeney* v. *Webb*, 33 Tex. Civ. App. 324, 76 S.W. 766.

That the principle of these cases, and the distinction between belief and behavior, are susceptible of perverse application, may be suggested by Oliver Cromwell's mandate to the besieged Catholic community in Ireland:

"As to freedom of conscience, I meddle with no man's conscience; but if you mean by that, liberty to celebrate the Mass, I would have you understand that in no place where the power of the Parliament of England prevails shall that be permitted." Quoted in Hook, The Paradoxes of Freedom (1962), 23.

[15] With respect to the decision in *Hamilton* v. *Regents*, compare two recent comments: Kurland, Religion and the Law (1962), 40; and French, Comment, Unconstitutional Conditions: An Analysis, 50 Geo. L. J. 234, 246 (1961).

[16] See generally as to the background and history of the *Barnette* case, Manwaring, Render Unto Caesar: The Flag-Salute Controversy (1962), especially at 252–253. Compare, for the interesting treatment of a problem similar to that of *Barnette*, in a nonconstitutional context, *Chabot* v. *Les Commissaires D'Ecoles de Lamorandière*, [1957] Que. B. R. 707, noted in 4 McGill L. J. 268 (1958).

[17] See *Barron* v. *Baltimore*, 7 Pet. 243; *Permoli* v. *New Orleans*, 3 How. 589, 609; cf. Fox v. *Ohio*, 5 How. 410, 434–435; *Withers* v. *Buckley*, 20 How. 84, 89–91. As early as 1825, however, at least one commentator argued that the guarantees of the Bill of Rights, excepting only those of the First and Seventh Amendments, were meant to limit the powers of the States, Rawle, A View of the Constitution of the United States of America (1825), 120–130.

[18] In addition to the statement of this Court in *Meyer*, at least one state court assumed as early as 1921 that claims of abridgment of the free exercise of religion in the public schools must be tested under the guarantees of the First Amendment as well as those of the state constitution. *Hardwick* v. *Board of School Trustees*, 54 Cal. App. 696, 704–705, 205 P. 49, 52. See Louisell and Jackson, Religion, Theology, and Public Higher Education, 50 Cal. L. Rev. 751, 772 (1962). Even before the Fourteenth Amendment, New York State enacted a general common school law in 1844 which provided that no religious instruction should be given which could be construed to violate the rights of conscience "as secured by the constitution of this state and the United States." N.Y. Laws, 1944, c. 320, § 12.

[19] See, *e.g.*, Snee, Religious Disestablishment and the Fourteenth Amendment, 1954 Wash. U.L.Q. 371, 373–394; Kruse, The Historical Meaning and Judicial Construction of the Establishment of Religion Clause of the First Amendment, 2 Washburn L.J. 65, 84–85, 127–130 (1962); Katz, Religion and American Constitutions, Address at Northwestern University Law School, March 20, 1963, pp. 6–7. But see the debate in the Constitutional Convention over the question whether it was necessary or advisable to include among the enumerated powers of the Congress a power "to establish a University, in which no preferences or distinctions should be allowed on account of religion." At least one delegate thought such an explicit delegation "is not necessary," for "[t]he exclusive power at the Seat of Government, will reach the object." The proposal was defeated by only two votes. 2 Farrand, Records of the Federal Convention of 1787 (1911), 616.

[20] The last formal establishment, that of Massachusetts, was dissolved in 1833. The process of disestablishment in that and other States is described in Cobb, The Rise of Religious Liberty in America (1902), c. X; Sweet, The Story of Religion in America (1950), c. XIII. The greater relevance of conditions existing at the time of adoption of the Fourteenth Amendment is suggested in Note, State Sunday Laws and the Religious Guarantees of the Federal Constitution, 73 Harv. L. Rev. 729, 739, n. 79 (1960).

[21] See Corwin, A Constitution of Power in a Secular State (1951), 111–114; Fairman and Morrison, Does the Fourteenth Amendment Incorporate the Bill of Rights?, 2 Stan. L. Rev. 5 (1949); Meyer, Comment, The Blaine Amendment and the Bill of Rights, 64 Harv. L. Rev. 939 (1951); Howe, Religion and Race in Public Education, 8 Buffalo L. Rev. 242, 245–247 (1959). Cf. Cooley, Principles of Constitutional Law (2d ed. 1891), 213–214. Compare Professor Freund's comment:

"Looking back, it is hard to see how the Court could have done otherwise, how it could have persisted in accepting freedom of contract as a guaranteed liberty without giving equal status to freedom of press and speech, assembly, and religious observance. What does not seem so inevitable is the inclusion within the Fourteenth Amendment of the concept of nonestablishment of religion in the sense of forbidding nondiscriminatory aid to religion, where there is no interference with freedom of religious exercise." Freund, The Supreme Court of the United States (1961), 58–59.

[22] The Blaine Amendment, 4 Cong. Rec. 5580, included also a more explicit provision that "no money raised by taxation in any State for the support of public schools or derived from any public fund therefor, nor any public lands devoted thereto, shall ever

be under the control of any religious sect or denomination . . . ." The Amendment passed the House but failed to obtain the requisite two-thirds vote in the Senate. See 4 Cong. Rec. 5595. The prohibition which the Blaine Amendment would have engrafted onto the American Constitution has been incorporated in the constitutions of other nations; compare Article 28(1) of the Constitution of India ("No religious instruction shall be provided in any educational institution wholly maintained out of State funds"); Article XX of the Constitution of Japan (". . . the State and its organs shall refrain from religious education or any other religious activity.") See 1 Chaudhri, Constitutional Rights and Limitations (1955), 875, 876.

[23] Three years after the adoption of the Fourteenth Amendment, Mr. Justice Bradley wrote a letter expressing his views on a proposed constitutional amendment designed to acknowledge the dependence of the Nation upon God, and to recognize the Bible as the foundation of its laws and the supreme ruler of its conduct:

"I have never been able to see the necessity or expediency of the movement for obtaining such an amendment. The Constitution was evidently framed and adopted by the people of the United States with the fixed determination to allow absolute religious freedom and equality, and to avoid all appearance even of a State religion, or a State endorsement of any particular creed or religious sect. . . . And after the Constitution in its original form was adopted, the people made haste to secure an amendment that Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. This shows the earnest desire of our Revolutionary fathers that religion should be left to the free and voluntary action of the people themselves. I do not regard it as manifesting any hostility to religion, but as showing a fixed determination to leave the people entirely free on the subject.

"And it seems to me that our fathers were wise; that the great voluntary system of this country is quite as favorable to the promotion of real religion as the systems of governmental protection and patronage have been in other countries. And whilst I do not understand that the association which you represent desire to invoke any governmental interference, still the amendment sought is a step in that direction which our fathers (quite as good Christians as ourselves) thought it wise not to take. In this country they thought they had settled one thing at least, that it is not the province of government to teach theology.

". . . Religion, as the basis and support of civil government, must reside, not in the written Constitution, but in the people themselves. And we cannot legislate religion into the people. It must be infused by gentler and wiser methods." Miscellaneous Writings of Joseph P. Bradley (1901), 357–359.

For a later phase of the controversy over such a constitutional amendment as that which Justice Bradley opposed, see Finlator, Christ in Congress, 4 J. Church and State 205 (1962).

[24] There is no doubt that, whatever "establishment" may have meant to the Framers of the First Amendment in 1791, the draftsmen of the Fourteenth Amendment three quarters of a century later understood the Establishment Clause to foreclose many incidental forms of governmental aid to religion which fell far short of the creation or support of an official church. The Report of a Senate Committee as early as 1853, for example, contained this view of the Establishment Clause:

"If Congress has passed, or should pass, any law which, fairly construed, has in any degree introduced, or should attempt to introduce, in favor of any church, or ecclesiastical association, or system of religious faith, all or any one of these obnoxious particulars—endowment at the public expense, peculiar privileges to its members, or disadvantages or penalties upon those who should reject its doctrines or belong to other communions—such law would be a 'law respecting an establishment of religion,' and, therefore, in violation of the Constitution." S. Rep. No. 376, 32d Cong., 2d Sess. 1–2.

Compare Thomas M. Cooley's exposition in the year in which the Fourteenth Amendment was ratified:

"Those things which are not lawful under any of the American constitutions may be stated thus:—

"1. Any law respecting an establishment of religion. . . .

"2. Compulsory support, by taxation or otherwise, of religious instruction. Not only is no one denomination to be favored at the expense of the rest, but all support of religious instruction must be entirely voluntary." Cooley, Constitutional Limitations (1st ed. 1868), 469.

[25] Compare, *e.g.*, Miller, Roger Williams: His Contribution to the American Tradition (1953), 83; with Madison, Memorial and Remonstrance Against Religious Assessments, reprinted as an Appendix to the dissenting opinion of Mr. Justice Rutledge, *Everson* v. *Board of Education, supra*, at 63–72. See also Cahn, On Government and Prayer, 37 N.Y.U.L. Rev. 981, 982–985 (1962); Jefferson's Bill for Establishing Religious Freedom, in Padover, The Complete Jefferson (1943), 946–947; Moulton and Myers, Report on Appointing Chaplains to the Legislature of New York, in Blau, Cornerstones of Religious Freedom in America (1949), 141–156; Bury, A History of Freedom of Thought (2d ed. 1952), 75–76.

[26] See, *e.g.*, Spicer, The Supreme Court and Fundamental Freedoms (1959), 83–84; Kauper, Church, State and Freedom: A Review, 52 Mich. L. Rev. 829, 839 (1954); Reed, Church-State and the Zorach Case, 27 Notre Dame Lawyer 529, 539–541 (1952).

[27] See 343 U.S., at 321–322 (Frankfurter, J., dissenting); Kurland, Religion and the Law (1962), 89. I recognize that there is a question whether in *Zorach* the free exercise claims asserted were in fact proved. 343 U.S., at 311.

[28] Mr. Justice Frankfurter described the effects of the *McCollum* program thus:

"Religious education so conducted on school time and property is patently woven into the working scheme of the school. The Champaign arrangement thus presents powerful elements of inherent pressure by the school system in the interest of religious sects. . . . As a result, the public school system of Champaign actively furthers inculcation in the religious tenets of some faiths, and in the process sharpens the consciousness of religious differences at least among some of the children committed to its care." 333 U.S., at 227–228.

For similar reasons some state courts have enjoined the public schools from employing or accepting the services of members of religious orders, even in the teaching of secular subjects, *e.g.*, *Zellers* v. *Huff*, 55 N. M. 501, 236 P. 2d 949; *Berghorn* v. *Reorganized School Dist. No. 8*, 364 Mo. 121, 260 S. W. 2d 573; compare ruling of Texas Commissioner of Education, Jan. 25, 1961, in 63 American Jewish Yearbook (1962), 188. Over a half century ago a New York court sustained a school board's exclusion from the public schools of teachers wearing religious garb on similar grounds:

"Then all through the school hours these teachers . . . were before the children as object lessons of the order and church of which they were members. It is within our common observation that young children . . . are very susceptible to the influence of their teachers and of the kind of object lessons continually before them in schools conducted under these circumstances and with these surroundings." *O'Connor* v. *Hendrick*, 109 App. Div. 361, 371–372, 96 N. Y. Supp. 161, 169. See also *Commonwealth* v. *Herr*, 229 Pa. 132, 78 A. 68; Comment, Religious Garb in the Public Schools—A Study in Conflicting Liberties, 22 U. of Chi. L. Rev. 888 (1955).

Also apposite are decisions of several courts which have enjoined the use of parochial schools as part of the public school system, *Harfst* v. *Hoegen*, 349 Mo. 808, 613 S. W. 2d 609; or have invalidated programs for the distribution in public school classrooms of Gideon Bibles, *Brown* v. *Orange County Board of Public Instruction*, 128 So. 2d 181 (Fla. App.); *Tudor* v. *Board of Education*, 14 N. J. 31, 100 A. 2d 857. See Note, The First Amendment and Distribution of Religious Literature in the Public Schools, 41 Va. L. Rev. 789, 803–806 (1955). In *Tudor*, the court stressed the role of the public schools in the Bible program:

". . . the public school machinery is used to bring about the distribution of these Bibles to the children . . . In the eyes of the pupils and their parents the board of education has placed its stamp of approval upon this distribution and, in fact, upon the Gideon Bible itself. . . . This is more than mere 'accommodation' of religion permitted in the Zorach case. The school's part in this distribution is an active one and cannot be sustained on the basis of a mere assistance to religion." 14 N. J., at 51–52, 100 A. 2d, at 868.

The significance of the teacher's authority was recognized by one early state court decision:

"The school being in session, the right to command was vested in the teacher, and the duty of obedience imposed upon the pupils. Under such circumstances a request and a command have the same meaning. A request from one in authority is understood to be a mere euphemism. It is in fact a command in an inoffensive form." *State ex rel. Freeman* v. *Scheve*, 65 Neb. 876, 880, 93 N. W. 169, 170.

[29] See for other illustrations of the principle that where First Amendment freedoms are or may be affected, government must employ those means which will least inhibit the exercise of constitutional liberties, *Lovell* v. *Griffin*, 303 U.S. 444; *Schneider* v. *State*, 308 U.S. 147, 161; *Martin* v. *Struthers*, 319 U.S. 141; *Saia* v. *New York*, 334 U.S. 558; *Shelton* v. *Tucker*, 364 U.S. 479, 488–489; *Bantam Books, Inc.*, v. *Sullivan*, 372 U.S. 58, 66, 69–71. See also Note, State Sunday Laws and the Religious Guarantees of the Federal Constitution, 73 Harv. L. Rev. 729, 743–745 (1960); Freund, The Supreme Court of the United States (1961), 86–87; 74 Harv. L. Rev. 613 (1961). And compare *Miller* v. *Cooper*, 56 N. M. 355, 244 P. 2d 520 (1952), in which a state court permitted the holding of public school commencement exercises in a church building only because no public buildings in the community were adequate to accommodate the ceremony.

[30] No question has been raised in these cases concerning the standing of these parents to challenge the religious practices conducted in the schools which their children presently attend. Whatever authority *Doremus* v. *Board of Education*, 342 U.S. 429, might have on the question of the standing of one not the parent of children affected by the challenged exercises is not before us in these cases. Neither in *McCollum* nor in *Zorach* was there any reason to question the standing of the parent-plaintiffs under settled principles of justiciability and jurisdiction, whether or not their complaints alleged pecuniary loss or monetary injury. The free-exercise claims of the parents alleged injury sufficient to give them standing. If, however, the gravamen of the lawsuit were exclusively one of establishment, it might seem illogical to confer standing upon a parent who—though he is concededly in the best position to assert a free-exercise claim—suffers no financial injury, by reason of being a parent, different from that of the ordinary

taxpayer, whose standing may be open to question. See Sutherland, Establishment According to *Engel*, 76 Harv. L. Rev. 25, 41–43 (1962). I would suggest several answers to this conceptual difficulty. First, the parent is surely the person most directly and immediately concerned about and affected by the challenged establishment, and to deny him standing either in his own right or on behalf of his child might effectively foreclose judicial inquiry into serious breaches of the prohibitions of the First Amendment—even though no special monetary injury could be shown. See *Schempp* v. *School District of Abington Township*, 177 F. Supp. 398, 407; Kurland, The Regents' Prayer Case: "Full of Sound and Fury, Signifying . . . ," 1962 Supreme Court Review 1, 22. Second, the complaint in every case thus far challenging an establishment has set forth at least a colorable claim of infringement of free exercise. When the complaint includes both claims, and neither is frivolous, it would surely be over-technical to say that a parent who does not detail the monetary cost of the exercises to him may ask the court to pass only upon the free-exercise claim, however logically the two may be related. Cf. *Pierce* v. *Society of Sisters*, *supra*; *Truax* v. *Raich*, 239 U.S. 33, 38–39; *NAACP* v. *Alabama ex rel. Patterson*, 357 U.S. 449, 458–460; *Bell* v. *Hood*, 327 U.S. 678; *Bantam Books, Inc.*, v. *Sullivan*, 372 U.S. 58, 64, n. 6. Finally, the concept of standing is a necessarily flexible one, designed principally to ensure that the plaintiffs have "such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions . . ." *Baker* v. *Carr*, 369 U.S. 186, 204. It seems to me that even a cursory examination of the complaints in these two cases and the opinions below discloses that these parents have very real grievances against the respective school authorities which cannot be resolved short of constitutional adjudication. See generally Arthur Garfield Hays Civil Liberties Conference: Public Aid to Parochial Schools and Standing to Bring Suit, 12 Buffalo L. Rev. 35 (1962); Jaffee, Standing to Secure Judicial Review: Public Actions, 74 Harv. L. Rev. 1265 (1961); Sutherland, Due Process and Disestablishment, 62 Harv. L. Rev. 1306, 1327–1332 (1949); Comment, The Supreme Court, the First Amendment, and Religion in the Public Schools, 63 Col. L. Rev 73, 94, in 1953 (1963).

[31] Quoted in Dunn, What Happened to Religious Education? (1958), 21.

[32] Quoted, *id.*, at 22.

[33] Quoted in Hartford, Moral Values in Public Education: Lessons From the Kentucky Experience (1958), 31.

[34] See Culver, Horace Mann and Religion in the Massachusetts Public Schools (1929), for an account of one prominent educator's efforts to satisfy both the protests of those who opposed continuation of sectarian lessons and exercises in public schools, and the demands of those who insisted upon the retention of some essentially religious practices. Mann's continued use of the Bible for what he regarded as nonsectarian exercises represented his response to these cross-pressures. See Mann, Religious Education, in Blau, Cornerstones of Religious Freedom in America (1949), 163–201 (from the Twelfth Annual Report for 1848 of the Secretary of the Board of Education of Massachusetts). See also Boles, The Bible, Religion, and the Public Schools (1961), 22–27.

[35] See 2 Stokes, Church and State in the United States (1950), 572–579; Greene, Religion and the State: The Making and Testing of an American Tradition (1941), 122–126.

[36] *E. g.*, Ala. Code, Tit. 52, § 542; Del. Code Ann., Tit. 14, §§ 4101–4102; Fla. Stat. Ann. § 231.09(2); Mass. Ann. Laws, c. 71, § 31; Tenn. Code Ann. § 49–1307 (4). Some statutes, like the recently amended Pennsylvania statute involved in *Schempp*, provide for the excusal or exemption of children whose parents do not wish them to participate. See generally Johnson and Yost, Separation of Church and State in the United States (1948), 33–36; Thayer, The Role of the School in American Society (1960); 374–375; Beth, The American Theory of Church and State (1958), 106–107. Compare with the American statutory approach Article 28 (3) of the Constitution of India:

"(3) No person attending any educational institution recognized by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto." See 1 Chaudhri, Constitutional Rights and Limitations (1955), 876, 939.

[37] See note 34, *supra*.

[38] Quoted from New Hampshire School Reports, 1850, 31–32, in Kinney, Church and State: The Struggle for Separation in New Hampshire, 1630–1900 (1955), 157–158.

[39] Quoted in Boyer, Religious Education of Public School Pupils in Wisconsin, 1953 Wis. L. Rev. 181, 185.

[40] Quoted in Dunn, What Happened to Religious Education? (1958), 271.

[41] Quoted in Butts, The American Tradition in Religion and Education (1950), 135–136.

[42] See *Board of Education* v. *Minor*, 23 Ohio St. 211; Blakely, American State Papers and Related Documents on Freedom in Religion (4th rev. ed. 1949), 864.

[43] Report of the United States Commissioner of Education for the Year 1888–1889, part I, H.R. Exec. Doc No. 1, part 5, 51st Cong., 1st Sess. 627.

[44] Quoted in *Illinois ex rel. McCollum* v. *Board of Education*, *supra*, at 218 (opinion of Frankfurter, J.). See also President Grant's Annual Message to Congress, Dec. 7, 1875, 4 Cong. Rec. 175 *et seq.*, which apparently inspired the drafting and submission of the Blaine Amendment. See Meyer, Comment, The Blaine Amendment and the Bill of Rights, 64 Harv. L. Rev. 939 (1951).

[45] Theodore Roosevelt to Michael A. Schaap, Feb. 22, 1915, 8 Letters of Theodore Roosevelt (Morrison ed. 1954), 893.

[46] Quoted in Boles, The Bible, Religion, and the Public Schools (1961), 238.

[47] *E. g.*, 26 Ore. Op. Atty. Gen. 46 (1952); 25 Cal. Op. Atty. Gen. 316 (1955); 1948–1950 Nev. Atty. Gen. Rep. 69 (1948). For a 1961 opinion of the Attorney General of Michigan to the same effect, see 63 American Jewish Yearbook (1962) 189 In addition to the Governor of Ohio, see note 46, *supra*, a Governor of Arizona vetoed a proposed law which would have permitted "reading the Bible, without comment, except to teach Historical or Literary facts." See 2 Stokes, Church and State in the United States (1950), 568.

[48] See Johnson and Yost, Separation of Church and State in the United States (1948), 71; Note, Bible Reading in Public Schools, 9 Vand. L. Rev. 849, 851 (1956).

[49] *E.g.*, *Spiller* v. *Inhabitants of Woburn*, 12 Allen (Mass.) 127 (1866); *Donahoe* v. *Richards*, 38 Maine 376, 413 (1854); cf. *Ferriter* v. *Tyler*, 48 Vt. 444, 471–472 (1876).

[50] *Board of Education* v. *Minor*, 23 Ohio St. 211 (1873).

[51] *People ex rel. Ring.* v. *Board of Education*, 245 Ill. 334, 92 N. E. 251 (1910); *Herold* v. *Parish Board of School Directors*, 136 La. 1034, 68 So. 116 (1915); *State ex rel. Weiss* v. *District Board*, 76 Wis. 177, 44 N. W. 967 (1890); *State ex rel. Finger* v. *Weedman*, 55 S. D. 343, 226 N. W. 348 (1929); *State ex rel. Dearle* v. *Frazier*, 102 Wash. 369, 173 P. 35 (1918); cf. *State ex rel. Clithero* v. *Showalter*, 159 Wash. 519, 293 P. 1000 (1930); *State ex rel. Freeman* v. *Scheve*, 65 Neb. 853, 91 N. W. 846 (1902), modified, 65 Neb. 876, 93 N. W. 169 (1903). The cases are discussed in Boles, The Bible, Religion, and the Public Schools (1961), c. IV; Harrison, The Bible, the Constitution and Public Education, 29 Tenn. L. Rev. 363, 386–389 (1962).

[52] *Moore* v. *Monroe*, 64 Iowa 367, 20 N.W. 475 (1884); *Hackett* v. *Brooksville Graded School District*, 120 Ky. 608, 87 S.W. 792 (1905); *Billard* v. *Board of Education*, 69 Kan. 53, 76 P. 422 (1904); *Pfeiffer* v. *Board of Education*, 118 Mich. 560, 77 N.W. 250 (1898); *Kaplan* v. *School District*, 171 Minn. 142, 214 N.W. 18 (1927); *Lewis* v. *Board of Education*, 157 Misc. 520, 285 N.Y. Supp. 164 (Sup. Ct. 1935), modified on other grounds, 247 App. Div. 106, 286 N.Y. Supp. 174 (1936), appeal dismissed, 276 N.Y. 490, 12 N.E. 2d 172 (1937); *Doremus* v. *Board of Education*, 5 N.J. 435, 75 A. 2d 880 (1950), appeal dismissed, 342 U.S. 429; *Church* v. *Bullock*, 104 Tex. 1, 109 S.W. 115 (1908); *People ex rel. Vollmar* v. *Stanley*, 81 Colo. 276, 255 P. 610 (1927); *Wilkerson* v. *City of Rome*, 152 Ga. 762, 110 S.E. 895 (1922); *Carden* v. *Bland*, 199 Tenn. 665, 288 S.W. 2d 718 (1956); *Chamberlin* v. *Dade County of Public Instruction*, 143 So. 2d 21 (Fla. 1962).

[53] For discussion of the constitutional and statutory provisions involved in the state cases which sustained devotional exercises in the public schools, see Boles, The Bible, Religion, and the Public Schools (1961), c. III; Harrison, The Bible, the Constitution and Public Education, 29 Tenn. L. Rev. 363, 381–385 (1962); Fellman, Separation of Church and State in the United States: A Summary View, 1950 Wis. L. Rev. 427, 450–452; Note, Bible Reading in Public Schools, 9 Vand. L. Rev. 849, 854–859 (1956); Note, Nineteenth Century Judicial Thought Concerning Church-State Relations, 40 Minn. L. Rev. 672, 675–678 (1956). State courts appear to have been increasingly influenced in sustaining devotional practices by the availability of an excuse or exemption for dissenting students. See Cushman, The Holy Bible and the Public Schools, 40 Cornell L. Q. 475, 477 (1955); 13 Vand. L. Rev. 552 (1960).

[54] See Rosenfield, Separation of Church and State in the Public Schools, 22 U. of Pitt. L. Rev. 561, 571–572 (1961); Harrison, The Bible, the Constitution and Public Education, 29 Tenn. L. Rev. 363, 399–400 (1962); 30 Ford. L. Rev. 801, 803 (1962); 45 Va. L. Rev. 1381 (1959). The essentially religious character of the materials used in these exercises is, in fact, strongly suggested by the presence of excusal or exemption provisions, and by the practice of rotating or alternating the use of different prayers and versions of the Holy Bible.

[55] In the *Billard* case, the teacher whose use of the Lord's Prayer and the Twenty-third Psalm was before the court, testified that the exercise served disciplinary rather than spiritual purposes:

"It is necessary to have some general exercise after the children come in from the playground to prepare them for their work. You need some exercise to quiet them down."

When asked again if the purpose were not at least partially religious, the teacher replied, "[i]t was religious to the children that are religious, and to the others it was not." 69 Kan., at 57–58, 76 P., at 423.

[56] See, *e. g.*, Henry, The Place of Religion in Public Schools (1950); Martin, Our Public Schools—Christian or Secular (1952); Educational Policies Comm'n of the National Educational Assn., Moral and Spiritual Values in the Public Schools (1951), c. IV; Harner, Religion's Place in General Education (1949). Educators are by no means unanimous, however, on this question. See Boles, The Bible, Religion, and the Public Schools (1961), 223–224. Compare George Washington's advice in his Farewell Address:

"And let us with caution indulge the supposition, that morality can be maintained without religion. Whatever may be conceded to the influence of refined education on minds of peculiar structure, reason and experience both forbid us to expect that National morality can prevail in exclusion of religious principle." 35 Writings of George Washington (Fitzpatrick ed. 1940), 229.

[57] Thomas Jefferson's insistence that where the judgments of young children "are not sufficiently matured for religious inquiries, their memories may here be stored with the most useful facts from Grecian, Roman, European and American history," 2 Writings of Thomas Jefferson (Memorial ed. 1903), 204, is relevant here. Recent proposals have explored the possibility of commencing the school day "with a quiet moment that would still the tumult of the playground and start a day of study," Editorial, Washington Post, June 28, 1962, § A, p. 22, col. 2. See also New York Times, Aug. 30, 1962, § 1, p. 18, col. 2. For a consideration of these and other alternative proposals see Choper, Religion in the Public Schools: A Proposed Constitutional Standard, 47 Minn. L. Rev. 329, 370–371 (1963). See also 2 Stokes, Church and State in the United States (1950), 571.

[58] The history, as it bears particularly upon the role of sectarian differences concerning Biblical texts and interpretation, has been summarized in *Tudor* v. *Board of Education*, 14 N.J. 31, 36–44, 100 A. 2d 857, 859–864. See also *State ex rel. Weiss* v. *District Board*, 76 Wis. 177, 190–193, 44 N. W. 967, 972–975. One state court adverted to these differences a half century ago:

"The Bible, in its entirety, is a sectarian book as to the Jew and every believer in any religion other than the Christian religion, and as to those who are heretical or who hold beliefs that are not regarded as orthodox . . . its use in the schools necessarily results in sectarian instruction. There are many sects of Christians, and their differences grow out of their differing constructions of various parts of the Scriptures—the different conclusions drawn as to the effect of the same words. The portions of Scripture which form the basis of these sectarian differences cannot be thoughtfully and intelligently read without impressing the reader, favorably or otherwise with reference to the doctrines supposed to be derived from them." *People ex rel. Ring* v. *Board of Education*, 245 Ill. 334, 347–348, 92 N. E. 251, 255. But see, for a sharply critical comment, Schofield, Religious Liberty and Bible Reading in Illinois Public Schools, 6 Ill. L. Rev. 17 (1911).

See also Dunn, What Happened to Religious Education? (1958), 268–273; Dawson, America's Way in Church, State, and Society (1953), 53–54; Johnson and Yost, Separation of Church and State in the United States (1948), c. IV; Harpster, Religion, Education and the Law, 36 Marquette L. Rev. 24, 44–45 (1952); 20 Ohio State L. J. 701, 702–703 (1959).

[59] See *Torcaso* v. *Watkins*, *supra*, at 495, n. 11; Cushman, The Holy Bible and the Public Schools, 40 Cornell L. Q. 475, 480–483 (1955); Note, Separation of Church and State: Religious Exercises in the Schools, 31 U. of Cinc. L. Rev. 408, 411–412 (1962). Few religious persons today would share the universality of the Biblical canons of John Quincy Adams:

"You ask me *what* Bible I take as the standard of my faith—the Hebrew, the Samaritan, the old English translation, or what? I answer, the Bible containing the sermon upon the mount—any Bible that I can read and understand. . . . I take any one of them for my standard of faith. If Socinus or Priestley had made a fair *translation* of the Bible, I would have taken that, but without their comments," John Quincy Adams to John Adams, Jan. 3, 1817, in Koch and Peden, Selected writings of John and John Quincy Adams (1946), 292.

[60] Rabbi Solomon Grayzel testified before the District Court, "In Judaism the Bible is not read, it is studied. There is no special virtue attached to a mere reading of the Bible; there is a great deal of virtue attached to a study of the Bible." See Boles, The Bible, Religion, and the Public Schools (1961), 208–218; Choper, Religion in the Public Schools: A Proposed Constitutional Standard, 47 Minn. L. Rev. 329, 372–375 (1963). One religious periodical has suggested the danger that "an observance of this sort is likely to deteriorate quickly into an empty formality with little if any significance. Prescribed forms of this sort, as many colleges have concluded after years of compulsory chapel attendance, can actually work against the inculcation of vital religion." Prayer in the Public School Opposed, 69 Christian Century, Jan. 9, 1952, p. 35.

[61] See Cahn, On Government and Prayer, 37 N. Y. U. L. Rev. 981, 993–994 (1962). A leading Protestant journal recently noted:

"Agitation for removal of religious practices in public schools is not prompted or supported entirely by Jews, humanists, and atheists. At both local and national levels, many Christian leaders, concerned both for civil rights of minorities and for adequate religious education, are opposed to religious exercises in public schools. . . . Many persons, both Jews and Christians, believe that prayer and Bible reading are too sacred to be permitted in public schools in spite of their possible moral value." Smith, The Religious Crisis In Our Schools, 128 The Episcopalian, May 1963, pp. 12–13. See, *e. g.*, for other recent statements on this question, Editorial, Amending the Amendment, 108 America, May 25, 1963, p. 736; Sissel, A Christian View: Behind the Fight Against School Prayer, 27 Look, June 18, 1963, p. 25.

It should be unnecessary to demonstrate that the Lord's Prayer, more clearly than the Regents' Prayer involved in *Engel* v. *Vitale*, is an essentially Christian supplication. See, *e. g.*, Scott, The Lord's Prayer: Its Character, Purpose, and Interpretation (1951), 55; Buttrick, So We Believe, So We Pray (1951), 142; Levy, Lord's Prayer, in 7 Universal Jewish Encyclopedia (1948), 193.

[62] Statement of the Baptist Joint Committee on Public Affairs, in 4 J. Church and State 144 (1962).

[63] See Harrison, The Bible, the Constitution and Public Education, 29 Tenn. L. Rev. 363, 397 (1962). The application of statutes and regulations which forbid comment on scriptural passages is further complicated by the view of certain religious groups that reading without comment is either meaningless or actually offensive. Compare Rabbi Grayzel's testimony before the District Court that "the Bible is misunderstood when it is taken without explanation." A recent survey of the attitudes of certain teachers disclosed concern that "refusal to answer pupil questions regarding any curricular activity is not educationally sound," and that reading without comment might create in the minds of the pupils the impression that something was "hidden or wrong." Boles, The Bible, Religion, and the Public Schools (1961), 235–236. Compare the comment of a foreign observer: "In no other field of learning would we expect a child to draw the full meaning from what he reads without explanatory comment. But comment by the teacher will inevitably reveal his own personal preferences; and the exhibition of preferences is what we are seeking to eliminate." MacKinnon, Freedom?—or Toleration?, The Problem of Church and State in the United States, [1959] Pub. Law 374, 383.

[64] See Abbott, A Common Bible Reader for Public Schools, 56 Religious Education 20 (1961); Note, 22 Albany L. Rev. 156–157 (1958); 2 Stokes, Church and State in the United States (1950), 501–506 (describing the "common denominator" or "three faiths" plan and certain programs of instruction designed to implement the "common core" approach). The attempts to evolve a universal, nondenominational prayer are by no means novel. See, *e.g.*, Madison's letter to Edward Everett, March 19, 1823, commenting upon a "project of a prayer . . . intended to comprehend & conciliate college students of every [Christ]ian denomination, by a Form composed wholle of texts & phrases of scripture." 9 Writings of James Madison (Hunt ed. 1910), 126. For a fuller description of this and other attempts to fashion a "common core" or nonsectarian exercise, see *Engel* v. *Vitale*, 18 Misc. 2d 659, 660–662, 191 N.Y.S. 2d 453, 459–460.

[65] See the policy statement recently drafted by the National Council of the Churches of Christ: ". . . neither true religion nor good education is dependent upon the devotional use of the Bible in the public school program. . . . Apart from the constitutional questions involved, attempts to establish a 'common core' of religious beliefs to be taught in public schools for the purpose of indoctrination are unrealistic and unwise. Major faith groups have not agreed on a formulation of religious beliefs common to all. Even if they had done so, such a body of religious doctrine would tend to become a substitute for the more demanding commitments of historic faiths." Washington Post, May 25, 1963, § A, p. 1, col. 4. See also Choper, Religion in the Public Schools: A Proposed Constitutional Standard, 47 Minn. L. Rev. 329, 341, 368–369 (1963). See also Hartford, Moral Values in Public Education: Lessons from the Kentucky Experience (1958), 261–262; Moehlman, The Wall of Separation Between Church and State (1951), 158–159. Cf. Mosk, "Establishment Clause" Clarified, 22 Law in Transition 231, 235–236 (1963).

[66] Quoted in Kurland, The Regents' Prayer Case: "Full of Sound and Fury, Signifying . . .", 1962 Supreme Court review (1962), 31.

[67] Quoted in Harrison, The Bible, the Constitution and Public Education, 29 Tenn. L. Rev. 363, 417 (1962). See also Dawson, America's Way in Church, State, and Society (1953), 54.

[68] See the testimony of Edward L. Schempp, the father of the children in the Abington schools and plaintiffs-appellee in No. 142, concerning his reasons for not asking that his children be excused from the morning exercises after excusal was made available through amendment of the statute:

"We originally objected to our children being exposed to the reading of the King James version of the Bible . . . and under those conditions we would have theoretically liked to have had the children excused. But we felt that the penalty of having our children labelled as 'odd balls' before their teachers and classmates every day in the year was even less satisfactory than the other problem. . . .

"The children, the classmates of Roger and Donna are very liable to label and lump all particular religious difference or religious objections as atheism, particularly, today the word 'atheism' is so often tied to atheistic communism, and atheism has very bad connotations in the minds of children and many adults today."

A recent opinion of the Attorney General of California gave as one reason for finding devotional exercises unconstitutional the likelihood that "[c]hildren forced by conscience to leave the room during such exercises would be placed in a position inferior to that of students adhering to the State-endorsed religion," 25 Cal. Op. Atty. Gen. 316, 319 (1955). Other views on this question, and possible effects of the excusal procedure, are summarized in Rosenfield, Separation of Church and State in the Public Schools, 22 U. of Pitt. L. Rev. 561, 581–585 (1961); Note, Separation of Church and State: Religious

Exercises in the Schools, 31 U. of Cinc. L. Rev. 408, 416 (1962); Note, 62 W. Va. L. Rev. 353, 358 (1960).

[69] Extensive testimony by behavioral scientists concerning the effect of similar practices upon children's attitudes and behaviors is discussed in *Tudor* v. *Board of Education*, 14 N. J. 31, 50–52, 100 A. 2d 857, 867–868. See also Choper, Religion in the Public Schools: A proposed Constitutional Standard, 47 Minn. L. Rev. 329, 344 (1963). There appears to be no reported experiments which bear directly upon the question under consideration. There have, however, been numerous experiments which indicate the susceptibility of school children to peer-group pressures, especially where important group norms and values are involved. See *e.g.*, Berenda, The Influence of the Group on the Judgments of Children (1950), 26–33; Argyle, Social Pressure in Public and Private Situations, 54 J. Abnormal & Social Psych. 172 (1957); cf. Rhine, The Effect of Peer Group Influence Upon Concept-Attitude Development and Change, 51 J. Social Psych. 173 (1960); French, Morrison and Levinger, Coercive Power and Forces Affecting Conformity, 61 J. Abnormal and Social Psych. 93 (1960). For a recent and important experimental study of the susceptibility of students to various factors in the school environment, see Zander, Curtis and Rosenfeld, The Influence of Teachers and Peers on Aspirations of Youth (U.S. Office of Education Cooperative Research Project No. 451, 1961), 24–25, 78–79. It is also apparent that the susceptibility of school children to prestige suggestion and social influence within the school environment varies inversely with the age, grade level, and consequent degree of sophistication, of the child, see Patel and Gordon, Some Personal and Situational Determinants of Yielding to Influence, 61 J. Abnormal and Social Psych. 411, 417 (1960).

Experimental findings also shed some light upon the probable effectiveness of a provision for excusal when, as is usually the case, the percentage of the class wishing not to participate in the exercises is very small. It has been demonstrated, for example, that the inclination even of adults to depart or dissent overtly from strong group norms varies proportionately with the size of the dissenting group—that is, inversely with the apparent or perceived strength of the norm itself—and is markedly slighter in the case of the sole or isolated dissenter. See *e.g.*, Asch, Studies of Independence and Conformity: I. A Minority of One Against a Unanimous Majority (Psych. Monographs No. 416, 1956), 69–70; Asch, Effects of Group Pressure upon the Modification and Distortion of Judgments, in Cartwright and Zander, Group Dynamics (2d ed. 1960), 189–199; Luchins and Luchins, On Conformity With True and False Communications, 42 J. Social Psych. 283 (1955). Recent important findings on these questions are summarized in Hare, Handbook of Small Group Research (1962), c. II.

[70] See, on the general problem of conflict and accommodation between the two clauses, Katz, Freedom of Religion and State Neutrality, 20 U. of Chi. L. Rev. 426, 429 (1953); Griswold, Absolute Is In the Dark, 8 Utah L. Rev. 167, 176–179 (1963); Kauper, Church, State and Freedom: A Review, 52 Mich. L. Rev. 829, 833 (1954). One author has suggested that the Establishment and Free Exercise Clauses must be "read as stating a single precept: that government cannot utilize religion as a standard for action or inaction because these clauses, read together as they should be, prohibit classification in terms of religion either to confer a benefit or to impose a burden." Kurland, Religion and the Law (1962), 112. Compare the formula of accommodation embodied in the Australian Constitution, § 116:

"The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth." Essays on the Australian Constitution (Else-Mitchell ed. 1961), 15.

[71] There has been much difference of opinion throughout American history concerning the advisability of furnishing chaplains at government expense. Compare, *e.g.*, Washington's order regarding chaplains for the Continental Army, July 9, 1776, in 5 Writings of George Washington (Fitzpatrick ed. 1932), 244, with Madison's views on a very similar question, letter to Edward Livingston, July 10, 1822, 9 Writings of James Madison (Hunt ed. 1910), 100–103. Compare also this statement by the Armed Forces Chaplains Board concerning the chaplain's obligation:

"To us has been entrusted the spiritual and moral guidance of the young men and women in the Armed Services of this Country. A chaplain has many duties—yet, first and foremost is that of presenting God to men and women wearing the military uniform. What happens to them while they are in military service has a profound effect on what happens in the community as they resume civilian life. We, as chaplains, must take full cognizance of that fact, and dedicate our work to making them finer, spiritually strengthened citizens." Builders of Faith (U. S. Department of Defense 1955), ii. It is interesting to compare in this regard an express provision, Article 140, of the Weimar Constitution: "Necessary free time shall be accorded to the members of the armed forces for the fulfillment of their religious duties." McBain and Rogers, The New Constitutions of Europe (1922), 203.

[72] For a discussion of some recent and difficult problems in connection with chaplains and religious exercises in prisons, see, *e.g.*, *Pierce* v. *La Vallee*, 293 F. 2d 233; *In re Ferguson*, 55 Cal. 2d 663, 361 P. 2d 417; *McBride* v. *McCorkle*, 44 N. J. Super. 468, 130 A. 2d 881; *Brown* v. *McGinnis*, 10 N. Y. 2d 531, 180 N. E. 2d 791; discussed in Comment, 62 Col. L. Rev. 1488 (1962); 75 Harv. L. Rev. 837 (1962). Compare Article XVIII of the Hague Convention of 1899:

"Prisoners of war shall enjoy every latitude in the exercise of their religion, including attendance at their own church services, provided only they comply with the regulations for order and police issued by the military authorities." Quoted in Blakely, American State Papers and Related Documents on Freedom in Religion (4th rev. ed. 1949), 313.

[73] Compare generally Sibley and Jacob, Conscription of Conscience: The American State and the Conscientious Objector, 1940–1947 (1952), with Conklin, Conscientious Objector Provisions: A View in the Light of *Torcaso* v. *Watkins*, 51 Geo. L. J. 252 (1963).

[74] See, *e.g.*, *Southside Estates Baptist Church* v. *Board of Trustees*, 115 So. 2d 697 (Fla.); *Lewis* v. *Mandeville*, 200 Misc. 718, 107 N. Y. S. 2d 856; cf. *School District No. 97* v. *Schmidt*, 128 Colo. 495, 263 P. 2d 581 (temporary loan of school district's custodian to church). A different problem may be presented with respect to the regular use of public school property for religious activities, *State ex rel. Gilbert* v. *Dilley*, 95 Neb. 527, 145 N. W. 999; the erection on public property of a statue of or memorial to an essentially religious figure, *State ex rel. Singelman* v. *Morrison*, 57 So. 2d 238 (La. App.); seasonal displays of a religious character, *Baer* v. *Kolmorgen*, 14 Misc. 2d 1015, 181 N. Y. S. 2d 230; or the performance on public property of a drama or opera based on religious material or carrying a religious message, cf. *County of Los Angeles* v. *Hollinger*, 200 Cal. App. 2d 877, 19 Cal. Rptr. 648.

[75] Compare Moulton and Myers, Report on Appointing Chaplains to the Legislature of New York, in Blau, Cornestones of Religious Freedom in America (1949), 141–156; Comment, 63 Col. L. Rev. 73, 97 (1963).

[76] A comprehensive survey of the problems raised concerning the role of religion in the secular curriculum is contained in Brown, ed., The Study of Religion in the Public Schools: An Appraisal (1958). See also Katz, Religion and American Constitutions, Lecture at Northwestern Universitiy Law School, March 21, 1963, pp. 37–41; Educational Policies Comm'n of the National Education Assn., Moral and Spiritual Values in the Public Schools (1951), 49–80. Compare, for a consideration of similar problems in state-supported colleges and universities, Louisell and Jackson, Religion, Theology, and Public Higher Education, 50 Cal. L. Rev. 751 (1962).

[77] See generally Torpey, Judicial Doctrines of Religious Rights in America (1948), c. VI; Van Alstyne, Tax Exemption of Church Property, 20 Ohio State L. J. 461 (1959); Sutherland, Due Process and Disestablishment, 62 Harv. L. Rev. 1306, 1336–1938 (949); Louisell and Jackson, Religion, Theology, and Public Higher Education, 50 Cal. L. Rev. 751, 773–780 (1962); 7 De Paul L. Rev. 206 (1958); 58 Col. L. Rev. 417 (1958); 9 Stan. L. Rev. 366 (1957).

[78] See, *e.g.*, *Washington Ethical Society* x. *District of Columbia*, 101 U.S. App. D.C. 371, 249 F. 2d 1227; *Fellowship of Humanity* v. *County of Alameda*, 153 Cal. App. 2d 673, 315 P. 2d 394.

[Supreme Court of the United States—Nos. 142 and 119—October Term, 1962]

SCHOOL DISTRICT OF ABINGTON TOWNSHIP, PENNSYLVANIA, ET AL., APPELLANTS (142) *v.* EDWARD LEWIS SCHEMPP ET AL.

(On Appeal From the United States District Court for the Eastern District of Pennsylvania)

WILLIAM J. MURRAY III, ETC., ET AL., PETITIONERS (119) v. JOHN N. CURLETT, PRESIDENT, ET AL., INDIVIDUALLY, AND CONSTITUTING THE BOARD OF SCHOOL COMMISSIONERS OF BALTIMORE CITY

(On Writ of Certiorari to the Court of Appeals of Maryland)

JUNE 17, 1963

Mr. JUSTICE GOLDBERG, with whom Mr. JUSTICE HARLAN joins, concurring.

As is apparent from the opinions filed today, delineation of the constitutionally permissible relationship between religion and government is a most difficult and sensitive task, calling for the careful exercise of both judicial and public judgment and restraint. The considerations which lead the Court today to interdict the clearly religious practices presented in these cases are to me wholly compelling; I have no doubt as to the propriety of the decision and therefore join the opinion and judgment of the Court. The singular sensitivity and concern which surround both the legal and practical judgments involved impel me, however, to add a few words in further explication, while at the same time avoiding repetition of the carefully and ably framed examination of history and authority by my Brethren.

The First Amendment's guarantees, as applied to the states through the Fourteenth Amendment, foreclose not only laws "respecting an establishment of religion" but also those "prohibiting the free exercise thereof." These two proscriptions are to be read together, and in light of the single end which they are designed to serve. The basic purpose of the First Amendment is to promote and assure the fullest possible scope of religious liberty and tolerance for all and to nurture the conditions which secure the best hope of attainment of that end.

The fullest realization of true religious liberty requires that government neither engage in nor compel religious practices, that it effect no favoritism among sects or between

religion and nonreligion, and that it work deterrence of no religious belief. But devotion even to these simply stated objectives presents no easy course, for the unavoidable accommodations necessary to achieve the maximum enjoyment of each and all of them are often difficult of discernment. There is for me no simple and clear measure which by precise application can readily and invariably demark the permissible from the impermissible.

It is said, and I agree, that the attitude of the state toward religion must be one of neutrality. But untutored devotion to the concept of neutrality can lead to invocation or approval of results which partake not simply of that noninterference and noninvolvement with the religious which the Constitution commands, but of a brooding and pervasive devotion to the secular and a passive, or even active, hostility to the religious. Such results are not only not compelled by the Constitution, but, it seems to me, are prohibited by it.

Neither the state nor this Court can or should ignore the significance of the fact that a vast portion of our people believe in and worship God and that many of our legal, political and personal values derive historically from religious teachings. Government must inevitably take cognizance of the existence of religion and, indeed, under certain circumstances the First Amendment may require that it do so. And it seems clear to me from the opinions in the present and past cases that the Court would recognize the propriety of providing military chaplains and of the teaching *about* religion, as distinguished from the teaching *of* religion, in the public schools. The examples could readily be multiplied, for both the required and the permissible accommodations between state and church frame the relation as one free of hostility or favor and productive of religious and political harmony, but without undue involvement of one in the concerns or practices of the other. To be sure, the judgment in each case is a delicate one, but it must be made if we are to do loyal service as judges to the ultimate First Amendment objective of religious liberty.

The practices here involved do not fall within any sensible or acceptable concept of compelled or permitted accommodation and involve the state so significantly and directly in the realm of the sectarian as to give rise to those very divisive influences and inhibitions of freedom which both religion clauses of the First Amendment preclude. The state has ordained and has utilized its facilities to engage in unmistakably religious exercises—the devotional reading and recitation of the Holy Bible—in a manner having substantial and significant import and impact. That it has selected, rather than written, a particular devotional liturgy seems to me without constitutional import. The pervasive religiosity and direct governmental involvement inhering in the prescription of prayer and Bible reading in the public schools, during and as part of the curricular day, involving young impressionable children whose school attendance is statutorily compelled, and utilizing the prestige, power, and influence of school administration, staff, and authority, cannot realistically be termed simply accommodation, and must fall within the interdiction of the First Amendment. I find nothing in the opinion of the Court which says more than this. And, of course, today's decision does not mean that all incidents of government which import of the religious are therefore and without more banned by the strictures of the Establishment Clause. As the Court declared only last Term in *Engel* v. *Vitale*, 370 U.S. 421, 435, n. 21:

"There is of course nothing in the decision reached here that is inconsistent with the fact that school children and others are officially encouraged to express love for our country by reciting historical documents such as the Declaration of Independence which contain references to the Deity or by singing officially espoused anthems which include the composer's professions of faith in a Supreme Being, or with the fact that there are many manifestations in our public life of belief in God. Such patriotic or ceremonial occasions bear no true resemblance to the unquestioned religious exercise that the State . . . has sponsored in this instance."

The First Amendment does not prohibit practices which by any realistic measure create none of the dangers which it is designed to prevent and which do not so directly or substantially involve the state in religious exercises or in the favoring of religion as to have meaningful and practical impact. It is of course true that great consequences can grow from small beginnings, but the measure of constitutional adjudication is the ability and willingness to distinguish between real threat and mere shadow.

[Supreme Court of the United States—Nos. 142 and 119—October Term, 1962]

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(On Writ of Certiorari to the Court of Appeals of Maryland)

June 17, 1963

Mr. JUSTICE STEWART, dissenting.

I think the records in the two cases before us are so fundamentally deficient as to make impossible an informed or responsible determination of the constitutional issues presented. Specifically, I cannot agree that on these records we can say that the Establishment Clause has necessarily been violated.[1] But I think there exist serious questions under both that provision and the Free Exercise Clause—insofar as each is imbedded in the Fourteenth Amendment—which require the remand of these cases for the taking of additional evidence.

The First Amendment declares that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . ." It is, I think, a fallacious oversimplification to regard these two provisions as establishing a single constitutional standard of "separation of church and state," which can be mechanically applied in every case to delineate the required boundaries between government and religion. We err in the first place if we do not recognize as a matter of history and as a matter of the imperatives of our free society, that religion and government must necessarily interact in countless ways. Secondly, the fact is that while in many contexts the Establishment Clause and the Free Exercise Clause fully complement each other, there are areas in which a doctrinaire trading of the Establishment Clause leads to irreconcilable conflict with the Free Exercise Clause.

A single obvious example should suffice to make the point. Spending federal funds to employ chaplains for the armed forces might be said to violate the Establishment Clause. Yet a lonely soldier stationed at some faraway outpost could surely complain that a government which did *not* provide him the opportunity for pastoral guidance was affirmatively prohibiting the free exercise of his religion. And such examples could readily be multiplied. The short of the matter is simply that the two relevant clauses of the First Amendment cannot accurately be reflected in a sterile metaphor which by its very nature may distort rather than illumine the problems involved in a particular case. Cf. *Sherbert* v. *Verner*, *post*, p. ——.

As a matter of history, the First Amendment was adopted solely as a limitation upon the newly created National Government. The events leading to its adoption strongly suggest that the Establishment Clause was primarily an attempt to insure that Congress not only would be powerless to establish a national church, but would also be unable to interfere with existing state establishments. See *McGowan* v. *Maryland*, 366 U.S. 420, 440–441. Each State was left free to go its own way and pursue its own policy with respect to religion. Thus Virginia from the beginning pursued a policy of disestablishmentarianism. Massachusetts, by contrast, had an established church until well into the nineteenth century.

So matters stood until the adoption of the Fourteenth Amendment, or more accurately, until this Court's decision in *Cantwell* v. *Connecticut*, in 1940. 310 U.S. 296. In that case the Court said: "The First Amendment declares that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. The Fourteenth Amendment has rendered the legislatures of the states as incompetent as Congress to enact such laws."[2]

I accept without question that the liberty guaranteed by the Fourteenth Amendment against impairment by the States embraces in full the right of free exercise of religion protected by the First Amendment, and I yield to no one in my conception of the breadth of that freedom. See *Braunfeld* v. *Brown*, 366 U.S. 599, 616 (dissenting opinion). I accept too the proposition that the Fourteenth Amendment has somehow absorbed the Establishment Clause, although it is not without irony that a constitutional provision evidently designed to leave the States free to go their own way should now have become a restriction upon their autonomy. But I cannot agree with what seems to me the insensitive definition of the Establishment Clause contained in the Court's opinion, nor with the different but, I think, equally mechanistic definitions contained in the separate opinions which have been filed.

Since the *Cantwell* pronouncement in 1940, this Court has only twice held invalid state laws on the ground that they were laws "respecting an establishment of religion" in violation of the Fourteenth Amendment. *McCollum* v. *Board of Education*, 333 U.S. 203; *Engel* v. *Vitale*, 370 U.S. 421. On the other hand, the Court has upheld against such a challenge laws establishing Sunday as a compulsory day of rest, *McGowan* v. *Maryland*, 366 U.S. 420, and a law authorizing reimbursement from public funds for the transportation of parochial school pupils. *Everson* v. *Board of Education*, 330 U.S. 1.

Unlike other First Amendment guarantees, there is an inherent limitation upon the applicability of the Establishment Clause's ban on state support to religion. That limitation was succinctly put in *Everson* v. *Board of Education*, 330 U.S. 1, 18: "State power is no more to be used so as to handicap religions than it is to favor them."[3] And in a later case, this Court recognized that the limitation was one which was itself compelled by the free exercise guarantee. "To hold that a state cannot consistently with the First and Fourteenth Amendments utilize its public school system to aid any or all religious faiths or sects in the dissemination of their doctrines and ideals does not . . . manifest a governmental hostility to religion or religious teaching. A manifestation of such hostility would be at war with

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Footnotes at end of article.

our national tradition as embodied in the First Amendment's guaranty of the free exercise of religion." *McCollum* v. *Board of Education*, 333 U.S. 203, 211–212.

That the central value embodied in the First Amendment—and, more particularly, in the guarantee of "liberty" contained in the Fourteenth—is the safeguarding of an individual's right to free exercise of his religion has been consistently recognized. Thus, in the case of *Hamilton* v. *Regents*, 293 U.S. 245, 265, Mr. Justice Cardozo, concurring, assumed that it was '. . . *the religious liberty* protected by the First Amendment against invasion by the nation [which] is protected by the Fourteenth Amendment against invasion by the states." (Emphasis added.) And in *Cantwell* v. *Connecticut*, *supra*, the purpose of those guarantees was described in the following terms: "On the one hand, it forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. Freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law. On the other hand, it safeguards the free exercise of the chosen form of religion." 310 U.S., at 303.

It is this concept of constitutional protection embodied in our decisions which makes the cases before us such difficult ones for me. For there is involved in these cases a substantial free exercise claim on the part of those who affirmatively desire to have their children's school day open with the reading of passages from the Bible.

It has become accepted that the decision in *Pierce* v. *Society of Sisters*, 268 U.S. 510, upholding the right of parents to send their children to nonpublic schools, was ultimately based upon the recognition of the validity of the free exercise claim involved in that situation. It might be argued here that parents who wanted their children to be exposed to religious influences in school could, under *Pierce*, send their children to private or parochial schools. But the consideration which renders this contention too facile to be determinative has already been recognized by the Court: "Freedom of speech, freedom of the press, freedom of religion are available to all, not merely to those who can pay their own way." *Murdock* v. *Pennsylvania*, 319 U.S. 105, 111.

It might also be argued that parents who want their children exposed to religious influences can adequately fulfill that wish off school property and outside school time. With all its surface persuasiveness, however, this argument seriously misconceives the basic constitutional justification for permitting the exercises at issue in these cases. For a compulsory state educational system so structures a child's life that if religious exercises are held to be an impermissible activity in schools, religion is placed at an artificial and state-created disadvantage. Viewed in this light, permission of such exercises for those who want them is necessary if the schools are truly to be neutral in the matter of religion. And a refusal to permit religious exercises thus is seen, not as the realization of state neutrality, but rather as the establishment of a religion of secularism, or at the least, as government support of the beliefs of those who think that religious exercises should be conducted only in private.

What seems to me to be of paramount importance, then, is recognition of the fact that the claim advanced here in favor of Bible reading is sufficiently substantial to make simple reference to the constitutional phrase "establishment of religion" as inadequate an analysis of the cases before us as the ritualistic invocation of the nonconstitutional phrase "separation of church and state." What these cases compel, rather, is an analysis of just what the "neutrality" is which is required by the interplay of the Establishment and Free Exercise Clauses of the First Amendment, as imbedded in the Fourteenth.

IV

Our decisions make clear that there is no constitutional bar to the use of government property for religious purposes. On the contrary, this Court has consistently held that the discriminatory barring of religious groups from public property is itself a violation of First and Fourteenth Amendment guarantees. *Fowler* v. *Rhode Island*, 345 U.S. 67; *Niemotko* v. *Maryland*, 340 U.S. 268. A different standard has been applied to public school property, because of the coercive effect which the use by religious sects of a compulsory school system would necessarily have upon the children involved. *McCollum* v. *Board of Education*, 333 U.S. 203. But insofar as the *McCollum* decision rests on the Establishment rather than the Free Exercise Clause, it is clear that its effect is limited to religious instruction—to government support of proselytizing activities of religious sects by throwing the weight of secular authority behind the dissemination of religious tenets.[4]

The dangers both to government and to religion inherent in official support of instruction in the tenets of various religious sects are absent in the present cases, which involve only a reading from the Bible unaccompanied by comments which might otherwise constitute instruction. Indeed, since, from all that appears in either record, any teacher who does not wish to do so is free not to participate,[5] it cannot even be contended that some infinitesimal part of the salaries paid by the State are made contingent upon the performance of a religious function.

In the absence of evidence that the legislature or school board intended to prohibit local schools from substituting a different set of readings where parents requested such a change, we should not assume that the provisions before us—as actually administered—may not be construed simply as authorizing religious exercises, nor that the designations may not be treated simply as indications of the promulgating body's view as to the community's preference. We are under a duty to interpret these provisions so as to render them constitutional if reasonably possible. Compare *Two Guys* v. *McGinley*, 366 U.S. 582, 592–595; *Everson* v. *Board of Education*, 330 U.S. 1, 4, and n. 2. In the *Schempp* case there is evidence which indicates that variations were in fact permitted by the very school there involved, and that further variations were not introduced only because of the absence of requests from parents. And in the *Murray* case the Baltimore rule itself contains a provision permitting another version of the Bible to be substituted for the King James version.

If the provisions are not so construed, I think that their validity under the Establishment Clause would be extremely doubtful, because of the designation of a particular religious book and a denominational prayer. But since, even if the provisions are construed as I believe they must be, I think that the cases before us must be remanded for further evidence on other issues—thus affording the plaintiffs and opportunity to prove that local variations are not in fact permitted—I shall for the balance of this dissenting opinion treat the provisions before us as making the variety and content of the exercises, as well as a choice as to their implementation, matters which ultimately reflect the concensus of each local school community. In the absence of coercion upon those who do not wish to participate—because they hold less strong beliefs, other beliefs, or no beliefs at all—such provisions cannot, in my view, be held to represent the type of support of religion barred by the Establishment Clause. For the only support which such rules provide for religion is the withholding of state hostility—a simple acknowledgment on the part of secular authorities that the Constitution does not require extirpation of all expression of religious belief.

V

I have said that these provisions authorizing religious exercises are properly to be regarded as measures making possible the free exercise of religion. But it is important to stress the free exercise of religion. But it is important to stress that strictly speaking, what is at issue here is a privilege rather than a right. In other words, the question presented is not whether exercises such as those at issue here are constitutionally compelled, but rather whether they are constitutionally invalid. And that issue, in my view, turns on the question of coercion.

It is clear that the dangers of coercion involved in the holding of religious exercises in a schoolroom differ qualitatively from those presented by the use of similar exercises or affirmations in ceremonies attended by adults. Even as to children, however, the duty laid upon government in connection with religious exercises in the public schools is that of refraining from so structuring the school environment as to put any kind of pressure on a child to participate in those exercises; it is not that of providing an atmosphere in which children are kept scrupulously insulated from any awareness that some of their fellows may want to open the school day with prayer, or of the fact that there exist in our pluralistic society differences of religious belief.

These are not, it must be stressed, cases like *Brown* v. *Board of Education*, 347 U. S. 483, in which this Court held that, in the sphere of public education, the Fourteenth Amendment's guarantee of equal protection of the laws required that race not be treated as a relevant factor. A segregated school system is not invalid because its operation is coercive; it is invalid simply because our Constitution presupposes that men are created equal, and that therefore racial differences cannot provide a valid basis for government action. Accommodation of religious differences on the part of the State, however, is not only permitted but required by that same Constitution.

The governmental neutrality which the First and Fourteenth Amendments require in the cases before us, in other words, is the extension of even-handed treatment to all who believe, doubt, or disbelieve—a refusal on the part of the State to weight the scales of private choice. In these cases, therefore, what is involved is not state action based on impermissible categories, but rather an attempt by the State to accommodate those differences which the existence in our society of a variety of religious beliefs make inevitable. The Constitution requires that such efforts be struck down only if they are proven to entail the use of the secular authority of government to coerce a preference among such beliefs.

It may well be, as has been argued to us, that even the supposed benefits to be derived from noncoercive religious exercises in public schools are incommensurate with the administrative problems which they would create. The choice involved, however, is one for each local community and its school board, and not for this Court. For, as I have said, religious exercises are not constitutionally invalid if they simply reflect differences which exist in the society from which the school draws its pupils. They become constitutionally invalid only if their administration places the sanction of secular authority behind one or more particular religious or irreligious beliefs.

Footnotes at end of article.

To be specific, it seems to be clear that certain types of exercises would present situations in which no possibility of coercion on the part of secular officials could be claimed to exist. Thus, if such exercises were held either before or after the official school day, or if the school schedule were such that participation were merely one among a number of desirable alternatives,[6] it could hardly be contended that the exercises did anything more than to provide an opportunity for the voluntary expression of religious belief. On the other hand, a law which provided for religious exercises during the school day and which contained no excusal provision would obviously be unconstitutionally coercive upon those who did not wish to participate. And even under a law containing an excusal provision, if the exercises were held during the school day, and no equally desirable alternative were provided by the school authorities, the likelihood that children might be under at least some psychological compulsion to participate would be great. In a case such as the latter, however, I think we would err if we *assumed* such coercion in the absence of any evidence.[7]

VI

Viewed in this light, it seems to me clear that the records in both of the cases before us are wholly inadequate to support an informed or reasonable decision. Both cases involve provisions which explicitly permit any student who wishes, to be excused from participation in the exercises. There is no evidence in either case as to whether there would exist any coercion of any kind upon a student who did not want to participate. No evidence at all was adduced in the *Murray* case, because it was decided upon a demurrer. All that we have in that case, therefore is the conclusory language of a pleading. While such conclusory allegations are acceptable for procedural purposes, I think that the nature of the constitutional problem involved here clearly demands that no decision be made except upon evidence. In the *Schempp* case the record shows no more than a subjective prophecy by a parent of what he thought would happen if a request were made to be excused from participation in the exercises under the amended statute. No such request was ever made, and there is no evidence whatever as to what might or would actually happen, nor of what administrative arrangements the school actually might or could make to free from pressure of any kind those who do not want to participate in the exercises. There were no District Court findings on this issue, since the case under the amended statute was decided exclusively on Establishment Clause grounds. 201 F. Supp. 815.

What our Constitution indispensably protects is the freedom of each of us, be he Jew or Agnostic, Christian or Atheist, Buddhist or Freethinker, to believe or disbelieve, to worship or not worship, to pray or keep silent, according to his own conscience, uncoerced and unrestrained by government. It is conceivable that these school boards, or even all school boards, might eventually find it impossible to administer a system of religious exercises during school hours in such a way as to meet this constitutional standard—in such a way as completely to free from any kind of official coercion those who do not affirmatively want to participate.[8] But I think we must not assume that school boards so lack the qualities of inventiveness and good will as to make impossible the achievement of that goal.

I would remand both cases for further hearings.

FOOTNOTES

[1] It is instructive, in this connection, to examine the complaints in the two cases before us. Neither complaint attacks the challenged practices as "establishments." What both allege as the basis for their causes of actions are, rather, violations of religious liberty.

[2] 310 U.S., at 303. The Court's statement as to the Establishment Clause in *Cantwell* was dictum. The case was decided on free exercise grounds.

[3] See also, in this connection, *Zorach* v. *Clauson*, 343 U.S. 306, 314: "Government may not finance religious groups nor undertake religious instruction nor blend secular and sectarian education nor use secular institutions to force one or some religion on any person. But we find no constitutional requirement which makes it necessary for government to be hostile to religion and to throw its weight against efforts to widen the effective scope of religious influence."

[4] "This is beyond all question a utilization of the tax-established and tax-supported public school system to aid religious groups *to spread their faith*." *McCollum* v. *Board of Education*, 333 U.S. 203, 210. (Emphasis added.)

[5] The Pennsylvania statute was specifically amended to remove the compulsion upon teachers. Act of December 17, 1959, P.L. 1928, 24 Purdon's Pa. Stat. Ann. § 15–1516. Since the Maryland case is here on a demurrer, the issue of whether or not a teacher could be dismissed for refusal to participate seems, among many others, never to have been raised.

[6] See, *e.g.*, the description of a plan permitting religious instruction off school property contained in *McCollum* v. *Board of Education*, 333 U.S. 203, 224 (separate opinion of Mr. Justice Frankfurter).

[7] Cf. "The task of separating the secular from the religious in education is one of magnitude, intricacy and delicacy. To lay down a sweeping constitutional doctrine as demanded by complainant and apparently approved by the Court, applicable alike to all school boards of the nation, . . . is to decree a uniform, rigid and, if we are consistent, an unchanging standard for countless school boards representing and serving highly localized groups which not only differ from each other but which themselves from time to time change attitudes. It seems to me that to do so is to allow zeal for our own ideas of what is good in public instruction to induce us to accept the role of a super board of education for every school district in the nation." *McCollum* v. *Board of Education*, 333 U.S. 203, 237 (concurring opinion of Mr. Justice Jackson).

[8] For example, if the record in the *Schempp* case contained proof (rather than mere prophecy) that the timing of morning announcements by the school was such as to handicap children who did not want to listen to the Bible reading, or that the excusal provision was so administered as to carry any overtones of social inferiority, then impermissible coercion would clearly exist.

Mr. ERVIN. I wish now to read what Justice Douglas had to say in his concurring opinion in the Abington Township case. I read from pages 3 and 4 of his opinion:

But the Establishment Clause is not limited to precluding the State itself from conducting religious exercises. It also forbids the State to employ its facilities or funds in a way that gives any church, or all churches, greater strength in our society than it would have by relying on its members alone. Thus, the present regimes must fall under that clause for the additional reason that public funds, though small in amount, are being used to promote a religious exercise. Through the mechanism of the State, all of the people are being required to finance a religious exercise that only some of the people want and that violates the sensibilities of others.

The most effective way to establish any institution is to finance it; and this truth is reflected in the appeals by church groups for public funds to finance their religious schools. Financing a church either in its strictly religious activities or in its other activities is equally unconstitutional, as I understand the Establishment Clause. Budgets for one activity may be technically separable from budgets for others. But the institution is an inseparable whole, a living organism, which is strengthened in proselytizing when it is strengthened in any department by contributions from other than its own members.

Such contributions may not be made by the State even in a minor degree without violating the Establishment Clause. It is not the amount of public funds expended; as this case illustrates, it is the use to which public funds are put that is controlling. For the First Amendment does not say that some forms of establishment are allowed; it says that "no law respecting an establishment of religion" shall be made. What may not be done directly may not be done indirectly lest the Establishment Clause become a mockery.

Mr. President, I took an oath, when I became a Senator of the United States, to support the Constitution. That oath placed upon me a solemn obligation to support the first amendment. The first amendment forbids the use of tax funds in any amount to support religious instruction or the blending of secular instruction with religious instruction.

It would be extremely unwise to take tax moneys to support the activities of church schools or other religious institutions, even if it were not unconstitutional. I say that because any religious institution begins to suffer moral decay and religious deterioration whenever it is made to depend in any degree whatsoever upon any financial means of support other than the voluntary contributions of its adherents.

I offer this amendment to eliminate all the provisions of the bill which provide for the use of Federal tax moneys to support the church schools of religious institutions which undertake to blend secular and sectarian instruction, not only because such action violates my oath to support the Constitution, but also because I believe that such action in the long run is inimical to the welfare of my country in that it has the tendency to make religious institutions depend on things that belong to Caesar for the support of things that belong to God. This is contrary to the teachings of the Christian religions as well as to the requirements of the first amendment.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

Mr. AIKEN. Mr. President, I appreciate the standing of the Senator from North Carolina as a constitutional authority, because I know that he is an expert in this field. I am not an expert, but I do have a practical situation to consider when we come to vote on this proposed amendment.

For generations, New England has had a large number of private schools, most of them church schools established a century or a century and a half ago. These schools have served the function of public schools for a great many of our communities, particularly in the three northern New England States, and they have saved those communities a great deal of expense. My own town, for

instance, has in the past paid tuition to private schools. We do not do it now, because we do not have to. We have grown so that we are now a part of a large public school system; but that is not true of the whole State.

Last week, just before adjournment, the Vermont Legislature enacted legislation authorizing the expenditure of public funds for the support of private schools. The general assembly laid down certain conditions having to do with such expenditures: For example, no religious teaching can be carried on in the private schools, even though the schools might have been started by the church itself anywhere from 50 to 150 years ago.

These private schools, for a long time, have had to comply with the standards established by the State board of education. Under the legislation passed by the Vermont Legislature last week, they will come under the jurisdiction of the superintendent of public schools for the district in which they are located. The State is authorized to supply equipment, to hire teachers, and to dismiss them if they are not found qualified to continue with the work.

This act on the part of the Vermont Legislature will save the people of our State probably several million dollars, in the near future, which it would cost to construct new publicly owned buildings which would meet the standards required of all of them.

So I would suggest the wisdom, if we are eventually to eliminate all aid for private schools, of phasing it out over a period of time, and not all at once. I fear that under the amendment proposed by the distinguished Senator from North Carolina, the taxpayers of my State, and probably many other States, would find it very costly to provide other means of education beyond that which our legislature authorized last week.

Mr. PELL. 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

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that following a quorum call, there be a time limitation of 5 minutes to the side on the amendment that has been offered by the distinguished Senator from North Carolina (Mr. ERVIN), the time to be controlled by the mover of the amendment (Mr. ERVIN) and the manager of the bill (Mr. PELL).

The PRESIDING OFFICER. Is the Senator's request for a live quorum?

Mr. BYRD of West Virginia. No, no. Following which the vote would occur on the amendment.

The PRESIDING OFFICER. Is there objection?

Mr. ERVIN. Mr. President, that would be satisfactory to me, but I would suggest that those who man the telephones inform Senators who phone in to ask what the purpose of the quorum call is that we will vote 10 minutes after the quorum call, which is to be rescinded, I would suppose, in 15 or 20 minutes, or less.

Mr. BYRD of West Virginia. Ten minutes.

Mr. ERVIN. Or 10 minutes, and that we will vote within 10 minutes, after 5 minutes of argument on each side.

Mr. BYRD of West Virginia. Mr. President, with the time for the quorum not to be charged, I ask unanimous consent that there be 10 minutes for a quorum call, and the attachés notify Senators that there will be a vote within 10 minutes after the order for the quorum call is rescinded.

The PRESIDING OFFICER. Just to be clear, it is understood that the quorum call will be called off, then?

Mr. BYRD of West Virginia. The quorum call will be called off. Then at that time, the time will start running, with 5 minutes to the side, after which there will be a vote on the amendment.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and 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 PRESIDING OFFICER. Without objection, it is so ordered.

Mr. TOWER. Mr. President, I support Senator ERVIN's amendment which would prevent Federal grants to nonpublic and private nonprofit corporations and agencies under the Emergency School Aid and Quality Integrated Education Act of 1971. I believe that it would be unwise for the Federal Government to fund private nonprofit corporations under an emergency school aid act. The basic purpose of our attempts in this legislation is to make certain that those public schools who are under a mandate to integrate their educational programs have sufficient funds to implement the law of the land and to provide quality education for disadvantaged minorities. This piece of legislation is essentially emergency in character, as the title implies, and is not the proper vehicle to include these broader questions.

The amendment also would prohibit aid to parochial and private schools under this program. Mr. President, there could be circumstances under which Government aid to these institutions could definitely be of advantage to the entire educational program of the Nation. I am very willing to pursue ways in which we may be of assistance to these financially burdened institutions that might want to voluntarily receive Federal funds. There is a fundamental problem here that should, I believe, be examined further so that we may decide just what kind of aid will be appropriate in these instances.

The PRESIDING OFFICER (Mr. CHILES). Who yields time?

Mr. PELL. Mr. President, I yield myself such time as is necessary.

I have listened to the arguments of the distinguished Senator from North Carolina, which are based on deep knowledge and as much study of the problem as any other Member of this body has given to it, but I would remind the Senate that Federal funds to aid the education of children in nonpublic schools have been authorized and have been appropriated in the past.

In fact, at present, four existing programs are participated in by children attending nonpublic schools; namely, title I of the ESEA, the programs for the disadvantaged; title II of the ESEA program, library resources and textbooks; title III, supplemental centers and services; and title VII, bilingual education program.

The theory behind these authorizations is that the aid follows the child. The aid is not going to the parochial or private institution but follows the child who happens to be attending that institution.

The pending bill, S. 1557, follows exactly the same procedure with no expansion of the philosophy beyond present law.

For this reason, I see no constitutional problems insofar as section 7B is concerned, and would urge the Senate to reject the pending amendment, which would actually push us back a bit with regard to helping children who are attending nonpublic institutions.

Mr. President, I yield the floor.

Mr. ERVIN. Mr. President, in reply to my good friend from Rhode Island, let me say that the fact that we have unconstitutional laws on the books does not make this bill constitutional. The Supreme Court expressly held that some of these programs are subject to review in the courts on the question of whether they violate the first amendment.

S. 1557 substantially impairs the value of the first amendment. Passage of my amendment would protect Americans in their religious freedom, and protect little children from harassment. Moreover, it would protect all Americans from taxation to support of a violation of the first amendment.

The decisions I read show that aid to church schools which are organized and operated for the support and purpose of blending religious instruction with secular instruction are unconstitutional.

For this reason, I hope that the Senate will be faithful to the traditions of this country, and the words of the first amendment, and vote to adopt the pending amendment.

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

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

The PRESIDING OFFICER (Mr. CHILES). All time on this amendment has now been yielded back.

The question is on agreeing to the amendment of the Senator from North Carolina.

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Alaska (Mr. GRAVEL), the Senator from Washington (Mr. JACKSON), the Senator from Massachusetts (Mr. KENNEDY), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Maine (Mr. MUSKIE), the Senator from Alabama (Mr. SPARKMAN), and the Senator from California (Mr. TUNNEY) are necessarily absent.

I further announce that the Senator from Oklahoma (Mr. HARRIS) and the Senator from South Carolina (Mr. HOLLINGS) are absent on official business.

I further announce that, if present and voting, the Senator from California (Mr. TUNNEY), the Senator from Washington (Mr. JACKSON), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from Oklahoma (Mr. HARRIS) would each vote "nay."

Mr. GRIFFIN. I announce that the Senator from Tennessee (Mr. BROCK), the Senator from Kentucky (Mr. COOK), the Senators from Kansas (Mr. DOLE and Mr. PEARSON), the Senator from Colorado (Mr. DOMINICK), the Senator from Iowa (Mr. MILLER), the Senators from Oregon (Mr. PACKWOOD and Mr. HATFIELD), the Senator from Pennsylvania (Mr. SCOTT), the Senator from Alaska (Mr. STEVENS), and the Senator from Connecticut (Mr. WEICKER) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from New York (Mr. BUCKLEY) and the Senator from Maryland (Mr. MATHIAS) are detained on official business.

If present and voting, the Senator from Colorado (Mr. DOMINICK), the Senator from Oregon (Mr. HATFIELD), the Senator from South Dakota (Mr. MUNDT), the Senator from Kansas (Mr. PEARSON), and the Senator from Pennsylvania (Mr. SCOTT) would each vote "nay."

The result was announced—yeas 15, nays 62, as follows:

[No. 49 Leg.]

YEAS—15

Allen	Ervin	Moss
Bennett	Fulbright	Stennis
Chiles	Gambrell	Talmadge
Eastland	Jordan, N.C.	Thurmond
Ellender	McClellan	Tower

NAYS—62

Aiken	Eagleton	Mondale
Allott	Fannin	Montoya
Anderson	Fong	Nelson
Baker	Goldwater	Pastore
Bayh	Griffin	Pell
Beall	Gurney	Percy
Bellmon	Hansen	Prouty
Bentsen	Hart	Proxmire
Bible	Hartke	Randolph
Boggs	Hruska	Ribicoff
Brooke	Hughes	Roth
Burdick	Humphrey	Saxbe
Byrd, Va.	Inouye	Schweiker
Byrd, W. Va.	Javits	Smith
Cannon	Jordan, Idaho	Spong
Case	Long	Stevenson
Church	Magnuson	Symington
Cooper	Mansfield	Taft
Cotton	McGee	Williams
Cranston	McIntyre	Young
Curtis	Metcalf	

NOT VOTING—23

Brock	Hollings	Packwood
Buckley	Jackson	Pearson
Cook	Kennedy	Scott
Dole	Mathias	Sparkman
Dominick	McGovern	Stevens
Gravel	Miller	Tunney
Harris	Mundt	Weicker
Hatfield	Muskie	

So Mr. ERVIN's amendment was rejected.

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Hackney, one of its reading clerks, communicated to the Senate the intelligence of the death of Hon. ROBERT J. CORBETT, a Representative from the State of Pennsylvania, and transmitted the resolution of the House thereon.

PROGRAM

Mr. GRIFFIN. Mr. President, for the guidance of Senators, I would like to inquire of the distinguished majority leader if he might give us some idea as to what he expects during the remainder of the afternoon.

INDEFINITE POSTPONEMENT OF SENATE RESOLUTION 101, ON VIETNAM VETERANS' USE OF THE MALL

Mr. MANSFIELD. Mr. President, if we may have order in the Senate, first I ask unanimous consent that Calendar No. 76, Senate Resolution 101, submitted by the distinguished Senator from Michigan (Mr. HART), and cosponsored by 41 other Senators, be indefinitely postponed.

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

EMERGENCY SCHOOL AID AND QUALITY INTEGRATED EDUCATION ACT OF 1971

The Senate continued with the consideration of the bill (S. 1557) to provide financial assistance to local educational agencies in order to establish equal educational opportunities for all children, and for other purposes.

Mr. MANSFIELD. Mr. President, in response to the question raised by the distinguished assistant minority leader——

Mr. COTTON. Mr. President, there is still so much conversation in the Chamber I cannot hear.

The PRESIDING OFFICER. The majority leader will withhold for a moment until we restore order in the Chamber. Senators will be seated. Clerks, aides, and attaches will please be seated or leave the Chamber.

The Senator may proceed.

UNANIMOUS-CONSENT AGREEMENT

Mr. MANSFIELD. Mr. President, after conferences with the distinguished Senator from North Carolina (Mr. ERVIN), the manager of the bill, the distinguished Senator from Rhode Island (Mr. PELL) the ranking minority member of the committee, the distinguished Senator from New York (Mr. JAVITS), the distinguished Senator from Michigan (Mr. GRIFFIN), and others, we have been informed by the Senator from North Carolina (Mr. ERVIN) that he intends to offer three amendments. With respect to two of them he would want them voted on en bloc, and with respect to the third amendment, he would want that amendment voted on separately. He wishes rollcall votes on these amendments. There would thus be two rollcall votes, although in reality three amendments would be considered.

On this basis the distinguished Senator from North Carolina is willing to enter into a unanimous-consent agreement allowing 10 minutes on each amendment, with the time equally divided between the manager of the bill and the sponsor of the amendments.

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

Mr. MANSFIELD. I yield.

Mr. ERVIN. I might inform the Senate that I have some other amendments dealing with what they call in Boston "open enrollment," prohibiting busing and giving children the right to adequate neighborhood schools, but that will not take long.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request? Without objection, it is so ordered.

Mr. MANSFIELD. Mr. President, as the distinguished Senator from North Carolina pointed out, there will be other amendments after those amendments are disposed of, so I would suggest that for the time being as many Senators as possible remain in the Chamber, because the distinguished Senator from North Carolina—as any Senator—is entitled to a reasonably good attendance so that he can explain that which he proposes.

The PRESIDING OFFICER. The Chair wishes to ask the majority leader if the unanimous consent agreement would apply to the three amendments or all?

Mr. MANSFIELD. The three amendments, two of which will be considered and voted on together.

Mr. ERVIN. Mr. President, I wish to state that I think we can dispose of all three of these amendments in 15 minutes or thereabouts; 20 minutes at the most.

PROGRAM

Mr. MANSFIELD. Mr. President, I also point out to the Senate that if the pending bill is disposed of today, and the prospects look good, it is the intention of the joint leadership to go over until Thursday. The Senate will have finished all available business. Only two items remain on the calendar. One is S. 860, a bill relating to the Trust Territory of the Pacific Islands, on which a referral to the Committee on Foreign Relations may be sought. In any case, it cannot be acted upon until this potential jurisdictional problem is resolved. All Senators concerned are apprised of the matter. The other bill is S. 646, having to do with the creation of a limited copyright in sound recordings for the purpose of protecting against unauthorized duplication and piracy of sound recording and for other purposes. This measure is being held on a temporary basis only—a routine ac-

commodation afforded any Senator on a measure of this nature.

I make this announcement at this time so the Senate will be fully cognizant of the possibilities for today and the rest of the week insofar as the joint leadership is concerned. The fact that the work of the Senate is remaining ahead of the work of the various committees is a tribute to us all.

EMERGENCY SCHOOL AID AND QUALITY INTEGRATED EDUCATION ACT OF 1971

The Senate continued with the consideration of the bill (S. 1557) to provide financial assistance to local educational agencies in order to establish equal educational opportunities for all children, and for other purposes.

AMENDMENTS NOS. 49 AND 51

Mr. ERVIN. Mr. President, I call up my amendments Nos. 49 and 51.

The PRESIDING OFFICER. The amendments will be stated.

The assistant legislative clerk proceeded to read the amendments.

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

The PRESIDING OFFICER. Without objection, it is so ordered; and without objection, the amendments will be printed in the RECORD.

The amendments, ordered to be printed in the RECORD, are as follows:

AMENDMENT NO. 49

On page 11, line 2, insert a comma and the word "religion" after the word "color".

AMENDMENT NO. 51

On page 27, line 14, insert the word "religion" between the word "color" and the words "or national origin."

Mr. ERVIN. Mr. President, I ask that the two amendments be voted on en bloc; and I ask for the yeas and nays on them.

The yeas and nays were ordered.

Mr. ERVIN. Mr. President, I can explain these amendments briefly.

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

Mr. ERVIN. I yield.

Mr. MANSFIELD. I ask for the yeas and nays on the second amendment, which the Senator will offer today, and I ask that it be in order to make that request at this time.

The PRESIDING OFFICER. Without objection, it is so ordered. There is obviously a sufficient second.

The yeas and nays were ordered.

Mr. ERVIN. Mr. President, this bill has provisions in it which authorize the extension of Federal aid to private nonprofit schools unless they practice discrimination on the basis of race, color, or national origin. These two amendments merely add another prohibited discrimination.

The PRESIDING OFFICER (Mr. HUMPHREY). Will the Senator withhold?

Mr. ERVIN. Yes.

The PRESIDING OFFICER. The Senator from North Carolina deserves the attention of the Senate. Will there please be quiet so the Senator can be heard?

Mr. ERVIN. Mr. President, my amendment would simply add to the three prohibited categories of discrimination which would bar a private nonprofit school from receiving aid under this bill a fourth prohibited discrimination; namely, it would deny the benefits of this bill to a nonprofit private school which discriminates against teachers or students on the ground of religion.

I think it is a terrible thing for tax funds to be used for the benefit of organizations which discriminate against any person because of the manner in which that person bows his own knees to his own God in his own way.

I would like at this time to make my argument for the next amendment. My next amendment, which is amendment No. 47, would amend section 601 of the Civil Rights Act of 1964 so as to add to the prohibited discriminations in federally financed programs those which discriminate on the basis of religion. I would consent to have the Senate vote on that amendment as soon as it votes on the two consolidated amendments, without further argument.

Since I have stated the objectives of these three amendments, that is, not to allow Federal funds to be used to discriminate against people on the ground of religion, I am willing to forgo further argument.

The PRESIDING OFFICER. Does the manager of the bill wish to respond?

Mr. PELL. Mr. President, I would like to ask a question of the Senator from North Carolina.

As I understand his amendment, it would mean that children in private or parochial schools, which, while not discriminating, certainly do not encourage the children of other faiths to attend their schools, would not be eligible to participate in programs under the bill. Is that correct?

Mr. ERVIN. It would not be entitled to funds if the private school refused employment to teachers on the ground that the teachers professed no religion or a religion that is different from that of the organization which maintained those schools, or if they excluded children from the schools on the basis of their religion.

Mr. PELL. I do not think the Senator will find many religious schools excluding children of other faiths, nor do children of other faiths eagerly attempt to go to those schools. I am trying to find out what the effect of this amendment would be. To my mind, it would prevent the help envisaged in this bill toward relieving some of the problems we presently face, being available to children who are attending parochial schools or private schools. Therefore I am opposed to the amendment.

Mr. ERVIN. The amendment would require that any private school which wanted to receive benefits under this bill would not only have to refrain from practicing discrimination on the ground of race, color, or national origin, but also on the ground of religion.

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

Mr. PELL. Mr. President, prior to yielding to the Senator from New York, I would like to add that I am constrained to oppose the amendment. I yield to the Senator from New York.

Mr. JAVITS. Mr. President, the trouble with the amendments is that they are directed not to institutions, but to children. We are not now, and we will not—there is no question about that—lend our support to religious institutions in violation the establishment clause. We established that position in the Elementary and Secondary Education Act, as in all other education legislation. But we do benefit with services children who do attend such schools. This is the very inherent framework of our education laws. The amendment before us, I am sure unintentionally—I am sure the Senator from North Carolina does not do it by design—would nevertheless fracture that practice. So we would be writing law directed at something which is not an evil under a set of conditions designed to correct an evil. We would be letting in something that is not directed at an evil. If we are seeking to correct something that would be a violation of the Constitution of the United States, which could be enjoined on that ground, at the same time it would be mischievous with respect to the ability to deal with assistance to private and parochial school children, which is an essential concept of our educational laws. For those reasons, I would be opposed to the amendment. We are seeking to deal with immediate evils, with immediate remedies. That is why the Senate turned down the Ribicoff amendment. Therefore, let us go forward with that objective, without fracturing the whole purpose of the bill. This is not a bill to promote religious education. Should we later perceive problems in regard to religious education, we can deal effectively with them later, without attempting to do it in this short-term education measure.

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

Mr. PELL. Mr. President, how much time do I have left?

The PRESIDING OFFICER. The Senator has 2 minutes remaining.

Mr. PELL. I yield those 2 minutes to the Senator from Minnesota.

Mr. MONDALE. Mr. President, I want to make one observation. The issue which the Senator from North Carolina seeks to raise with these amendments could be raised against almost any title of the Elementary and Secondary Education Act, which have long been established to deliver assistance for various education purposes, because most of these titles authorize participation by private school students, as this bill does—participation by children, but not aid to the private institution.

For example, title I of ESEA, which delivers educational assistance to the so-called educationally disadvantaged, a program which now involves $1.8 billion annually, would be subject to the same criticism as that which the Senator from North Carolina raises to the pending bill.

Title II, the Library Assistance Act, similarly provides for participation by private school children, but does not provide assistance to parochial schools as such.

Title III, assisting supplementary demonstration centers, contains similar provisions, as does title VII, which is one

of the new and growing areas of our national education effort, bilingual education.

Mr. President, I believe the amendments of the Senator from North Carolina should be rejected.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. ERVIN. Mr. President, I listened with interest to the argument of the distinguished Senator from New York. Like the flowers that bloom in the spring, it has nothing to do with the bill. The bill expressly provides that aid go to the schools, and not to the children. It provides that, in the nonprofit schools, the aid is to go through the local educational agency, and the local educational agency must consult with the officials of the private nonprofit school before asking for aid for it. So the argument that the aid goes to the students just is not a tenable one.

The PRESIDING OFFICER. All time has expired or has been yielded back. The question is on agreeing, en bloc, to the amendments of the Senator from North Carolina. The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk proceeded to call the roll.

[Disturbance in the visitors' galleries.]

The PRESIDING OFFICER (Mr. HUMPHREY). There will be order in the galleries. The Chair admonishes the galleries that we will not tolerate any kind of noise or any kind of concerted effort to disrupt. This Chamber is for the purpose of doing the business of the Senate and the Government of the United States.

The clerk will continue the rollcall.

The rollcall was continued.

[A further disturbance in the visitors' galleries.]

Mr. TOWER. Mr. President, I ask that the galleries be cleared.

The PRESIDING OFFICER. The Chair asks those in the galleries to restrain themselves, to refrain from comment, and to abide by the rules, or the Chair will order the Sergeant at Arms to have those who violate the rules removed.

[Another disturbance in the visitors' galleries.]

Mr. TOWER. Mr. President, I demand that the galleries be cleared.

The PRESIDING OFFICER. The Chair will ask that only those who violate the rules be removed. The Chair urges visitors in the galleries to respect the rights of others and the responsibilities of this body.

The clerk will proceed with the rollcall.

The roll was continued and concluded.

Mr. BYRD of West Virginia. I announce that the Senator from Alaska (Mr. GRAVEL), the Senator from Washington (Mr. JACKSON), the Senator from Massachusetts (Mr. KENNEDY), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Maine (Mr. MUSKIE), and the Senator from Alabama (Mr. SPARKMAN), are necessarily absent.

I further announce that the Senator from Oklahoma (Mr. HARRIS), and the Senator from South Carolina (Mr. HOLLINGS), are absent on official business.

I further announce that, if present and voting, the Senator from South Dakota (Mr. MCGOVERN), the Senator from Washington (Mr. JACKSON), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from Oklahoma (Mr. HARRIS), would vote "nay."

Mr. GRIFFIN. I announce that the Senator from Tennessee (Mr. BROCK), the Senator from Kentucky (Mr. COOK), the Senators from Kansas (Mr. DOLE and Mr. PEARSON), the Senator from Colorado (Mr. DOMINICK), the Senator from Iowa (Mr. MILLER), the Senators from Oregon (Mr. PACKWOOD and Mr. HATFIELD), the Senator from Pennsylvania (Mr. SCOTT), the Senator from Alaska (Mr. STEVENS) and the Senator from Connecticut (Mr. WEICKER) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Arizona (Mr. GOLDWATER) is detained on official business.

If present and voting, the Senator from Oregon (Mr. HATFIELD), the Senator from Colorado (Mr. DOMINICK), the Senator from Kansas (Mr. PEARSON), the Senator from South Dakota (Mr. MUNDT), and the Senator from Pennsylvania (Mr. SCOTT) would vote "nay."

The result was announced—yeas 14, nays 65, as follows:

[No. 50 Leg.]

YEAS—14

Allen	Ervin	Moss
Bellmon	Fulbright	Stennis
Bennett	Gambrell	Talmadge
Eastland	Jordan, N.C.	Thurmond
Ellender	McClellan	

NAYS—65

Aiken	Eagleton	Montoya
Allott	Fannin	Nelson
Anderson	Fong	Pastore
Baker	Griffin	Pell
Bayh	Gurney	Percy
Beall	Hansen	Prouty
Bentsen	Hart	Proxmire
Bible	Hartke	Randolph
Boggs	Hruska	Ribicoff
Brooke	Hughes	Roth
Buckley	Humphrey	Saxbe
Burdick	Inouye	Schweiker
Byrd, Va.	Javits	Smith
Byrd, W. Va.	Jordan, Idaho	Spong
Cannon	Long	Stevenson
Case	Magnuson	Symington
Chiles	Mansfield	Taft
Church	Mathias	Tower
Cooper	McGee	Tunney
Cotton	McIntyre	Williams
Cranston	Metcalf	Young
Curtis	Mondale	

NOT VOTING—21

Brock	Hatfield	Muskie
Cook	Hollings	Packwood
Dole	Jackson	Pearson
Dominick	Kennedy	Scott
Goldwater	McGovern	Sparkman
Gravel	Miller	Stevens
Harris	Mundt	Weicker

So Mr. ERVIN's amendments (Nos. 49 and 51) considered en bloc were rejected.

Mr. MANSFIELD addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. MANSFIELD. Mr. President, I yield to the distinguished Senator from North Carolina.

Mr. ERVIN. Mr. President, it is obvious that my efforts to prevent the use of tax-raised moneys to prevent discrimination against people on account of the way they bow their knees to God are fruitless, and for that reason I ask that my amendment No. 47 be printed at this point in the RECORD.

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

On page 40, line 16, insert the following:

"AMENDMENT WITH RESPECT TO RELIGIOUS NONDISCRIMINATION

"SEC. 17. Section 601 of the Civil Rights Act of 1964 is amended by inserting a comma and the word 'religion' after the word 'color'."

Mr. ERVIN. Mr. President, I also ask unanimous consent that the order for the yeas and nays on that amendment be withdrawn and that I be permitted to withdraw the amendment.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. TOWER. Mr. President, I call up my amendment and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

On page 3, line 16, strike out "3 per centum" and insert in lieu thereof "4 per centum".

UNANIMOUS-CONSENT AGREEMENT

Mr. MANSFIELD. If the Senator from Texas will yield for just a moment, I ask unanimous consent that there be 6 minutes on the pending amendment, with the time to be equally divided between the sponsor of the amendment and the manager of the bill, or whomever he may designate.

The PRESIDING OFFICER (Mr. BUCKLEY). Is there objection to the request of the Senator from Montana? The Chair hears none, and it is so ordered.

Mr. TOWER. Mr. President, this amendment does not put any additional money into the bill at all. It provides for a percentage of the amount already in the bill—an additional $15 million, 5 million in the first year and 10 million in the second year, for bilingual education. I was pleased to have been an author of this provision when it was enacted in 1967 and hope that my colleagues will be convinced now of the necessity for increasing the funding for this most successful new education programs to come along in many years. However, almost since its inception, it has suffered from underfunding, and I believe that the time has arrived to remedy this situation and expand the operation and scope of bilingual education.

In my State of Texas there are literally hundreds of thousands of households where Spanish is the primary if not the only language. The children that come from these households by and large enter schools where only English is spoken. When the children from these families enter school, the cultural shock on them is great, and their learning ability is impeded because they do not have a proper grasp of the English language. It is impossible to say how many children have dropped out of school, potentially brilliant children who could have easily gone on to college, simply because

they could not understand enough English to keep up with other children in the class. The current bilingual education program has produced outstanding results as is witnessed by report after report; however, for some reason, it has never been given enough funds. The current levels of $25 million for fiscal year 1971 and the request of the same $25 million for fiscal year 1972 are simply not adequate to take care of the millions of children throughout the Southwest and the West. Also, the State of Florida is beginning to experience similar situations with its increasing Cuban population who could add so much to the culture of our country.

Mr. President, we can accomplish this increased funding level without upsetting the percentage ratio in this legislation. It will be recalled that we deleted section 11 from this bill, which had allocated to it 1 per centum of the entire fund authorization. What I seek to do in this amendment is to merely transfer that 1 per centum that was deleted to the bilingual authorization. Thus, no other section will suffer by this action.

In conclusion, Mr. President, I hope that my colleagues in the Senate will concur with me that bilingual education in the United States needs more emphasis than it is now getting. By so doing, we are showing the Spanish-speaking people of this Nation that we are committed to helping them help themselves. What these industrious people really want is not more welfare, not more giveaway programs, but jobs and education, and these two go hand in hand. By providing this increased opportunity for Mexican-Americans and other Spanish and foreign-tongue groups to become a true part of America, regardless of their cultural background, we are striking at the very core of poverty and any incipient discrimination and going what should be done: Helping Americans to help themselves.

Mr. MONDALE. Mr. President, I do not wish to take up the time of the Senate. I think this is an excellent amendment. Even with the additional funds, we will still be short of the money needed to bring bilingual and bicultural education within the reach of millions of children who do not know English, but who speak Spanish, Portugese, or Asian, and other languages. Many children tragically, unbelievably, go to school to be taught by teachers whom they cannot understand because their languages are different, to be taught from textbooks which are unresponsive to their needs and culturally insensitive.

Mr. President, I ask unanimous consent that the portion of the committee report found on pages 22 through 24, entitled "Programs To Overcome Language Barriers and Cultural Differences" be printed in the RECORD at this point in my remarks.

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

PROGRAMS TO OVERCOME LANGUAGE BARRIERS AND CULTURAL DIFFERENCES

Section 7(c) of the bill authorizes programs to meet the special educational needs of minority group children from environments in which a dominant language is other than English and who are deprived of equal educational opportunity because of language barriers and cultural differences. With respect to this section, all programs and projects assigned under Section 7(c) must be specifically designed to complement programs and projects carried out by local educational agencies under Section 5. School districts with children from language minority backgrounds should participate on an equitable basis in the distribution of all financial assistance under the bill. Applications by such school districts must appropriately and equitably address the special educational needs of these children so that they may derive the full benefit of programs under the bill and so that other children may derive the fullest possible benefits from the contributions that children from language minority group backgrounds can make to their education.

It is expected that the program authorized by section 7(c) will be closely coordinated with that authorized by the Bilingual Education Act (title VII of the Elementary and Secondary Education Act of 1965), and that it will be used to supplement and improve the title VII program. It should be noted that the Bilingual Education Act is intended to authorize a long-range program, while that which is authorized by section 7 (c) is for a two-year period, any diminution of the former cannot be justified by the existence of the latter.

The need for meeting the special educational needs of minority group children with language barriers and cultural differences is unquestioned. The Department of Health, Education and Welfare estimates that there are 5 million public school children who come to school with limited English-speaking ability. Title VII of the Elementary and Secondary Education Act serves only 54,000 of these students. According to HEW's 1968 Elementary and Secondary School Survey there are 2,002,776 Spanish-surnamed students; 177,464 American Indian students; 194,022 Oriental students in our nation's schools. According to the Bureau of Census, only 31% of the 9,230,000 persons of Spanish origin in the United States considered English as their mother tongue and only half reported that English was usually spoken in their homes. Among Spanish origin persons between the ages of 16 and 25 who reported to the Bureau of the Census that they were able to read and write the language usually spoken in their homes, twice as many had completed at least 4 years of high school when that language was English than when it was Spanish.

The single most important component of programs to implement curricula developed under this subsection is teacher training. Funds are authorized for in-service training, which includes training conducted during the summer months. Only if teachers are sensitive to the needs of the children, and understand and respect the language which they speak in their homes and the culture of which they are proud, will programs be successful. A program of in-service training is to be included in each project funded under this provision. In addition, a balance should be maintained between curriculum development and curriculum implementation, so that funds will remain for implementation of all successfully developed curricula. Training activities under section 7(c) are not to be administered with those of the Education Professions Development Act.

Development of sensitive, humane educational programs to meet the needs of these students cannot be overemphasized. Section 7(c) is designed specifically to assure that the development and implementation of curricula for language minority students involve the full participation of representatives of the minority group students, the educational needs of whom programs and projects are intended to meet. Section 7(c) therefore authorizes grants to private non-profit organizations for the development of such curricula in cooperation in the local educational agencies and requires as a condition to eligibility that applicant local educational agencies establish community committees which are broadly representative of parents, school officials, teachers, and members of the community, no less than half of whom must be parents and not less than half of whom must be members of the groups to be served. In addition, private nonprofit agencies must establish a program or project board which meets these requirements and which will exercise policy-making authority with respect to the development of programs and projects. It is only with the full participation of the persons affected that these programs can be successful.

[Disturbance in a visitors' gallery.]

The PRESIDING OFFICER (Mr. BUCKLEY). The Sergeant at Arms will clear the gallery of the offending individual.

Mr. TOWER. Mr. President, I yield 1 minute to my distinguished colleague from Texas.

Mr. BENTSEN. Mr. President, I support the amendment offered by the senior Senator from Texas (Mr. TOWER).

Mr. President, it has been estimated that over 3 million children in our country are in need of bilingual programs, yet at the present time we are only able to provide programs for a fraction of these children.

Under the Bilingual Education Act, an imaginative program signed into law by President Johnson, less than $25 million has been requested by the administration out of a total authorization of $100 million.

Aside from providing for only a fraction of the students who currently need bilingual aid, we are also failing to concentrate sufficient funds in the regions that need them. Texas receives scarcely enough bilingual funds to dent the major problems we have with children who do not have a sufficient knowledge of the English language.

In fact, only 18,000 students in Texas are being served by these programs now, and the estimated need runs into the hundreds of thousands.

The city of Laredo, in the Mexican border area, currently has 14,000 children in need of bilingual education, but only 1,000 can be served because of the shortage of funds.

For these reasons I support the amendment offered by the senior Senator from Texas. The additional funds to aid bilingual education under this act can go a long way toward meeting the needs of our young people in Texas and throughout the Nation who are handicapped by their inability to benefit from schools which are frequently unprepared to help them overcome their language difficulties.

I urge the adoption of the amendment.

Mr. TOWER. My colleague, Mr. BENTSEN, comes from the Lower Rio Grande Valley where we have a high percentage of Mexican Americans. He understands their problem better than anyone else.

Mr. JAVITS. Mr. President, will the Senator from Texas yield?

Mr. TOWER. I yield.

Mr. JAVITS. It has been said many times that this bill was drafted after most careful and difficult negotiations. We had set a figure of 3 percent for bi-

lingual education. No one appreciates the situation better than I as to the bilingual education problem and the need for effective effort.

I have taken this amendment up with the administration, and, while it cannot say it is for the amendment, it is not going to stand in the way of it.

I can only promise the Senator from Texas that there is considerable sympathy for this situation. We will certainly do our utmost, depending on what the other body does in behalf of this most constructive proposal.

Mr. PELL. Mr. President, I yield myself such time as may be necessary.

I have studied the amendment of the Senator from Texas, I have discussed it with the able senior Senator from New York and the able senior Senator from Minnesota and with the administration. We all agree that it is a good amendment and will be a real improvement in the bill.

I personally am particularly delighted, because we have included in the bill, for the first time, eligibility in bilingual provisions, not only for Spanish-speaking people, but also for Portuguese-speaking people—the whole of the Iberian Peninsula will now be covered. I am therefore glad to accept the amendment, and ask that I may be made a cosponsor of it.

Mr. TOWER. Mr. President, I ask unanimous consent that the following cosponsors be added to the amendment.

The Senator from Massachusetts (Mr. BROOKE), my colleague from Texas, Mr. BENTSEN, the Senator from Minnesota (Mr. MONDALE), the Senators from Colorado (Mr. ALLOTT, and Mr. DOMINICK), the Senator from Montana (Mr. MANSFIELD), the Senator from Florida (Mr. CHILES), the Senator from New Mexico (Mr. MONTOYA), the Senator from Rhode Island (Mr. PELL), and the Senator from Florida (Mr. GURNEY).

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

Mr. CHILES. Mr. President, I am very pleased to join with the Senator from Texas (Mr. TOWER) in offering this amendment to increase bilingual educational funds by $15 million.

In my home State of Florida the need to provide adequate funding for a project of this type is extremely important, not only for the established Spanish-speaking communities, but also to effectively communicate with the many thousands of refugees that have arrived from Cuba over the past few years, and the migrants who come to harvest the crops.

These people depend on our educational system to meet their needs, and if we fail them by not even being able to communicate with them in their native language, then we will have failed to bring them in the American community. We cannot afford to let this happen.

The PRESIDING OFFICER. All time on the amendment has now expired. The question is on agreeing to the amendment of the Senator from Texas.

The amendment was agreed to.

Mr. GRIFFIN. Mr. President, I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

On page 31 insert the following between lines 4 and 5:

"(e) No State shall reduce the amount of State aid with respect to the provision of free public education in any school district of any local educational agency within such State because of assistance made or to be made available to such agency under this Act."

Mr. JAVITS. Mr. President, will the Senator from Michigan yield?

Mr. GRIFFIN. I yield.

Mr. JAVITS. As we understand the purpose of the amendment, it does, with respect to the States what the bill already does with respect to the local educational districts. In short, it provides against the diminution of efforts by the State, as we have already provided respecting the district, for any benefit which is conferred by the bill.

I think this is a perfectly good amendment and I hope very much that the manager of the bill will accept it.

Mr. GRIFFIN. The Senator from New York (Mr. JAVITS) states that very well.

Mr. President, this amendment seeks to assure that States do not take away with one hand what the Federal Government is providing with another through this act.

The intent of S. 1557 is to assist local educational agencies in meeting the additional costs of desegregating or eliminating or reducing racial isolation. By definition, these are additional costs, over and above the regular school budget. It would defeat the purpose of the act if a State were to include funds received by local agencies under this bill into its own computations for allocating State aid.

Therefore, the amendment seeks to make sure that the local district will not suffer any reduction of State aid under the funds in the bill which is supposed to be for additional costs.

This amendment seeks to assure that the intent of the bill is not subverted. It provides that States cannot take into account funds made available under the act in determining local grants under State equalization or foundation programs.

The maintenance of effort provisions set forth in the bill in section 9(a)(9) of the bill are important, but they are directed at the school district or the local educational agency—not the State.

My amendment would not change the substance of the pending legislation. It does seek to assure that assistance already or otherwise provided by a State to local districts will not be eroded by State governments.

I hope that the distinguished chairman of the Education Subcommittee, the manager of the bill, the Senator from Rhode Island (Mr. PELL), will agree to what I expect to be a noncontroversial provision.

Mr. PELL. I understand that the amendment is acceptable to the administration.

Mr. GRIFFIN. That is correct.

Mr. PELL. On the majority side we have held consultations and it is acceptable to us. It is an improvement on the bill and we are glad to accept the amendment.

Mr. GRIFFIN. I thank my colleague from Rhode Island.

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

The amendment was agreed to.

AMENDMENT NO. 41

Mr. ERVIN. Mr. President, I call up my amendment No. 41 and I modify my amendment so as to conform with the document I sent to the desk. I ask unanimous consent that the reading of the modified amendment be dispensed with and that the modified amendment be printed in the RECORD at this point and that I be permitted to explain the provisions in lieu of having it read.

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

The modified amendment, ordered to be printed in the RECORD, reads as follows:

AMENDMENT NO. 41

TITLE II—OPEN ENROLLMENT IN STUDENT ASSIGNMENTS TO PUBLIC SCHOOLS

SEC. 201. The Civil Rights Act of 1964 (42 U.S.C. 1971, 1975a–1975d, 2000a–2000h–6) is amended by adding at the end thereof the following new title:

"TITLE XII—PUBLIC SCHOOL—OPEN ENROLLMENT

"SEC. 1201. As used in this title—

"(a) 'State' means any State, district, Commonwealth, territory, or possession of the United States.

"(b) 'Public school' means any elementary or secondary educational institution, which is operated by a State, subdivision of a State, or governmental agency within a State, or any elementary or secondary educational institution which is operated, in whole or in part, from or through the use of governmental funds or property, or funds or property derived from a governmental source.

"(c) 'School board' means any agency or agencies which administer a system of one or more public schools and any other agency which is responsible for the assignment of studies to or within such system.

"(d) 'Student' means any person required or permitted by State law to attend a public school for the purpose of receiving instruction.

"(e) 'Parent' means any parent, adoptive parent, guardian, or legal or actual custodian of a student.

"(f) 'Faculty' means the administrative and teaching force of a public school system or a public school.

"(g) 'Open enrollment system' means a system for the assignment of students to public schools and within public schools maintained by a school board operating a system of public schools in which the public schools and the classes it operates are open to students of all races and in which the students are granted the freedom to attend public schools and classes chosen by their respective parents from among the public schools and classes available for the instruction of students of their ages and educational standings.

"SEC. 1202. No department, agency, officer, or employee of the United States empowered to extend Federal financial assistance to any program or activity at any public school by way of grant, loan, or otherwise shall withhold, or threaten to withhold, such financial assistance from any such program or activity on account of the racial composition of the

student body at any public school or in any class at any public school in any case whatever where the school board operating such public school or class maintains in respect to such public school and class an open enrollment system as defined in section 1201(g).

"SEC. 1203. No department, agency, officer, or employee of the United States empowered to extend Federal financial assistance to any program or activity at any public school by way of grant, loan, or otherwise shall withhold, or threaten to withhold, any such Federal financial assistance from any such program or activity at such public school to coerce or induce the school board operating such public school to transport students from such public school to any other public school for the purpose of altering in any way the racial composition of the student body at such public school or any other public school.

"SEC. 1204. No department, agency, officer, or employee of the United States empowered to extend Federal financial assistance to any program or activity of any public school in any public school system by way of grant, loan, or otherwise shall withhold or threaten to withhold any such Federal financial assistance from any such program or activity at such public school to coerce or induce any school board operating such public school system to close any public school, and transfer the students from it to another public school for the purpose of altering in any way the racial composition of the student body at any public school.

"SEC. 1205. Whenever any department, agency, officer, or employee of the United States violates or threatens to violate section 1202, section 1203, or section 1204, of this Act, the school board aggrieved by the violation or threatened violation, or the parent of any student affected or to be affected by the violation or threatened violation, or any student affected or to be affected by the violation or threatened violation, may bring a civil action against the United States in the district court of the United States complaining of the violation or threatened violation, and the district court of the United States shall have jurisdiction to try and determine the civil action irrespective of the value or the amount involved in it and enter such judgment or issue such order as may be necessary or appropriate to redress the violation or prevent the threatened violation. Any civil action against the United States under this section may be prosecuted in the judicial district in which the school board aggrieved by the violation or threatened violation has its principal office, or in the judicial district in which any school affected or to be affected by the violation or threatened violation is located, or in the judicial district in which a parent of a student affected or to be affected by the violation or threatened violation resides, or in the judicial district in which a student affected or to be affected by the violation or threatened violation resides, or in the judicial district encompassing the District of Columbia. The United States hereby expressly consents to be sued in any civil action authorized by this section, and hereby expressly agrees that any judgment entered or order issued in any such civil action shall be binding on the United States and its offending department, agency, officer, or employee, subject to the right of the United States to secure an appellate review of the judgment or order by appeal or certiorari as is provided by law with respect to judgments or orders entered against the United States in other civil actions in which the United States is a defendant.

"SEC. 1206. No court of the United States shall have jurisdiction to make any decision, enter any judgment, or issue any order requiring any school board to make any change in the racial composition of the student body at any public school or in any class at any public school to which students are assigned in conformity with an open enrollment system as defined in section 1201(g) of this Act, or requiring any school board to transport any students from one public school to another public school or from one place to another place or from one school district to another school district in order to effect a change in the racial composition of the student body at any school or place or in any school district, or denying to any student the right or privilege of attending any public school or class at any public school chosen by the parent of such student in conformity with an open enrollment system as defined in section 1201(g) of this Act, or requiring any school board to close any school and transfer the students from the closed school to any other school for the purpose of altering the racial composition of the student body at any public school.

Mr. ERVIN. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. ERVIN. Mr. President, this is a very important amendment.

These are the objectives of the amendment:

First. To restore to local school boards the power to administer the public schools committed to their charge.

Second. To confer upon parents the right to choose the public schools their children attend.

Third. To secure to children the right to attend the public schools chosen by their parents.

Let me explain the provisions of the amendment:

Section 1201(g) provides that open enrollment means "a system for the assignment of students to public schools and within public schools maintained by a school board operating a system of public schools in which the public schools and the classes it operates are open to students of all races and in which the students are granted the freedom to attend public schools and classes chosen by their respective parents from among the public schools and classes available for the instruction of students of their ages and educational standings."

Sections 1202, 1203 and 1204 of the amendment forbid the Department of Health, Education, and Welfare to do any of these things:

First. To withhold, or threaten to withhold, Federal financial assistance from any public school operating under an open enrollment plan "on account of the racial composition of its student body."

Second. To withhold, or threaten to withhold, Federal financial assistance from any public school "to coerce or induce the school board operating the public school to transport students from such public school to any other public school for the purpose of altering in any way the racial composition of the student body at such public school or any other public school."

Third. To withhold, or threaten to withhold, Federal financial assistance from any school board operating any public school to coerce or induce the school board to close any public school and transfer the students from such public school to any other public school or schools for the purpose of altering the racial composition of the student body at any public school.

Section 1205 of the amendment empowers any school board or any parent of any student affected or to be affected by any violation or threatened violation of any of the provisions of sections 1202, 1203, and 1204 to sue the United States in the district court of the United States, and obtain such relief "as may be necessary or appropriate to redress the violation or prevent the threatened violation."

[Disturbance in the visitors' galleries.]

The PRESIDING OFFICER. Under rule XIX the Chair is required to keep order in the Senate. People in the galleries are guests of the Senate and should maintain order without the Chair having to request this. If order is not maintained, however, the Chair will be compelled to order the removal of those persons from the galleries who are causing the disturbance. If order is not maintained, the Chair will be compelled to close the galleries of the Senate to the public.

[Further disturbance in the visitors' galleries.]

Mr. BYRD of West Virginia. Mr. President, I ask that the two galleries containing the disrupters be cleared.

The PRESIDING OFFICER. The Sergeant at Arms will clear those two galleries.

Mr. BYRD of West Virginia. Mr. President, I ask that they be cleared until order is restored.

The PRESIDING OFFICER. The remaining visitors are reminded once again that they are guests and that disturbances will not be tolerated.

Mr. HUMPHREY. Mr. President, may I respectfully suggest that only those who are guilty of violations of the rules be taken out of the galleries. Many guests have come in good faith.

The PRESIDING OFFICER. In compliance with the request of the Senator from Minnesota, the Sergeant at Arms will remove only those who have created the disturbance so that other visitors will not suffer because of the violations of some.

Mr. BYRD of West Virginia. Mr. President, I ask that both galleries be cleared and that those individuals who did not participate in the disturbance afterward be permitted to return to the galleries.

The PRESIDING OFFICER. The gallery will be cleared. Those occupants who did not cause disturbance will be permitted to reenter.

Mr. ERVIN. Mr. President, section 1206 specifies that—

No court of the United States shall have jurisdiction to make any decision, enter any judgment, or issue any order requiring any school board to make any change in the racial composition of the student body at any public school or in any class at any public school to which students are assigned in conformity with an open enrollment system as defined in Section 1201(g) of this Act, or requiring any school board to transport any students from one public school to another public school or from one place to another place or from one school district to another school district in order to effect a change in the racial composition of the student body at any school or place or in any school district or denying to any student the right or privilege of attending any public school or class at any public school chosen by the parent of such student in conformity with an open enrollment system as defined in section 1201 (g) of this Act, or requiring any school

board to close any school and transfer any students from the closed school to any other school for the purpose of altering the racial composition of the student body at any public school.

Section 1206 is sanctioned by article III of the Constitution which empowers Congress to regulate the appellate jurisdiction of the Supreme Court and both the original and appellate jurisdiction of all Federal courts inferior to the Supreme Court.

Mr. President, I can state what these provisions would do in simpler fashion. They would provide that wherever a school board establishes an open enrollment policy for the assignment of children to schools or classes under its jurisdiction, the assignment by the school board could not be changed by requirements imposed upon it by HEW or by the Federal courts.

They also provide that the public school board establishes an open enrollment policy when it opens all of the schools subject to its jurisdiction to children of all races and permits the children of all races to attend the public schools available for the education of schoolchildren of their ages and intellectual attainments which are selected by their parents. In other words, an open enrollment policy is what's known in the South as a freedom-of-choice system.

It is known in Boston as an open enrollment system. I propose that the Congress authorize for the South, and the remainder of the country, open enrollment systems similar to that used in Boston.

These provisions would prohibit the busing of children at the instance of HEW or the Federal courts. It would also secure to each child the right to attend his neighborhood school, which is the school nearest his home, and which is available for children of his age and educational achievements. The amendment would also prohibit both the HEW and the Federal courts from closing down schools, and taking students from the closed schools to other schools merely for the purpose of changing the racial composition of some schools in the system.

This bill is in perfect harmony with the equal protection clause of the 14th amendment.

If we are to understand the conditions out of which the necessity for amendment arises, we must understand the equal protection clause of the 14th amendment.

The equal protection clause of the 14th amendment, which was certified to be a part of the Constitution on July 28, 1863, forbids a State to "deny to any person within its jurisdiction the equal protection of the laws."

By these words, the equal protection clause requires a State to treat in like manner all persons similiarly situated. *State Board of Tax Commissioners of Indiana* v. *Jackson*, 283 U.S. 527 (1931); *Maxwell* v. *Bugbee*, 250 U.S. 525 (1919). The clause does not require identity of treatment. *Walters* v. *St. Louis*, 347 U.S. 231 (1934). It permits a State to make distinctions between persons subject to its jurisdiction if the distinctions are based on some reasonable classification, and all persons embraced within the classification are treated alike. It merely outlaws arbitrary or invidious discrimination. *Avery* v. *Midland County*, 390 U.S. 474 (1968); *Missouri Pacific Railway Co.* v. *Mackey*, 127 U.S. 205 (1888).

From July 28, 1868, until May 17, 1954, the equal protection clause of the 14th amendment was interpreted to sanction the "separate but equal doctrine," which permitted a State to segregate schoolchildren in its public schools on the basis of race when it furnished equal facilities for the education of the children of each race. *Gong Lum* v. *Rice*, 275 U.S. 78 (1927); *Cumming* v. *Richmond County Board of Education*, 175 U.S. 528 (1899); *Plessy* v. *Ferguson*, 163 U.S. 537 (1896).

On May 17, 1954, the Supreme Court handed down its historic decision in *Brown* v. *Board of Education of Topeka*, 347 U.S. 483 (1954), adjudging "that in the field of public education the doctrine of 'separate but equal' has no place" and holding that a State violates the equal protection clause if it denies any child admission to any of its public schools on account of the child's race.

On the same day the Supreme Court handed down *Bolling* v. *Sharpe*, 347 U.S. 497 (1954), ruling that the Due Process Clause of the 5th amendment imposes the same inhibition on the public schools of the District of Columbia that the equal protection clause does on the public schools of a State, and 1 year later the Supreme Court announced its implementing decision in second Brown, which is reported as *Brown* v. *Board of Education of Topeka*, 349 U.S. 294 (1955).

Since these decisions the Supreme Court has applied the equal protection clause to varying factual situations arising in various southern public school districts in the following cases: *Cooper* v. *Aaron*, 358 U.S. 1, 20 (1958); *Shuttlesworth* v. *Birmingham Board of Education*, 358 U.S. 101 (1958); *Bush* v. *Orleans Parish School Board*, 364 U.S. 500 (1960); *Watson* v. *City of Memphis*, 373 U.S. 526 (1963); *Goss* v. *Board of Education of Knoxville*, 373 U.S. 683 (1963); *Griffin* v. *County School Board of Prince Edward County*, 377 U.S. 218 (1964); *Bradley* v. *School Board of City of Richmond*, 382 U.S. 103 (1965); *Rogers* v. *Paul*, 382 U.S. 198 (1965); *Green* v. *County School Board of New Kent County*, 391 U.S. 430 (1968); *Raney* v. *Board of Education of the Gould School District*, 391 U.S. 443 (1968); *Monroe* v. *Board of Commissioners of the City of Jackson*, 391 U.S. 450 (1968); *United States* v. *Montgomery County Board of Education*, 395 U.S. 225 (1969); *Alexander* v. *Holmes County Board of Education*, 396 U.S. 19 (1969); *Dowell* v. *Board of Education of the Oklahoma City Public Schools*, 396 U.S. 269 (1969); *Carter* v. *West Felicana Parish School Board*, 396 U.S. 226 (1969); *Carter* v. *West Felicana Parish School Board*, 396 U.S. 290 (1970); and *Northcross* v. *Board of Education of the Memphis City Schools*, 397 U.S. 232 (1970).

Besides, individual Supreme Court Justices, acting as Circuit Justices, have expressed opinions on the subject in these cases: *Board of School Commissioners of Mobile County* v. *Davis*, 11 L. ed. 2d 26 (1963); *Keyes* v. *School District No. 1, Denver*, 396 U.S. 1215 (1970); and *Alexander* v. *Holmes County Board of Education*, 396 U.S. 1218 (1969).

And on April 20, 1971, the Supreme Court handed down its latest decision in this area, Swann versus Charlotte-Mecklinburg Board of Education.

When all of these cases are analyzed, they interpret the equal protection clause as follows:

First. The equal protection clause makes it unconstitutional for a State to deny any child admission to any public school it operates on account of the child's race.

Second. In consequence, the equal protection clause imposes upon a State, acting through its appropriate agencies, the responsibility to establish a system of determining admission to its public schools on a nonracial basis.

Third. A State, which operated a racially segregated system of public schools on May 17, 1954, fulfills this responsibilty by converting its dual public school system into a unitary public school system.

Fourth. A unitary public school system is one "within which no person is to be effectively excluded from any school because of race or color."

As interpreted in the first *Brown Case*, 347 U.S. 483 (1954), and all subsequent Supreme Court decisions relevant to the subject, the equal protection clause forbids a public school board, which acts as a State agency, to deny any child admission to any school it operates on account of the child's race. A public school board obeys the clause by maintaining a unitary school system, i.e., a school system "within which no person is to be effectively excluded from any school because of race or color." *Northcross* v. *Board of Education of the Memphis City Schools*, 397 U.S. 232 (1970); *Alexander* v. *Holmes County Board of Education*, 396 U.S. 19 (1969). See also the opinion of Mr. Justice Black, acting as Circuit Justice, in *Alexander* v. *Holmes County Board of Education*, 396 U.S. 1218 (1969).

The power to assign children to State supported schools belongs to the public school board which operates them. The equal protection clause does not undertake to transfer this power to the Federal Courts. It merely subjects the exercise of the power by the public school board to this limitation: The board must not exclude any child from any school it operates because of the child's race.

If it faithfully observes this limitation upon its power, a public school board has the right to assign children to the schools it operates in any nondiscriminatory fashion satisfactory to itself.

School Board exercises this right when it creates nondiscriminatory attendance districts or zones and assigns all children, whether black or white, to neighborhood schools in the districts or zones of their residence without regard to race.

It inevitably follows that where school attendance areas are not arbitrarily or invidiously fixed so as to include or exclude children of a particular race, the equal protection clause does not prohibit a State or local school board from requiring that the children living in each

attendance area attend the school in that area, even though the effect of such a requirement, in a locality where the different races are concentrated in separate residential areas, is racial imbalance or de facto segregation in the schools.

Although a school system is in the South, racial imbalances produced in its schools by de facto residential segregation are just as innocent as racial imbalances produced in the public schools of the North by the same cause, and are equally exempt from federal interference, whether legislative, executive, or judicial, under the equal protection clause, which, as already pointed out, condemns no discrimination except that which is arbitrary or invidious.

Mr. PELL. Mr. President, I would suggest the Senate be in order so that we can hear the Senator from North Carolina.

The PRESIDING OFFICER. There will be order in the Senate, please.

Mr. ERVIN. Mr. President, the Supreme Court has so adjudged. Indeed, it must do so if the United States is to be truly one Nation under one flag and one Constitution.

It no longer comports with intellectual inegrity to call all racial imbalances in the public schools of the South de jure, and all racial imbalances in the public schools of the North de facto.

There is now no de jure school segregation anywhere in our land. Racial imbalances in public schools are either arbitrary or invidious and, hence, constitutionally impermissible, both North and South, or innocent and, hence, constitutionally permissible, both North and South. Racial imbalances resulting from de facto residential segregation or nondiscriminatory districting or zoning, whether in the North or in the South, are clearly innocent and constitutionally permissible.

Moreover, it no longer comports with reality, commonsense, or justice to apply one rule to the North and another to the South because the South did not precede the Supreme Court in discovering that the "separate, but equal doctrine" had ceased to be the law of the land.

As I shall demonstrate later, some Federal courts actually discriminate against southern school districts simply because southern school districts were not smarter than the Supreme Court itself and did not discover before the Supreme Court discovered that the separate but equal doctrine had ceased to be a part of the law of the land.

As I have stated, a school board performs its duty under the equal protection clause when it creates nondiscriminatory districts or zones and assigns all children, whether they be black or white, to neighborhood schools in the districts or zones of their residence without regard to race.

And, as we shall see, a school board likewise performs its constitutional obligation when it assigns children to its public schools pursuant to a freedom of choice or open enrollment system as defined in my amendment.

These things are so because if children are similarly situated and the school board treats them exactly alike, its action is in complete harmony with the equal protection clause.

The equal protection clause is limited in objective and operation. It imposes this duty, and this duty only, on a State, that is, to treat in like manner all persons similarly situated.

In consequence, it forbids a public school board, acting as a State agency, to exclude any child from any school because of the child's race.

Further than that it does not go. It does not rob any public school board of its inherent authority to assign children of any race to their neighborhood school if the school board acts for reasons other than racial reasons, such as a purpose to promote ease of school administration, convenience of the children and the homes from which they come, or economy of operation.

Hence, it does not empower Federal courts to deny children of any race admission to their neighborhood schools and to bus them to other schools in other areas to remedy racial imbalances in their neighborhood schools or the other schools arising out of the residential patterns of their neighborhoods or of the other areas.

And, above all things, the equal protection clause does not intend that little children, black or white, shall be treated as pawns on a bureaucratic or judicial chess board.

I reiterate: A school board, acting as a state agency, has the power to assign children to the public schools it operates free from interference by the Federal judiciary as long as it obeys the equal protection clause and does not exclude any child from any school because of the child's race.

When a school board violates the equal protection clause, a Federal Court has jurisdiction to order the school board to devise and implement a plan sufficient to remedy its discriminatory assignment of children to its schools, and to punish the members of the school board for contempt of court if they fail to obey the order. Nevertheless, the power to devise and implement a plan to remedy the discriminatory assignment continues to reside in the school board, and the Federal Court is without power to reject a nondiscriminatory plan submitted by the school board because such nondiscriminatory plan will not mix the races in the schools in numbers or proportions satisfactory to the Federal Court.

Besides the Federal Court cannot usurp and exercise the power of the school board to devise a non-discriminatory assignment plan because the Federal Court wishes to mix the races in the schools in greater numbers or proportions than the non-discriminatory plan of the school board envisages.

When it is stated in simple fashion the equal protection clause merely means that all persons subjected to state action must be treated alike under like conditions, both in the rights conferred and in the obligations imposed.

As Chief Justice Burger repeatedly stated in Swann against The Charlotte-Mecklenburg Board of Education, the Supreme Court has not departed in any way from the interpretation it placed upon the equal protection clause in the original Brown case.

In interpreting this clause in *Brown* v. *Board of Education of Topeka,* 347 U.S. 483, the Supreme Court held that a State denies the equal protection of the laws to black children if it denies them admission to its public schools attended by white children under State laws requiring or permitting segregation according to race. One of the intellectual and legal giants of our age, the late Chief Judge John J. Parker of the U.S. Court of Appeals for the Fourth Circuit, correctly explained what the Supreme Court decided in the Brown Case in his per curiam opinion in *Briggs* v. *Elliott,* 132 F. Supp. 776, 777:

> Having said this, it is important that we point out exactly what the Supreme Court has decided and what it has not decided in this case. It has not decided that the federal courts are to take over or regulate the public schools of the states. It has not decided that the states must mix persons of different races in the schools or must require them to attend schools or must deprive them of the right of choosing the schools they attend. What it has decided, and all that it has decided, is that a state may not deny to any person on account of race the right to attend any school that it maintains. This, under the decision of the Supreme Court, the state may not do directly or indirectly; but if the schools which it maintains are open to children of all races, no violation of the Constitution is involved even though the children of different races voluntarily attend different schools, as they attend different churches. Nothing in the Constitution or in the decision of the Supreme Court takes away from the people freedom to choose the schools they attend. The Constitution, in other words, does not require integration. It merely forbids discrimination. It does not forbid such segregation as occurs as the result of voluntary action. It merely forbids the use of governmental power to enforce segregation. The Fourteenth Amendment is a limitation upon the exercise of power by the state or state agencies, not a limitation upon the freedom of individuals.

What Judge Parker said in the Briggs case correctly interprets the ruling in the Brown case. Circuit Judge Wisdom's attempt in *U.S.* v. *Jefferson County Board of Education,* 372 F. 2d 836, 862, to dismiss what Judge Parker declared in the Briggs case as "pure dictum" is not even plausible. The Briggs case was one of the four cases consolidated for hearing and decision in the Brown case, and Judge Parker was applying that decision to the Briggs case on its remand to the three-judge district court sitting in the eastern district of South Carolina.

It is as clear as the noonday sun in a cloudless sky that Judge Parker's assertion that when a State opens its schools to children of all races and grants to them freedom to choose the schools they attend, its action in so doing does not violate the equal protection clause of the 14th amendment and is absolutely sound. This is so because when it takes such action, the State treats all persons of all races exactly alike under like conditions, and thus fulfills both the letter and the spirit of the equal protection clause. No amount of judicial or bureau-

cratic jargon and sophistry can erase this obvious truth.

Moreover, Judge Parker's declaration is faithful to the proposition that the Constitution decrees that Americans are citizens of a free society and not the hapless and helpless subjects of judicial and bureaucratic oligarchies.

It is worthy of observation at this point that when the Brown case itself was remanded to the court in which it originated, the three-judge U.S. District Court sitting in the District of Kansas revealed itself to be in complete agreement with Judge Parker's analysis of the Brown case by making the following statement:

> It was stressed at the hearing that such schools as Buchanan are all-colored schools and that in them there is no intermingling of colored and white children. Desegregation does not mean that there must be intermingling of the races in all school districts. It means only that they may not be prevented from intermingling or going to school together because of race or color.
>
> If it is a fact, as we understand it is, with respect to Buchanan School that the district is inhabited entirely by colored students, no violation of any constitutional right results because they are compelled to attend the school in the district in which they live. (139 F. Supp. 468, 470)

It is noted, in passing, that in *Bell* v. *School City of Gary*, 324 F. 2d 209, *Deal* v. *Cincinnati Board of Education*, 369 F. 2d 55, and other well considered cases able Federal courts rendered decisions in full harmony with the sound views expressed by Judge Parker in the Briggs case notwithstanding the fact that in one or two cases the court has misapplied these principles of law.

It is apparent from the Swann case, which was handed down on April 20, and every other decision of the Supreme Court of the United States on this subject, that a Federal court or the Department of HEW has no jurisdiction to compel a local school board to do anything unless that local school board arbitrarily or unreasonably discriminates against children by denying children admission to a school which it operates because of their race. That is in line with all the other decisions of the Supreme Court on this point.

[Disturbance in the visitors' galleries.]

The PRESIDING OFFICER (Mr. BUCKLEY). Will the Senator from North Carolina suspend? The Chair wishes to remind those in the galleries once again that under rule XIX the Chair is required to maintain order in the Senate. That means absolute quiet. If the rule is not observed, the Chair will be obligated to require that those causing the disturbances and noise be removed.

The Senator from North Carolina may proceed.

Mr. ERVIN. Some of the Federal courts inferior to the Supreme Court are now attempting to rob schoolchildren and their parents of the liberty to select schools embodied in the freedom of choice or open enrollment concept. For example, the Fourth Circuit Court of Appeals declared on July 11, 1969, in the case entitled Hawthorne against Lunenberg that "the famous Briggs against Elliott dictum—adhered to by this court for many years—that the Constitution forbids segregation but does not require integration, is now dead."

In this quotation from the Hawthorne case, the Fourth Circuit Court of Appeals was referring to the constitutional principle enunciated by Judge Parker in these words:

> Nothing in the Constitution—takes away from the people the freedom to choose the schools they attend. *Briggs* v. *Elliott*, 132 F. Supp., 776, 777.

I make this observation: If this constitutional principle is now dead, it was murdered by judicial activists in violation of the equal protection clause of the 14th amendment itself. This is so because no man who is willing to give words their obvious meaning can find anything in the equal protection clause which deprives any individual in the United States of the freedom to choose the public school he attends or any other freedom. Indeed, as I have pointed out, this clause relates solely to State and not to individual action.

Judicial activists cite the opinion of Justice Brennan in Green against County School Board of New Kent County, 391 U.S. 430, as a pronouncement of the Supreme Court that the Brown case requires all public schools to be compulsorily integrated if both black and white children of school age are obtainable and that all "freedom of choice" plans are automatically unconstitutional.

I would point out that this case laid down as the applicable constitutional principle that the only obligation resting upon a State which maintained a segregated system on May 17, 1954, was to convert that system to a unitary school system, a system in which admission to its schools is determined on a nonracial basis. I submit that that is exactly what Chief Justice Burger stated time and time again in his opinion in Swann against Charlotte-Mecklenburg Board of Education.

I would have to confess that I think that the Green case misapplied that the principle of constitutional law to the facts of the case, while professing to adhere to and enforce that principle of constitutional law.

I shall not undertake to analyze the Green case in detail. If one desires to speak with assurance concerning it, he must limit his remarks to these observations: Its facts are plain; its verbiage is ambiguous and murky; it lays down no understandable or workable rule.

New Kent County is a rural county in eastern Virginia which possesses only two schools. One of these schools, the New Kent School, is designated by the opinion as a "white" school, and the other, the Watkins School, is designated by the opinion as a "Negro" school. Three years before the opinion was written, the School Board of New Kent County completely removed from its school system all State-imposed segregation, and adopted a "freedom of choice" plan which allowed each black and white school child in New Kent County to attend whichever school he chose to attend.

The district court and the Fourth Circuit Court of Appeals adjudged this freedom of choice plan valid, and the Supreme Court reversed their rulings and remanded the case to the district court with a statement that the school board must be required to "fashion steps which promise realistically to convert promptly to a system without a 'white' school and a 'Negro' school, but just schools." I will not undertake to determine whether the case constitutes a solemn adjudication that the words "just schools" imply that all schools must be black and white schools where black and white children are available for coercive mixing.

I will make certain comments, however, concerning the only real reason given by the opinion for the rejection of the school board's "freedom of choice" plan.

The opinion declares that such plan did not constitute an "adequate compliance" with the responsibility imposed upon the school board by the second decision in the Brown case (347 U.S. 294, 300–301), "to achieve a system of determining admission to the public schools on a nonracial basis" because not a single one of the 550 white children in the county had chosen to attend Watkins School, and only 115 of the 740 black children in the county had chosen to attend the New Kent School.

Despite this ruling, it is as clear as the noonday sun in a cloudless sky that the most effective way "to achieve a system of determining admission to the public schools on a nonracial basis" is to open the public schools to children of all races, and allow them or their parents to choose the schools they attend. Oceans of judicial sophistry cannot wash out this plain truth.

If the Green case means anything, it means that freedom of choice plans are valid if black and white children choose to mix themselves in public schools in proportions pleasing to Supreme Court Justices, but are invalid if black and white children exercise their freedom of choice in a manner displeasing to Supreme Court Justices.

Obviously, the United States cannot continue to boast that it is a free country if the freedom of its people hangs on such an arbitrary and tenuous judical thread.

I wish to call to the attention of the Senate a cartoon and editorial which appeared in the Washington Star on June 23, 1968, and which are highly pertinent to the subject under consideration. The cartoon depicts a black-robed Federal Judge who presides over a classroom inhabited by small children, banging his gavel on the teacher's desk and declaring in stern judicial language: "This court will come to order."

I deeply regret that the format of the RECORD does not permit reproduction of the cartoon for the edification of Senators. Fortunately, however, I can have the editorial reproduced in the RECORD.

Therefore, I ask unanimous consent that the editorial which is entitled "Our Judges Should Stick To Their Judging," be printed at this point in the RECORD.

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

Eleven months ago the American Association of School Administrators, with some 17,000 members around the country strongly urged that an appeal be taken from Judge Skelly Wright's decision in the District school case.

The association said that the decision "usurps the prerogatives of boards of education and school administrators" and, further, that Judge Wright's educational theories are "wrong and dangerous."

Now, a year after the ruling, an appeal will be heard this week by the United States Court of Appeals. What the result will be is, of course, uncertain. But one may at least hope that the appellate judges will return control of the Washington schools to the school authorities, and that Judge Wright will be encouraged to devote himself to his judicial knitting.

Judge Wright has not been the only federal judge to get into the business of running or trying to run public school systems. The Supreme Court and the Fourth Circuit Court of Appeals also got in a few whacks this year.

The case of Brown vs. Board of Education was decided by the Supreme Court in 1954 and an implementing decision, known as Brown II, came down a year later.

The 1954 Brown ruling held that segregated public school systems imposed or required by state or local law were in violation of the Fourteenth Amendment and therefore unconstitutional. Brown II decreed that such segregated systems must be abolished. The court did not say, however, that compulsory segregation must be replaced by compulsory integration.

John J. Parker, then chief judge of the Fourth Circuit, construed the Brown decision in this language: "It (the court) has not decided that the states must mix persons of different races in the schools or must require them to attend schools or must deprive them of the right of choosing the schools they attend. What it has decided, and all that it has decided, is that a state may not deny to any person on account of race the right to attend any school that it maintains. * * * Nothing in the Constitution or in the decision of the Supreme Court takes away from the people the freedom to choose the schools they attend."

Chief Judge Parker was a distinguished jurist, not a man to bypass or undermine Supreme Court rulings. A few years before his death in 1958 he was awarded the American Bar Association's gold medal for "conspicuous service to American jurisprudence." But in undertaking to construe Brown, Judge Parker spoke too soon. He couldn't foresee, of course, what the Supreme Court would say in May 1968 in the case of Virginia's New Kent County, and he would have been horrified to read that opinion.

New Kent is a small rural county with only two schools for its 740 Negro and 550 white pupils—New Kent School on the east side of the county for whites and George W. Watkins School on the west for Negroes. There is no residential segregation in the county.

New Kent, as it had to do, went along for several years after Brown with the Virginia Legislature's various efforts to avoid school desegregation. But three years ago the county adopted a freedom of choice plan. There has been no claim that the plan did not offer a truly free choice or that it was applied in any discriminatory way. No white children transferred to the Watkins School. But in 1967 a total of 115 Negro children applied for and were enrolled in New Kent. This was up from 35 in 1965 and 111 in 1966. To sum it up, no white children have gone to the "colored" school, but slightly more than 15 percent of the Negro children were attending the "white" school at the end of this year's term.

In an ambiguous opinion, Justice Brennan said this was not good enough.

He did not, and indeed he could not, properly say that a bona fide freedom of choice plan, such as New Kent's, is unconstitutional. In fact, he did not cite any specific constitutional basis for holding that the New Kent system wouldn't do.

He said the plan placed a "burden" on children and their parents—the burden of applying for admission to one school or the other if they wanted to switch. He did not stress the point that the parents of 115 Negro children did not find this too burdensome last year. He also suggested that the county should adopt some kind of "zoning" system, although he was very vague about this. And without more ado, he set aside a ruling by the Fourth Circuit which had upheld the New Kent plan.

So much for that. But what is it that New Kent County is supposed to do that will satisfy the learned justices of the Supreme Court when they doff their judicial robes and sit as a local school board? Justice Brennan didn't say. The county authorities are left in the dark. But we have several suggestions. (1) The ruling applies only to states whose schools formerly were segregated by law, which means the southern and border states. If this is what the law now requires in those states, why is it not required in all states? (2) This decision, although it doesn't spell it out, clearly commands compulsory integration, and this without specifying any constitutional basis for the command. Judge Brennan did cite some language from Brown II, but Brown II is not the Constitution. (3) The court is saying, though not in so many words, that some white children in New Kent County, regardless of their wishes, must be compelled by the local authorities to attend the "colored" school, and that more than 115 Negro children, regardless of their desires, must be compelled to attend the "white" school. Precisely what racial "mix" will be satisfactory? Again, the justices in their infinite wisdom did not say. We suspect they haven't the foggiest notion. We also suspect that what they have done will play hob with New Kent County's public school system and the education of both its black and white children.

Another judicial shocker, which reinforces our belief that judges, especially eager-beaver judges, should stay out of the schoolroom, has just come down from the Fourth Circuit.

The effect of this 5-to-2 ruling in a Norfolk case is to cut down the neighborhood school concept. Again, the court majority uses weasel words. It says that the assignment of pupils to neighborhood schools is a sound concept. But it adds that this is not true if purely private discrimination in housing keeps Negroes out of a given residential area. How does private discrimination, as distinguished from public or state discrimination, offend the Constitution? The majority judges, of course, do not say. But we note with interest the dissenting opinion by Judge Albert V. Bryan, who said the court was guilty of "usurpation", and that the majority through its decision "once again acts as a school board and as a trial court, and now is about to act as a city planning commission." This last presumably refers to the problem of how to bus pupils in Norfolk, which has no school bus system.

To sum it up, federal judges have a constitutional duty and the competence to strike down any law which imposes school segregation. They have neither the duty nor the competence to demand compulsory integration and to run the schools by judicial fiat. The sooner the judges recognize this, if they ever recognize it, the better it will be for our system of public education.

[Disturbance in a visitors' gallery.]

The PRESIDING OFFICER. Quiet will be maintained in the gallery.

The Sergeant at Arms will please clear the gallery of those causing the disturbance.

The remaining guests in the gallery are reminded that the Chair has the obligation, under the rules of the Senate, to maintain order, and intends to do so.

Mr. ERVIN. Mr. President, in passing from this phase of my remarks, I note that since it is authorized by congressional legislation to extend Federal financial aid to public school activities, the Department of Health, Education, and Welfare administers the provisions of title VI of the Civil Rights Act of 1964, which deals with nondiscrimination in federal assisted programs.

An observant and wise Federal district judge, J. Robert Elliott, of the middle district of Georgia, who performs his judicial tasks where people live, move, and have their being rather than in some ivory tower, entered a trenchant and illuminating interim opinion a short time ago when the Fifth Circuit Court of Appeals remanded the case of United States against Board of Education of Crisp County, Georgia, to the U.S. District Court for the Middle District of Georgia with directions that Judge Elliott reconsider his former ruling in the light of the most recent decision of the Court of Appeals and the Supreme Court dealing with school desegregation.

In an order requiring the school board to submit a new plan of desegregation, Judge Elliott made an accurate and penetrating analysis of the tragic impact of judicially coerced integration upon law and public school education. I quote his words:

A review of these decisions shows that it is intended that integration be brought about in some way by school administrators as the first order of business. Problems of money, problems of transportation, problems of finding competent teachers willing to staff completely integrated schools, problems of political and emotional ramifications and the myriad frustrating difficulties peculiar to public education, and even the substantial objections of those thought to be benefited, are either ignored or brushed aside. We are told not to be "color blind", but to be "color conscious". The three R's long thought to be the reason for the existence of the public school system have been eclipsed by the one big R-Race. Integration is primary. Education is secondary. And through it all is the clear implication that Federal Courts are competent to design, supervise and administer plans for the integration of all school systems within our jurisdiction regardless of the diverse and complex problems presented. As for myself, I disavow any such occult power and am convinced that a fairly administered freedom of choice plan is the best answer and that the "immediate total integration at any cost" approach must inevitably result in serious damage to the public school system. However, we are bound by the decisions of the Supreme Court and the Court of Appeals for the Fifth Circuit, so we will make one more drag of the judicial claw across this sensitive area.

The judicial activists and the crusading bureaucrats have virtually taken over the public schools of the South.

They arbitrarily establish numerical or percentage quotas based on race for specified schools, and compel school boards to assign black and white administrators and teachers, and black and white children to these schools in num-

bers or percentages sufficient to meet these racial quotas.

If neighborhood schools are located in racially mixed school districts, they compel school boards to force children residing in the districts to attend their neighborhood schools even in instances where some of the children have valid reasons for assignment to schools elsewhere.

If neighborhood schools are not located in racially mixed districts, they compel school boards to resort to geographical rezoning, to bus schoolchildren from one school to another or from one school district to another, and to "pair schools." The sole objective of each of these courses of action is to mix black and white children in the same schools, and each of them requires that substantial numbers of black and white children be denied the freedom to attend the neighborhood schools nearest their homes because children of their race are needed to integrate schools elsewhere.

Let me explain what each of these courses of action involves.

In geographical rezoning, Federal judges and HEW officials compel school boards to create new geographical districts or zones, gerrymandered if necessary for the purpose, to embrace racially mixed residential areas, and to make arbitrary assignments of black and white children to the various schools within the newly created districts or zones, even though such arbitrary assignments deny substantial numbers of the children the right to attend the neighborhood schools nearest their homes and require them to travel substantial distances to reach the schools to which they are assigned.

Some of the judicially and bureaucratically imposed geographical zoning plans thrust grave hardships upon schoolchildren and their parents. Others are irrational. Moreover, some imposed in the fifth circuit where judicial activism runs rampant even imperil the safety of schoolchildren.

I mention only a few of the numerous instances which prove the validity of these observations.

The School Board of Raleigh, the capital of North Carolina, was coerced by HEW to adopt new geographical zoning by the threat of cutting off Federal funds otherwise available to it. Under the HEW-coerced geographical rezoning plan, the school board in Raleigh had to deny to numerous children, both black and white, the right to attend their neighborhood schools, and to assign them to schools located substantial distances from their homes. Two boys who reside only four blocks from a high school were assigned to another high school 4½ miles distant from their home. When their father made requests in their behalf that they be assigned to their neighborhood high school instead of the distance high school, he received this response from the school authorities in respect to each of his sons:

> I regret to inform you that your request for transfer of school assignment * * * for your child has been denied. * * * Honoring your request would have resulted in exposing your child to fewer students of a different race than he would be exposed to in the school to which he has been assigned for the next year.

The father wrote me a letter in which he pointed out that the denial of his request for the transfer of his sons to their neighborhood high school compelled them to walk 9 miles daily to and from the distant high school, despite the intervening traffic hazards. He then put to me a question which I now in turn put to the Senate: Why should children "be herded around like cattle and shifted like pawns in a chess game?"

I will now call attention to a few judicial decisions in the fifth circuit where the courts are dominated by judicial activists of highly immoderate attitudes. They compel school boards to create geographical zones sufficient to "produce integration of faculties, staff, facilities, transportation, and school activities such as athletics, along with the integration of students"—*Adams* v. *Matthews*, 403 F. 2d 181—even though the geographical districts are so irrational as to compel little children to imperil their safety by crossing hazardous railroad tracks, bridges, and bayous—*U.S.* v. *Indianola Municipal School District*, CA–5, April 11, 1969, No. 25,655; *U.S.* v. *Greenwood Municipal School District*, CA–5, February 4, 1969, No. 25,714—ignore the density of population in the zones, the proximity of the residences of school children to schools, and natural boundaries created by God; and deprive school boards of the ability to make maximum use of existing school buildings—*U.S.* v. *Indianola Municipal School District*. supra; *Henry* v. *Clarksdale Municipal School District*, CA–5, March 6, 1969, No. 23,255.

Indeed, the Court of Appeals for the Fifth Circuit intimates in the Greenwood Municipal School District case that the equal protection clause of the 14th amendment requires school boards to give "all negro students a desegregated education," regardless of what burdens such action would impose upon them, their parents, other schoolchildren, the parents of other schoolchildren, and the taxpayers.

Moreover, the same court makes the astounding declaration in the Indianola Municipal School District case that even nondiscriminatory action of a school board is unconstitutional if it fails to result in substantial desegregation.

When they require school boards to resort to the busing of students, Federal judges and HEW officials compel the school boards to deny to substantial numbers of black and white children the right to attend their neighborhood schools, and to transport them by bus to other schools in the district in which they reside, or to other schools in other districts for the purpose of altering the racial composition of their neighborhood schools, or the racial composition of the schools to which they are transported.

When they require the pairing of schools, Federal judges and HEW officials compel school boards to swap certain grades in a school located in a predominately black residential area for certain other grades in a school located in a predominately white residential area. For example, they may require a school board to transfer grades 1 through 4 from school A to school B, and grades 5 through 8 from school B to school A.

In their zeal for compulsory integration of schools, Federal judges and HEW officials have even assumed overlordship over the property of the public schools of the States. In many cases, they compel school boards to close public schools attended in predominate numbers by children of one race, and to transfer such children to other public schools attended in predominate numbers by children of the other race. In so doing, they regard with utter disdain the fact that the schools which are closed were built with the hard-earned dollars of the taxpayers, and the further fact that the closing of such schools deprive the people of the community of any community center.

Some time ago, under pressure from HEW, the School Board of Hyde County, N.C., undertook to close two schools black children had been attending and to force the black children to attend a predominately white school located elsewhere in the county. This action evoked violent demonstrations by black citizens of Hyde County who demanded that the closed schools be reopened and that their children be permitted to attend them. Events of this nature have been inspired by similar action in other areas.

Sometimes one encounters statements in desegregation cases that courts only enforce plans for desegregation presented to them by school boards. Candor compels me to say that these statements savor of hypocrisy. The truth is that the plans are dictated by Federal judges, and are presented by school boards simply because their members sit beneath Damoclean swords. The members of the school boards know they are subject to being fined or jailed for contempt of court if their official action is displeasing to Federal judges. As a consequence of this, it requires great patriotism for any person to serve on a school board nowadays.

Even apart from constitutional considerations, Federal judges and HEW officials ought to stop taking over and exercising the functions of school boards. This is so because they lack the competence to operate schools. The validity of this observation is made manifest by the arbitrary guidelines of HEW, which exalt the integration of the bodies of schoolchildren above the enlightenment of their minds; and the decisions of judicial activists which mommick educational processes almost as badly as they mangle the Constitution.

I yield at this point to the temptation to comment briefly upon one of these decisions, *Hobson* v. *Hansen*, 269 F. Supp. 401, where Judge Wright uses 118 pages to instruct the Board of Education of the District of Columbia as to how it should perform its "constitutional obligation to abolish de facto segregation produced in the public schools of the District by prevalent residential patterns, and as to how it should teach the children of the District after its schools are desegregated." Judge Wright adjudges, in essence, among other things, that the Constitution now forbids a public school to extend to bright or diligent students any opportunity to learn anything more than it attempts to teach to dull or lazy students.

I challenge the validity of this adjudication. Gov. Charles Brantley Aycock, of North Carolina, was right when he as-

serted that the highest of the inalienable rights of the American people is the "right of each individual to make of himself all that God gave him any possibility of being." I deny that the Constitution of my country undertakes to rob children of this right by imposing upon them the equality of inferiority.

Since they treat all parents and children of all races alike under like conditions, freedom of choice or open enrollment plans are in perfect accord with the equal protection clause of the 14th amendment, which merely forbids States to treat differently persons similarly situated. This being so, Federal judges and HEW officials violate the equal protection clause when they nullify freedom of choice plans and undertake to impose on State school boards affirmative obligations to commingle black and white children in public schools.

It is obvious, moreover, that Federal judges and HEW officials actually force school boards to violate the equal protection clause as interpreted by the Supreme Court in the Brown case when they compel school boards to employ such programs as large scale geographic rezoning, the busing of children, or the pairing of schools. These programs require school boards to deny to substantial numbers of children the freedom to attend their neighborhood schools and assign them to other schools because children of their race are needed to desegregate the other schools. Consequently, these programs discriminate against the children affected by them because they deny those children admission to their neighborhood schools on account of their race.

There is nothing in the Constitution which requires, or even authorizes, Federal judges and HEW officials to substitute federally coerced school integration for outlawed State-imposed school segregation. Moreover, there is nothing in the Constitution which confers upon Federal judges or HEW officials the autocratic power to deprive schoolchildren and their parents of the freedom to determine for themselves how their constitutional and legal rights are to be exercised. Yet this is precisely what Federal judges and HEW officials do when they assume authority to nullify freedom of choice plans, deny schoolchildren the liberty to attend their neighborhood schools, and compel them to attend schools other than those chosen by them or their parents.

The actions of Federal judges and HEW officials, which I have enumerated, are unjust and unwise as well as unconstitutional.

Governmental action which visits the sins of the guilty upon the innocent is repugnant to justice. Yet that is what HEW officials intend to do when they deny the benefits of Federal financial assistance to innocent children merely because the members of public school boards charged by law with the duty of operating public schools with wisdom disagree with their self-manufactured views and arbitrary guidelines in respect to the desirability of compulsory desegregation or the particular methods of achieving it.

In so doing, they not only punish the innocent children for things for which they are not remotely responsible, but they thwart the primary purpose Congress had in mind in authorizing Federal financial assistance to public schools; that is, the promotion of the education and welfare of disadvantaged children. As every intelligent man knows, disadvantaged children suffer the most when HEW officials deny Federal financial assistance to the school systems operating the schools they attend.

When HEW officials cut off Federal funds and they and Federal courts deny to children the freedom to attend their neighborhood schools, and herd them around like cattle and shift them about like pawns in a chess game, they seriously impede their education.

Knowing as I do the insatiable hunger of nonelective Federal officials for power, I give this warning to those who live in the North, in the East, and in the West. When the judicial activists and crusading bureaucrats reduce the South to a state of vassalage, they will not sit down like Alexander the Great and weep because they can find no other worlds to conquer. They will turn their attention to the North, the East, and the West, take over and exercise the functions of their school boards, and herd their children around like cattle and shift them about like pawns in a chess game.

For this reason, it is highly advisable for northern Senators and Representatives to join me in my effort to put an end to judicial and bureaucratic tyranny, and restore to the States their right to operate their public schools in a manner consistent with wisdom and the true interpretation of the equal protection clause of the 14th amendment.

Let me enumerate the things which my amendment will do.

If it is enacted, the amendment will restore to the local school boards of the States their constitutional power to administer the public schools committed to their charge without impairing in any way their constitutional obligation under the equal protection clause of the 14th amendment to treat all schoolchildren and all parents of all races in like manner under like conditions. In so doing, the amendment honors and enforces the truth proclaimed by the Supreme Court in *Texas* v. *White*, 19 L. Ed. 227, 237, that "the Constitution in all its provisions, looks to an indestructable union composed of indestructable States."

If it is enacted, the amendment will confer on parents the right to choose the public schools their children attend. In so doing, the amendment will honor and enforce the truth proclaimed by the Supreme Court in Pierce against Society of Sisters, 268 U.S. 510, that parents have a right to a voice in the upbringing and education of their children. After all, God gives the children to parents and not to judicial activists and crusading bureaucrats, and parents have more interest in their upbringing and education than any other human beings anywhere on the face of this earth.

If it is enacted, the amendment will secure to children, the right to attend the public schools chosen by their parents. In so doing, the amendment recognizes the further truth proclaimed by the Supreme Court in Pierce against Society of Sisters, supra, that children are not the mere creatures of the state. After all, the father of the school boys in Raleigh, N.C., was right when he declared that children ought to "to be herded around like cattle and shifted like pawns in a chess game" to satisfy the undefined notions of judicial activists and crusading bureaucrats concerning compulsory integration.

If it is enacted, the amendment will end the perversion of the equal protection clause of the 14th amendment by judicial activists and crusading bureaucrats.

The bill is in perfect accord with the Constitution. Moreover, it makes a substantial contribution to the constitutional ideals that all Americans of all races shall be members of a free society and that none of them shall be the hapless and helpless subjects of judicial or bureaucratic oligarchies.

The amendment is designed to accomplish these things by restoring freedom of choice to its rightful place in the law of the land, and by placing certain prohibitions upon Federal judges and executive officials with respect to the busing of children, and the closing of schools.

Congress is authorized to do these things by the fifth section of the 14th amendment, which expressly empowers Congress to "enforce, by appropriate legislation" the equal protection clause; the first section of article III of the Constitution, which authorizes Congress to prescribe the jurisdiction of the inferior courts created by it, *Chisholm* v. *Georgia*, 2 Dall. (U.S.) 419, 432 (1793); *Turner* v. *Bank of North America*, 4 Dall. (U.S.) 8 (1799); *Ex Parte Bollman*, 4 Cranch (U.S.) 75, 93 (1807); *Cary* v. *Curtis*, 3 How. (U.S.) 236, 245 (1845); *Sheldon* v. *Still*, 8 How. (U.S.) 441 (1850); *Kline* v. *Burke Construction Co.*, 260 U.S. 226, 234 (1922); *Lauf* v. *E. G. Skinner & Co.*, 303 U.S. 323, 330 (1938); *Lockerty* v. *Phillips*, 319 U.S. 182 (1943); and *Yakus* v. *United States*, 321 U.S. 414 (1944); and the Second Section of Article III of the Constitution, which vests Congress with legal power to regulate the appellate jurisdiction of the Supreme Court, *Wiscart* v. *D'Auchy*, 3 Dall. (U.S.) 321 (1796); *Durousseau* v. *United States*, 6 Cranch 309 (1810); *Barry* v. *Mercein*, 5 How. (U.S.) 103, 119 (1847); *Daniels* v. *Railroad Co.*, 3 Wall. (U.S.) 250, 254 (1866); *Ex Parte McCardle*, 6 Wall. (U.S.) 318 (1868); *The Francis Wright*, 105 U.S. 381, 386 (1882); *Kuntz* v. *Moffitt*, 115 U.S. 487, 497 (1885); *Cross* v. *Burke*, 146 U.S. 82, 86 (1892); *Missouri* v. *Pacific Railway Co.*, 292 U.S. 13, 15 (1934); and *Stephan* v. *United States*, 319 U.S. 423, 426 (1943).

Let me emphasize that my amendment is in perfect harmony with the equal protection clause. This clause applies only to State action which is arbitrary or invidious, and, hence, it leaves a public school board, acting as a State agency, entirely free to assign students to its schools by any method satisfactory to itself if such method is not arbitrary or invidious. A public school board acts arbitrarily or invidiously if it assigns students to its schools for racial reasons, but

a public school board does not act arbitrarily or invidiously if it assigns students to its schools for nonracial reasons, such as the promotion of the efficiency of school administration, the economy of school administration, or the convenience of the students or their parents. This being true, the equal protection clause does not impair in any way the power of a public school board to assign children to the public schools it operates in accordance with an open enrollment plan.

It is necessary for Congress to adopt my amendment to protect public school systems and children from "the love of power and proneness to abuse it" of judicial activists and crusading bureaucrats. The amendment would do this by granting to parents of all races the freedom to choose the public schools their children attend, and by depriving Federal judges and the Department of Health, Education, and Welfare of the power to deny to any child of any race the freedom to attend the public school chosen by his parents. In so doing, the amendment would exalt freedom above governmental tyranny and make effective to a substantial degree the constitutional objective that Americans of all races shall be members of a free society. Moreover, it would do these things in complete harmony with the equal protection clause of the 14th amendment whose only command is that States treat in like manner all persons similarly situated.

My amendment merits the support of every Senator and Representative who believes that it is either unconstitutional or unwise for Federal judges and bureaucrats to herd children around like cattle or shift them about like pawns in a chess game. Its adoption would restore peace to the South and prove that all of the United States is one nation under one flag and one Constitution.

Mr. PELL. Mr. President, I have listened with interest to the remarks of the Senator from North Carolina. I realize the depth of his knowledge and experience in this field.

Basically to my mind his amendment is a freedom of choice amendment. I understand that freedom of choice has been found by the Federal courts to be an unacceptable alternative to a desegregation plan when the freedom of choice is utilized merely as a means to continue some form of segregation.

The Senator from North Carolina cited at some length the open enrollment plan in Massachusetts, a plan with which I am familiar inasmuch as Massachusetts is immediately to the north of my State. The Senator cited that example as a means of allowing greater segregation of the schools. But in effect that plan was designed for just the opposite result, although it has not had a great deal of success.

The major difference behind the adoption of that plan and the proposal of the Senator from North Carolina allowing freedom of choice is that the Senator's proposal would allow the States to continue to evade desegregation of the schools, and to my mind that would be an incorrect course. Therefore, as manager of the bill, I am opposed to the amendment.

Mr. ERVIN. Mr. President, a communication was had this morning by the Legislative Reference Service of the Library of Congress with the assistant superintendent of the Boston schools, and the assistant superintendent of Boston schools informed the Legislative Reference Service that under the open enrollment policy of Boston any child may transfer from one school to another if two things coexist: First, if a seat is available at the school of his choice and, second, a suitable course is available at the school of his choice.

How can it be constitutional in Boston and unconstitutional in North Carolina to assign children to schools under an open enrollment plan?

With reference to the statement my good friend made about freedom of choice, which is identical with open enrollment, I will say that the Court declared in the Green case that children may have freedom of choice if they exercise it in a manner satisfactory to the undefined and unstated wishes of Supreme Court Justices; but that if they exercise freedom of choice in a manner pleasing to themselves, but displeasing to the undefined and unstated wishes of Supreme Court Justices, they can have no such freedom.

Mr. President, the reversal of the Green case was a strange thing to happen under a Constitution which declares in its preamble that it is ordained by the people of the United States to preserve the blessings of liberty for themselves and posterity.

Mr. McCLELLAN. Mr. President, I wish to comment only briefly on the amendment.

As I understand it, the Senator's amendment would apply the freedom of enrollment plan as legalized by the statutes of Massachusetts and practiced in the city of Boston, to the rest of the States of the Union. Am I correct?

Mr. ERVIN. The Senator is correct.

Mr. McCLELLAN. I would like to make some brief comments on that question. I serve on the Select Committee for Equal Educational Opportunity. This committee has developed information in the course of our hearings about the statute of Massachusetts as applied in Boston, which actually operates, as the Senator from Rhode Island said, to desegregate the schools.

One school in Boston was predominantly white in 1966. The name of the school was the Solomon Lewenburg Junior High School. Under freedom of enrollment, what happened was that as the Negroes moved in, the whites sought enrollment in other schools and they all moved out. In 3 years the school became 95 percent black and only 5 percent white.

That is what is going on in Boston, and their representatives are now down here insisting—and they are doing it with great success—that the South is the real culprit, and condemning it for everything, and doing nothing about their own situation.

We brought this matter to the attention of the Attorney General when he was testifying before the committee. We reported these facts to him, asking him if he was going to do anything about it. We did the same thing with the Secretary of Health, Education, and Welfare. So they know about it.

Mr. President, do you know what has happened? HEW has been investigating it for a year. When we first took it up with the Attorney General, he said that nobody had filed a complaint. Well, a complaint has been filed by one of the officials in the school up there. No action was taken. None has been taken until this hour. I just called the Justice Department. HEW is making no recommendation. In my judgment, they do not intend to make any. It is a whitewash. It is tantamount to the perpetration of a fraud.

If this freedom of enrollment is legal in Boston, Mass., then every Senator here would vote to make it legal across the Nation. Until we eliminate the double standard and hypocrisy that goes on in this country today in school integration, we can expect no improvement. It is a national shame. Why can we not get action in Boston? Will the Senator from Rhode Island tell me that? I yield for that purpose.

Mr. PELL. Mr. President, I understand that no suit has been filed before the Federal courts on this issue.

Mr. McCLELLAN. Why does not somebody, some citizen of Boston who wants these laws imposed on the South, do it?

Mr. PELL. I can hear him very well.

Mr. McCLELLAN. I talk according to my own sentiments. I do not raise my voice at the Senator. Why does not someone in Massachusetts who wants to impose these conditions on the South bring suit and come in here with clean hands and say, "We want the same thing applied to us?"

Mr. PELL. I wish some citizen of the Commonwealth of Massachusetts would. I happen not to be a citizen of Massachusetts.

Mr. McCLELLAN. I know, but people who are down here from Massachusetts vote against everything that would give the South equality of treatment and impose on the South standards and requirements which they contend are constitutional but not what is practiced in Boston, Mass.

Let me tell you, Mr. President, the day will come in this country when there will be a reckoning, when there will be equal justice; and if this is the proper way to educate children, by busing them miles and miles, in order to produce racial equality, racial balance in the schools, as the courts say, many are certainly not getting a good integrated education in Boston.

Mr. PELL. The Senator is absolutely right.

Mr. McCLELLAN. Many are not getting a good education somewhere else. I would like to hear from some Senators, particularly Senators who are imposing conditions on the South, take the floor and denounce what is going on in the North and what is now the policy of this administration, the double standard that is being practiced and perpetuated.

The way to correct this grave discrimination and injustice is to administer the law equitably and alike in all sections of America.

As long as we continue this antago-

nism toward one section of the country and allow the others immunity, soft pedal the unlawful conditions that prevail elsewhere we are not going to have integrity or equality in the public schools of this Nation. That is what is happening today. That is why the public school systems are deteriorating. We are setting a double standard here at the national level that does not do equity or justice, but which discriminates in favor of most of this Nation, while imposing on and jeopardizing the South.

Mr. President, I ask unanimous consent to have printed in the RECORD at this point an editorial which appeared in the Arkansas Democrat on April 21, 1971, entitled "Anything Goes," which refers to the recent Supreme Court decision.

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

ANYTHING GOES

The Supreme Court said yesterday that when it comes to desegregating schools in the South, anything goes.

Busing, pairing, gerrymandering, abandoning schools, building new ones, assigning faculty . . . Nothing can stand in the way—state laws, acts of Congress, lower court decisions, lack of funds, neighborhood living patterns, or inconvenience.

The Supreme Court said lower courts may order anything for the purpose of eliminating all forms of segregation caused by the dual school system, which, of course, means the South. As always, the court announced it was dealing only with segregation that had come about because of laws. It was not dealing with the big-city ghetto school that was created by neighborhood living patterns because no such case was before it. Another reason is that the court probably thinks, as do even some members of the NAACP Legal Defense Fund, that the schools of Harlem, South Bronx and Chicago can never be desegregated. This very practical matter always makes an impression on judges, it seems, but other practicalities, such as where dirt-poor Southern districts are going to get the money for transportation systems, don't get much consideration.

This time the Supreme Court went further than we dreamed it would go. Although this is the very fuzzy part of the decision, it comes very close to decreeing racial quotas for schools. However, it denies it has done this, saying in fact, that the Constitution does not demand that "every school in every community must always reflect the racial composition of the school system as a whole."

Yet, the court makes it plain that neighborhood schools (Chief Justice Warren Burger calls them "walk-in" schools) will have to go and that district judges will be "concerned with the elimination of the one-race school." Especially significant is that this decision upholds the Charlotte-Mecklenburg integration plan, which called for the purchase of $1 million worth of school buses to move 13,300 school children (9,000 of them in grade school) so that every school would have an enrollment that was 71 per cent white and 29 per cent black. In language that must win a prize for ambiguity, the court says that we must not conclude that its approval of this plan means it approves of racial quotas. The 71–29 ratio was not a "starting point for shaping a remedy." Racial quotas are not called for by the Constitution, the court declares.

We also don't think "starting points" are mentioned in the Constitution. Either all of us are equal before the law, or we aren't. Our color shouldn't make any difference, and certainly it does when a child is going to be forced to go to a different school—one that he wouldn't normally attend—because some judge has prescribed the number of whites and blacks that have to be in each school. This makes school kids the creatures of the state and pretty well wipes out the theory of individual freedom we prize so highly in our country.

We think that now we will see "starting points" laid down by all judges, who are assured from this point on that the Supreme Court will uphold just about anything they require. The Charlotte-Mecklenburg decision will be the guide especially for courts like the Eighth Circuit Court of Appeals, which has already demonstrated its impatience with a moderate approach to desegregation.

Before it right now are appeals from the reasonable desegregation plans now in effect in the Little Rock, North Little Rock and Pulaski County School districts. We can judge how quick this court will seize the precedent of the Charlotte-Mecklenburg decision by the fact that it already has taken the unprecedented step of stopping school construction on demand of some Negro lawyers who said the new buildings would increase segregation. Our reading of the decision makes us believe that all school administrators in Pulaski County had better get ready for wholesale busing in the fall and the breakup of many neighborhood elementary schools.

Mr. McCLELLAN. I also ask unanimous consent to have printed in the RECORD at this point a statement entitled "Monumental Hypocrisy: Boston Mass.," an article which I inserted in the CONGRESSIONAL RECORD, volume 116, part 24, page 33047, together with the letter which I received from Mr. Jerris Leonard on August 24, 1970, which appears on page 33049 of the same date, and also the other letters and documents that were entered in the RECORD at that time by unanimous consent.

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

MONUMENTAL HYPOCRISY: BOSTON, MASS.

In the debates on the Senate floor leading to the establishment of this Committee, the charge was made that the North was guilty of "monumental hypocrisy" in its efforts to force integration upon the South, while the North became increasingly segregated. In defense to these charges of monumental hypocrisy, the question was asked of the South, "What about the continuing efforts to evade the constitutional mandate with 'freedom of choice' and similar plans?"[1] At this point in the hearing record we are confronted with "freedom of choice plans," better known in Boston, Massachusetts, as the "open-enrollment policy."

In August of 1965, Boston, Massachusetts, enacted a Racial Imbalance Act. The law provides for elimination of racial imbalance in the Boston school system. The remedy for failure to eliminate imbalance is that the Commissioner of Education must refuse to certify all State aid for that system. This requirement is unique in the 50 States. Under that law, the State Board of Education voted unanimously to withdraw aid from the Boston school system in 1966. Insofar as I have been able to determine aid was never terminated.

Boston also has a number of programs which have received wide publicity, designed to produce integration between minority groups and suburban students.

That is the facade. That is the image of Massachusetts and of Boston—the city often represented as the cradle of American liberty, which has ostensibly taken great strides to exercise leadership in the nation in the field of quality integrated education. In hearings before the Education Subcommittee of the Senate Committee on Labor and Public Welfare, Boston was pictured in terms of its unique racial imbalance law and its progressive integration programs as well as its open-enrollment policy. The question was then posed as to the net result of these programs.[2]

Let us now look at the realities prevailing in the North and Massachusetts in general and then Boston in particular.

During the Senate debates leading to the establishment of this Committee, another question was asked of the South—"What about the monumental hypocrisy of trying to find some way to develop private schools, or to close the public schools, made by Governors of states, somehow to avoid the constitutional mandate of equal educational opportunity?"[3] The latest available statistics show that the State of New York has 816,600 students in private schools whereas the entire eleven southern states have only 569,700 such students.[4] Massachusetts has done much better in this regard, it only has 234,300 in private schools. This does not, of course, exceed the eleven southern states; it only exceeds by 20,000 students the combined private school populations of Alabama, Arkansas, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia.

What has happened in the City of Boston in response to its much touted drive to achieve quality integrated equal educational opportunity? According to the Department of Health, Education, and Welfare, Boston had 198 schools in 1966. Of these 198 schools, 47 contained more than 50 per cent non-Whites. In 1969, Boston operated 199 schools. Of these 199 schools, 70 contained more than 50 per cent non-Whites. Thus Boston has increased its predominantly minority group schools by 46 per cent while simultaneously publicizing its attempts to provide quality integrated education. In addition, Boston has now achieved 48 schools with more than 80 per cent minority group students. This is the net result of Boston integration "efforts."[5]

There reportedly is a great deal of transportation to achieve integration in the Boston area, but it should be noted that generally the school does not pay for the transportation, and students are allowed to transfer to schools outside the Boston school district. Although this has been touted in connection with inner-city Blacks attending suburban schools, the only group which, generally speaking, can internally finance transfer of its children to schools outside Boston is White, this "White flight" reportedly is what made the Solomon Lewenberg school a 95 per cent Black school.[6] It should also be noted that Massachusetts General Laws Annotated, Chapter 71, Section 37D, provides that "no school committee or regional school district committee shall be required as part of its plan to transport any pupil to any school outside its jurisdiction or to any school outside the school district established for his neighborhood, if the parent or guardian of such pupil files written objection thereto with such school committee." Thus the neighborhood school is preserved for those who want it—in Boston.

We have heard much concerning the necessity of faculty desegregation in the South, and of the injustices perpetrated when Black teachers lose their positions due to elimination of need for teachers in many instances when schools are merged. These Black teachers who seem to be surplus may wish to know that Boston is in great need of Negro teachers. Boston has only 5 per cent Negro teachers and 28.7 per cent Negro students.[7] If the law is enforced equally across the United

Footnotes at end of article.

States there obviously is a great need for Black teachers in Boston.

I now turn to examination of the legal response, both from Federal and State authorities. As indicated in the hearing, this matter came to my attention through the testimony of Neil Sullivan, Commissioner of Education in Boston, Massachusetts. In view of the facts as they have developed, I am extremely curious as to the reasons for which the Commonwealth of Massachusetts has declined to take action to implement its own laws.[8] Boston and Massachusetts officials have watched Boston segregate, with legally sanctioned freedom of choice as a prime tool to achieve their segregation. They have established racially identifiable schools in Boston. The State Commissioner of Education has complained of this policy to our Committee; yet the State, whatever its actions may have been under its law, has only achieved increased segregation in Boston. Federal officials did not bring Boston to the Committee's attention—indeed they apparently did not bother to brief the Attorney General on the Boston situation before his appearance on August 13.

Lest I be misunderstood, I state that this is not a partisan attack on the Republican Administration. They have only been in office since 1969. Segregation caused by legal action in Boston has been apparent and in controversy at least since 1966. State officials have not enforced State laws. Former Justice, and Health, Education, and Welfare officials have not enforced the Federal law in Boston.

The facts requiring action in this case are clear. They were specifically called to the attention of the Civil Rights Division (in the Department of Justice) in December 1969.[9] The response, on January 16, 1970, was that a parent must complain.[10] Such a parental letter was forwarded to the Justice Department on January 22, 1970.[11] It is now September 1970, and no action, other than some kind of an abbreviated investigation, has been slowly taken. I call upon the Administration to explain why its efforts in the North are not at least as vigorous and forceful as is its efforts in the South. Common northern excuses are that the South has had seventeen years to correct their racial problems and the North also should have seventeen years. My answer is that they have had those same seventeen years. In addition, Boston has been in court as early as 1966. They have declined to correct the situation, and indeed have worsened it. Both the Attorney General and Secretary Richardson are publicly committed to enforcing the law nationwide. Is it not time to take action in the North where these flagrant violations are known to exist? They have had eight months to investigate a situation in Boston which would be, under their interpretation of the law, clearly illegal in the South. As we all know, action would long since have been taken if the Boston events had occurred anywhere in the South. We can be sure that no federal funds would be available to any southern city for the 1970 school year, if that city had actively proposed segregation and refused to correct the condition as is the case in Boston.

At this point I wish to turn to a concrete example of the discrimination being practiced against the South. I recently received a letter dated August 20, 1970, from three citizens of McCrory, Arkansas. These citizens live in a farming community very close to McCrory. Because of historical factors not relevant to the present controversy, children of this community attended the schools of an adjacent district, Cotton Plant, rather than the McCrory schools. They receive their mail from McCrory and their telephones are connected with the McCrory exchange. All of their trade is done through McCrory. The children of this community obtained the consent of all necessary local officials in both the McCrory and the Cotton Plant schools to attend school in the McCrory district. McCrory is integrated, as is Cotton Plant, although Cotton Plant apparently has a higher percentage of Black pupils. Due to objections voiced by the Department of Health, Education, and Welfare, McCrory officials reversed their decision and these children will not be allowed to attend the McCrory schools. Let us contrast the situation in McCrory with that in Massachusetts.

Massachusetts General Laws Annotated, Chapter 76, Section 12B, provides ". . . any child may attend the public school where he does not reside upon such terms as the school committee of such town where he does not reside shall fix; . . ." Thus, in Boston, students may transfer not only from one high school to another in the City, they also have legislative approval for transfer out of Boston to the suburbs. I have previously given the figures supplied by HEW which indicate the degree to which Boston has segregated over the past three years. The exhibits reflect the belief of concerned Boston citizens that the open-enrollment policies have substantially increased the degree of segregation in Boston. Mr. Pottinger's letter reflects the opinion of HEW that the open-enrollment policy played a large part in the segregation of the Lewenberg High School. The facts I have related to this point are indeed, to me, astonishing. I had thought that surely the legions of Massachusetts citizens and representatives who preached the value of integration were consistent. Yet I find, to the contrary, that even as they preached Southern integration, they were segregating their own society.

According to *Boston Herald Traveler* and *Boston Globe* reports of allegations made by a mother whose child attends the Lewenberg Junior High School, the situation is even worse than presently set out. This mother testified that conditions in the Lewenberg High School, brought about by open enrollment, were "pure bedlam."[12]

In an effort to remove her child from this place of bedlam, she moved out of the Lewenberg district and attempted to send her child to the Washington Irving School ten blocks from her home. She was refused permission to transfer her child to the district in which she resided, and was forced to send her child back to the Lewenberg school because there were vacancies there and Washington Irving was crowded. We all know why there were vacanies at Lewenberg—Boston officials had aided Whites to leave Lewenberg, thus creating the vacancies. Here we have a concrete example of northern action, as opposed to northern talk. No matter how many meaningless laws are on the Massachusetts books, no matter how many Massachusetts leaders praise the virtue of integration, the deeds in Massachusetts, sadly, repudiate and violate the law, and in the Black mother's case, tragically, imposes and enforces a rank injustice.

While the citizens in Arkansas who wish to attend a school in the town with which they are connected in every way are denied that right, the city of Boston, Massachusetts, not only allows transfers, they then force Black children back into the ghetto schools from which the Whites have been allowed to transfer.

Mr. Pottinger also reported on the situation in Detroit, where the Administration has taken no action.[13] The NAACP has filed suit in Detroit pointing out that "a northern legislature has adopted the judicially discredited southern tactic of interposition and nullification (commonly known as State's rights) . . ."[14]

Not mentioned in the newspaper article is the adoption of a freedom of choice plan by the same Michigan legislature. Children in Detroit are now free to attend schools of their choice in addition to initially attending schools established by legislatively gerrymandered attendance zones. Southern children may not do these things. The NAACP has filed suit based on the belief that the Constitution applies equally in the North and in the South. The Administration has not filed suit in either Boston or Detroit. Why? Does not the Constitution apply equally to all the States—North and South? In theory it does. In practice however, it is not so applied.

One final commentary on equal application of the laws. I have a letter dated August 28, 1970, from Jerris Leonard, Assistant Attorney General Civil Rights Division,[15] in respect to an inquiry contained in a letter from me dated August 26, 1970.[16] In my letter I inquired into Administration policy on hiring and firing of Black teachers. In response, Mr. Leonard quoted to me a portion of a 1969, 5th Circuit, decision. Therein it was stated:

"1. Effective not later than February 1, 1970, the principals, teachers, teacher-aides and other staff who work directly with children at a school shall be so assigned that in no case will the racial composition of a staff indicate that a school is intended for Negro students or white students. For the remainder of the 1969–70 school year the district shall assign the staff described above so that the ratio of Negro to white teachers in each school, and the ratio of other staff in each, are substantially the same as each such ratio is to the teachers and other staff, respectively, in the entire school system.

The school district shall, to the extent necessary to carry out this desegregation plan, direct members of its staff as a condition of continued employment to accept new assignments."

I am sure we all recall, during the previous Administration, the controversy surrounding the Chicago schools refusal to integrate teaching staffs or to assign teachers to different schools in accordance with Federal policy existing in the South by court decree and Administrative guidelines. According to the August 13, 1970, Chicago Sun Times,[17] Chicago has been highly successful in continuing its segregated faculty while the Department of HEW continues to complain loudly and slap the Chicago wrist. In 1969 the Justice Department threatened to sue. It is now getting late in 1970 and Justice is still threatenening to sue, but has not yet done so. Why is there no such suit? I can draw no conclusion except the obvious one—that there is one integration law for the South and another integration law for the rest of the country. If there are those who wonder why there is a virulent third party movement in the South, I submit that the facts contained in this statement are most conducive to it. Both Democrats and Republican administrations have consciously followed a program of forcing integration in the South to an extent apparently not tolerable in the rest of the country. Both parties have been captured by groups which scream for Southern integration, yet refused to integrate their own states. This is a situation—a double standard—which no elected representative of a Southern state can contemplate with less than undisguised disgust for such "monumental hypocrisy."

FOOTNOTES

[1] Omitted.

[2] Omitted.

[3] Omitted.

[4] Digest of Educational Statistics, pp. 30, 31 (OE–10024–69).

[5] Letter from Stanley Pottinger to Sen. McClellan, see Ex. 2.

[6] Testimony of Neil Sullivan, Transcript, page 849–850. See also Ex. 3, 4, 5, 6, 7 and 8, correspondence of Allan Cohen.

[7] Stanley Pottinger letter, Ex. 2.

[8] Ex. 11, excerpt from Civil Rights Commission Report, "Racial Isolation in the Public Schools."

[9] Ex. 6.

[10] Ex. 7.
[11] Ex. 8.
[12] Ex. 12, *Boston Herald Traveler, Boston Globe*, Friday, August 21, 1970.
[13] Ex. 2, page 2.
[14] Ex. 13, *Detroit News*, August 19, 1970.
[15] Ex. 15. Letter to Sen. McClellan from Jerris Leonard, Assistant Attorney General, Civil Rights Division, dated August 28, 1970.
[16] Ex. 14, Letter to Jerris Leonard, Assistant Attorney General, Civil Rights Division, dated August 26, 1970.
[17] Ex. 16.

DEPARTMENT OF JUSTICE,
Washington, August 24, 1970.

Hon. JOHN MCCLELLAN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MCCLELLAN: I would like to thank you for drawing my attention to the fact that the Justice Department may have been in error with reference to the Boston School situation, mentioned at pages 2239-2242 of the hearings before the Select Committee on Equal Educational Opportunity.

Upon reviewing our Boston, Massachusetts file, I have ascertained that we did receive a complaint pertaining to the situation you mentioned.

Pursuant to our normal procedures we deferred our investigation, as the Office of Civil Rights of Health, Education and Welfare had received an identical complaint, and that office was already investigating the matter.

The Office of Civil Rights has completed a preliminary investigation, and we have made arrangements with them to obtain a copy of their investigation.

If our review of the investigation indicates that further action is warranted, we will take such action as is necessary.

I would appreciate it if the hearing's record were corrected to reflect; that we did receive a complaint; that HEW received an identical complaint, and investigated the complaint; and that the Justice Department has made arrangements to review their investigation, and take such further action as is warranted.

Sincerely,

JERRIS LEONARD,
Assistant Attorney General, Civil Rights Division.

DEPARTMENT OF HEALTH,
EDUCATION, AND WELFARE,
Washington, D.C., August 28, 1970.

Hon. JOHN L. MCCLELLAN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MCCLELLAN: This is in response to your request for the current status of Office for Civil Rights activity with respect to the school systems of Boston, Massachusetts; Detroit, Michigan; and New York, New York.

BOSTON

In January, 1970, a complaint was received by Washington OCR that the "open enrollment" student assignment policy of the Boston, Massachusetts school district has resulted in the segregation of black students at the Solomon Lewenburg Junior High School. Upon receipt of the complaint arrangements were made to meet with the Boston Superintendent, and a preliminary investigation was conducted by representatives from OCR's Washington and Boston regional offices on February 2-7, 1970.

Since enactment in 1965 of the Massachusetts Act for the elimination of racial imbalance in the public schools, Boston has entered a long-range program with the stated intention of ensuring that no school has a majority non-white student body, and with the goal of eliminating "a ratio between non-white and other students in public schools which is sharply out of balance with the racial composition of the society in which non-white children study, serve, and work" (statutory language). The main features of this program are a large scale construction program designed to locate schools so as to maximize integration and the open enrollment policy. In addition, a number of non-white children attend public schools outside the Boston district at their own expense but with cooperation of the district officials.

The open enrollment policy provides:

(a) Open enrollment is applicable if the following three conditions are fulfilled:

1. There is an available seat in the desired school.

2. There is a suitable grade and/or course of study in that school.

3. Transportation is provided by the parents.

(b) The principal makes arrangements for the transfer. Information on seat vacancies in the schools is periodically distributed through all communications media.

These measures have not resulted in the correction of the overall imbalance in the district. During 1969-70, Boston operated 199 schools, of which 70 had more than 50% minority students and 48 more than 80%. This compares with 47 schools containing more than 50% non-whites of a total of 198 schools in 1966-67. In addition, for 1969-70 there were 27,276 Negroes (28.7%) of a total 94,887 students, but only 226 Negroes (5%) of a total 4,495 teachers. The district also had 3,205 students of various Spanish language origins and 1,643 Orientals.

Because of the diversion of resources needed to fully investigate so large a district, it was decided to concentrate on the Lewenberg Junior High School. In 1966-67 the racial student enrollment was 736 whites and 384 Negroes. In 1969-70 the enrollment was 633 Negroes, 23 other minorities, and 78 whites. In discussions with the Superintendent he alleged that the change was the result of the open enrollment policy. The investigative team visited the school and confirmed that open enrollment was the cause in conjunction with a substantial change in neighborhood racial residence patterns. While the team noted many educational deficiencies at the school, no comparison was made with a representative sample of other Boston schools, so no conclusions can yet be drawn.

The investigative team has recommended a full scale investigation of the Boston public school system's compliance with title VI of the Civil Rights Act of 1964. At the present time the preliminary report is being studied by the Office of the General Counsel, and a final recommendation to the Director is anticipated within 30 days.

DETROIT

On July 7, 1970, the State of Michigan enacted a measure which in effect defeated a program of school integration in the Detroit Public Schools. Detroit has adopted a system of high school regions beginning September 16, 1970, in response to an act of the state legislature which, as a by-product, would have for the first time largely integrated the high school student bodies.

However, by a 1970 amendment to the act establishing compact neighborhood zones drawn by a commission appointed by the governor, the school board plan was cancelled and the segregated nature of the schools has allegedly been reinforced.

OCR has communicated with various Detroit school officials since passage of the recent amendment. Detroit has been requested to supply more complete details with regard to student assignment policies and results, past, present, and future. This information has not yet been received.

On August 17, 1970, the NAACP (not Legal Defense Fund) filed suit in the U.S. District Court for the Eastern District of Michigan (Detroit) seeking to prevent implementation of the State statute as it affects Detroit's school integration, and also seeking complete implementation of the plan in September, 1970, rather than gradually as proposed. A hearing on a motion for preliminary injunction has been set for August 28, 1970.

NEW YORK

In May 1970 the Regional Director of the Office for Civil Rights received complaints from two sources concerning alleged discrimination in the drawing of community district lines within the New York City school district. The district lines are in the Harlem area of upper Manhattan, the Lower East Side of Manhattan, and Oceanhills Brownsville in Brooklyn.

Representatives of the Office met with complainants on June 1 at which time it appeared that the district lines did not affect the assignment of students to schools since without exception school attendance areas were used in fact to make up districts. The OCR Regional Director believed it necessary, however, to obtain further information and accordingly requested a meeting with the city wide school board. That meeting was held on August 25, attended by four of the five board members, the acting chancellor and other staff of the board. The board denied that there was any valid basis for charges of discrimination including intervening charges which alleged that qualifying examinations hampered the recruitment of teachers from minority groups.

The HEW representatives requested various types of information from the board. The board indicated that it would assemble the information and designate a staff member to serve as contact with HEW to supply such additional information as may be needed.

I appreciated the opportunity to discuss school desegregation matters with you on August 21. If we can be of any further assistance, please let me know.

Sincerely yours,

J. STANLEY POTTINGER,
Director, Office for Civil Rights.

BOSTON, MASS.,
August 14, 1970.

Senator JOHN L. MCCLELLAN,
Senate Select Committee on Equal Educational Opportunities, U.S. Senate, Washington, D.C.

DEAR SENATOR: I believe I have vital information to give your committee in regards to Attorney General John Mitchell's testimony of last Thursday. At that time he stated that the Justice Department have never received a complaint about Boston's segregationist open enrollment policy. As a teacher and project coordinator at the Lewenberg Junior High School community advisory board in Boston, I filed a complaint with the Justice Department last December 29th and they responded to it. I have all correspondence for your worthy investigation and I am available as well as my files if it will be useful to your committee.

ALLAN S. COHEN.

PRESS RELEASE

In response to an article in this morning's Boston Globe wherein U.S. Attorney General Mitchell stated, while appearing before the Senate's Select Committee on Equal Education Opportunity, that his office has never received a complaint about the open enrollment policy as it exists in the Boston School System, I wish to publicly state that the Attorney General was very much in error in making such a statement.

As Project Co-ordinator of the School Community Advisory Board at the Solomon Lewenberg Junior High School in Mattapan on December 29, 1969, I sent letters to both the Civil Rights Division of the Justice Department and the Office for Civil Rights for the Department of Health, Education, and Welfare stating that on behalf of the Advisory Board I wished to request an investigation into the Racial Imbalance Law and the Open

Enrollment Policy as it existed in Boston. I stated in those letters that under the Open Enrollment Policy the Solomon Lewenberg Junior High had gone from 5% black enrollment in 1965 to 95% black enrollment in 1969.

I received a reply from the Justice Department on January 16, 1970 confirming my request for an investigation and advising me that before such an investigation could be made an official complaint from "a parent or group of parents to the effect that his or their minor children are being deprived by a school board of the equal protection of the laws."

A letter was sent to the Justice Department conforming to their request on January 22, 1970 and signed by six (6) such interested parents.

To date, I nor the Advisory Board has received a reply to this formal complaint that the Attorney General claims was never made.

I have copies of all the correspondence mentioned above and will make the same public except for the names of those parents who signed the requested complaint.

It should be made known that the Department of HEW did respond to our request by sending a three (3) man investigating team to the Solomon Lewenberg Junior High during the last week of January and first part of February, 1970.

I would further wish to state that it is quite disheartening when the Attorney General of the United States publicly errs on such an important issue as the one at hand.

HYDE PARK, MASS.,
August 19, 1970.

Senator JOHN L. MCCLELLAN,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MCCLELLAN: Thank you for your prompt reply: Enclosed are copies of the Boston Globe news articles which preceded the press release; the Record American, Herald Traveler, and Boston Globe articles which followed the release; all correspondence to both the Civil Rights Division of the Justice Department and the Office for Civil Rights of Health, Education and Welfare; and a copy of the January 14, 1970 Herald Traveler article announcing the Justice Department complaint made by us.

As noted in the press release that I sent you, the Office for Civil Rights of Health, Education and Welfare did send a team of investigators headed by Mr. Walter J. Patterson, Office for Civil Rights, U.S. Department of Health, Education and Welfare, 7th and D Streets, S.W., Room 3636, Washington, D.C. He, Mr. Horn from the New York Civil Rights Office, and Mr. John Bynoe from the Boston Civil Rights Office visited the school, speaking with faculty, students and parents.

Mr. Patterson seemed very concerned, but as of this date his report has not been released. It would be greatly appreciated and a benefit to all that this report be released immediately; if not publicly, at least to those making the complaint.

I am looking forward to your action on this matter, and as stated before, will be available to you and the Senate Select Committee on Equal Education Opportunity. Thank you again for your concern. Hopefully the problems facing the Lewenberg and all Boston schools can be improved.

Sincerely yours,

ALLAN S. COHEN,
Project Co-ordinator, Solomon Lewenberg Junior High School Community Advisory Board.

SOLOMON LEWENBERG JUNIOR HIGH,
Mattapan, Mass., December 29, 1969.

Mr. GERRIS LEONARD,
Director, Civil Rights Divisions, Justice Department, Washington, D.C.

DEAR MR. LEONARD: On behalf of the Solomon Lewenberg Junior High School Community Advisory Board, we would like to request an investigation by your department into the Racial Imbalance Law of the State of Massachusetts and the Open Enrollment Policy of the Boston School System.

Under this State Law and School Department Policy the Lewenberg Junior High has undergone a change from 95% white student enrollment in 1965 to over 95% black student enrollment today. As parents, students, and teachers on the Advisory Board we wish the best education for all. We believe this can be best achieved through integrated education.

We would like to know the rationale of this law and policy and if possible to have a member of your department meet with us to discuss the problems created by the State Law and School Department Policy at the Lewenberg.

Sincerely,

ALLAN S. COHEN,
Project Co-ordinator.

SOLOMON LEWENBERG JUNIOR HIGH,
Mattapan, Mass., January 22, 1970.

Re JL:CKH:sec DJ 169-36-1 #20-025-7.

Mr. CHARLES K. HOWARD, Jr.
Attorney Education Section,
U.S. Department of Justice,
Washington, D.C.

DEAR MR. HOWARD: In reply to your letter of January 16, to Mr. Cohen, the Advisory Board project co-ordinator, we are pleased with your interest.

As parents who have children at the Lewenberg Junior High, we wish a good education for our children and hope it will be an integrated one.

The Lewenberg being a part of the Boston School Department come under the Open Enrollment Policy instituted by the Boston School System. Under this policy any child may enter any school district in which there is a vacant seat.

The Lewenberg has enrolled many out of district students from schools that are predominately black; at the same time many white pupils have transferred under the Open Enrollment Policy to overcrowded predominately white schools. Therefore, we feel that the present Open Enrollment policy defeats the Racial Imbalance Law of the State of Massachusetts and its goal of an integrated education.

Sincerely,

———— ————.

U.S. DEPARTMENT OF JUSTICE,
Washington, D.C., January 16, 2970.

Mr. ALLAN S. COHEN,
Project Co-ordinator, Solomon Lewenberg Junior High School, Community Advisory Board, Mattapan, Mass.

DEAR MR. COHEN: This is in response to your letter of December 29, 1969, concerning the racial change in Lewenberg Junior High since 1965, the Racial Imbalance Law of the State of Massachusetts, and the Open Enrollment Policy of the Boston School System.

In order for the Department of Justice to conduct an investigation into possible violations of Title IV of the 1964 Civil Rights Act (Desegregation of Public Education) it is necessary that we have a complaint in writing "signed by a parent or group of parents to the effect that his or their minor children . . . are being deprived by a school board of the equal protection of the laws."

It would seem that the racial change at Lewenberg Junior High School since 1965 might well fall into the equal protection qualification. If subsequent investigation proves racial considerations have contributed to this change. At any rate we are unable to tell from your letter whether or not you are a parent of a child attending school in the involved school system or whether perhaps another member of the Committee who is a parent should write us also.

We would also appreciate any other details at your disposal to assist us in determining what action is appropriate. Particularly, we would appreciate a more detailed description of the problem you describe in your letter and the identity of the school department to which you refer.

Thank you very much for bringing this matter to our attention.

Sincerely,

JERRIS LEONARD,
Assistant Attorney General, Civil Rights Division.
By: CHARLES K. HOWARD, Jr.,
Attorney, Education Section.

[From the Boston (Mass.) Herald Traveler, Aug. 15, 1970]

WARNER, HICKS, DEFEND OPEN SCHOOL ENROLLMENT

Director John D. Warner of the Boston Redevelopment Authority and City Councilman Mrs. Louise Day Hicks yesterday defended Boston's open enrollment school policy in the wake of a statement by U.S. Atty. Gen. John N. Mitchell that it was illegal.

Warner also criticized State Education Commissioner Neil Sullivan for what he said was Sullivan's failure to speed up a study of possible revisions to the Massachusetts racial imbalance law.

Mitchell's remark was made Thursday in testimony before the Senate's Select Committee on Equal Educational Opportunity. In an appearance before the committee in May, Sullivan had described the open enrollment plan, which permits Boston parents to enroll their children in any city school they choose.

Mrs. Hicks said yesterday, "Boston's open enrollment policy has not been declared unconstitutional in a court of law. Boston's open enrollment policy enables a student to attend any public school in Boston on a completely free and voluntary basis provided, of course, there is a seat available and that an appropriate course of study is in operation.

"Boston has judiciously attempted to obey both state and federal laws and fortunately there still exists in our great country a judicial system," continued Mrs. Hicks. "Citizens are not dependent upon unwarranted, unproven statements of constitutional officers who should know better."

Sullivan, in his remarks before the Senate committee, said the open enrollment policy was responsible for turning the Solomon Lewenberg School in Mattapan from a predominantly white school to an almost completely black school.

Sullivan said the plan "permitted the mobile-class children to escape from the school, continue to live in their community, but go to all-white schools in Boston on the periphery."

Warner denied this, saying "The Lewenberg School is black because whites have left that section of the city."

Robert Smith, public information officer of the Civil Rights Division of the Dept. of Health, Education, and Welfare, said yesterday the HEW general counsel is considering whether the open enrollment policy constitutes a violation of the 1964 civil rights act, and, if there has, whether it would come under the jurisdiction of HEW or the Justice Dept.

Allen Cohen, a teacher at the Lewenberg School, said he had sent a complaint to Atty. Charles K. Howard of the Justice Dept. Dec. 29 of last year, and said it was possible that Howard turned the complaint over to HEW.

Warner, in an afternoon press conference, said the state's racial imbalance law, which requires that every school be at least 50 per cent white, is adversely affecting Boston's school construction program.

"The city of Boston is not months or days away from a very critical situation insofar as the planning of our school construction program is concerned," Warner said.

"We are now, today, being forced into making unsound planning decisions with respect to the location of new schools, all in a frantic and, at this time, foolish effort to comply with the patently unworkable provisions of the racial imbalance law."

He denied a link between open enrollment and racial imbalance. Sullivan's remarks, he said, were "unbelievably unfair" to the citizens of Boston and showed "shocking unawareness" of the history of the open enrollment policy in Boston schools.

"An inaccurate and unjust appraisal of Boston's efforts to solve the problem of racial imbalance has now been given not only to the Congress but to the nation," Warner said.

He urged Sullivan to move "as swiftly as possible" to permit filing of legislation changing the Racial Imbalance law.

"The law may be great in Pride's Crossing or Beverly Farms, but it doesn't work as far as the city goes," said Warner.

Asked if Mrs. Hicks had been right in her opposition to the Racial Imbalance law before its enactment in 1968, Warner said, "Yes, for the wrong reasons."

Mayor Kevin H. White yesterday reaffirmed his long-standing position that the Racial Imbalance law was in principle sound but unworkable because of the 50 per cent clause.

He also urged a quick study of possible amending legislation.

Warner said a prime example of the harm being done by the law is the necessity to close the Prince School, in the Back Bay, in order to provide white children to racially balance the new Carter School in the South End, due to open in two years.

The Prince School, on Newbury Street, is racially mixed. One of Warner's children is enrolled there.

Warner said the closing of the Prince School would be deleterious in the neighborhood concept of the Back Bay.

"Does the Back Bay remain a neighborhood or become a commercial, transient area?" he said. "A neighborhood has to have a neighborhood school."

The closing of the Prince School, he said, "would have a disastrous effect on the Back Bay as a neighborhood. Families would move out rather than send their kids that far away (to the Carter School). Or they would put their children in private schools."

(From the Boston (Mass.) Record American, Aug. 15, 1970)

WARNER HITS SCHOOL BOSS SULLIVAN

Boston Redevelopment Director John D. Warner yesterday accused State Education Comr. Neil Sullivan of giving "inaccurate, unjust and unfair" testimony in Washington about Boston's racial problems.

Warner angrily charged that Sullivan's testimony to the U.S. Senate Select Committee on Equal Educational Opportunity was "such a distortion of the Boston school situation that it will make the entire problem much more difficult to solve."

The head-on collision of Sullivan and Warner pointed up a quarrel of long standing over what should be done to ease racial tensions in the Boston school system.

Warner said the state's present racial imbalance law is unworkable and that "frantic" and "foolish" attempts to comply with it is driving the city to a crisis in trying to plan for school construction.

The smouldering issue flared up again after Atty. General John Mitchell said that Boston's open enrollment school policy is unconstitutional and allows segregation through city policy.

Mitchell was appearing before the Senate subcommittee when he got into a verbal tussle with Sen. John L. McClellan (D-Ark.). McClellan was attempting to make the point that the administration sends federal agents to the South to enforce desegregation but allows segregation to flourish in the North.

McClellan quoted testimony given on May 21 by Comr. Sullivan who said that the events at the Lewenberg Junior High School in Roxbury was typical of the actual results of the city's open enrollment policy.

Sullivan said the school was almost completely white but that shortly after a few black students moved in the white students moved out and that the school is now 95 percent black.

McClellan demanded to know whether that situation was constitutional and Mitchell answered, "No, sir."

"What are you going to do about it?" McClellan asked. "We have never had a complaint," Mitchell answered.

This statement was challenged by Allan Cohen, a project coordinator for the Community Advisory Board of the Lewenberg School.

Cohen said Mitchell was in error in saying he never received a complaint and that he had sent a letter on Dec. 29, 1969, to the Justice Dept., asking an investigation of the racial imbalance law and open enrollment as it exists in Boston.

EXCERPT FROM RACIAL ISOLATION IN THE PUBLIC SCHOOLS, A REPORT OF THE U.S. COMMISSION ON CIVIL RIGHTS

The Massachusetts policy is supported by the strongest enforcement powers. In August 1965, the Massachusetts Legislature enacted a Racial Imbalance Act, which provides that upon notification by the State Board that a school within its system is racially imbalanced, a school committee must prepare and file with the board a plan to eliminate the imbalance. If the committee fails to show progress within a reasonable time in eliminating racial imbalance in its school system, the Commissioner of Education must refuse to certify all State school aid for that system.

Massachusetts is the only State which requires, either by law or administrative regulation, that State educational funds be withheld from school systems operating racially imbalanced schools.

MOTHER HITS "BEDLAM" AT MATTAPAN SCHOOL

A Mattapan mother said yesterday at an anti-discrimination hearing that Lewenberg Junior High School in Mattapan was a place of "pure bedlam."

Mrs. Barbara Harrison of Clarkwood Street, told members of the Massachusetts Commission Against Discrimination (MCAD) "that she would rather teach her daughter herself than send her to Lewenberg school."

Mrs. Harrison brought a discrimination complaint against the Boston School Department, charging that her daughter Donna, was assigned to a 6th grade classroom at Lewenberg "because she is black."

Mrs. Harrison wants her child to attend Washington Irving school in Roslindale.

"I'll keep her home and teach her myself. I feel I can do a much better teaching job than she receives at Lewenberg," Mrs. Harrison testified. "There's pure bedlam going on there."

She testified that some teachers at Lewenberg scream at the pupils and others announce, "I don't feel like teaching today," and allow the students to take over the classroom.

Mrs. Harrison said teachers at the school advised her: "Take your daughter out, she doesn't belong here."

Anthony Galeota, school department engineer, outlined the school construction program designed to eliminate racial imbalance in Boston schools.

He said 14,000 non-whites, including 12,000 blacks, attended Boston elementary schools.

Mrs. Harrison's attorney, Steven Cohen, told the commission members "the number of schools built is irrelevant, the point is a child has been denied admission to a school because she is black."

Asst. Corporation Counsel Edith Fine told the commission that the Boston School Department had an open enrollment policy "which is color blind."

"It helps both blacks and whites," she said.

MOTHER ATTACKS ENROLLMENT POLICY

A black parent told the Massachusetts Commission Against Discrimination yesterday that her daughter had been assigned to the Solomon Lewenberg Junior High School this fall despite the fact that the family had deliberately moved out of the Lewenberg district to avoid going to school there.

Mrs. Barbara Harrison of 52 Clarkwood St., Mattapan, testified at a hearing on a case charging discrimination against black students in the administration of Boston's open enrollment program.

Mrs. Harrison said she preferred to have her daughter to attend the Washington Irving School, which is 10 blocks from her home, because pure bedlam is going on in the Lewenberg. Mrs. Edith Fine, attorney for the Boston School Department, said the Washington Irving school was overcrowded, but the Lewenberg had vacancies.

NAACP FILES SUIT TO RESTORE SCHOOL INTEGRATION PLAN

(By Jerome F. Hansen)

The NAACP has asked the Federal Court in Detroit to reinstate the Detroit Board of Education's original school decentralization and attendance plan.

The request was contained in a suit filed yesterday which challenged the constitutionality of a bill passed recently by the Legislature which nullified the school board's plan.

The suit was filed in large measure to vindicate the five board members who devised the plan, according to Nathaniel R. Jones, general counsel of the NAACP.

The members were A. L. Zwerding, Darneau V. Stewart, Andrew Perdue, Peter Grylls and the late Dr. Remus Robinson.

The first four voted for the plan and were recalled from office this month. Dr. Robinson was too ill at the time and did not vote.

The plan, designed to increase racial integration in 12 of the city's 22 high schools, stirred widespread controversy. Many persons objected to the distance students would have to travel to school.

However, the legislature voided the plan by ordering the boundaries drawn by a three-member committee appointed by the governor and deferring changes in attendance areas.

"As a result of the action of the Legislature," Jones said, "not only were the efforts of this school board frustrated, but their successors in office are required to carry out an unconstitutional policy maintaining the existing segregated schools."

NAACP officials, scheduled to meet Tuesday with Federal Judge Stephen J. Roth, who will handle the case, said the suit was filed because "we believe that the constitutional mandate for desegregated education must apply equally throughout the United States."

"In Michigan, we have a situation where a northern legislature has adopted the judicially discredited southern tactic of interposition and nullification (commonly known as states' rights) to prevent black and white children from enjoying their constitutional rights to an integrated education enforced by the U.S. Supreme Court," the NAACP said.

"This lawsuit is part of a continuing pattern of school desegregation suits sponsored by the NAACP in northern communities."

In addition to asking that the school board's decentralization attendance plan be reinstated, the suit also asks:

That the Legislature's plan be declared unconstitutional.

Assignment of principals, supervisors,

faculty and other personnel in proportion to the school's racial makeup.

That construction of school buildings be delayed until desegregation is completed.

Named as defendants in the suit were the governor, state attorney general, State Board of Education and the Detroit school board.

The suit contends the Legislature's action violates the 14th Amendment to the U.S. Constitution.

"The (legislative) act pertains solely to the Detroit Board of Education and thereby deliberately prohibits the Detroit Board of Education from making pupil assignments and establishing pupil attendance zones in a manner which all other school districts in the state of Michigan are free to do," the suit contends.

AUGUST 26, 1970.

Mr. JERRIS LEONARD,
Assistant Attorney General,
Department of Justice,
Washington, D.C.

DEAR MR. LEONARD: In relation to our conversation on the 13th and my earlier letter to you regarding the firing or demotion of black teachers in the South, I have the following additional requests for information which I would like to place in the Committee record:

1. As early as possible I would like to have the number of complaints received by you from the Committee or the NEA concerning the Louisiana and Mississippi schools. I wish for them to be identified as NEA originating where possible.

2. I wish the specific information set out in my earlier letter as to your post-investigative evaluation of the complaints.

3. I wish to have your evaluation of whether you have been granted full access to all complaints alluded to in our hearings.

4. There has been a great deal of controversy over the firing or demotion of Black teachers in the South. On the one hand Southern school systems have received bitter complaints concerning the low quality of Black schools and teachers. On the other hand equally vociferous complaints are received when there is an attempt to upgrade teacher quality on a fair and equitable basis. Could you furnish a statement of HEW-Justice policy in the area of hiring and firing of teachers? I wish specifically to know the degree of federal involvement in teacher hiring policy you propose for the federal government.

Your prompt attention to this matter will be greatly appreciated.

Sincerely yours,

JOHN L. MCCLELLAN.

DEPARTMENT OF JUSTICE,
Washington, August 28, 1970.

Hon. JOHN L. MCCLELLAN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MCCLELLAN: This is in response to your letter of August 26, 1970 requesting additional information respecting complaints about the firing or demotion of black teachers in the South.

My letter to you of the same date explains some of the problems that exist in trying to give a precise report. In addition, during these weeks when school openings are underway we do not have the staff to do a detailed analysis of the type you request. I should also note that at present the Federal Bureau of Investigation is at our request, investigating complaints of demotions or dismissals in approximately 18 systems, and we have not yet received their investigative reports as to these systems. In these circumstances I would ask your indulgence and would propose to attempt to provide a full answer to your first two questions later in the fall.

You inquired whether we have been granted full access to all complaints alluded to in the Committee hearings. We have examined the full record of the hearings and have been given access to N.E.A. files in Washington. Because the source of some complaints is unclear and some complaints are non-specific in nature, it is difficult to assess whether the disclosure by the N.E.A. has been complete. I know that some instances of non-cooperation in the field have occurred recently but I know of no such recent problems in Washington.

Finally, you inquire into our policy as to hiring and firing of teachers. Our policy is to enforce the requirements of non-discrimination as spelled out in the court decisions. The most detailed appellate description of those rules appears in *Singleton* v. *Jackson Municipal Separate School District*, 419 F. 2d 1211 (5th Cir. 1969), and I think it worthwhile to set those rules out here. The court ordered:

DESEGREGATION OF FACULTY AND OTHER STAFF

The School Board shall announce and implement the following policies:

1. Effective not later than February 1, 1970, the principals, teachers, teacher aides and other staff who work directly with children at a school shall be so assigned that in no case will the racial composition of a staff indicate that a school is intended for Negro students or white students. For the remainder of the 1969–70 school year the district shall assign the staff described above so that the ratio of Negro to white teachers in each school, and the ratio of other staff in each, are substantially the same as each such ratio is to the teachers and other staff, respectively, in the entire school system.

The school district shall, to the extent necessary to carry out this desegregation plan, direct members of its staff as a condition of continued employment to accept new assignments.

2. Staff members who work directly with children, and professional staff who work on the administrative level will be hired, assigned, promoted, paid, demoted, dismissed, and otherwise treated without regard to race, color, or national origin.

3. If there is to be a reduction in the number of principals, teachers, teacher-aides, or other professional staff employed by the school district which will result in a dismissal or demotion of any such staff members, the staff member to be dismissed or demoted must be selected on the basis of objective and reasonable non-discriminatory standards from among all the staff of the school district. In addition if there is any such dismissal or demotion, no staff vacancy may be filled through recruitment of a person of a race, color, or national origin different from that of the individual dismissed or demoted, until each displaced staff member who is qualified has had an opportunity to fill the vacancy and has failed to accept an offer to do so.

Prior to such a reduction, the school board will develop or require the development of non-racial objective criteria to be used in selecting the staff member who is to be dismissed or demoted. These criteria shall be available for public inspection and shall be retained by the school district. The school district also shall record and preserve the evaluation of staff members under the criteria. Such evaluation shall be made available upon request to the dismissed or demoted employee.

"Demotion" as used above includes any reassignment (1) under which the staff member receives less pay or has less responsibility than under the assignment he held previously, (2) which requires a lesser degree of skill than did the assignment he held previously, or (3) under which the staff member is asked to teach a subject or grade other than one for which he is certified or for which he has had substantial experience within a reasonably current period. In general and depending upon the subject matter involved, five years is such a reasonable period.

Sincerely,

JERRIS LEONARD,
Assistant Attorney General, Civil Rights Division.

[From the Chicago (Ill.) Sun-Times, Aug. 13, 1970]

BEGIN FACULTY INTEGRATION OF SCHOOLS HERE

(By Joel Havemann)

School Supt. James R. Redmond announced Wednesday that about 700 teachers have been given school assignments to increase faculty integration in Chicago schools in September.

He said this number was about 16 per cent of the 4,400 teachers that must be assigned on the basis of race so that the Board of Education can meet federal desegregation guidelines.

Of the 700 teachers assigned so far, Redmond said 400 are new teachers or substitute teachers who have gained regular certification this summer.

The other 300 are substitutes formerly assigned to a school full-time who have been displaced by regularly certified teachers.

NO MANDATORY TRANSFERS

No regularly certified teachers have been forced to transfer in the interests of integration, Redmond said. Mandatory transfers have been attacked bitterly by the Chicago Teachers Union.

The Justice Department threatened last summer to sue the school board if it did not integrate its teaching staffs.

The Health, Education and Welfare Department suggested that the number of black teachers at any school should not deviate by more than 10 per cent from the city-wide average of 34 per cent.

HEW proposed a number of desegregation steps, including about 1,000 mandatory transfers. Redmond told the school board he was negotiating with HEW officials to work out a plan acceptable to federal officials and to the board.

In other action, the school board sent telegrams to all U.S. senators and congressmen from Illinois, urging them to vote to override President Nixon's veto of the federal aid to education bill.

ON VETO OF EDUCATION BILL

Redmond said the bill would increase Chicago's share of federal aid by nearly $5 million, to an annual total of $37 million. Mr. Nixon said he vetoed the bill because it was inflationary.

Board members also criticized the efforts of school administrators to combat street gang activities in the schools.

They suggested that school officials work more closely with militant community organizations and perhaps establish a "gang intelligence unit" within the school system.

Board members responded to a report by Deputy Schools Supt. Manford Byrd Jr., who recommended that the quality of the schools be improved to the point where they would attract their pupils away from the gangs.

Board member Warren H. Bacon suggested that school administrators co-operate with such organizations as Operation Breadbasket, The Woodlawn Organization and the West Side Organization.

Byrd said the schools already worked with such groups as the YMCA and Boys Club.

"What we've done in the past has proved entirely inadequate," Bacon said.

Board member Alvin J. Boutte suggested the possibility of a school "gang intelligence unit" similar to the one in the police department. Byrd said such an idea might work.

Boutte noted that the board has spent its entire 1970 budget for school security. Byrd promised that a transfer of funds into the

security budget would be proposed before September.

Boutte asked whether school officials conferred enough with parents whose children had difficulties with the gangs. When Byrd said they did, several black persons in the audience groaned.

Byrd said school officials would consider the board members' suggestions.

The board meeting was disrupted by 13 Southwest Side residents wearing yellow hard hats who demanded that the board reverse its decision to place a prefabricated classroom building at the O'Toole Elementary School, 6550 S. Seeley.

One woman was escorted out of the meeting by security guards and the other 12 followed her. They demanded that the board relieve overcrowding at O'Toole by redrawing school boundary lines so that most black pupils would be eliminated from O'Toole.

Byrd said school officials would consider the board members' suggestions.

The board appointed three high school principals:

Bernarr E. Dawson to Calumet High, Dawson, the black former principal of Du Sable Upper Grade Center, was selected by a community screening board after the community forced out Charles L. LaForce, who was white.

James P. Maloney to Schurz High. Student disruption last January forced Maloney out of the all-black Crane High. Schurz is all white.

Edward C. Bennett to Cooley Vocational High.

SUPPLEMENTAL STATEMENT

Mr. CHAIRMAN, yesterday some supplemental information concerning the subject of today's statement came to my attention.

The two newspaper clippings from Boston and Detroit are self-explanatory. They relate the continuing controversy in Boston over integration, and the refusal of the U.S. District Court in Detroit immediately to set aside the Michigan law requiring resegregation of the Detroit schools.

The letter from Stanley Pottinger, Director, Office for Civil Rights, Department of Health, Education, and Welfare, explains the refusal of HEW to allow transfers from Cotton Plant to McCrory. I note that the HEW policies and Fifth Circuit Decision quoted in the letter, if enforced in Boston, would no doubt have prevented a large part of the segregation that now exists in that city. It is my contention that Boston has in effect created a dual system in that city, using the open enrollment policy to accomplish this fact.

I am hopeful that someday we will in fact see a national policy on integration that is enforced equitably and without preference or discrimination as between the states of the South and the states of the North and other sections of our country. I believe that the statement that I have made today proves that we do not have a single standard national policy on school integration, and that we have never had such a policy.

I ask unanimous consent that this material, the news clippings and the letter from Mr. Pottinger, be placed in the hearing record following my statement.

DEPARTMENT OF HEALTH,
EDUCATION, AND WELFARE,
Washington, D.C., September 21, 1970.

Mr. EMON A. MAHONY, Jr.,
Assistant to Hon. John L. McClellan,
U.S. Senate, Washington, D.C.

DEAR MR. MAHONY: Bill van den Toorn has told me of your concern about the question of student transfers from one school district to another.

I understand that the question arose with specific regard to the Cotton Plant school district in Arkansas. There the Board of Education approved the transfer applications of roughly 50 white students who wished to enroll in a school of the neighboring McCrory school district. The transfer, it effectuated, would have left the Cotton Plant High School nearly all-black and as such, would have conflicted with the proposed desegregation plan submitted by the district and accepted by the Office for Civil Rights on June 11, 1970. The plan provided that all students in grades 10–12 (141 black students and 58 white students) would attend the Cotton Plant High School at the start of the 1970–71 school year.

It has been the longstanding policy of the Office for Civil Rights to disapprove transfer arrangements when their effect is to undo legally required desegregation. In this regard, Subpart C, Section 16 of the "Policies on Elementary and Secondary School Compliance with Title VI of the Civil Rights Act of 1964" provides:

"School systems are responsible for assuring that no arrangement is made nor permission granted for students residing in one school system to attend school in another school system in any case where the result tends to maintain what is essentially a dual school structure in either system."

The U.S. Court of Appeals for the Fifth Circuit recently ruled with respect to several school desegregation cases that:

"If the school district grants transfers to students living in the district for their attendance at public schools outside the district or if it permits transfers into the district of students who live outside the district, it shall do so on a non-discriminatory basis, except that it shall not consent to transfers where the cumulative effect will reduce desegregation in either district or reinforce the dual school system." *Singleton v. Jackson Municipal Separate School District,* 419 F. 2d 1211 (5th Cir. 1970).

In advising school officials that the proposed transfer arrangement in this case violated the requirements of Title VI, our Regional Office at Dallas was acting consistent with established policy and judicial standards.

We appreciate your interest in this matter. If I can be of further assistance, please let me know.

Sincerely yours,
J. STANLEY POTTINGER,
Director, Office for Civil Rights.

[From the Boston (Mass.) Herald Traveler, Sept. 9, 1970]

ANOTHER LOOK AT "IMBALANCE"

Commr. of Education Neil V. Sullivan, an ardent champion of racial balance in the public schools and the use of busing to bring about this end, has taken a gingerly step in the opposite direction.

He has appointed an Advisory Committee on Racial Imbalance, the presumed purpose of which is to review and study the state's racial imbalance law which has proved so disruptive to the Boston school system, and to recommend changes or perhaps even repeal.

Sullivan, a former superintendent of schools in Berkeley, Calif., where he racially balanced the schools by cross-busing, arrived here a year and one-half ago to take over supervision of secondary and elementary public education at $30,000 a year, and has sat on his hands while the educational problems of the capital city worsened.

He agreed to appoint the special panel to review the racial imbalance law at the insistence of John D. Warner, aggressive new director of the Boston Redevelopment Authority, who sees the city in a crisis situation because of the controversial statute.

But Warner does not intend to sit back and permit Sullivan's blue ribbon panel of 14 to study the problem to death while conditions created by the racial imbalance law worsen and a $100 million school building program planned by the city grinds to a halt.

"I intend to keep the pressure on him," declares the tough-minded Warner. "While I am, of course, pleased that the commissioner has appointed this study panel, I want to see it go into action immediately.

"Consequently, I will ask how soon this special committee intends to meet, and will ask to appear before the committee at the earliest opportunity to state my views concerning the damage the racial imbalance law is doing to the city of Boston in its efforts to build new schools.

"This year is, of course, lost, but if we get moving on the problems now, perhaps by the opening of the new school year the situation with respect to racial imbalance can be put back into its proper perspective, and progress in the building of new schools can commence."

But if Sullivan's record in Berkeley, Calif., is any criterion, he may not be easy to push into taking direct action to wipe the racial imbalance law off the statute books, or even change it drastically.

Sullivan blasted no less a personage than President Nixon when the nation's chief executive had the temerity to question the advisability of busing children from one end of a city to the other to achieve racial balance.

And he also took on U.S. Atty. Gen. John Mitchell and the then Secretary of Health, Education and Welfare, Robert Finch, when they disagreed with him on the same subject.

Since then, Sullivan has been relatively silent, apparently because of a rap on the knuckles he received from Gov. Sargent, who made it clear that he did not approve of department heads making major policy statements without clearing them through the governor's office.

But Sullivan is a controversial figure, as evidenced by some of the statements attributed to him while he was in Berkeley, Calif.

For instance, in October of 1968, the Berkeley High School faculty steering committee met with Sullivan to discuss the Berkeley Unified School District's acceding to demands made by the high school's Black Student Union.

One of the questions put to Sullivan, according to a report published in the steering committee's bulletin, was:

"Many teachers are concerned that ready giving in on the part of the administration to the demands of a small group will convince all students that militancy is the only way to get things done. What is your opinion on this?"

"Damn right it is," replied Sullivan, according to the published report. "History has shown that the only way to get things done is to get a shotgun and stick it up against the other people's neck."

Consequently, it is not anticipated that Sullivan will remain silent for long, particularly since he has been challenged by the hard-driving Warner to get off his racial balancing kick, and provide the leadership necessary to straighten out the problems created in the Boston school system by the racial imbalance law.

Warner is no pushover, however, as Sullivan will find out if he is determined to persist in pursuing a philosophy which simply cannot work in a city like Boston.

The BRA director has already expressed his indignation over Sullivan's testimony before a Senate committee headed by U.S. Sen. John McClellan of Arkansas.

Sullivan criticized Boston's open enrollment plan, in which any pupil, anywhere in the city, can go to the school of his choice, provided there is a vacancy. He said he considered the policy "racist."

Warner has termed Sullivan's remarks "unfair and unwarranted, and showed a tragic lack of knowledge of the city's problems."

He points out that the open school enrollment policy was instituted years ago, long before the conception of the racial imbalance law, which is providing too harmful to Boston.

"The key is that this racial imbalance law doesn't work," Warner asserts. "It has a classic ability to harm both blacks and whites. In the long run it will force busing of kids around the city and this is not healthy.

"It requires the building of schools on the peripheries, and that is wrong. There is no substitute for the strong neighborhood school, and the racial imbalance law makes this impossible."

Warner is convinced that the time to do something about the racial imbalance law is now, if the city is to replace with new schools the antiquated structures which should have been replaced long ago.

And it would appear he does not intend to permit Sullivan to serve as the stumbling block.

[From the Detroit Free Press, Aug. 4, 1970]

U.S. COURT BLOCKS INTEGRATION PLAN FOR CITY SCHOOLS

(By William Grant)

U.S. District Judge Stephen J. Roth denied Thursday a request by the National Association for the Advancement of Colored People that the Detroit school system be required to put its controversial high school integration plan into effect next week.

The NAACP had made its appeal as part of a suit challenging the right of the Michigan Legislature to prohibit the school system from implementing the plan which was adopted by the school board last April 7.

A hearing on that suit has been set for the first two weeks in November, but the NAACP had asked that Judge Roth order the plan implemented pending the final outcome of the case.

Judge Roth said Thursday that to issue the temporary order would be, in effect, deciding the whole case.

"The best interests of the schools, the students and the parents will be served if no order is issued at this time," Roth said.

Attorneys for both sides were notified by telephone Thursday morning of Judge Roth's decision. The judge has been hearing cases in Flint and his office said a written opinion will be available early next week.

The decision means Detroit students will enroll next Wednesday as if the school board had never adopted its April 7 high school integration plan.

Charles Wolfe, executive deputy superintendent for the school system, said:

"Students will follow the same school attendance pattern they have for the past several years. Anyone with any question should call either their neighborhood school or the regional school office."

The school board voted 4–2 April 7 to alter school boundaries to balance the racial composition of 11 of the city's 22 public high schools.

But the Legislature passed a new state school decentralization law in July which prohibited the board from implementing the integration plan.

And Detroit voters Aug. 4 recalled from office the four board members who had approved the plan.

Mr. McCLELLAN. I think this is the proper time and place to again document in the RECORD the hypocrisy that is now going on in this country. If we keep up this hypocrisy we will bring disgrace upon the Nation. A nation that believes in justice, equal justice, equal treatment, cannot pursue this course indefinitely without some retribution coming to it. Oh, you can do it for a little while. You can impose it on the South. You have the power to do it. All three departments of Government are equally guilty. You can do it for a little while, and you can insist on it, but the time will come in this Nation when hypocrisy and the double standard that is being followed in the administration of justice will rise to shame and plague it.

Mr. ERVIN. Mr. President, I ask for the yeas and nays on my amendment.

The yeas and nays were ordered.

Mr. ERVIN. Mr. President, I want to say a word or two more. The distinguished Senator from New York (Mr. JAVITS) introduced a letter in the RECORD from the Secretary of Health, Education, and Welfare, in which the Secretary asked for the defeat of the pending amendment and the other amendments offered by me. The distinguished Senator from New York assured us that the Secretary's letter represented the position of the administration. I believe the Senator from New York is honestly mistaken in this assurance.

When the President came down to North Carolina in 1968, asking the people of North Carolina to vote for him, he told them that he favored just exactly what I have in the pending amendment. He emphasized that he favored neighborhood schools and was opposed to busing to achieve integrated public schools.

He came back to North Carolina in 1970 and went to the city of Asheville. He was not seeking votes for himself at that time, but he was seeking them for the Republican candidate for Congress from the Asheville district. He assured the people of North Carolina a second time in public utterances that he favored what is in this amendment; that is, securing for children the right to attend their neighborhood schools, and prohibiting busing to change the racial composition of schools.

I believe the President is an honest man, and that he meant what he said when he declared he favors neighborhood schools and is opposed to busing, as he did in Charlotte, N.C., in 1968, and as he said in Asheville, N.C., in 1970.

I cannot accept the theory that the letter of the Secretary of Health, Education, and Welfare, expresses the President's position, because if it does, a lot of North Carolina people are going to doubt the President's credibility. Believing that the President is an honest man, I cannot accept what I conceive to be the honest assurance of the distinguished Senator from New York that the letter of Mr. Richardson expresses the President's position in respect to this matter. I would point out that my pending amendment is, in a sense, separate from the original purpose of the bill. It is an amendment to the Civil Rights Act of 1964. Believing the President to be an honest man, and believing that he meant exactly what he said in North Carolina on two occasions, I am unable to accept the assurance that his position was correctly stated by the Secretary of Health, Education, and Welfare.

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

Mr. ERVIN. I yield.

Mr. McCLELLAN. Does the Senator believe that if this bill is enacted, one dollar of the money will be spent to bring a lawsuit in Boston, to correct the favoritism that now prevails up there under the Massachusetts statute permitting freedom of enrollment?

Mr. ERVIN. Not at all; because, unfortunately, there are a lot of people who favor desegregation in the South but support segregation in the north. There are a lot of people—and many of them are in public office—who are like the doctor who would not take the medicine he prescribed for his patient.

Mr. McCLELLAN. I think that is correct; but does the Senator know that HEW has supposedly been investigating that situation of this one school up there in Boston for about a year, and cannot find out whether it is true or not? Would the Senator be surprised to know that they have not even made a recommendation to the Department of Justice yet as to what action should be taken?

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

Mr. McCLELLAN. In a moment. May I say this further: I just called Mr. Jerris Leonard at the Justice Department, a fine gentleman, and asked him if anything had been done. He was present when I interrogated the Attorney General last year in the committee. I think he was also present when I interrogated Mr. Richardson, the Secretary of Health, Education, and Welfare. If not, he has the record. At that time, it was stated absolutely by Mr. Mitchell before the committee that that law in Massachusetts is unconstitutional.

But nothing has been done. The Federal Government has taken no action. They have had over a year. What does that indicate to the country today with respect to justice and equality under the law, under this administration?

Mr. ERVIN. It would indicate to me that there are some people in this Nation who entertain the view that we are not one Nation under one Constitution, but that on the contrary we have one Constitution for the South and another for the rest of the country. The truth is that the South is being penalized, as I observed some time ago, simply because the Southern States were not smart enough to discover that the separate but equal doctrine was no longer the law of the land before the Supreme Court Justices made that discovery for themselves.

Mr. McCLELLAN. We are being penalized because of a Supreme Court decision which we followed for many years. It was the law of the land until the 1954 decision. We followed the law of the land, and, because some judges made up their minds about what the law should be and made that 1954 ruling, we in the South have been penalized, because we followed the ultimate source of authority until they—the Court—changed the Constitution.

Mr. ERVIN. Just because we believed what they adjudged to be the law of the land was actually the law of the land prior to May 17, 1954.

Mr. McCLELLAN. Yes. I yield to the Senator from Virginia.

Mr. SPONG. Mr. President, I merely wanted to confirm what the Senator from Arkansas has said. Last year, in the hearings, this situation in Boston was dramatically brought to the attention of

the Secretary of Health, Education, and Welfare, Mr. Richardson.

Mr. McCLELLAN. Incidentally, his home is Boston; is it not?

Mr. SPONG. I believe it is.

Mr. McCLELLAN. Yes; that is characteristic of this law enforcement in civil rights.

Mr. SPONG. Now this time has passed. After the situation being called to the attention of the Department of Justice, several months have passed, and we have received no answer that would lead us to believe they intend to do anything about it.

Mr. McCLELLAN. I have the answer. I called the Department of Justice a few minutes ago. Nothing has been done. The Department of Justice has said it had not received any recommendation from HEW regarding it. Nothing whatsoever. So nothing has been done other than a pretended investigation; it is said that an investigation is being conducted.

Mr. SPONG. Will the Senator yield further?

Mr. McCLELLAN. I yield.

Mr. SPONG. I did not support the Ribicoff amendment because I did not think it had received thorough hearings. There are many educational questions involved with regard to which we needed testimony. I believe hearings should take place.

But I wish to say that for a period of more than a year now, the Senator from Mississippi and the Senator from Arkansas have cited situation after situation with regard to Boston, with regard to Detroit, Mich., and with regard to cities all over the country, and there has not yet been forthcoming any evidence at all that either the Justice Department or HEW has any idea of applying the law of the land uniformly throughout the Nation.

We are not talking about situations where de facto segregation has always existed. We are talking about situations where the evidence brought out that there were statutes in those localities which, by their nature, were discriminatory.

Mr. McCLELLAN. If the Senator will yield, the situation in Boston was de facto until they passed the Massachusetts statute. Now it is de jure.

Mr. SPONG. Without question.

Mr. McCLELLAN. And still no action is taken.

Mr. SPONG. There is no question about that. I should like to make just one further observation.

Senators who have listened to the Senator from Connecticut in the past would do well to review what he has stated. Also, they would do well to read the last paragraphs of the Supreme Court decision in the Charlotte-Mecklenburg case, in which the Supreme Court acknowledges that the time will come when the localities of the South will be exactly like the localities in the North; they will be de facto. By reason of having become unitary school systems, they will have complied. They will also have resegregated, as has taken place in many parts of the country, and all the educational values that Dr. Coleman and others suggested with regard to educational opportunity will be defeated by virtue of this; and they will be defeated more hastily if there is not uniform application throughout the United States that all of the people can understand.

I thank the Senator from Arkansas.

Mr. McCLELLAN. I thank the distinguished Senator, and I thank the able Senator from North Carolina for yielding to me. I commend him for bringing these amendments before this body in an effort to make at least an attempt, Mr. President, to get the laws in this country equitable and equal in all sections of the Nation and for all our people, and to get them enforced accordingly.

The PRESIDING OFFICER (Mr. BUCKLEY). The question is on agreeing to the amendment (No. 41) of the Senator from North Carolina (Mr. ERVIN). On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Alaska (Mr. GRAVEL), the Senator from Indiana (Mr. HARTKE), the Senator from Washington (Mr. JACKSON), the Senator from Massachusetts (Mr. KENNEDY), the Senator from South Dakota (Mr. McGOVERN), and the Senator from Maine (Mr. MUSKIE) are necessarily absent.

I further announce that the Senator from Oklahoma (Mr. HARRIS), and the Senator from South Carolina (Mr. HOLLINGS) are absent on official business.

I further announce that, if present and voting, the Senator from Oklahoma (Mr. HARRIS), the Senator from Washington (Mr. JACKSON), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from South Dakota (Mr. McGOVERN) would each vote "nay."

Mr. GRIFFIN. I announce that the Senator from Tennessee (Mr. BROCK), the Senator from Kentucky (Mr. COOK), the Senator from Kentucky (Mr. COOPER), the Senator from Colorado (Mr. DOMINICK), the Senator from Arizona (Mr. GOLDWATER), the Senator from Iowa (Mr. MILLER), the Senator from Oregon (Mr. PACKWOOD), and the Senator from Kansas (Mr. PEARSON) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

If present and voting, the Senator from South Dakota (Mr. MUNDT) would vote "yea."

On this vote, the Senator from Tennessee (Mr. BROCK) is paired with the Senator from Colorado (Mr. DOMINICK). If present and voting, the Senator from Tennessee would vote "yea" and the Senator from Colorado would vote "nay."

Also, if present and voting, the Senator from Kansas (Mr. PEARSON) would vote "nay".

The result was announced—yeas 32, nays 51, as follows:

[No. 51 Leg.]

YEAS—32

Allen	Eastland	Long
Baker	Ellender	McClellan
Bennett	Ervin	Randolph
Bentsen	Fannin	Sparkman
Bible	Fulbright	Spong
Byrd, Va.	Gambrell	Stennis
Byrd, W. Va.	Gurney	Talmadge
Cannon	Hansen	Thurmond
Chiles	Hruska	Tower
Cotton	Jordan, N.C.	Young
Curtis	Jordan, Idaho	

NAYS—51

Aiken	Hart	Pell
Allott	Hatfield	Percy
Anderson	Hughes	Prouty
Bayh	Humphrey	Proxmire
Beall	Inouye	Ribicoff
Bellmon	Javits	Roth
Boggs	Magnuson	Saxbe
Brooke	Mansfield	Schweiker
Buckley	Mathias	Scott
Burdick	McGee	Smith
Case	McIntyre	Stevens
Church	Metcalf	Stevenson
Cranston	Mondale	Symington
Dole	Montoya	Taft
Eagleton	Moss	Tunney
Fong	Nelson	Weicker
Griffin	Pastore	Williams

NOT VOTING—17

Brock	Harris	Miller
Cook	Hartke	Mundt
Cooper	Hollings	Muskie
Dominick	Jackson	Packwood
Goldwater	Kennedy	Pearson
Gravel	McGovern	

So Mr. ERVIN's amendment No. 41 was rejected.

UNANIMOUS-CONSENT AGREEMENT—YEAS AND NAYS

Mr. ERVIN. Mr. President, I have two more amendments that I intend to call up. I will agree to a time limitation of 2 minutes on each side on each amendment, and I would like to have the yeas and nays on both of them.

Mr. MANSFIELD. Mr. President, I ask that it be in order for the yeas and nays, and I ask that the Chair make a judgment on the unanimous consent request of the distinguished Senator from North Carolina that there be 2 minutes to the side.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. MANSFIELD. Mr. President, has the unanimous-consent agreement been agreed to?

The PRESIDING OFFICER. Is there objection to the request of the Senator from North Carolina? The Chair hears none, and it is so ordered.

AMENDMENT NO. 42

Mr. ERVIN. Mr. President, I call up my amendment No. 42 and ask that the reading of the amendment be omitted and that I be permitted to state what the amendment would do.

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

Mr. ERVIN. Mr. President, the amendment is very simple. It would place a prohibition on the busing of children to effect the racial composition of schools.

That is all it does.

I yield back the remainder of my 2 minutes.

Mr. PELL. Mr. President, under the basic bill any movement of children is voluntary. I oppose the amendment.

I yield back the remainder of my time.

Mr. ERVIN. Mr. President, I ask unanimous consent that a copy of the amendment be printed in full just before the vote.

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

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

AMENDMENT NO. 42

At the end of the bill insert the following:

"LIMITATION

"SEC. 17. No court, department, agency, officer, or employee of the United States shall have jurisdiction or power to require any State or local public school board or any other State or local agency empowered to assign children to public schools to transport any child from one place to another place, or from one school to another school, or from one school district to another school district to alter the racial composition of the student body at any public school."

The PRESIDING OFFICER. All time having expired, the question is on agreeing to the amendment of the Senator from North Carolina. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. METCALF (after having voted in the negative). On this vote I have a pair with the Senator from Louisiana (Mr. ELLENDER). If he were present and voting, he would vote "aye." I have already voted "nay." I withdraw my vote.

Mr. BYRD of West Virginia. I announce that the Senator from Louisiana (Mr. ELLENDER), the Senator from Alaska (Mr. GRAVEL), the Senator from Indiana (Mr. HARTKE), the Senator from Washington (Mr. JACKSON), the Senator from Massachusetts (Mr. KENNEDY), the Senator from South Dakota (Mr. MCGOVERN), and the Senator from Maine (Mr. MUSKIE) are necessarily absent.

I further announce that the Senator from Oklahoma (Mr. HARRIS) and the Senator from South Carolina (Mr. HOLLINGS) are absent on official business.

I further announce that, if present and voting, the Senator from Oklahoma (Mr. HARRIS), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Washington (Mr. JACKSON), and the Senator from South Dakota (Mr. MCGOVERN) would each vote "nay."

Mr. GRIFFIN. I announce that the Senator from Tennessee (Mr. BROCK), the Senator from Kentucky (Mr. COOK), the Senator from Kentucky (Mr. COOPER), the Senator from Colorado (Mr. DOMINICK), the Senator from Arizona (Mr. GOLDWATER), the Senator from Iowa (Mr. MILLER), the Senator from Oregon (Mr. PACKWOOD), and the Senator from Kansas (Mr. PEARSON) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

If present and voting, the Senator from South Dakota (Mr. MUNDT) would vote "yea."

On this vote, the Senaotr from Tennessee (Mr. BROCK) is paired with the Senator from Colorado (Mr. DOMINICK). If present and voting, the Senator from Tennessee would vote "yea" and the Senator from Colorado would vote "nay."

Also, if present and voting, the Senator from Kansas (Mr. PEARSON) would vote "nay."

The result was announced—yeas 35, nays 46, as follows:

[No. 52 Leg.]

YEAS—35

Allen	Byrd, W. Va.	Fannin
Baker	Cannon	Fulbright
Beall	Chiles	Gambrell
Bennett	Cotton	Gurney
Bentsen	Curtis	Hansen
Bible	Dole	Hruska
Buckley	Eastland	Jordan, N.C.
Byrd, Va.	Ervin	Jordan, Idaho
Long	Sparkman	Thurmond
McClellan	Spong	Tower
Randolph	Stennis	Young
Roth	Talmadge	

NAYS—46

Aiken	Hughes	Prouty
Allott	Humphrey	Proxmire
Anderson	Inouye	Ribicoff
Bayh	Javits	Saxbe
Bellmon	Magnuson	Schweiker
Boggs	Mansfield	Scott
Brooke	Mathias	Smith
Burdick	McGee	Stevens
Case	McIntyre	Stevenson
Church	Mondale	Symington
Cranston	Montoya	Taft
Eagleton	Moss	Tunney
Fong	Nelson	Weicker
Griffin	Pastore	Williams
Hart	Pell	
Hatfield	Percy	

PRESENT AND GIVING A LIVE PAIR AS PREVIOUSLY RECORDED—1

Metcalf, against.

NOT VOTING—18

Brock	Gravel	McGovern
Cook	Harris	Miller
Cooper	Hartke	Mundt
Dominick	Hollings	Muskie
Ellender	Jackson	Packwood
Goldwater	Kennedy	Pearson

So. Mr. ERVIN's amendment (No. 42) was rejected.

EQUAL EDUCATION FOR ALL

Mr. KENNEDY. Mr. President, I want to commend the able chairman of the Senate Education Subcommittee (Mr. PELL), the chairman of the Select Committee on Equal Education, the Senator from Minnesota (Mr. MONDALE), and the ranking minority leader of the Labor and Public Welfare Committee, the Senator from New York (Mr. JAVITS), for their leadership in the development of the Emergency School Aid and Quality Integrated Education Act of 1971.

Mr. President, the history of this legislation begins at least 17 years ago with the decision by the Supreme Court in Brown against Board of Education.

The Court found that school segregation affects the hearts and minds of children "in ways unlikely ever to be undone." From that moment forward, this Nation has been struggling to meet the demands of law and the demands of justice to divest itself of the vestiges of segregation. The Congress has responded fitfully to those demands, all too frequently deferring to the Supreme Court when it should have been leading the way.

The failures of the past are spelled out in school statistics of today, statistics that place more than 4 million of the 9 million minority schoolchildren in schools where they constitute more than 80 percent of the total enrollment. More than 1 million of those children attend schools in which there is 100 percent minority enrollment.

Of the 6.2 million black students in the Nation, 53 percent are in schools whose enrollments are 99 to 100 percent comprised of minority group students. Of the 2 million Spanish-surnamed children, nearly a third are in 80- to 100-percent minority schools.

Boston is a microcosm of this problem. There, the proportion of the city's black students enrolled in schools with over 90-percent minority students increased from 43.1 to 45.5 percent between 1968 and 1969. Of our 7,000 or more school-age Puerto Ricans, only four graduated from high school between 1965 and 1969. In June 1970, seven graduated, only three from public schools.

There is no longer any question whether these kinds of school segregation limit the educational potential of children.

As far back as 1966, HEW published "Equality of Educational Opportunity," by Dr. James Coleman, which described the pervasive impact of racial isolation on minority students. Again, in 1966, the Panel on Education planning the White House Conference concluded:

> There is clear documentary evidence of a direct relationship between segregated schools and inferior education, and of cumulative academic retardation among children in Negro ghettoes. There is evidence also that this waste is remediable, hence the greater tragedy.

Following that disclosure, I introduced in February 1966 an amendment to title IV of the Civil Rights Act of 1964 to provide grants and technical assistance to school districts which sought to prepare, adopt, and implement plans for the correction of racial imbalance. Unfortunately, that measure was not passed.

Since then, we have witnessed a host of further studies reaffirming the handicaps faced by children denied equal educational opportunity. In 1967, the U.S. Commission on Civil Rights, after a year of extensive investigation of the school systems in 15 major cities, issued its report on "Racial Isolation in the Public Schools." It found that "racial isolation, whatever its origin, inflicts harm upon Negro students." It also concluded, "school desegregation remedies have been devised which will improve the quality of education for all children."

The report emphasized that only a combination of school desegregation and improved educational quality can assure true equality in education to the Nation's schoolchildren. Magnet schools, educational parks, consolidation of attendance boundaries, metropolitan planning—all of these techniques were cited as possible solutions, solutions that parents, teachers, and community representatives might choose.

The physical end of segregation is only part of the equation, it must be matched by improved educational programs in the school—"at the end of the bus ride," as Julian Bond told the select committee last year.

We already have evidence that ending racial isolation in tandem with better quality education can produce major advances in educational achievement. Perhaps the best example is at Berkeley, where the integrated schools are balanced between 50-percent disadvantaged black students and 50-percent advantaged white students. Since that program was instituted, the academic achievement of black students has increased 60-percent faster than prior to desegregation. White students have at least maintained their previous rate of learning and in some cases that rate actually increased.

There are other examples of positive results when adequate resources are combined with integration efforts. Despite an overall failure to remedy existing racial isolation in Boston, two kinds of educational innovations open to local districts

have been tried successfully. The William Monroe Trotter school was constructed in 1969 in the center of Roxbury and a combination of educational benefits were offered—smaller class size, greater use of community aides, and team teaching. The result has been a successful effort at attracting white students to an integrated school in the heart of a black neighborhood.

Also, Project Exodus, and now Metco, have demonstrated the critical need for interdistrict cooperation in reducing racial isolation and offering quality education.

Both were voluntary busing programs, in which blacks went from the center city to the suburbs. Although they have the disability of one-way busing, the positive value to be gained in an integrated education setting has been demonstrated.

So it is that I particularly would call attention to the bill's provisions for interdistrict and metropolitan area programs and bilingual and bicultural programs.

Despite the immediate image of Harlem and Washington, D.C., when one thinks of central city school districts, those situations are anomalies when we examine the Nation as a whole. Of the 100 largest school districts, only 18 are comprised of a majority of minority group members. Of the 217 metropolitan areas in the Nation with a central city of more than 55,000, only 42 of those cities contain a majority of minority group students. Most of the remaining school districts and cities can achieve stable quality integrated systems without crossing city or district boundaries.

However, the Washingtons and Harlems will never achieve an end to racial imbalance if their only option is to move students from one school to another within the same school district. For these areas, interdistrict and metropolitan area planning is the only way that the lily-white ring around the city can represent a life preserver instead of a noose. The bill reserves 15 percent of the total $1.5 billion authorized for such metropolitan area programs. Combined with the concept of magnet schools and educational parks, metropolitanwide educational planning can be the first step toward ending the polarization of rich and poor, suburb and city, white and black. And it can mean better education for all.

The bill also contains a specific reservation of $45 million for efforts to respond to the special needs of children who are deprived of equal educational opportunities because of language disabilities and cultural barriers.

The contrast between the need for bilingual and bicultural education and what is being done is starkly shown by the following statistics. HEW last year stated that there are 5 million public schoolchildren who come to school with limited English-speaking ability. Yet, title VII of the Elementary and Secondary Education Act serves only 54,000 students. Clearly more must be done.

The U.S. Civil Rights Commission issued a special report last year, in which it found that Mexican-American students were severely isolated by school districts and by schools within individual districts. The report also found that Mexican Americans "are gravely underrepresented among teachers and an even smaller proportion of principals than teachers are Mexican Americans."

Mr. President, we have delayed action too long. We have avoided our responsibilities too long. Each day that passes in which the Federal Government fails to commit sufficient resources to the struggle to assure equal educational opportunity to all of our citizens maintains a nation divided into separate societies, one rich, one poor, one black, one white, one complacent, one despairing.

President Kennedy said that "the human mind is our fundamental resource." Providing equal opportunity for our children to develop this resource through education is the only way we shall ever guarantee equal opportunity in all fields for all of our citizens.

I strongly urge the Senate to pass this measure.

Mr. MANSFIELD. Mr. President, for the information of the Senate, it is the understanding of the joint leadership that we have only one more amendment, and that will be pending very shortly.

At this time I ask for the yeas and nays on final passage.

The yeas and nays on passage were ordered.

PROGRAM

Mr. SCOTT. Mr. President, if the Senator will yield, I should like to discuss with him the further business of the Senate.

Mr. MANSFIELD. Mr. President, I am delighted that again this question has been raised, because, with the disposition of the pending business, we will have on the calendar only S. 646, which has a temporary "hold" on it, and S. 860, a bill relating to the Trust Territory of the Pacific Islands, which is being considered informally in the Foreign Relations Committee. Therefore, there will be nothing on the calendar to be taken up in the way of business when we finish with the pending business tonight.

ORDER FOR ADJOURNMENT UNTIL THURSDAY, APRIL 29, 1971

Mr. MANSFIELD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 12 o'clock Thursday noon next.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

PROGRAM

Mr. SCOTT. Mr. President, if the Senator will yield further, I would like to express the hope that next Monday and Tuesday the Senate will be in session, and I hope we can secure some business from the committees. I will state my reason very clearly. It has been announced that it has been the purpose of some persons to prevent the functioning of the Government of the United States on next Monday and Tuesday. Therefore, I think it important that we be in session on those days to engage in the Nation's business without interference and without disruption.

Mr. MANSFIELD. Mr. President, if I repeat, the Senate is going to be in business on any day in which there is business to attend to, and I hope that in the meantime the committees will apply themselves and get out some legislation, because our business is the people's business and our business is being on the job here if there is any business to do. The joint leadership intends to see to it that the Senate is in session if there is any business to attend to.

Mr. SCOTT. Mr. President, I made my statement with full awareness of the feeling of the majority leader.

EMERGENCY SCHOOL AID AND QUALITY INTEGRATED EDUCATIONAL ACT OF 1971

The Senate continued with the consideration of the bill (S. 1557) to provide financial assistance to local educational agencies in order to establish equal educational opportunities for all children, and for other purposes.

AMENDMENT NO. 37

Mr. ERVIN. Mr. President, I call up my amendment No. 37, and ask unanimous consent that it be printed in the RECORD at this point and that I may explain it.

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

Amendment No. 37 is as follows:

At the end of the bill insert the following:

"LIMITATION

"SEC. 17. No court, department, agency, officer, or employee of the United States shall have jurisdiction or power to deny to any child the right to attend the public school nearest his home which is operated for the education of children of his age and ability."

Mr. ERVIN. Mr. President, the amendment would simply extend to every schoolchild the right, as against the Federal Government——

Mr. BYRD of West Virginia. Mr. President, may we have order?

The PRESIDING OFFICER. There will be order in the Senate.

Mr. ERVIN. Mr. President, this amendment would extend to every schoolchild in this Nation, as against the Federal Government, the right to attend the public school nearest his home which is operated for the education of children of his age and ability.

I yield back the remainder of my time.

Mr. PELL. Mr. President, the question of the neighborhood schools is an emotional one. However, stripping away the emotion, in the context that has been discussed on the floor today, the guise of this amendment as the neighborhood school concept is another attempt to thwart national efforts to desegregate local school districts and decisions of the U.S. Supreme Court.

Mr. ERVIN. Mr. President, I ask unanimous consent to have 30 seconds to reply to the last statement of the distinguished Senator.

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

Mr. ERVIN. This amendment would not affect the power of the school boards; it would affect the power of the Federal Government.

The PRESIDING OFFICER. All time

on the amendment has been yielded back. The question is on agreeing to the amendment of the Senator from North Carolina. The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Lousiana (Mr. ELLENDER), the Senator from Alaska (Mr. GRAVEL), the Senator from Indiana (Mr. HARTKE), the Senator from Washington (Mr. JACKSON), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Mr. LONG), the Senator from South Dakota (Mr. MCGOVERN), and the Senator from Maine (Mr. MUSKIE) are necessarily absent.

I further announce that the Senator from Oklahoma (Mr. HARRIS), and the Senator from South Carolina (Mr. HOLLINGS) are absent on official business.

On this vote, the Senator from Louisiana (Mr. ELLENDER) is paired with the Senator from South Dakota (Mr. MCGOVERN).

If present and voting, the Senator from Louisiana would vote yea and the Senator from South Dakota would vote nay.

I further announce that, if present and voting, the Senator from Oklahoma (Mr. HARRIS), the Senator from Washington (Mr. JACKSON), and the Senator from Massachusetts (Mr. KENNEDY) would each vote "nay."

Mr. GRIFFIN. I announce that the Senator from Tennessee (Mr. BROCK), the Senator from Kentucky (Mr. COOK), the Senator from Kentucky (Mr. COOPER), the Senator from Colorado (Mr. DOMINICK), the Senator from Arizona (Mr. GOLDWATER), the Senator from Iowa (Mr. MILLER), the Senator from Oregon (Mr. PACKWOOD) and the Senator from Kansas (Mr. PEARSON) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

If present and voting the Senator from South Dakota (Mr. MUNDT) would vote "yea."

On this vote, the Senator from Tennessee (Mr. BROCK) is paired with the Senator from Colorado (Mr. DOMINICK). If present and voting, the Senator from Tennessee would vote "yea" and the Senator from Colorado would vote "nay."

Also, if present and voting, the Senator from Kansas (Mr. PEARSON) would vote "nay."

The result was announced—yeas 33, nays 48, as follows:

[No. 53 Leg.]

YEAS—33

Allen	Curtis	Jordan, N.C.
Baker	Dole	Jordan, Idaho
Bennett	Eastland	McClellan
Bentsen	Ervin	Roth
Bible	Fannin	Sparkman
Buckley	Fong	Spong
Byrd, Va.	Fulbright	Stennis
Byrd, W. Va.	Gambrell	Talmadge
Cannon	Gurney	Thurmond
Chiles	Hansen	Tower
Cotton	Hruska	Young

NAYS—48

Aiken	Beall	Burdick
Allott	Bellmon	Case
Anderson	Boggs	Church
Bayh	Brooke	Cranston
Eagleton	McIntyre	Ribicoff
Griffin	Metcalf	Saxbe
Hart	Mondale	Schweiker
Hatfield	Montoya	Scott
Hughes	Moss	Smith
Humphrey	Nelson	Stevens
Inouye	Pastore	Stevenson
Javits	Pell	Symington
Magnuson	Percy	Taft
Mansfield	Prouty	Tunney
Mathias	Proxmire	Weicker
McGee	Randolph	Williams

NOT VOTING—19

Brock	Harris	Miller
Cook	Hartke	Mundt
Cooper	Hollings	Muskie
Dominick	Jackson	Packwood
Ellender	Kennedy	Pearson
Goldwater	Long	
Gravel	McGovern	

So Mr. ERVIN'S amendment (No. 37) was rejected.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

NEGATION OF ORDER ON THE EXTENSION OF THE PASTORE RULE

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the time allotted to the extension of the Pastore rule be negated.

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

Mr. MANSFIELD. Mr. President, I yield briefly to the distinguished Senator from Washington (Mr. MAGNUSON).

UNVEILING OF STATUE OF THE LATE SENATOR ROBERT BARTLETT, OF ALASKA

Mr. MAGNUSON. Mr. President, I wish to inform Senators that tomorrow, commencing at 3:30 p.m., in the rotunda, we will have ceremonies in connection with the unveiling of the statue of the late Senator Bartlett, of Alaska. He was chosen by the State and the State legislature to be one of the State's two distinguished citizens whose statues will be placed in the rotunda.

I hope that as many Senators as possible, particularly those who knew Bob, will come to the unveiling. Present will be several of his personal friends, his widow, and his family.

If it is any encouragement to attend, the Senator from Washington is going to deliver a few brief remarks.

Mr. MANSFIELD. Mr. President, I join the distinguished senior Senator from Washington in what he has just said.

I hope that those who have had the honor and the privilege of knowing Bob Bartlett—who was the real father of Alaskan statehood—will find it possible to attend this ceremony in honor of a late, departed, and beloved colleague who fully deserves the honor which his State is according to him.

EMERGENCY SCHOOL AID AND QUALITY INTEGRATED EDUCATION ACT OF 1971

The Senate continued with the consideration of the bill (S. 1557) to provide financial assistance to local educational agencies in order to establish equal education opportunities for all children, and for other purposes.

Mr. MANSFIELD. Mr. President, I yield to the Senator from Virginia, the Senator from Florida, or the Senator from Georgia, whichever one wishes to offer an amendment.

Mr. SPONG. Mr. President, we do have an amendment to offer. Pursuant to our conversation earlier, we would be willing to accept a time limitation of 30 minutes to a side.

UNANIMOUS-CONSENT AGREEMENT

Mr. MANSFIELD. Mr. President, I ask unanimous consent that when the amendment is presented to the Senate, there be a time limitation of 1 hour on the amendment, with the time to be equally divided between the sponsor and the manager of the bill, or whomever he may designate; and 10 minutes, the time to be equally divided on the same basis, on amendments to the amendment.

Mr. JAVITS. Mr. President, could we know something about this amendment? This is one we know nothing whatever about.

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

The PRESIDING OFFICER (Mr. TUNNEY). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. MANSFIELD. Mr. President, I reiterate my unanimous-consent request.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Montana?

Mr. JAVITS. Mr. President, only one point. I am agreeable to the 1 hour and agreeable to the 10 minutes to be equally divided for amendments to the amendment, but I wish also to reserve the right, when the time expires on the time for amendments to amendments, to move to table, which exists, as well as the right to vote it up or down.

Mr. MANSFIELD. I was unaware that that right had been taken away from any Senator. When the distinguished Senator from New York mentioned it to me, I must say, I was surprised.

A parliamentary inquiry. Under a unanimous-consent request, unless otherwise stated, does a Senator have a right to move to table an amendment?

The PRESIDING OFFICER (Mr. TUNNEY). If the proposed unanimous-consent agreement limits the time on an amendment, after the time is used or yielded back a Senator has a right to move to table the amendment. If the requested agreement sets a specific time for a vote on an amendment the right to move to table the amendment is lost. In this instance the request was made in

the first form. Therefore, the right to table would not be lost.

Is there objection to the request of the Senator from Montana?

Mr. GRIFFIN. Mr. President, further reserving the right to object, may it be understood, particularly in view of the fact that the so-called amendment has not yet been offered and is not yet before the Senate, this amendment and any proposed thereto on which there would be a time limitation of 10 minutes, would be germane to the bill; is that correct?

Mr. MANSFIELD. Oh, yes; it would have to be. Yes; I include that in my request, Mr. President.

The PRESIDING OFFICER (Mr. TUNNEY). Is there objection to the request of the Senator from Montana? The Chair hears none, and it is so ordered.

Mr. MANSFIELD subsequently said: Mr. President, if I may go out on a long limb, I ask unanimous consent that the vote on final passage occur no later than the hour of 6:30 p.m. tonight and that rule XII be waived.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Montana? The Chair hears none, and it is so ordered.

APPOINTMENT BY THE VICE PRESIDENT

The PRESIDING OFFICER (Mr. TUNNEY). The Chair, on behalf of the Vice President, appoints the following Senators to the Plenipotentiary Conference on Definitive Arrangements for the International Telecommunications Satellite Consortium, Washington, D.C., beginning April 14, 1971:

The Senator from Rhode Island (Mr. PASTORE) and the Senator from Tennessee (Mr. BAKER).

MESSAGES FROM THE PRESIDENT

Messages in writing from the President of the United States were communicated to the Senate by Mr. Leonard, one of his secretaries.

EXECUTIVE MESSAGE REFERRED

As in executive session, the Presiding Officer (Mr. TUNNEY) laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the Committee on the Judiciary.

(For nominations received today, see the end of Senate proceedings.)

EMERGENCY SCHOOL AID AND QUALITY INTEGRATED EDUCATION ACT OF 1971

The Senate continued the consideration of the bill (S. 1557) to provide financial assistance to local educational agencies in order to establish equal educational opportunities for all children, and for other purposes.

Mr. CHILES. Mr. President, I send to the desk an amendment and ask that it be stated. I offer this amendment, Mr. President, on behalf of myself, the Senator from Georgia (Mr. GAMBRELL), the Senator from Texas (Mr. BENTSEN), and the Senator from Virginia (Mr. SPONG).

The PRESIDING OFFICER. The amendment will be stated. The legislative clerk read as follows:

(c) Notwithstanding any of the provisions heretofore set forth in section 6, sums appropriated as therein set forth shall be available for grants to, and contracts with, any local educational agencies in such State, to assist such agencies in carrying out programs as may be required or provided for in the court order applicable to such agency referred to in section 5(a)(1)(A)(i) I.

Mr. CHILES. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from Florida is recognized for 5 minutes.

Mr. CHILES. First, Mr. President, I ask for the yeas and nays on the amendment.

The yeas and nays were ordered.

Mr. CHILES. Mr. President, in section 5(c), it provides that those districts under a court order may make application.

In section 6 of the bill, it sets forth the authorized activities.

This amendment would add a new paragraph (c), at the end of section 6, that, in addition to the authorized activities, it would provide that those districts under a Federal court order would be entitled to receive funds in order to carry out the requirements of the court order that they were under.

It is the feeling of the movers of the amendment that where we are under a Federal court order in a school district, we should be entitled to seek and receive funds to implement that order, and that it should not be necessary to have to go to the HEW and say, "We need funds," at the risk of the possibility of HEW's saying, "Yes, you are under a court order but before we will give you any funds, even to carry out that court order, we will require you also to come forward with some additional activities that you meet some additional requirements before we give you funds."

We feel the overall purpose of the bill is to entitle those districts to assist schools that are desegregating, and certainly if they are under a court order, they are meeting the requirements of the courts of the land in order to desegregate. If they are under a court appointed and approved plan, that plan should be sufficient. They should be entitled to attempt to carry out the provisions of the act under the funds provided by the bill.

Many of us are from States that have many of the boards under court order at this time. They are today suffering under the requirements of carrying out the act and how to properly desegregate. They should not be required to be put under court order again to determine whether they should meet additional requirements. They should be entitled now to seek a determination of whether they are now under a valid court order.

Mr. GAMBRELL. Mr. President, will the Senator yield for a question?

Mr. CHILES. I yield for a question.

Mr. GAMBRELL. Mr. President, is it the Senator's understanding pursuant to the amendment he has offered that if a school district which is under a court ordered plan of integration submitted a request to HEW for funding to carry out the financial requirements of that court order, that by itself would qualify that school district for money without any further additional requirements being put upon them?

Mr. CHILES. The Senator is correct. I think it would make them eligible for funding to carry out the provisions of the court order. There are provisions of the bill that make such grants if they carry out special requirements. I do not think they would be eligible for those special funds, but for those requirements that it would be necessary to accomplish to carry out the court order, I think they would be eligible to seek and receive funds.

Mr. GAMBRELL. Would it be necessary in accordance with the Senator's understanding of the amendment that any other requirements of section 6 be met or be added to the plan, or would the plan as required by the court be sufficient in and of itself, if that is what the school district is supposed to do?

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. CHILES. Mr. President, I yield myself an additional 5 minutes.

The PRESIDING OFFICER. The Senator is recognized for an additional 5 minutes.

Mr. CHILES. Yes. The plan required by the court would be sufficient to make them eligible to receive funds to carry out that plan. It would not make them eligible to receive some of the special funds in the bill. They would have to meet those requirements to receive the special funds. But for the basic eligibility, I think the amendment would meet the requisite of being eligible.

Mr. GAMBRELL. They would be eligible for funds to carry out the plan without having other things to do?

Mr. CHILES. Yes. I think they would be eligible to try to meet as speedily as possible the order of the Federal court.

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

Mr. CHILES. I yield.

Mr. SPONG. Mr. President, I associate myself with those who have offered the amendment. What we are trying to do is assure that money will be readily available to school districts that are under court order that could help them to comply with those orders.

General dissatisfaction has been expressed by many parties concerning how the money already appropriated has been spent for desegregation. There have been questions raised about the administrative abilities and capacities of those who have had these funds to disperse.

Those of us from States that have school divisions under court order want those divisions to have assistance to comply with the court orders without being told by an administrative agency, "All right; you have got to do this in addition to what you have already been ordered to do in order to qualify for these funds."

If buses are needed, they are needed and the money is needed for them. But we do not want to leave the door open for an administrative agency to come in

and pose additional requirements over and above what the court order spells out before that school division is eligible for funds.

It is not provided for in the bill. I understand that the amendment the Senator from Florida has offered would take care of that situation. I commend the Senator from Florida and the junior Senator from Georgia.

Mr. President, I am happy to join with them in offering the amendment.

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

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. CHILES. Mr. President, I yield myself an additional 5 minutes.

The PRESIDING OFFICER. The Senator from Florida is recognized for an additional 5 minutes.

Mr. BENTSEN. Mr. President, I associate myself with the amendment. It is an amendment of some substantial significance because of the number of school districts throughout the country that are now under court orders and who are under the insistence of the courts that they proceed with integration in the proper manner.

I do not think that this precludes HEW from coming in at a later date or at a later time and asking for additional things to be done. However, this does bring about an implementation of what the court has directed to be accomplished up to that point.

Many school districts are under a financial burden because of the tax situation, and it will be extremely difficult for them to comply with the court order.

That is one of the specific reasons that I support the measure. We will support the measure today, but when we run into the situation where we find that the HEW or the administrator brings in extraneous issues at a time when the district is trying to comply with the court order, I think we can find a situation where we actually impede a school district in complying with the court order.

That is the reason for my support of the amendment.

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

Mr. PELL. Mr. President, I yield myself such time as I may require.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. PELL. Mr. President, I have not had a chance yet to look at the amendment. I do not have a copy of the amendment, even though I am the manager of the bill.

From the Senator's description of his amendment, I understand that the amendment would take what is presently a voluntary program and make in into a mandatory entitlement program. It would mean that the money would be divided among the school districts in States where court orders exist.

I wonder if that is the case. I ask the authors of the amendment how the money would be divided? Would it be an entitlement program on the basis of school age population?

Mr. GAMBRELL. Mr. President, the language of the amendment simply adopts the language already being used in section 6 which provides that sums appropriated shall be available for grants to agencies carrying out certain programs as set forth in section 6.

The amendment simply says that in addition to and notwithstanding the programs set forth in section 6, this money shall be available for use in carrying out court ordered integration. In other words, it allows for another type of program which can be funded under section 6.

It is not anything more mandatory than now under section 6.

Mr. PELL. Mr. President, does this not mean that it changes the bill to provide that on application of a school district. the money would be granted if it is under court order?

Mr. GAMBRELL. No, I do not think so. I think it simply states that HEW funds will be available and that HEW is to make some allocation among those districts who apply under a plan, that those districts are eligible for consideration that include a plan which is carried out under court order.

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

Mr. PELL. I yield.

Mr. HUMPHREY. Does the Senator from Rhode Island feel that the amendment offered would preempt certain funds, or does he feel that the amendment offered would permit the school districts under court order to qualify for the funds that are provided in the bill?

Mr. PELL. If it were an amendment that would merely permit them to apply—that is what the bill says already—there would be no problem with it. But if it would give what would be an entitlement that would give a different thrust to the bill. That is why I do not understand it. Certainly, as I heard the amendment read, it would become an entitlement.

The bill now provides an award to those districts that are making bona fide efforts in the direction the court directs.

Mr. HUMPHREY. Does not the bill without the amendment entitle those agencies that meet certain criteria to receive funds?

Mr. PELL. There is a grant authorization.

Mr. HUMPHREY. So there is entitlement for that group.

Mr. PELL. That group is eligible.

Mr. HUMPHREY. This amendment would merely add another entitled group. In other words, if a school district that is under a court order feels it would be advantageous for that school district, in order to comply with the court order, to receive these funds, then the school district, in its application, would be eligible. Is that a fact?

Mr. PELL. That is correct. But as manager of the bill I must admit to some confusion since I have not studied the amendment. I do not fully understand what the amendment would do, nor do the members of the committee.

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

Mr. PELL. I yield.

Mr. PASTORE. Why can we not straighten it out by changing the word "shall" to "may"? Why would that not do it?

In other words, it would not preclude, but it would not make it compulsory, changing it from an entitlement to a grant upon application. Is that not what we are trying to do?

Mr. JAVITS. I did not hear the Senator's suggestion.

Mr. PASTORE. I suggested that we change the word "shall" to "may".

Mr. JAVITS. Where?

Mr. PASTORE. I read it just a moment ago. The amendment, as now proposed, reads:

> Notwithstanding any of the provisions heretofore set forth in section 6, sums appropriated as therein set forth shall be available—

In other words, this may be a preference and to avoid preferential treatment, make it "may". It would not preclude them but it would cover them.

Mr. JAVITS. I concur with the Senator. I do not know if the proponents of the amendment intend this or not, but it seems to me they are saying to the administrator or the Commissioner, "You may not make it a grant to a district which is under a court order unless you make it only in connection with a decree. You may not put in any other provision on how to use the money set forth in section 6."

That is the only reason I see the proponents would want it. It seems to me that completely negates the entire bill. The reason we are doing what we are doing is to improve education in the districts which are under court order.

If they mean something else, for the protection of all of us Senator PASTORE's suggestion should be adopted.

Mr. HUMPHREY. Mr. President, will the Senator from Rhode Island yield?

Mr. PELL. I yield.

Mr. HUMPHREY. Is there language in the amendment which says—notwithstanding any other provisions, that those districts, under court order, shall be eligible for the special benefits in this legislation?

Mr. PELL. Yes. They shall be available for grants. The suggestion of the Senator from Rhode Island was "may be available."

Mr. HUMPHREY. For the purpose of my cross examination with the manager of the bill, what the Senator from Florida was seeking to do was to make it possible for those districts that are under court order to implement and expedite fulfillment of that court order by the use of the funds and the resources that are authorized by this bill.

That brings us to the proposal of the Senator from Rhode Island (Mr. PASTORE) of using the word "may" rather than the word "shall."

The point that needs to be clear is that notwithstanding anything else in this bill those districts may be eligible that may apply.

Mr. JAVITS. Mr. President, will the Senator yield further?

Mr. PELL. I yield.

Mr. JAVITS. I think we are getting the picture now. It depends on what the sponsors wish. It is a fact that a district which is desegregated is eligible, and that

provision is made in section 5(a)(1)(A). It begins at the top of page 6 with lines 1 through 8. It would be noted that those words state: "which has been undertaken pursuant to a final order issued by a court of the United States, or a court of any State, which requires the desegregation of minority group segregated children or faculty in the elementary and secondary schools of such agency, or otherwise requires the elimination or reduction of minority group isolation in such schools; or"

In view of the word "or" they fulfill the initial requirement for qualification. What these gentlemen are trying to get at is in section 6 where we specify an entire group of things for which the Commissioner can grant funds. They say when a school district is under court order to desegregate he may not insist that the district should do any of the things specified in section 6.

I say I cannot go along with that mandatorily. But if the proponents of the amendment take the Pastore formula, and give the Secretary power to waive that provision, I am for that. Therefore, I would go for the Pastore proposal. I think he has put his finger on the problem being raised by the sponsors of the amendment, to wit, that the list of authorized activities enumerated in section 6(a) should not serve to limit the Commissioner in funding other activities required by a court order to desegregate.

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

Mr. PELL. I yield.

Mr. PASTORE. As I understand the proponents of the bill they fear if they are precluded in receiving this money while under court order they will not have the wherewithal to carry out the court order, if I understand the Senator from Texas. I think he made his position clear. I think all of us want them included to carry out the court order. But there is some fear that if we use the word "shall" we give preference. Therefore, to avoid the preferential treatment we are leaving it to the discretion of HEW in a case where they are under court order. By using the word "may" I think the Senators will accomplish their purpose.

Mr. PELL. I would like to ask the authors of the amendment if they would be willing to accept the suggestion of the Senator from Rhode Island (Mr. PASTORE). After consultation with my colleagues on the committee, I understand that we can accept the amendment with the substitution of the word "may" for the word "shall."

Mr. CHILES. I think the Senator from New York has a different interpretation than the Senator from Rhode Island as to what "may" means. That is something that concerns us. We trace the language of section 6 at the top of page 15 of the bill, and section 6 and paragraph (a) when we said:

> Sums appropriated to section 3(a) and apportioned to a State pursuant to section 4 (which have not been reserved under paragraph (2) or (3) of section 4(a)) shall be available for grants to, and contracts with local educational agencies in that State—

That is where we came up with the word "shall." They say that sections 5 through 9 "shall be." We are only adding subsection (C) that says:

> They shall be eligible for funds to help carry out a Federal court order.

It is the same "shall" as before. Now, the senior Senator from Rhode Island makes the proposal that if the word "may" is used, if they were under court order, they would be entitled to funds, but not to the exclusion of every project that might come in.

I think that is a proposition with which we are in concurrence.

However, the Senator from New York said regardless of whether they are under court order the proponents of the bill want the administrator of HEW to have the final say-so as to whether they are going to give the money or not.

The purpose of our amendment is clear and it is so that the administrator of HEW will not have the final say-so.

We feel that if a district is under a Federal court order, that should be sufficient to enable it to be eligible and to share in the proceeds of the bill in order to carry out the provisions of the court order. That would entitle it to proceed under section 7, which sets up an additional requirement. The "notwithstanding" provision of the amendment would not prevent a district, even if it were under a Federal court order, from complying with paragraphs 1 through 6, to seeking additional funds, but it would allow it, without the approval of the administrator saying, "I am going to approve your application that you would be eligible," to share in the funds.

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

Mr. CHILES. I yield.

Mr. JAVITS. The Senator said "without the approval of the Secretary." He cannot mean that. If I understood the Senator from Rhode Island, he said we will do two things with respect to this provision. Once a school district is eligible, we will make its court-ordered activities eligible—there is no question about that—and we will allow the Commissioner to weigh any part of section 6 regarding the districts which are under court order to desegregate. We always use the word "may" where we are trying to give the administrator discretion in respect to a mandatory requirement. The Senator proves the case himself when he says section 6 says "shall." Therefore, it makes that mandatory. Therefore, if the Senator wants to give discretion with respect to the mandatory power, the discretion is given by saying "may." Remember that the "notwithstanding" provision of Section 6 is kept.

I see no difference between the Senator from Florida, the Senator from Rhode Island, and myself. They are eligible, and the Secretary is given discretion to relieve the district of any part of section 6, notwithstanding that, as it now stands, section 6 is mandatory. That is what I understand will result from the legal situation.

Mr. CHILES. If I understood the distinguished Senator from New York, he would make me eligible in one breath, but take it away in the other. He says I am eligible, but he leaves it up to the Secretary as to whether I get any funds. I do not see what I gain.

Mr. JAVITS. What the Senator gains is that he does not have to comply with section 6(a) if the Commissioner frees him of it. The Senators offering the amendment say they do not want preference over all other districts. If they do, we ought to know it so we know how to vote. They say they do not want funding preference over the other districts; yet, if we adopt this proposal as presented, they would have it. They want the right for court-ordered activities to be eligible and the requirement of the right to be relieved of section 6(a). They are achieving it if they adopt the suggestion of the senior Senator from Rhode Island (Mr. PASTORE). But if they argue in the same breath that it is mandatory that the district be given the money, but that it is not mandatory to do what is required, then we had better know about that. If the Senator contends funding is mandatory on the part of the Commissioner, it destroys the bill.

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

Mr. CHILES. I yield.

Mr. GAMBRELL. All we are asking is that all districts under court orders be given the same treatment in executing the court plan in comparison with a district that says, "We have a voluntary plan and we want to be eligible." Under section 6, these funds shall be available to finance a plan. All we are saying is that we should add to that another program which is carrying out a court order plan of integration. The words "shall be available" in section 6 mean to me "may," in any event. In other words, to say funds shall be available does not say they shall be granted.

Mr. PASTORE. Mr. President, if the Senator will yield, the trouble with that is that the Senator uses the words "notwithstanding any of the provisions" of section 6. If they were taken out, the Senator would have an argument. That is where the confusion comes in. The Senator is obviating completely section 6 and he is making a new category. If the Senator did not use "notwithstanding the provisions of section 6," he would have a case made.

Mr. PASTORE. We either have to use the word "may" if we say "notwithstanding," or we have to take "notwithstanding" out if we use the word "shall." It is as simple as that.

The PRESIDING OFFICER. The Chair wishes to inquire on whose time the Senators are speaking.

Mr. PASTORE. Mr. President, it is everybody's time.

The PRESIDING OFFICER. Is it on the time of the Senator from Rhode Island or the Senator from Florida?

Mr. PELL. Mr. President, we are now on my time. I yield myself as much time as I may consume.

Under the bill, both those districts under court order and other school districts can apply for funds.

What the amendment would do, as I understand it, would be that those districts that are under court order could come in without offering any further program or plan and would then be entitled to these funds and would be given a priority or preference. If that is the case, I think that would nullify a great portion or part of the purpose of the bill. On the other hand, if they want equal treatment, that would be accorded under the suggestion of my colleague from Rhode Island (Mr. PASTORE), and the manager of the bill would be willing to accept it.

I apologize for not having understood the amendment more quickly. I think I understand it now.

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

Mr. PELL. I yield.

Mr. MONDALE. There are two sections of the bill that should be emphasized. Section 5 is the eligibility section. It establishes what a district must do in order to be eligible for funds. Section 6 is a permissible expenditure section. It defines the ways in which money can be spent to assist a district that has been determined to be eligible under section 5.

A school district under court order can be eligible under section 5, but it is not necessarily eligible under section 6. It must comply with the requirements set forth in the bill.

Therefore, the amendment offered by the Senator from Florida, in effect, removes the requirements of section 6 regarding districts under court order. The word "shall" defines the basic standards of what one has to do to apply. This gets to the question of whether we are passing a bill consistent with the theory of the original bill, in which case we should not provide a grant until a plan has been approved by the HEW, or whether we should create a mandatory entitlement, by which any district under any kind of court order is entitled to be funded for activities not found in section 6. That is what the amendment of the Senator from Florida does.

Let me remind the Senate that there is a whole host of invalid Federal court orders today, and even more now because of the recent Supreme Court decision. If all those district court orders were approved for funds—freedom of choice orders, plans for segregation, orders based on the neighborhood school theory—regardless of how illegal they are, all of them would receive funding under this amendment.

I have some sympathy with the problem the Senator from Florida is concerned with. There have been cases in which the Department of Health, Education, and Welfare has been officious. There have been cases where it has been incompetent. That is regrettable.

I think the way to resolve this issue is by way of the compromise offered by the senior Senator from Rhode Island, because it does two things to meet the objective of the Senator from Florida. First, it gets away from the requirements of section 6, which is quite a victory. Second, it has the requirement, not of preference, but a requirement that special consideration should be given to school districts under court orders. But it does not require the Secretary to fund a district which should not be funded. I think if we go that extra step, which the present amendment in the present form requires, we will be destroying the present intention of the bill. Therefore, I would oppose it. I wish the sponsors would accept the compromise proposal offered by the senior Senator from Rhode Island.

Mr. CHILES. Mr. President, I yield myself some time.

I would like to ask the junior Senator from Rhode Island his opinion if we changed the amendment and if we provided that "sums appropriated as set forth in section 6 shall also be available for grants to, and contracts with," would that be sufficient to comply?

Mr. PELL. As long as the Senator says "may also," and not "shall also," that would be fine.

Mr. CHILES. We are knocking out the "notwithstanding." Following the suggestion of the senior Senator from Rhode Island that you cannot have the "notwithstanding" and the "shall," we are taking out the "notwithstanding."

Mr. PASTORE. Read it again.

Mr. CHILES. "Sums appropriated as set forth in section 6 shall also be available." All we are adding is an additional eligibility requirement, that they shall also be available.

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

Mr. CHILES. I yield.

Mr. MONDALE. The Senator understands by this amendment that the district shall be eligible, but not necessarily funded; is that correct?

Mr. CHILES. That is right.

Mr. MONDALE. If that is correct, I believe it meets our problem.

The PRESIDING OFFICER. Does the Senator so modify his amendment?

Mr. CHILES. Yes.

Mr. JAVITS. Mr. President, reserving the right to object—and I shall not object—may we have it read?

Mr. CHILES. Yes. We would strike the provision that was in the amendment before, "notwithstanding any of the provisions heretofore set forth in section 6." That would be stricken, and the amendment would start: "Sums appropriated as set forth in section 6 shall also be available for grants to and contracts with," and the rest of the language would continue the way the language of the amendment was originally.

The PRESIDING OFFICER. Will the Senator please send his modification to the desk?

Mr. CHILES. Yes.

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

Mr. CHILES. I yield.

Mr. PELL. That sounds fine. I want to ask the Senator one question. This does not mean an automatic entitlement, does it?

Mr. CHILES. It would mean automatic eligibility. I think in effect we would say, "You shall be eligible just like anyone else shall be eligible."

Mr. MONDALE. In other words, the district is theoretically eligible, but the question of funding, what kind and what amount, remains a question for the Secretary of Health, Education, and Welfare. I think we can accept that.

Mr. PELL. Is that correct, according to the Senator from Flordia?

Mr. CHILES. Mr. President, I got a little scared, on the last statement, that it would again put it up to the Administrator to determine any qualifications, or anything he would set up. It just states that they would share just like anyone applying for anything under the other nine provisions would share.

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

Mr. CHILES. I yield.

Mr. TAFT. I would like to propound this question to the Senators. It seems to me he has excluded the language in lines 24 and 25 on page 14 application. That is the leading language of section 6(a), which reads: "Sums appropriated pursuant to section 3(a) and apportioned to a State pursuant to section 4," and so forth, may get entitlement under section 5. Is the Senator taking out the apportionment under that section between the States, so that under his amendment, it would not result in the apportionment between the States applying as provided here, but would give a superiority, as I understand it, to claims arising under court orders? Is that correct?

Mr. CHILES. No, I do not think so, because the language "notwithstanding" those provisions is stricken. The amendment says only that they shall be eligible. I do not think that would affect the first portion of the paragraph.

Mr. TAFT. With that clarification, I hope the Senator is correct.

The PRESIDING OFFICER. The Senator from Florida still has the time.

Mr. PELL. Will the Senator from Florida yield?

Mr. CHILES. I yield.

Mr. PELL. As manager of the bill, after consultation with my colleagues—on the committee, I would be able to accept the amendment of the Senator from Florida as modified, and congratulate him on his good work.

The PRESIDING OFFICER. Who yields time?

Mr. PELL. I yield back the remainder of my time.

Mr. JAVITS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. JAVITS. Has the amendment been modified?

The PRESIDING OFFICER. Yes.

Mr. GRIFFIN. Mr. President, have the yeas and nays been ordered on this amendment?

The PRESIDING OFFICER. They have been.

Mr. GRIFFIN. I wonder if I might have the attention of the distinguished sponsor of the amendment. I wish to ask unanimous consent that the order for the yeas and nays be rescinded, unless the Senator wants them.

Mr. CHILES. That is agreeable.

Mr. GRIFFIN. Mr. President, I ask unanimous consent that the order for the yeas and nays be rescinded.

The PRESIDING OFFICER. Is there

objection? Without objection, it is so ordered.

The question is on agreeing to the amendment of the Senator from Florida, as modified.

The amendment was agreed to.

Mr. CHILES. Mr. President, on behalf of myself, the Senator from Texas (Mr. BENTSEN), the Senator from Georgia (Mr. GAMBRELL), and the Senator from Virginia (Mr. SPONG), let me say that the purpose of this amendment is to make clear that there is nothing in the bill to prevent those districts that are under court order from being eligible and, therefore, able to share in the funds and benefits available under the bill.

The PRESIDING OFFICER (Mr. TUNNEY). 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.

Mr. PELL. Mr. President, as debate closes on S. 1557, I urge the Senate to adopt the bill. It is a measure which I believe will aid our Nation in its effort to reduce minority group isolation in our schools. All parts of the country, North, South, East, and West are treated equally. The funds may be used for programs designed by local educational agencies to meet their own needs, while approximately 30 percent of the authorized funds would be utilized by the Secretary of Health, Education, and Welfare for exemplary programs.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

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

The PRESIDING OFFICER (Mr. TUNNEY). The bill having been read the third time, the question is, Shall it pass? On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Alaska (Mr. GRAVEL), the Senator from Indiana (Mr. HARTKE), the Senator from Washington (Mr. JACKSON), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Mr. LONG), the Senator from South Dakota (Mr. MCGOVERN), and the Senator from Maine (Mr. MUSKIE), are necessarily absent.

I further announce that the Senator from Oklahoma (Mr. HARRIS) and the Senator from South Carolina (Mr. HOLLINGS) are absent on official business.

I further announce that, if present and voting, the Senator from Alaska (Mr. GRAVEL), the Senator from Oklahoma (Mr. HARRIS), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Washington (Mr. JACKSON), and the Senator from South Dakota (Mr. MCGOVERN) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Tennessee (Mr. BROCK), the Senator from Kentucky (Mr. COOK), the Senator from Colorado (Mr. DOMINICK), the Senator from Arizona (Mr GOLDWATER), the Senator from Iowa (Mr MILLER), the Senator from Oregon (Mr. PACKWOOD), and the Senator from Kansas (Mr. PEARSON) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Utah (Mr. BENNETT) is detained on official business.

If present and voting, the Senator from Utah (Mr. BENNETT), the Senator from Colorado (Mr. DOMINICK), the Senator from South Dakota (Mr. MUNDT), and the Senator from Kansas (Mr. PEARSON) would each vote "yea."

The result was announced—yeas 74, nays 8, as follows:

[No. 54 Leg.]

YEAS—74

Aiken	Fong	Pastore
Allott	Fulbright	Pell
Anderson	Gambrell	Percy
Baker	Griffin	Prouty
Bayh	Gurney	Proxmire
Beall	Hansen	Randolph
Bellmon	Hart	Ribicoff
Bentsen	Hatfield	Roth
Bible	Hruska	Saxbe
Boggs	Hughes	Schweiker
Brooke	Humphrey	Scott
Buckley	Inouye	Smith
Burdick	Javits	Sparkman
Byrd, W. Va.	Jordan, N.C.	Spong
Cannon	Jordan, Idaho	Stevens
Case	Magnuson	Stevenson
Chiles	Mansfield	Symington
Church	Mathias	Taft
Cooper	McGee	Talmadge
Cotton	McIntyre	Tower
Cranston	Metcalf	Tunney
Curtis	Mondale	Weicker
Dole	Montoya	Williams
Eagleton	Moss	Young
Fannin	Nelson	

NAYS—8

Allen	Ellender	Stennis
Byrd, Va.	Ervin	Thurmond
Eastland	McClellan	

NOT VOTING—18

Bennett	Harris	McGovern
Brock	Hartke	Miller
Cook	Hollings	Mundt
Dominick	Jackson	Muskie
Goldwater	Kennedy	Packwood
Gravel	Long	Pearson

So the bill (S. 1557) was passed, as follows:

S. 1557

An Act to provide financial assistance to local educational agencies in order to establish equal educational opportunities for all children, and for other purposes

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

POLICY WITH RESPECT TO THE APPLICATION OF CERTAIN PROVISIONS OF FEDERAL LAW

SEC. 2. It is the policy of the United States that guidelines and criteria established pursuant to title VI of the Civil Rights Act of 1964, section 182 of the Elementary and Secondary Education Amendments of 1966, and this Act, shall be applied uniformly in all regions of the United States in dealing with conditions of segregation by race whether de jure or de facto in the schools of the local educational agencies of any State without regard to the origin or cause of such segregation.

FINDINGS AND PURPOSE

SEC. 2A. (a) The Congress hereby finds that the process of establishing and maintaining stable, quality, integrated schools and eliminating or preventing minority group isolation improves the quality of education for all children and often involves the expenditure of additional funds to which local educational agencies do not have access.

(b) It is the purpose of this Act (1) to encourage comprehensive planning for the elimination of minority group isolation in school systems throughout the Nation, (2) to provide financial assistance to encourage the establishment and maintenance of stable, quality integrated schools throughout the Nation, serving students from all backgrounds, which offer enriched educational opportunities derived from the presence of children from diverse backgrounds in an environment sensitive to the potential contribution of each child to the education of all, through the use of modern educational methods, practices, and techniques, including, where appropriate, programs of integrated bilingual, bicultural education, (3) to assist in eliminating minority group isolation in public school systems throughout the Nation, and (4) to aid schoolchildren in overcoming the educational disadvantages of minority group isolation.

APPROPRIATIONS

SEC. 3. (a) The Commissioner, shall, in accordance with the provisions of this Act, carry out a program designed to achieve the purposes set forth in section 2A(b). There are authorized to be appropriated to the Commissioner, for the purpose of carrying out this Act, $500,000,000 for the period beginning with the enactment of this Act and ending June 30, 1972, and $1,000,000,000 for the fiscal year ending June 30, 1973. Funds so appropriated shall remain available for obligation and expenditure during the fiscal year succeeding the fiscal year for which they are appropriated, except that funds reserved pursuant to subsection (b) shall remain available until expended.

(b) (1) From the sums appropriated pursuant to subsection (a) for any fiscal year, the Commissioner shall reserve an amount equal to 15 per centum thereof for the purposes of section 8.

(2) From the sums appropriated pursuant to subsection (a) for any fiscal year, the Commissioner shall reserve an amount equal to 15 per centum thereof for the purposes of section 7(a) and (c), and 10, of which—

(A) not less than an amount equal to 4 per centum of such sums shall be for the purposes of section 7(c); and

(B) not less than an amount equal to 3 per centum of such sums shall be for the purposes of section 10.

APPORTIONMENT AMONG STATES

SEC. 4. (a) (1) From the sums appropriated pursuant to section 3(a) which are not reserved under section 3(b) or 12 for any fiscal year, the Commissioner shall apportion to each State for grants and contracts within that State an amount which bears the same ratio to such sums as the number of minority group children enrolled in elementary and secondary schools in that State bears to the number of such children in all the States, except that the amount apportioned to any State shall not be less than $100,000.

(2) Of the amount apportioned to each State under paragraph (1), the Commissioner shall, in accordance with criteria established by regulation, reserve not in excess of 22 per centum thereof for grants to, and contracts with, local educational agencies in that State pursuant to section 5(b).

(3) Of the amount apportioned to each State under paragraph (1), the Commissioner shall reserve not less than 15 per centum thereof for grants and contracts in that State pursuant to section 7(b).

(b) The amount of any State's apportionment under subsection (a) which exceeds the the amount which the Commissioner determines, in accordance with criteria established by regulation, will be required during the period for which the apportionment is available for programs and projects within

such State, shall be available for reapportionment from time to time, on such dates during such period as the Commissioner shall fix by regulation, to other States in proportion to the original apportionments to such States under subsection (a). If the Commissioner determines, in accordance with criteria established by regulation, that the amount which would be reapportioned to a State under the first sentence of this subsection exceeds the amount which will be required during the period of the apportionment for programs and projects within such State, the amount of such State's reapportionment shall be reduced to the extent of such excess, and the total amount of any reduction pursuant to this sentence shall be available for reapportionment under the first sentence of this subsection. Any amount reapportioned to a State under this subsection during the period of any apportionment shall be deemed a part of its apportionment for that period. Any amount reserved pursuant to paragraph (3) of subsection (a) and reapportioned under this subsection shall be used solely for the purposes for which it was originally reserved.

ELIGIBILITY FOR ASSISTANCE

SEC. 5.(a)(1)(A) The Commissioner is authorized to make a grant to, or a contract with, a local educational agency—

(i) which is implementing a plan—

(I) which has been undertaken pursuant to a final order issued by a court of the United States, or a court of any State, which requires the desegregation of minority group segregated children or faculty in the elementary and secondary schools of such agency, or otherwise requires the elimination of reduction of minority group isolation in such schools; or

(II) which has been approved by the Secretary as adequate under title VI of the Civil Rights Act of 1964 for the desegregation of minority group segergated children or faculty in such schools;

(ii) which, without having been required to do so, has adopted and is implementing, or will, if assistance is made available to it under this Act, adopt and implement, a plan for the complete elimination of minority group isolation in all the minority group isolated schools of such agency; or

(iii) which has adopted and is implementing, or will, if assistance is made available to it under this Act, adopt and implement, a plan—

(I) to eliminate or reduce minority group isolation in one or more of the minority group isolated schools of such agency,

(II) to reduce the total number of minority group children who are in minority group isolated schools of such agency, or

(III) to prevent minority group isolation reasonably likely to occur (in the absence of assistance under this Act) in any school of such agency, in which school at least 20 per centum, but not more than 60 per centum, of the enrollment consists of such children.

(B) No local educational agency shall be eligible under subparagraph (A) unless the Commissioner determines, in accordance with regulations, that the local educational agency will establish or maintain or has established and will maintain at least one stable, quality integrated school and that the agency has adopted a comprehensive districtwide plan for the elimination of minority group isolation, to the maximum extent possible, in all schools of such agency.

(2)(A) The Commissioner is authorized, in accordance with special eligibility criteria established by regulation for the purposes of this paragraph, to make grants to, and contracts with, local educational agencies for the purposes of section 8(a)(1).

(B) A local educational agency shall be eligible for assistance under this paragraph only if—

(i) such agency is located within, or adjacent to, a Standard Metropolitan Statistical Area;

(ii) the schools of such agency are not attended by minority group children in a significant number or proportion; and

(iii) such local educational agency has made joint arrangements with a local educational agency, located within that Standard Metropolitan Statistical Area, and the schools of which are attended by minority group children in a significant proportion, for the establishment or maintenance of one or more stable, quality integrated schools as provided in section 8(a)(1).

(3)(A) Upon a determination by the Commissioner—

(i) that more than 50 per centum of the number of children in attendance at the schools of a local educational agency is minority group children;

(ii) that such local educational agency has adopted a comprehensive districtwide plan which meets the requirements of subparagraph (B) of paragraph (1) of this section; and

(iii) that such local educational agency has applied for and will receive at least an equal amount of assistance under subsection (b);

the Commissioner is authorized to make a grant to, or contract with, such local educational agency for the establishment or maintenance of one or more stable, quality integrated schools as defined in subparagraph (B).

(B) For the purposes of this paragraph (3), an integrated school shall be a school with (i) an enrollment in which a substantial proportion of the children is from educationally advantaged backgrounds, and in which the Commissioner determines that the number of nonminority group children constitutes that proportion of the enrollment which will achieve stability, in no event more than 60 per centum thereof, and (ii) a faculty which is representative of the minority group and nonminority group population of the larger community in which it is located, or, whenever the Commissioner determines that the local educational agency concerned in attempting to increase the proportions of minority group teachers, supervisors, and administrators in its employ, a faculty which is representative of the minority group and nonminority group faculty employed by the local educational agency.

(b) The Commissioner is authorized to make grants to, or contracts with, local educational agencies, which are eligible under subsection (a), for unusually promising pilot programs or projects designed to overcome the adverse effects of minority group isolation by improving the academic achievement of children in one or more minority group isolated schools, if he determines that the local educational agency had a number of minority group children enrolled in its schools, for the fiscal year preceding the fiscal year for which assistance is to be provided, (1) is at least 15,000, or (2) constitutes more than 50 per centum of the total number of children enrolled in such schools.

(c) No local educational agency making application under this section shall be eligible to receive a grant or contract in an amount in excess of the amount determined by the Commissioner, in accordance with regulations setting forth criteria established for such purpose, to be the additional cost to the applicant arising out of activities authorized under this Act, above that of the activities normally carried out by the local educational agency.

(d) (1) No local educational agency shall be eligible for assistance under this Act if it has, after the date of enactment of this Act—

(A) transferred (directly or indirectly by gift, lease, loan, sale, or other means) real or personal property, to, or made any services available to, any nonpublic school or school system (or any organization controlling, or intending to establish, such a school or school system) without prior determination that such nonpublic school or school system (i) is not operated on a racially segregated basis as an alternative for children seeking to avoid attendance in desegregated public schools, and (ii) does not otherwise practice, or permit to be practiced, discrimination on the basis of race, color, or national origin in the operation of any school activity;

(B) had in effect any practice, policy, or procedure which results (or has resulted) in the disproportionate demotion or dismissal of instructional or other personnel from minority groups in conjunction with desegregation or the conduct of an activity described in section 5, or otherwise engaged in discrimination based upon race, color, or national origin in the hiring, promotion, or assignment of employees of the agency (or other personnel for whom the agency has any administrative responsibility);

(C) in conjunction with desegregation or the conduct of an activity described in section 5, had in effect any procedure for the assignment of children to or within classes which results in the separation of minority group from nonminority group children for a substantial portion of the school day: *Provided, however,* That the foregoing does not prohibit the use of bona fide ability grouping by a local education agency as a standard pedagogical practice; or

(D) had in effect any other practice, policy, or procedure, such as limiting curricular or extracurricular activities (or participation therein by children) in order to avoid the participation of minority group children in such activities, which discriminates among children on the basis of race, color, or national origin;

except that, in the case of any local educational agency which is ineligible for assistance by reason of clause (A), (B), (C), or (D), such agency may make application for a waiver of ineligibility, which application shall specify the reason for its ineligibility, contain such information and assurances as the Secretary shall require by regulation in order to insure that any practice, policy, or procedure, or other activity resulting in the ineligibility has ceased to exist or occur and include such provisions as are necessary to insure that such activities do not reoccur after the submission of the application.

(2)(A) Except as is provided in subparagraph (B), no local educational agency shall be eligible for assistance under this Act or for a waiver under paragraph (1) if—

(i) after August 18, 1970, it has caused to exist or occur, or has permitted to exist or occur, any transaction, practice, policy, or procedure described in clause (A), (B), (C), or (D) of paragraph (1) which would have rendered it ineligible if such transaction, practice, policy, or procedure existed or occurred after the date of enactment of this Act; and

(ii) it has received assistance under the paragraph headed "Emergency School Assistance" in the Office of Education Appropriations Act, 1971 (Public Law 91-380).

(B)(i) In the case of any local educational agency which is ineligible for assistance under this Act by reason of subparagraph (A), such agency may make a special application for a waiver of its eligibility, which application shall include (I) all the specifications, procedures, assurances, and other information required for a waiver under the exception set forth in paragraph (1), and (II) in addition, such other data, plans, assurances, and information as the Secretary shall require in order to insure compliance with this subparagraph (B).

(ii) The additional matters required by the Secretary under clause (II) of subparagraph (B)(i) shall at least include sufficient infor-

mation as to enable the Commissioner to evaluate properly the application submitted under section 9 by the applicant for a special waiver under this subparagraph (B) and advise the Secretary with respect to the merit of the program for which assistance is sought.

(3) Applications for waivers under paragraphs (1) and (2) may be approved only by the Secretary. The Secretary's functions under this paragraph shall, notwithstanding any other provision of law, not be delegated.

(4) No application for assistance under this Act shall be approved prior to a determination by the Commissioner that the applicant is not ineligible by reason of this subsection. No waiver under paragraph (2) shall be granted until the Commissioner has determined that the special applicant has submitted an application under section 9 proposing a program or project of extraordinary merit.

(5) All determinations pursuant to this subsection shall be carried out in accordance with criteria and investigative procedures established by regulations of the Secretary for the purpose of compliance with this subsection.

(6) All determinations and waivers pursuant to this subsection shall be in writing. The Committee on Labor and Public Welfare of the Senate and the Committee on Education and Labor of the House of Representatives shall each be given notice of an intention to grant any waiver under this subsection, which notice shall be accompanied by a copy of the proposed waiver for which notice is given and copies of all determinations relating to such waiver. The Commissioner shall not approve an application by a local educational agency which requires a waiver under this subsection prior to thirty days after receipt of the notice required by the preceding sentence by the chairman of the Committee on Labor and Public Welfare of the Senate and the chairman of the Committee on Education and Labor of the House of Representatives.

AUTHORIZED ACTIVITIES

SEC. 6. (a) Sums appropriated pursuant to section 3(a) and apportioned to a State pursuant to section 4 (which have not been reserved under paragraph (2) or (3) of section 4(a)) shall be available for grants to, and contracts with, local educational agencies in that State which have been established as eligible under section 5(a), to assist such agencies in carrying out the following programs and projects under the comprehensive districtwide plan submitted pursuant to section 5(a) as necessary and appropriate to carry out the purposes of this Act:

(1) The development and use of new curricula and instructional methods, practices, and techniques (and the acquisition of instructional materials relating thereto) to support a program of instruction for children from all racial, ethnic, and economic backgrounds, including instruction in the language and cultural heritage of minority groups.

(2) Remedial services, beyond those provided under the regular school program conducted by the local educational agency, including student-to-student tutoring.

(3) Guidance and counseling services, beyond those provided under the regualr school program conducted by the local educational agency, designed to promote mutual understanding among minority group and nonminority group parents, children, and teachers.

(4) Administrative and auxiliary services to facilitate the success of the project.

(5) Community activities, including public information efforts, in support of a plan, program, project, or other activities described in this section.

(6) Recruiting, hiring, and training of teacher aides: *Provided*, That in recruiting teacher aides, preference shall be given to parents of children attending schools assisted under section 5(a).

(7) Inservice teacher training designed to enhance the success of schools assisted under section 5(a) through contracts with institutions of higher education, or other institutions, agencies, and organizations individually determined by the Commissioner to have special competence for such purpose.

(8) Planning programs and projects under this section, the evaluation of such programs and projects, and dissemination of information with respect to such programs and projects.

(9) Repair or minor remodeling or alteration of existing school facilities (including the acquisition, installation, modernization, or replacement of instructional equipment) and the lease or purchase of mobile classroom units or other mobile educational facilities.

In the case of programs and projects involving activities described in paragraph (9), the inclusion of such activities must be found to be a necessary component of, or necessary to facilitate, a program or project involving other activities described in this section or subsection (b), and in no case involve an expenditure in excess of 10 per centum of the amount made available to the applicant to carry out the program or project. The Commissioner shall by regulation define the term "repair or minor remodeling or alteration".

(b) Sums reserved under section 4(a)(2) with respect to any State shall be available for grants to, and contracts with, local educational agencies in that State making application for assistance under section 5(b) to carry out innovative pilot programs and projects which are specifically designed to assist in overcoming the adverse effects of minority group isolation, by improving the educational achievement of children in minority group isolated schools, including only the activities described in paragraphs (1) through (9) of subsection (a), as they may be used to accomplish such purpose.

(c) Sums appropriated as set forth in section 6 shall also be available for grants to, and contracts with, any local educational agencies in such State, to assist such agencies in carrying out programs as may be required or provided for in the court order applicable to such agency referred to in section 5 (a)(1)(A)(i)(I).

SPECIAL PROGRAMS AND PROJECTS

SEC. 7. (a)(1) Amounts reserved by the Commissioner pursuant to section 3(b)(2), which are not designated for the purposes of clause (A) or (B) thereof, shall be available to him for grants and contracts under this subsection.

(2) The Commissioner is authorized to make grants to, and contracts with State and local educational agencies, and other public and private nonprofit agencies and organizations (or a combination of such agencies and organizations) for the purpose of conducting special programs and projects carrying out activities otherwise authorized by this Act, which the Commissioner determines will make substantial progress toward achieving the purposes of this Act.

(b) From the amounts reserved pursuant to section 4(a)(3), the Commissioner is authorized to make grants to, and contracts with, public and private nonprofit agencies, institutions, and organizations (other than local educational agencies and nonpublic elementary and secondary schools) for programs and projects to promote equality of educational opportunity, through facilitating the participation of parents, students, and teachers in the design and implementation of comprehensive educational planning; the provision of services which will enable parents to become effective participants in the educational process; the conduct of activities which foster understanding among minority group and nonminority group parents, children, teachers, and school officials, including public information and school-community relations activities; and the conduct of school-related activities to reinforce student growth and achievement.

(c)(1) The Commissioner shall carry out a program to meet the needs of minority group children who are from an environment in which a dominant language is other than English and who, because of language barriers and cultural differences do not have equality of educational opportunity. From the amount reserved pursuant to section 3(b)(2)(B), the Commissioner is authorized to make grants to, and contracts with—

(A) private nonprofit agencies, institutions, and organizations to develop curricula, at the request of one or more educational agencies which are eligible for assistance under section 5, designed to meet the special educational needs of minority group children who are from environments in which a dominant language is other than English, for the development of reading, writing, and speaking skills in the English language and in the language of their parents or grandparents, and to meet the educational needs of such children and their classmates to understand the history and cultural background of the minority groups of which such children are members;

(B) local educational agencies eligible for assistance under section 5 for the purpose of engaging in such activities;

(C) local educational agencies which are eligible to receive assistance under section 5, for the purpose of carrying out activities authorized under section 6(a) of this Act to implement curricula developed under clauses (A) and (B) or curricula otherwise developed which the Commissioner determines meets the purposes stated in clause (A).

In making grants and contracts under this paragraph, the Commissioner shall assure that sufficient funds from the amount reserved pursuant to section 3(b)(2)(A) remain available to provide for grants and contracts under clause (C) of this paragraph for implementation of such curricula as the Commissioner determines meet the purposes stated in clause (A) of this paragraph. In making a grant or contract under clause (C) of this paragraph, the Commissioner shall take whatever action is necessary to assure that the implementation plan includes provision adequate to insure training of teachers and other ancillary education personnel.

(2)(A) In order to be eligible for a grant or contract under this subsection—

(i) a local educational agency must establish a program or project committee meeting the requirements of subparagraph (B), which will fully participate in the preparation of the application under this subsection and in the implementation of the program or project and join in submitting such application; and

(ii) a private nonprofit agency, institution, or organization must (I) establish a program or project board of not less than ten members which meets the requirements of subparagraph (B) and which shall exercise policymaking authority with respect to the program or project and (II) have demonstrated to the Commissioner that it has the capacity to obtain the services of adequately trained and qualified staff.

(B) A program or project committee or board, established pursuant to subparagraph (A) must be broadly representative of parents, school officials, teachers, and interested members of the community or communities to be served, not less than half of the members of which shall be parents and not less than half of the members of which shall be members of the minority group, the educational needs of which the program or project is intended to meet.

(3) All programs or projects assisted un-

der this subsection shall be specifically designed to complement any programs or projects carried out by the local educational agency under section 5. The Commissioner shall insure that programs of Federal financial assistance related to the purposes of this subsection are coordinated and carried out in a manner consistent with the provisions of this subsection, to the extent consistent with other law.

METROPOLITAN AREA PROJECTS

SEC. 8. (a) Sums reserved pursuant to section 3(b) (1) shall be available for the following purposes:

(1) A program of grants to, and contracts with, local educational agencies which are eligible under section 5(a)(2) in order to assist them in establishing and maintaining stable, quality integrated schools. For the purposes of this paragraph, an integrated school shall be a school with an enrollment in which a substantial proportion of the children is from educationally advantaged backgrounds, in which the proportions of minority group children are at least 50 percentum of the proportions of minority group children enrolled in all schools of the local educational agencies within the Standard Metropolitan Statistical Area, and which has a faculty and administrative staff with substantial representation of minority group persons.

(2) A program of grants to groups of local educational agencies located in Standard Metropolitan Statistical Areas, for the joint development of plans to reduce and eliminate minority group isolation, to the maximum extent possible, in the public elementary and secondary schools in Standard Metropolitan Statistical Areas, which shall, as a minimum, provide that by a date certain, but in no event later than July 1, 1983, the percentage of minority group children enrolled in each school in the Standard Metropolitan Statistical Area shall be at least 50 percentum of the percentage of minority children enrolled in all the schools in the Standard and Metropolitan Statistical Area.

(3) A program of grants to local educational agencies to pay all or part of the cost of planning and constructing integrated education parks. For the purpose of this paragraph, the term "education park" means a school or cluster of such schools located on a common site, within a Standard Metropolitan Statistical Area, of sufficient size to achieve maximum economy of scale consistent with sound educational practice, providing the full range of pre-school elementary, and secondary education, with an enrollment in which a substantial proportion of the children is from educationally advantaged backgrounds, and which is representative of the minority group and non-minority group children in attendance at the schools of the local educational agencies in the Standard Metropolitan Statistical Area, or, if the applicant is a single local educational agency, representative of that of the local educational agency, and a faculty and administrative staff with substantial representation of minority group persons.

(b) In making grants and contracts under this section, the Commissioner shall insure that—

(1) at least one grant shall be for the purposes of paragraph (2) of subsection (a); and

(2) at least two grants shall be for the purposes of paragraph (3) of subsection (a), of which at least one shall be to assist an education park being planned, established and operated as an interdistrict project involving two or more local educational agencies.

APPLICATIONS

SEC. 9. (a) Any local educational agency desiring to receive assistance under this Act for any fiscal year shall submit to the Commissioner an application therefor for that fiscal year at such time, in such form, and containing such information as the Commissioner shall require by regulation. Such application, together with all correspondence and other written materials relating thereto, shall be made readily available to the public by the applicant and by the Commissioner. The Commissioner may approve such an application only if he determines that such application—

(1) in the case of applications under section 5, sets forth a program under which, and such policies and procedures as will assure that, (A) the applicant will use the funds received under this Act only for the activities set forth in section 6 and that the applicant will use such funds for the implementation of a comprehensive district-wide plan for the elimination, to the extent possible, of minority group isolation, and that the use of such funds by the applicant will include the implementation of a comprehensive program specifically designed to establish or maintain at least one, or more, stable, quality, integrated schools and, (B) in the case of an application under section 5(b), the applicant will initiate or expand an innovative program specifically designed to meet the educational needs of children attending one or more minority group isolated schools;

(2) has been developed—

(A) in open consultation with parents, teachers, and, where applicable, secondary school students, including public hearings at which such persons have had a full opportunity to understand the program for which assistance is being sought and to offer recommendations thereon, and

(B) except in the case of applications under section 7(c), with the participation and, subject to subsection (b), approval of a committee composed of parents of children participating in the program for which assistance is sought, teachers, and, where applicable, secondary school students, of which at least half the members shall be such parents, and at least half shall be persons from minority groups;

(3) sets forth such policies and procedures as will insure that the program for which assistance is sought will be operated in consultation with, and the involvement of, parents of the children and representatives of the area to be served, including the committee established for the purposes of clause (2)(B);

(4) sets forth such policies and procedures, and contains such information, as will insure that funds paid to the applicant under the application be used solely to pay the additional cost to the applicant in carrying out the plan and program described in the application;

(5) contains such assurances and other information as will insure that the program for which assistance is sought will be administered by the applicant, and that any funds received by the applicant, and any property derived therefrom, will remain under the administration and control of the applicant;

(6) sets forth such policies and procedures, and contains such information, as will insure that funds made available to the applicant (A) under this Act will be so used (i) as to supplement and, to the extent practicable, increase the level of funds that would, in the absence of such funds, be made available from non-Federal sources for the purposes of the program for which assistance is sought, and for promoting the integration of the schools of the applicant, and for the education of children participating in such program, and (ii) in no case, as to supplant such funds from non-Federal sources, and (B) under any other law of the United States will, in accordance with standards established by regulation, be used in coordination with such programs to the extent consistent with such other law;

(7) in the case of an application for assistance under section 5, provides that the program or project to be assisted will involve an additional expenditure per pupil to be served, determined in accordance with regulations prescribed by the Commissioner, of sufficient magnitude to provide reasonable assurance that the desired educational impact will be achieved and that funds under this Act will not be dispersed in such a way as to undermine their effectiveness;

(8) to the extent consistent with the number of minority group children in the area to be served who are enrolled in private nonprofit elementary and secondary schools which are operated in a manner free from discrimination on the basis of race, color, or national origin, and which do not serve as alternatives for children seeking to avoid attendance in desegregated or integrated public schools, whose participation would assist in achieving the purpose of this Act, provides assurance that such agency (after consultation with the appropriate private school officials) has made provision for their participation on an equitable basis;

(9) provides that the applicant has not reduced its fiscal effort for the provision of free public education for children in attendance at the schools of such agency for the fiscal year for which assistance is sought under this Act to less than that of the second preceding fiscal year, and that the current expenditure per pupil which such agency makes from revenues derived from its local sources for the fiscal year for which assistance under this Act will be made available to such agency is not less than such expenditure per pupil which such agency made from such revenues for (A) the fiscal year preceding the fiscal year during which the implementation of a plan described in section 5(a)(1)(A) was commenced, or (B) the third fiscal year preceding the fiscal year for which such assistance will be made available under this Act, whichever is later;

(10) that the State educational agency or agencies governing the school district or school districts in which the approved program or project will be carried out have been given reasonable opportunity to offer recommendations to the applicant and to submit comments to the Commissioner;

(11) sets forth effective procedures, including provisions for objective measurement of change in educational achievement and other change to be effected by programs conducted under this Act, for the continuing evaluation of programs or projects under this Act, including their effectiveness in achieving clearly stated program goals, their impact on related programs and upon the community served, and their structure and mechanisms for the delivery of services; and

(12) provides (A) that the applicant will make periodic reports at such time, in such form, and containing such information as the Commissioner shall require by regulation, which regulation shall require at least—

(i) in the case of reports relating to performance, that the reports be consistent with specific criteria related to the program objectives, and

(ii) that the reports include information relating to educational achievement of children in the schools of the applicant,

and (B) that the applicant will keep such records and afford such access thereto as—

(i) will be necessary to assure the correctness of such reports and to verify them, and

(ii) will be necessary to assure the public adequate access to such reports and other written materials.

(b) No application under this section shall be approved which is not accompanied by a detailed written statement of approval or disapproval by the committee established pur-

suant to clause (2)(B) of subsection (a), which statement shall be considered by the Commissioner in making his determination, after the committee has been given an appropriate opportunity for an informal hearing, that the local educational agency had sufficient cause to proceed without committee approval, and the Commissioner shall provide a written explanation to the local educational agency and the committee.

(c) The Commissioner shall not approve an application under this section unless he determines that—

(1) the comprehensive districtwide plan submitted pursuant to section 5(a)(1)(B) or 5(a)(3) can be reasonably expected to eliminate minority group isolation, to the maximum extent possible, in all schools of the applicant; and

(2) the funding for establishment or maintenance of the stable, quality integrated schools operated by applicant will be at a sufficient level as to achieve the purpose set forth in section 2A(b)(2).

(d) In approving applications under section 5, the Commissioner shall take into consideration (1) the extent to which the applicant will decrease minority group isolation and will prevent minority group isolation, (2) the numbers and proportions of minority group children which the applicant will place in stable, quality integrated schools, and (3) applications which offer the greatest promise of providing quality education for all children participating in the proposed project; and he shall first approve those applications from local education agencies which place the largest numbers and proportions of minority group children in stable, quality integrated schools.

(e) No State shall reduce the amount of State aid with respect to the provision of free public education in any school district of any local educational agency within such State because of assistance made or to be made available to such agency under this Act.

EDUCATIONAL TELEVISION

SEC. 10. (a) The sums reserved pursuant to section 3(b)(2)(B) for the purpose of carrying out this section shall be available for grants and contracts in accordance with subsection (b).

(b)(1) The Commissioner shall carry out a program of making grants to, or contracts with, not more than ten public or private nonprofit agencies, institutions, or organizations with the capability of providing expertise in the development of television programing, in sufficient number to assure diversity, to pay the cost of development and production of integrated children's television programs of cognitive and affective educational value.

(2) Television programs developed in whole or in part with assistance provided under this Act shall be made reasonably available for transmission, free of charge, and shall not be transmitted under commercial sponsorship.

(3) The Commissioner may approve an application under this section only if he determines that the applicant—

(A) will employ members of minority groups in responsible positions in development, production, and administrative staffs;

(B) will use modern television techniques of research and production; and

(C) has adopted effective procedures for evaluating education and other change achieved by children viewing the program.

DEFINITIONS

SEC. 11. Except as otherwise specified, the following definitions shall apply to the terms used in this Act:

(1) The term "Commissioner" means the Commissioner of Education; and the term "Secretary" means the Secretary of Health, Education, and Welfare.

(2) The term "current expenditure per pupil" for a local educational agency means (1) the expenditures for free public education, including expenditures for administration, instruction, attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities, but not including expenditures for community services, capital outlay, and debt service, or any expenditures, made from any Federal funds paid to the agency, divided by (2) the number of children in average daily attendance to whom such agency provided free public education during the year for which the computation is made.

(3) The term "elementary school" means a day or residential school which provides elementary education, as determined under State law.

(4) The term "equipment" includes machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them, and includes all other items necessary for the provision of educational services, such as instructional equipment and necessary furniture, printed, published, and audiovisual instructional materials, and other related material.

(5) The term "institution of higher education" means an educational institution in any State which—

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

(B) is legally authorized within such State to provide a program of education beyond high school;

(C) provides an educational program for which it awards a bachelor's degree; or provides not less than a two-year program which is acceptable for full credit toward such a degree, or offers a two-year program in engineering, mathematics, or the physical or biological sciences which is designed to prepare the student to work as a technician and at a semiprofessional level in engineering, scientific, or other technological fields which require the understanding and application of basic engineering, scientific, or mathematical principles or knowledge;

(D) is a public or other nonprofit institution; and

(E) is accredited by a nationally recognized accrediting agency or association listed by the Commissioner for the purposes of this paragraph.

(6) The term "integrated school" means a school with an enrollment in which a substantial proportion of the children are from educationally advantaged backgrounds, and which is substantially representative of the minority group and nonminority group enrollment of the local educational agency in which it is located, and a faculty which is representative of the minority group and nonminority group population of the larger community in which it is located, or whenever the Commissioner determines that the local educational agency concerned is attempting to increase the proportions of minority group teachers, supervisors, and administrators in its employ, a faculty which is representative of the minority group and nonminority group faculty employed by the local educational agency.

(7) The term "local educational agency" means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or a federally recognized Indian reservation, or such combination of school districts, or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools, or a combination of local educational agencies; and includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(8)(A) The term "minority group" refers to (i) persons who are Negro, American Indian, Spanish-surnamed American, Portuguese, or Oriental; and (ii) (except for the purposes of section 4), as determined by the Secretary, persons who are from environments in which a dominant language is other than English and who, as a result of language barriers and cultural differences, do not have an equal educational opportunity, and (B) the term "Spanish-surnamed American" includes persons of Mexican, Puerto Rican, Cuban, or Spanish origin or ancestry.

(9) The terms "minority group isolated school" and "minority group isolation" in reference to a school mean a school and condition, respectively, in which minority group children constitute more than 50 per centum of the enrollment of a school.

(10) The term "nonprofit" as applied to a school, agency, organization, or institution means a school, agency, organization, or institution owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(11) The term "secondary school" means a day or residential school which provides secondary education, as determined under State law, except that it does not include any education provided beyond grade 12.

(12) The term "Standard Metropolitan Statistical Area" means the area in and around a city of fifty thousand inhabitants or more as defined by the Office of Management and Budget.

(13) The term "State' means one of the fifty States or the District of Columbia.

(14) The term "State educational agency" means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary and secondary schools, or if there is no such officer or agency, an officer or agency designated by the Governor or by State law for this purpose.

EVALUATIONS

SEC. 12. The Commissioner is authorized to reserve not in excess of 1 per centum of the sums appropriated under this Act for any fiscal year for the purposes of this section. From such reservation, the Commissioner is authorized to make grants to, and contracts with, State educational agencies, institutions of higher education and private organizations, institutions, and agencies, including committees established pursuant to section 9(a)(2) for the purpose of evaluating specific programs and projects assisted under this Act.

REPORTS

SEC. 13. The Commissioner shall make periodic detailed reports concerning his activities in connection with the program authorized by this Act and the program carried out with appropriations under the paragraph headed "Emergency School Assistance" in the Office of Education Appropriations Act, 1971 (Public Law 91-380), and the effectiveness of programs and projects assisted under this Act in achieving the purposes of this Act. Such reports shall contain such information as may be necessary to permit adequate evaluation of the programs authorized by this Act, and shall be submitted to the President and to the Committee on Labor and Public Welfare of the Senate and the Committee on Education and Labor of the House of Representatives. The first report submitted pursuant to this section shall be submitted no later than ninety days after the enactment of this Act. Subsequent reports shall be submitted no less often than four times annually.

JOINT FUNDING

SEC. 14. Pursuant to regulations prescribed by the President, where funds are advanced by the Office of Education, and one or more other Federal agencies for any project or activity funded in whole or in part under this Act, any one of such Federal agencies may be designated to act for all in administering the funds advanced. In such cases, any such agency may waive any technical grant or contract requirement (as defined by regulations) which is inconsistent with the similar requirements of the administering agency or which the administering agency does not impose. Nothing in this section shall be construed to authorize (1) the use of any funds appropriated under this Act for any purpose not authorized herein, (2) a variance of any reservation or apportionment under section 3 or 4 or (3) waiver of any requirement set forth in sections 5, 6, 7, 8, 9, and 11(6).

NATIONAL ADVISORY COUNCIL

SEC. 15. (a) There is hereby established a National Advisory Council on Equality of Educational Opportunity, consisting of fifteen members, at least one-half of whom shall be representatives of minority groups, appointed by the President, which shall—

(1) advise the Secretary with respect to the operation of the program authorized by this Act, including the preparation of regulations and the development of criteria for the approval of applications;

(2) review the operation of the program (A) with respect to its effectiveness in achieving its purposes as stated in section 2A, and (B) with respect to the Commissioner's conduct in the administration of the program;

(3) meet not less than four times in the period during which the program is authorized, and submit through the Secretary, to the Congress at least two interim reports, which reports shall include a statement of its activities and of any recommendations it may have with respect to the operation of the program; and

(4) not later than December 1, 1973; submit to the Congress a final report on the operation of the program.

(b) The Commissioner shall submit an estimate under the authority of section 401 (c) and part C of the General Education Provisions Act to the Congress for the appropriations necessary for the Council created by subsection (a) to carry out its functions.

ATTORNEY FEES

SEC. 16. Upon the entry of a final order by a court of the United States against a local educational agency, a State (or any agency thereof), or the United States (or any agency thereof), for failure to comply with any provision of this Act or for discrimination on the basis of race, color, or national origin in violation of title VI of the Civil Rights Act of 1964, or the fourteenth amendment to the Constitution of the United States as they pertain to elementary and secondary education, the court, in its discretion, upon a finding that the proceedings were necessary to bring about compliance, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

Mr. JAVITS. Mr. President, I move that the vote by which the bill was passed be reconsidered.

Mr. PELL. Mr. President, I move that the motion to reconsider be laid on the table.

The motion was agreed to.

Mr. PELL. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to make technical and clerical corrections in the engrossment of S. 1557.

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

Mr. MANSFIELD. Mr. President, the Senate is greatly indebted to the distinguished and able Senator from Rhode Island (Mr. PELL). As the Chairman of the Subcommittee on Education he devoted his expert leadership and guidance to this highly important and complex measure. It concerns nothing less than the quality of education of the Nation's children and there is no matter of greater importance. Indeed, Senator PELL has provided a great deal of insight and calm discussion throughout the entire debate. His contributions were immense and assured the high quality of the discussion. Senator PELL deserves the Senate's highest commendation.

The Senate likewise deeply appreciates the contribution and assistance of the distinguished Senator from New York (Mr. JAVITS) and the distinguished Senator from Minnesota (Mr. MONDALE). Both joined to make certain that the Senate's action on this measure would be swift and efficient. Both provided splendid leadership and cooperation. The Senator from Connecticut (Mr. RIBICOFF) is similarly to be commended. The Senate is grateful for his always sincere presentation of his deeply felt views on this subject.

Joining also to enlighten the Senate on the ramifications of this measure were the distinguished and able Senators from Mississippi (Mr. STENNIS) and North Carolina (Mr. ERVIN). Both Senator STENNIS and Senator ERVIN, with their strong and sincere views added considerably to the discussion. Both cooperated magnificently to assure the efficient disposition of the proposal.

Others, too, are to be commended. Senator DOMINICK, Senator SPONG, and many other Senators participated in this very important debate. To them goes our deepest thanks for their contributions. To the Senate as a whole goes the thanks of the leadership for making possible our efforts to continue to keep up with our business in a timely manner. Such cooperation has enabled us to obtain another outstanding achievement in orderly fashion. Personally, I am deeply grateful.

Mr. PELL. Mr. President, debate on the bill has been constructive. I should like to commend the Senate on the caliber of the debate. I regret that not enough attention was devoted to the new and fine parts of the bill such as the innovative plans for educational television and things of that sort. We sometimes tend to go over the same ground a little bit too often.

In any case, I thank Senators DOMINICK, ERVIN, RIBICOFF, and STENNIS for their contribution to the debate.

Particularly I want to thank two Members who really made this bill possible. If ever a manager of a bill acted as a chairman, an element to bring together the differing views, that was my role.

Particularly do I thank the ranking minority member of the committee, the senior Senator from New York (Mr. JAVITS), for all he did in every way, behind the scenes, on the scene, over the dinner table, and in his apartment, without whose efforts this bill could not have come into being, for the constructive help he gave throughout. I also want to thank the distinguished Senator from Minnesota (Mr. MONDALE), many of whose ideas have emerged in the bill and to whom the bill is a great tribute. Without their help and assistance, this bill would not have come before the Senate.

I thank Secretary Richardson and Commissioner Marland, too, for accepting certain elements in the bill, not completely what they wished, but they made an agreement to support the bill and have hung on to their commitments punctiliously.

I also thank the majority staff members, Stephen Wexler and Richard Smith, for all the valuable work they did—it was simply tremendous; as well as Roy Millenson of the minority staff of the Committee on Labor and Public Welfare, William Smith, Bert Carp, and Len Strickman of the Select Committee on Equal Educational Opportunity. They made a considerable input to the bill. We had joint hearings at different times at the beginning and they helped right through to the end.

Mr. JAVITS. Mr. President, first I should like to join in all the very proper praise which the Senator from Rhode Island has just given to the staff and to the other Members who facilitated this debate. That includes the Senator from North Carolina (Mr. ERVIN), although he had grave doubts about the bill, and also the Senator from Mississippi (Mr. STENNIS) and the Senator from Connecticut (Mr. RIBICOFF), and other Senators who acted in the matter.

I also want to join the Senator from Rhode Island in my deep appreciation to the Senator from Minnesota (Mr. MONDALE), who showed really gifted initiative in the stable quality integrated school concept and many other concepts, yet who was not unbending or stiff-necked but, rather, sought to accomplish the result.

I think that the role of the Secretary of HEW, Elliot Richardson, who personally participated in our efforts to come to a negotiation on this measure and the Commissioner of Education of the United States, Sidney Marland, was very significant.

I am so pleased that the Senator found the assistance of Roy Millenson of the minority staff of the committee to be valuable, as well as that of Mr. Len Strickman from the staff of the Select Committee on Equal Educational Opportunity, a law professor whom I drafted for Government service.

I would say the same about Steve Wexler and Dick Smith and all of the members of the majority staff, as well as Bill Smith and Bert Carp from the Select Committee staff. However, I cannot refrain from saying hail to the chairman. He held the bill together.

The Senator from Rhode Island is a man of character. He said what he did or did not know about the bill, and the Senate relied upon his character in voting as it did.

I think the Senator showed traditional humility. The Senator is a very dear

friend. I know him very well and have very deep appreciation for him. He deprecates his own contribution. Without the Senator from Rhode Island the bill could not have passed the Senate.

For whatever I had to do with bringing the bill before the Senate, I am grateful. However, without the Senator from Rhode Island the bill could not have passed the Senate. I am very grateful to him.

I hope that this will be an initial effort in opening the door to a new chapter in education, in an area which bears the most scars and an area which in the past has reflected so many deficiencies.

Mr. PELL. Mr. President, I thank my friend, the Senator from New York, very much for his nice words which do not belie my warm friendship and affection for him.

I would also like to add another kudo and that is to the majority whip, the Senator from West Virginia (Mr. BYRD) who did a great job in keeping our noses to the grindstone and prolonging the Pastore rule of germaneness at every opportunity.

Mr. JAVITS. Mr. President, it was he and Senator Pastore who came forth with Solomon-like decisions.

Mr. BYRD of West Virginia. Mr. President, I thank the Senator from Rhode Island and also the Senator from New York.

ADDRESS BY VICE PRESIDENT AGNEW BEFORE THE SOUTHERN GAS ASSOCIATION CONVENTION

Mr. HANSEN. Mr. President, today the Vice President of the United States was in New Orleans, La., where he addressed the Southern Gas Association at its convention. Because his remarks are timely and add to the factual completion of the record on a very distinguished member of the FBI, the Director, J. Edgar Hoover, I ask unanimous consent that the full text of his remarks be printed in the RECORD.

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

ADDRESS BY THE VICE PRESIDENT, SOUTHERN GAS ASSOCIATION CONVENTION, NEW ORLEANS, LA., APRIL 26, 1971

In the past several weeks we have witnessed a series of vitriolic attacks on one of the nation's top law enforcement agencies and particularly on the man who built it into a highly professional and efficient organization respected throughout the world.

It is not the first time that the FBI and J. Edgar Hoover have been assailed. They have withstood many assaults during their long association. The attacks generally have come from expected quarters—subversives, mobsters, extremists and anarchists—enemies of the American system, who quite naturally detest an agency that stands between them and the accomplishment of their objectives—the perversion or destruction of our institutions.

But this time the scenario is somewhat different. While the attacks appear to be as well orchestrated as if they were being performed in concert by the professionals of disruption, this latest assault is from another direction It gives off an unpleasant political odor—perhaps for the first time in FBI history—and it comes mainly from Presidential aspirants who apparently foresee some political accretion from the radical left if they challenge the integrity of the FBI and its long-time director. These opportunists are being aided and abetted by certain of their friends in the liberal news media who automatically shout "Right on!" every time someone claims his civil liberties have been threatened, regardless of the transparency of such charges.

Now I am sure that most of these charges will fall of their own weight—or rather vaporize because of their lack of weight. Those that have an aura of credibility will be disproved in the course of thorough examination of all the evidence. But in any case, the very fact that these fractious allegations will be known by many more than ever learn of their successful refutation cannot possibly be of help, and indeed could damage, an outstanding American institution. If the FBI suffers from these attacks, all law enforcement in America will suffer. And we can ill afford that, particularly at a time in our history when the FBI and the police of this nation have their hands full maintaining order and preserving our institutions of government from those who would tear down our society.

So I would like to discuss with you today this great law enforcement institution—what it means to us as citizens and what it means to our government. I also would like to examine candidly the fitness of its director, whose ouster is energetically sought by those now attacking the institution to which he has devoted his life. And in doing this we can look perhaps a littler closer at some of the charges that have been brought against the FBI and Director J. Edgar Hoover.

In recognition of the non-partisan nature of the FBI, I shall endeavor to keep politics out of this. If I succeed, I will have accomplished more than the irresponsible critics who generated this controversy.

If you took literally some of the more dramatic statements in the news accounts about the FBI controversy, you could only conclude that there is an agent behind every tree and monument in Washington, in the closet of every congressman's office, in automobiles trailing him from work to home to parties, and in listening posts monitoring his wiretapped conversations.

Note carefully, if you will, these words from Senator McGovern, a Presidential aspirant and one the leaders of the "Dump Hoover" movement, as reported in the *Washington Star* of April 20th:

"There is no doubt in my mind that virtually every political figure, every student activist, every leader for peace and social justice is under the surveillance of the FBI."

Now let's think about that statement for just a minute, ladies and gentlemen. I do not know how many political figures there are in Washington, to say nothing of the rest of the country. But I do know that there are 535 members of the Congress alone.

I assume that Senator McGovern is including all of these in his term "virtually every political figure", and probably would include, in addition, key members of their staffs.

Even if the FBI were to use as few as four agents per 24-hour-day to keep these political figures under surveillance—and surveillance in this sense means constant, close watch—it would tie up 2,140 agents just to keep an eye on the members of Congress. Since the FBI has a total of only 8,365 agents throughout the entire nation—and the great majority of these operate outside Washington—the agency would be hard pressed indeed to keep the members of Congress under surveillance. And this doesn't even begin to consider other political figures or Senator McGovern's generous additions of "every student activist, every leader for peace and social justice." Heaven only knows how many of those there are.

As we shall see in a few minutes—when we look at some of the work that the FBI is *really* involved in and is charged by law with accomplishing—the Bureau does not have the time or the manpower for the "surveillance" that it is accused of maintaining on innocent people.

But first I'd like to briefly mention two other cases that have kept the FBI controversy high in the news for several weeks.

Senator Muskie, who also is a presidential candidate, is another who has gathered considerable publicity by attacking the FBI. He shares the phobia of those who believe they are under surveillance. As proof, he released publicly an FBI memorandum which was a factual report of the Earth Day activities in Washington last year, at which the Senator happened to be a speaker. Agents had been sent there primarily to watch the activities of an incendiary radical, one Rennie Davis, and a few others also better known for their subversive proclivities than for their interest in ecology.

As there was with the other principal participants in the rally, there was a brief mention of Senator Muskie in the memorandum. Here it is in full. I quote: "Shortly after 8 p.m., Senator Edmund Muskie (D) Maine, arrived and gave a short anti-pollution speech."

That was the report's total reference to Senator Muskie's participation, although you would not know it from the news coverage of his startling revelation that he and other innocents were spied on by the FBI.

Newsweek Magazine, for example, devoted two pages of its April 26th issue to the incidents, which it headlined, "Who Dug for Dirt on Earth Day?" Said *Newsweek*: "It is becoming plain that the Democrats sense they have a powerful public issue in the surveillance activities of the feds." It featured a photograph of Senator Muskie, a large photograph of the Earth Day crowd, and the top of the FBI document made public by the Maine Senator. The magazine account observed that one of those the FBI was interested in was Rennie Davis, convicted Chicago 7 member. *Newsweek* said Davis "spoke at the rally but was mentioned only briefly in the report." Actually, it was Senator Muskie who got only one sentence in the FBI document. In the report, Davis rated two full paragraphs summarizing his 10-minute speech. None of the news accounts that I've seen have quoted Davis. Here is what Davis had to say that apparently wasn't worth mentioning in *Newsweek*.

"He called for tearing down the capitalistic structure." the FBI reported. After he was heckled, we are told by the FBI document, Davis proclaimed that he "opposed all except (to) 'light up a joint and get stoned.'" He said "one way to fight for ecology is to go to New Haven on May 1st to stop Bobby Seale's trial." That hardly sounds like a speech on the environment, but it certainly sounds like the kind of exhortation to violence that merits FBI surveillance. How does a crowd stop a trial without violence?

Senator Muskie and his media supporters apparently feel it is terribly wrong to send the FBI to a rally where so many innocent people gather in the name of ecology, even if radicals have a prominent role in it and seek to use it as a forum.

Well, I disagree with them. I hope law enforcement officers will keep the Rennie Davises and the Abbie Hoffmans and their ilk under surveillance wherever they go to preach sedition.

Another recent well-publicized attack on the FBI was that of the well-known congressman who claimed that his and other members' phones had been tapped and demanded the immediate resignation of J. Edgar Hoover. We have now been given what he calls his evidence—a statement that if the phone company denies your phone has been tapped, it means that the FBI did the

tapping. I don't think that case deserves any further comment.

Now let's look at what the FBI is *really* up to and consider the man whose firm leadership and dedication to principle have restructured this organization from an inefficient division of the Justice Department in 1924 to the world's best known, most professional and scientifically efficient investigative and law enforcement agency.

The FBI has jurisdiction over some 185 Federal investigative matters. These range from such longtime responsibilities as civil rights violations, bank robberies, subversion and kidnappings to aircraft hijackings, and, in the past year, broader investigative authorty over syndicated gambling and bombings.

To handle its workload the Bureau has a force of about 19,000 employees, of whom 8,365 are agents. It operates 59 field offices in major cities throughout the United States and in the Commonwealth of Puerto Rico and maintains 17 liaison posts in foreign countries.

One thousand agents have been added within the past year to meet new responsibilities under the Organized Crime Control Act of 1970 and to relieve a workload that had grown to the point that each agent was handling an average of 31 separate investigative matters at a time. The ideal load, according to Director Hoover, is 18 cases per agent. So you can see they have had little time to do the "political sleuthing" attributed to them.

During their investigation of the burning of the ROTC building at Kent State University and the shooting of four students by National Guardsmen there last May, the FBI had a peak of 302 agents assigned to the case. They worked 6,316 hours of overtime for which they received no compensation. Their reports totaling over 8,000 pages were filed with the Department of Justice, which ordered the investigation, and with the President's Commission on Campus Unrest.

Every year the Bureau brings in more money than it costs to operate. Last fiscal year, FBI investigations accounted for nearly $411 million in fines, savings and recoveries—an average return of $1.60 for every dollar appropriated for FBI operations. Moreover, the Bureau has an outstanding record of convictions. Last year, over 96 per cent of the persons brought to trial in cases investigated by the FBI were convicted, 83 percent of them as a result of guilty pleas.

In addition to its work in Federal law enforcement, the FBI works very closely with state and local law enforcement agencies. FBI laboratory services, provided without charge to local police departments and to other agencies, are indispensable to successful crime control. The laboratory made nearly 385,000 examinations last year, most of them relative to documents, photographs and shoe and tire prints.

The fingerprint division started by J. Edgar Hoover in 1924, less than two months after he became director of the Bureau, now houses the fingerprint records of more than 86 million people—the largest collection of fingerprints in the world. These are used to identify thousands of people each year, accident victims as well as fugitives.

Adding greatly to efficient and effective law enforcement everywhere in the United States is the National Crime Information Center which the FBI established four years ago. It is the hub of a vast telecommunications network linking local, state and federal law enforcement agencies. The computers in the FBI headquarters in Washington now store more than two and a half million record cards on crime and criminals. This information is provided in a matter of seconds to inquiring local police departments. For example, an officer in New Orleans, pursuing a car which has run a red light, can radio the license number to local police headquarters and within one minute have back from Washington information that the car was stolen four days ago in Ohio, and other pertinent information. When he pulls alongside the driver, the officer is ready to wrap up the case.

The FBI, a thoroughly professional organization since the three-year period that J. Edgar Hoover spent cleaning it out and reshaping it in the 1920's, also has been long dedicated to the full professionalization of law enforcement throughout the United States. During the last fiscal year, FBI instructors assisted in the training of more than a quarter of a million local police officers at schools throughout the country. The FBI National Academy, which can train up to 100 officers at a time in a 12-week course that makes them better police executives, celebrated its 35th anniversary last year. The class now enrolled for graduation on June 30th, will bring to nearly 6,000 the number of graduates since it was founded. New Academy facilities will be completed next year which will enable the training of 2,000 local candidates each year instead of the present 200 annually.

With all of these activities going on, there just isn't much time available for spying on Congress.

Now, if the present-day Senators who are worried about FBI surveillance had been around in the period immediately prior to Hoover's taking over the directorship, their complaints would have been justified.

In a Senate investigation of corruption at the close of the Harding era, Gaston B. Means, a former detective and patronage appointee in the Bureau of Investigation admitted to Senators that he had agents sneak into their offices, open their mail, search their files and spy on them in an effort to find something damaging which could be used to stop their attacks on Attorney General Daugherty.

To save time, he was asked what Senators he had not investigated. Means replied: "Oh, there are lots of them I haven't. They are a pretty clean body. You don't find much on them, either."

The new Attorney General appointed by President Coolidge, Harlan Fiske Stone, asked J. Edgar Hoover to take over the job as Director of the Bureau of Investigation. He agreed only on condition that the Bureau be divorced from politics and that appointments and promotions be based strictly on merit. Stone agreed and said he wouldn't have it any other way. Incompetents were weeded out and professionalism began.

In the 47 years since then, Hoover has kept the Bureau out of politics. The fact that he has served under 10 Presidents—Republican and Democrat—and 19 Attorneys General since he joined the Justice Department as a young Master of Laws graduate in 1917 is testimony of his strictly nonpartisan and even-handed administration of a sensitive agency. The relatively low turnover rate of agents—more than half have been with the Bureau for periods from 10 to 25 years or more—is a further criterion of sound administration.

Yet Hoover's critics continue their drive to get rid of him. One of their principal arguments is that he is 76 years old—six years beyond the mandatory retirement age for federal employees. President Johnson issued an executive order exempting Mr. Hoover from that requirement and President Nixon asked the vigorous Director to continue on the job. You don't judge a man's worth or his competence by his age, and that certainly holds true in Washington as well as elsewhere.

Three Justices of the Supreme Court are over 70. The senior member, Mr. Justice Black, is 85 years old and still going strong.

Twelve United States Senators among those who list their age in the Congressional Directory are over 70, and four of them are 75 or over, including the 80-year-old Chairman of the Senate Appropriations Committee. I haven't heard any Hoover critics in the Senate calling on their colleagues to resign.

At least 14 members of the House of Representatives among those who list their age are over 70, including the 82-year-old chairman of the House Judiciary Committee and four other committee chairmen. And I don't hear any Hoover critics in the House calling on them to resign.

And outside the government we find many men in the 70's and 80's active and vigorous, including such spokesmen for the left as Cyrus Eaton, 87, Averell Harriman, 79, Herbert Marcuse, 72, Robert Hutchins, 72, and Linus Pauling, 70.

Dr. Benjamin Spock, almost 68, does not qualify but is moving up fast. However, he really doesn't seem to improve with age, so we have little to look forward to.

Walter Lippmann at 81 still finds the opportunity to write a stinging essay now and then.

We don't hear these men put down for their age by Hoover critics. To the contrary, they enjoy among their followers wide respect for their experience, as well they should.

But still we find those, particularly among the news media, who try to make some issue of Mr. Hoover's age. Most news stories out of Washington about the current controversy carry the Director's age, whether or not it is pertinent to that day's developments. And just the other night, the commentator, Eric Sevareid, in a mild disparagement described the FBI director as "surrounded by old cronies." One would assume that Mr. Sevareid isn't surrounded by old cronies. Yet, with silver hair and silken voice, he has appeared before us nightly for years in tandem with the familiar countenance of Walter Cronkite.

No, I think it is something more than age that is the real issue in the effort to drive J. Edgar Hoover out of office. A more likely explanation is the fact that he is anathema to the New Left and extremists of every stripe, and he doesn't mince words in calling attention to them as dangerous to the country. Not surprisingly, this firm stand is a constant irritation to those who would have us believe that there is more to be feared from effective law enforcement than from the radicals and fledging anarchists who daily call for the destruction of our institutions.

The FBI has frequently been called a Gestapo or secret police by its critics, and is again being called that today. But the Bureau's director has resisted every effort to make the FBI a national police force and has succeeded in keeping it a fact-finding agency within the Justice Department throughout the past 47 years.

J. Edgar Hoover prepared the Justice Department's first brief on the newly formed Communist Party in the fall of 1919, and he has watched the party with an expert's eye ever since. He has authored three best-selling books on the menace of Communism to the United States. He understands perhaps better than anyone in this nation the nature and danger of subversion.

Listen to his own thoughts on this subject, expressed in his foreword to the book, "The FBI Story" in 1956:

"The acts of the subversive, particularly the 'dyed-in-the-wool' Communist, call for increased vigilance. The security of our country has suffered because too many of our people were 'hoodwinked' by the propaganda which claimed that the Communist Party

was a political party like the Democratic or Republican Party. Likewise, too many of our people have fallen for the line that spies, subversives, agents of foreign governments and Communists who have been convicted and sent to prison are 'political prisoners.' 'Political prisoners' do not exist in the United States. Those who are prisoners violated the laws of the United States, were indicted by federal grand juries and convicted in federal courts. I do not think they deserve the special treatment, with special rights and privileges, which is sought for them by their sympathizers.

"In the United States, the subversive is a lawbreaker when he violates the law of the land, not because he disagrees with the party in power. And anyone who violates the law commits a criminal act even if the motives of the lawbreaker are self-servingly claimed to be political. If we ever permit political motives to justify lawbreaking, we shall develop political tyrannies in this country as similar instances have developed tyrannies in other countries."

In 1936, on direct orders from President Roosevelt, Mr. Hoover and the FBI began gathering information on Communist and Fascist groups in this country. In 1939, President Roosevelt issued a proclamation announcing the FBI's broadened responsibility for national security.

Later when the FBI arrested a dozen communists and sympathizers who had been indicted for conspiring to recruit volunteers for the Spanish Loyalist Army, a barrage of protests broke around Hoover and the FBI. He was accused of running a Gestapo and trying to persecute people who held political views contrary to his own. He was attacked in Congress, but backed up by the Democratic President and Attorney General and eventually weathered the storm.

In his 1956 foreword to "The FBI Story", recalling some of the earlier battles, Mr. Hoover wrote:

"In recent years, a campaign of falsehood and vilification has been directed against the FBI by some ignorant and some subversive elements. In the world-wide struggle of free peoples, the truth is still one of our most potent weapons. And the record of the FBI speaks for itself. It is the best answer to the falsehoods, half-truths and rumors . . . ."

With a little dusting off and the change of a word or two, he could use the same statement again today.

Personally, I have complete confidence in this dedicated, steel-willed public servant with the 20–20 vision into our national security and crime control problems and the institution that he has made the beacon of law enforcement in America. I am sure they will again triumph over their critics, and the American people will be the winners.

CANNIKIN—AGAIN?

Mr. HUMPHREY. Mr. President, last week I called to the attention of the Senate a question which until now has had far too little examination. The point I discussed is that a most serious decision has been made, with insufficient disclosure on the part of the Atomic Energy Commission.

I mentioned at the time of my remarks last week that there had been a news report to the effect that the Atomic Energy Commission was going to conduct a massive nuclear underground test at Amchitka Island, Alaska. In my remarks of a week ago I was able only to comment upon what appeared to be a rumor. It has now become a fact.

Today we are faced with the incredible news of the AEC's plan to stage an underground atomic test, said to have an explosive force of 5 megatons, at Alaska's Amchitka Island. This test promises to be the largest in American history. An explosive force of five megatons is equivalent to at least 7.0 on the Richeter seismic scale. More important, a test of five megatons can have an untold effect to our country's environment. The Atomic Energy Commission assures us that there will be no, or at least a nondetrimental amount of radiation leaks. If we are to accept these assurances at face value, we are still left with the ominous question of earthquakes and volcanoes. Because of the huge magnitude of this planned test which has never been undertaken before, it is difficult to predict just what the geological effect will be.

It is very difficult to say with sufficient assurance that there will not be very serious radiation.

It seems not merely logical, but absolutely imperative that the AEC reply to these questions before the thought of such a test is given serious and final consideration. I am quite frankly amazed at the AEC's failure to make a detailed report on the environmental effects of Cannikin, the code name for the Amchitka test. The June report submitted to Congress was rejected and appropriations were withheld on the basis of the inadequacy of the statement. We have received no other report since that time and are told we should not expect one for some time. That was June of last year.

This is despite the fact that the AEC has made a decision to go ahead, even though the Congress of the United States in June of last year rejected the proposal of the AEC and withheld appropriations.

At this point, Mr. President, I ask unanimous consent that the letter to Mr. Ruckelshaus, Administrator of the Environmental Protection Agency, from the Disarmament Issues Committee of the United Nations Association of the United States be printed in the RECORD. It states very clearly and responsibly the environmental and administrative issues involved.

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

UNITED NATIONS ASSOCIATION,
OF THE UNITED STATES OF AMERTICA,
New York, N.Y., April 22, 1971.

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

DEAR MR. RUCKELSHAUS: We urgently request your assistance in obtaining compliance by the Atomic Energy Commission with the provisions of the National Environmental Policy Act of 1969 (P.L. 91–190). As you know, the AEC has proposed a fall underground nuclear test, code-named "Cannikin," to be the largest such test ever attempted by the United States. Recognized scientific authorities are already on public record as viewing the earthquake, tidal-wave, and nuclear implications of the proposed test as very uncertain and potentially grave. "Cannikin" clearly falls within the meaning of Section 102 of P.L. 91–190: it is a "major federal action significantly affecting the quality of the human environment."

Under the law, every federal agency recommending or proposing by legislation such "major federal actions" must publish a "detailed statement" of the possible impact upon the environment. Such a statement must be preceded by consultation with other federal and local agencies, must specify the kinds of impact upon the environment as far as they may be conjectured, and must also identify "alternatives to the proposed action." The "detailed statements," mandated by the Congress, is then published in the *Federal Register* to allow public comment. The AEC is, we believe, in violation of Federal law for the following reasons:

(1) The FY 1972 authorizing legislation for the AEC (S 958) was introduced into the Senate on February 25, 1971. It contained language proposing the "Cannikin" test, a "major federal action" impacting the environment, but lacked the supporting data.

(2) The AEC has given inadequate indication of specific hazards to the environment from this test as they are known to the Commission's staff.

(3) At no time has the AEC presented "alternatives to the proposed action," as required by law.

(4) As of this writing, the AEC still has not published in the *Federal Register* for public comment its "detailed statement" concerning "Cannikin," as mandated by the U.S. Congress.

We call to your attention the fact that the AEC made a similar request for funds last year to carry out a major test under Amchitka Island, Alaska. During its hearings in May, 1970, the Senate Appropriations Committee was informed by expert witnesses from our Disarmament Issues Committee that the AEC was out of compliance with federal law. The Senate promptly asked the AEC for the legally required document. The Commission responded on June 12, 1970, with a hastily drawn "Draft Environmental Statement." The Congress was not satisfied; it dismissed the statement and withheld the appropriation for the proposed test. Sen. Edmund S. Muskie informed the press that Congress had refused the funds "because the Atomic Energy Commission failed to file a satisfactory statement on such test's environment effects." Senate Report 91–1118, issued on August 12, 1970, announced there would be a "change in scheduling" of the FY 71 underground test, giving the AEC "an opportunity to make a more thorough study of the environment in the region of Amchitka in Alaska and will permit conducting the experiment at a more favorable season to assure maximum protection to this environment."

The June document is the only public statement issued thus far by the AEC and is, according to the Commission's own staff, inadequate. Mr. John A. Erlewine, Assistant General Manager of Operations at the AEC, wrote to the Disarmament Issues Committee of the UNA–USA on February 19, 1971—six days prior to the introduction of S 958—that the "Cannikin" test was "planned for the fall of 1971" and that the draft statement of last June "is presently being revised for reissuance prior to the 'Cannikin' test." We have since been told by AEC staff that no revised statement will be issued before this coming summer. Apparently the Congress is expected to approve and fund the "Cannikin" test and overlook the fact that the AEC is in direct violation of the National Environmental Policy Act. Congress, agencies such as yours, and the public at large are thus being denied the full disclosure required by the Act so that environmental hazards may be understood and debated prior to the passage of authorizing legislation.

We request an early response setting forth what actions your agency intends to take to protect the public interest and preserve the integrity of the law.

Sincerely yours,

Mrs. JOSEPHINE POMERANCE,
Chairman,
Disarmament Issues Committee.
W. LLOYD TUPLING,
Washington Representative,
Sierra Club
Dr. GEORGE RATHJENS,
Massachusetts Institute of Technology.
ADRIAN FISHER,
Dean,
Georgetown University Law School.
JOHN SILARD,
Counsel to the Committee.
Dr. ARTHUR LARSON,
Duke University.
WILLIAM C. FOSTER,
Former Director, Arms Control and Disarmament Agency.
Mrs. ROBERT W. CLAYTON,
National Board of the YWCA.
THOMAS HALSTED,
Director, Council for a Livable World.
ARTHUR J. LELYVILD,
President, American Jewish Congress.
ELVIS J. STAHR,
President, National Audubon Society.

Mr. HUMPHREY. Mr. President, aside from these very essential questions, there is another factor which deserves equal consideration. It is now openly admitted that the Cannikin test will be for a warhead of our Safeguard antiballistic missile. I have said before, and I will say it again, I have serious doubts and concern over this program. It has a negligible strategic value, and what is more relevant, its development at this time is contrary to the spirit of the SALT talks. If we really do intend to stop or slow down the arms race, then let us do it. We can begin by calling off the Cannikin test; even better, we can and should make every possible effort to negotiate an ABM agreement with the Soviets.

The Amchitka test is scheduled for the fall; but I ask, What is scheduled for November, and December and January? We do not know. Is an arms control agreement on the agenda or can we expect more expenditures for development and deployment of new weapons which opens up a Pandora's box for generations to come.

In July of last year there was a conference at Woods Hole on seismic discrimination sponsored by the Advanced Research Projects Agency of the Department of Defense. The papers presented, commonly referred to as the Woods Hole report, had at least one common theme: the technological progress which has been made in our own detection equipment. According to Mr. Evernden, who gave the opening presentation, our seismographs can now distinguish accurately the difference between earthquakes and explosions at levels as low as 4.0 on the Richter scale.

Below that threshold, accuracy is obviously reduced due to the extremely low magnitudes involved but still the data is extremely reliable. This finding has a very important significance in that it indicated the feasibility of reaching a comprehensive underground test ban treaty.

If anything underscores the need for a comprehensive nuclear test ban treaty which includes underground tests, as well as tests in the air, it is this proposed test at Amchitko Island.

Party Chairman Brezhnev in his delivered statement before the 24th Congress of the Soviet Communist Party expressed an interest in such an agreement. We do not know if this is propaganda or a serious proposal—but we should explore it—seriously, perseveringly, and carefully. Many leaders in the United States have urged that negotiations get underway in Geneva for an underground test ban treaty, thereby rounding out the Limited Nuclear Test Ban Treaty of 1963. With the latest scientific material in the Woods Hole Report, an underground test ban is no longer remote. It may be safe and subject to verification.

How can we solidify this hope of agreement in the face of the latest news? Are we to assume that Cannikin is the test to end all tests and then we can get on with an agreement? Or is this just one more stage in the development of costly, massive new missile systems? Whatever the answer, it does not bode well for those of us who think that we should be moving toward armaments limitations without further delay.

I know that the Senate will be giving very careful examination to the budget of the Department of Defense. I would suggest one way to reduce the defense budget in this country would be to pursue relentlessly, perseveringly, and with continuing patience every possibility to arrive at some form of arms control agreements. No matter how slow it may seem, it means the inevitable savings of billions of dollars and it may mean we will live in a safer world.

The only way I know to trim the defense budget significantly is to trim out weapons systems. The nuclear arms race results in weapons systems which are extremely costly, highly sophisticated, and dangerous. Therefore, whatever time it takes, no matter how much patience it requires, we must seriously, systematically, stubbornly and persistently work on this matter of negotiating an arms control agreement.

To be sure, it must be an agreement that has its safeguards and protections, but one to at least slow down some of the fantastic expenditures for these new and sophisticated nuclear weapons.

I am not speaking on this question to be rhetorical. I speak because it is the best way I know to register concern and hopefully, to press for action. It is not utopian to call for a halt to the arms race. It is realistic and essential. All I ask is that due recognition be given to the urgency of this question, sufficient thought to what action can be taken and then to take it now.

I call upon the Atomic Energy Commission to abandon its plan for a nuclear test of the magnitude that is contemplated in Project Cannikin, or at least, at a minimum, that they inform Congress as to what may be the ramifications of this test in terms of our environment, in terms of the possibility of radiation leak, in terms of earthquake, and other movements of the earth. There is good reason to be concerned, and it is not good public policy—it is not what I call freedom of information and the right to know—for any commission or for any agency of Government to ignore the request of Congress or to make a decision prior to releasing information that has been requested by an appropriate committee of this body.

I would hope we might be just a little more careful. It does not take a great deal of intelligence to get into trouble. We have made some very sorry and sad decisions in the past. We find ourselves in a cruel, long, and costly war. We find ourselves once again moving forward in an arms race, the cost of which this Congress has no idea; but we do know it runs into hundreds of billions of dollars.

Those arms, I submit, will give us no greater security because as we build them so do the Soviets; and as the Soviets build them, so do we. I cannot help but believe that somewhere there must be a voice that can be heard to say both to the Russians and the Americans, "we must make better use of our resources as human beings, rather than to engage in the mad pursuit of weapons of mass destruction."

I submit that not one of these weapons will give us more security but will only raise the level of insecurity and danger.

NATIONAL ENVIRONMENTAL LABORATORY ACT OF 1971

ORDER FOR STAR PRINT OF S. 1113

Mr. BYRD of West Virginia. Mr. President, S. 1113 was introduced by the Senator from Tennessee (Mr. BAKER) on calendar day March 4, legislative day of February 17, 1971. Certain technical corrections need to be made in the bill.

I ask unanimous consent that there be a star print of S. 1113 with the necessary technical corrections printed therein.

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

ORDER FOR RECOGNITION OF SENATORS ALLEN, TALMADGE, AND SYMINGTON ON THURSDAY NEXT

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that on Thursday next, immediately following the recognition of the two leaders under the standing order, the Senator from Alabama (Mr. ALLEN) be recognized for not to exceed 15 minutes.

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

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that following the remarks of the junior Senator from Alabama (Mr. ALLEN) on Thursday next, the distinguished senior Senator from Georgia (Mr. TALMADGE) be recognized for not to exceed 15 minutes, and that he be followed by the distinguished senior Senator from Missouri (Mr. SYMINGTON) for not to exceed 15 minutes.

ORDER FOR PERIOD FOR TRANSACTION OF ROUTINE MORNING BUSINESS ON THURSDAY NEXT

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that at the

completion of the orders recognizing Senators on Thursday next there be a period for the transaction of routine morning business for not to exceed 30 minutes, with statements therein limited to 3 minutes.

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

AUTHORIZATION FOR COMMITTEES TO SUBMIT REPORTS DURING ADJOURNMENT

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that all committees may be authorized to submit reports during the adjournment, until noon on Thursday, April 29, 1971.

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

PROGRAM

Mr. BYRD of West Virginia. Mr. President, the program for Thursday next is as follows: The Senate will convene at 12 o'clock noon. Following the recognition of the two leaders under the standing order, the distinguished junior Senator from Alabama (Mr. ALLEN) will be recognized for not to exceed 15 minutes. He will be followed by the distinguished senior Senator from Georgia (Mr. TALMADGE) for not to exceed 15 minutes. He will be followed by the distinguished senior Senator from Missouri (Mr. SYMINGTON) for not to exceed 15 minutes.

Upon the conclusion thereof, there will be a period for the transaction of routine morning business for not to exceed 30 minutes, with statements therein limited to 3 minutes.

DEATH OF REPRESENTATIVE ROBERT J. CORBETT, OF PENNSYLVANIA

Mr. SCHWEIKER. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on House Resolution 402.

The PRESIDING OFFICER laid before the Senate the resolution of the House of Representatives (H. Res. 402), which was read as follows:

H. RES. 402

Resolved, That the House has heard with profound sorrow of the death of the Honorable ROBERT J. CORBETT, a Representative from the State of Pennsylvania.

Resolved, That a committee of forty-eight Members of the House, with such Members of the Senate as may be joined, be appointed to attend the funeral.

Resolved, That the Sergeant at Arms of the House be authorized and directed to take such steps as may be necessary for carrying out the provisions of these resolutions and that the necessary expenses in connection therewith be paid out of the contingent fund of the House.

Resolved, That the Clerk communicate these resolutions to the Senate and transmit a copy thereof to the family of the deceased.

Resolved, That as a further mark of respect the House do now adjourn.

Mr. SCHWEIKER. Mr. President, on behalf of myself and the distinguished Republican leader, I submit a resolution and ask for its immediate consideration.

The PRESIDING OFFICER. The resolution will be read.

The resolution was read, as follows:

S. RES. 106

Resolved, That the Senate has heard with profound sorrow the announcement of the death of the Honorable ROBERT J. CORBETT, late a Representative from the State of Pennsylvania.

Resolved, That a committee of two Senators be appointed by the Presiding Officer to join the committee appointed on the part of the House of Representatives to attend the funeral of the deceased Representative.

Resolved, That the Secretary communicate these resolutions to the House of Representatives and transmit an enrolled copy thereof to the family of the deceased.

Resolved, That, as a further mark of respect to the memory of the deceased, the Senate do now adjourn.

Mr. SCHWEIKER. Mr. President, ROBERT J. CORBETT, dean of the Pennsylvania congressional delegation, died Sunday in Pittsburgh after suffering a stroke. I have lost a personal friend and his community, State, and Nation have lost a dedicated servant.

He spent half of his lifetime in public service, including 28 years as a Member of Congress from Allegheny County's 18th District.

Congressman CORBETT was ranking Republican on the House Post Office and Civil Service Committee and was the third ranking Republican Member of the House.

The statement issued by President Nixon sums up the feeling of many of us for BOB CORBETT. He honored him as "a valuable personal friend whom I have known since our service together in the House of Representatives more than 20 years ago."

It was with justifiable pride that Robert Corbett of Pennsylvania called himself "the little man's congressman." His constant concern for the blind, the infirm and others in special need was a tribute to his humanitarianism. With his death, the Congress has lost a distingiushed Member and the Nation has lost a dedicated servant.

Mr. CORBETT was first elected to Congress in 1938 after graduating from Allegheny College and receiving a master's degree in history from the University of Pittsburgh, service as a high school teacher and publisher of the North Pittsburgh.

He served his community and constituents with honor, his party, State, and Nation with love.

I offer this resolution expressing the sorrow of the Members of this body and extending our sympathy to his wife and family.

BOB CORBETT will be missed.

Mr. SCOTT. Mr. President, BOB CORBETT was my old and dear friend over the greater period of his distinguished service in the Congress.

He served ably, with diligence, competence, and faithfulness to his constituency.

We will miss his cheerful friendliness and his warm personality.

I extend my sincere condolences to his family.

Mr. JAVITS. I wish to express my deepest sympathy on the passing of BOB CORBETT. He was a great friend of mine for many years. I am dismayed and shocked at his death. I join all my colleagues in expressing deepest sympathy and condolences to his family.

The PRESIDING OFFICER. Is there objection to the consideration of the resolution?

There being no objection, the resolution was considered and unanimously agreed to.

The PRESIDING OFFICER. Under the second resolving clause the Chair appoints the Senators from Pennsylvania (Mr. SCOTT and Mr. SCHWEIKER) as the committee on the part of the Senate to attend the funeral of the late Representative CORBETT.

ADJOURNMENT UNTIL THURSDAY, APRIL 29, 1971

Mr. BYRD of West Virginia. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, and, pursuant to Senate Resolution 106, as a further mark of respect to the memory of Representative ROBERT J. CORBETT, of Pennsylvania, that the Senate now adjourn.

The motion was agreed to; and (at 6 o'clock and 29 minutes p.m.) the Senate adjourned until Thursday, April 29, 1971, at 12 o'clock noon.

NOMINATIONS

Executive nominations received by the Senate April 26, 1971:

U.S. CIRCUIT COURTS

Walter R. Mansfield, of New York, to be a U.S. circuit judge, second circuit, vice Leonard P. Moore, retired.

William Hughes Mulligan, of New York, to be a U.S. circuit judge, second circuit, vice J. Edward Lumbard, retiring.

U.S. DISTRICT COURTS

Lawrence W. Pierce, of New York, to be a U.S. district judge for the southern district of New York, vice William B. Herlands, deceased.

Mark A. Costantino, of New York, to be a U.S. district judge for the eastern district of New York, a new position created by Public Law 91–272, approved June 2, 1970.

DEPARTMENT OF JUSTICE

Jack T. Stuart, of Mississippi, to be U.S. marshal for the southern district of Mississippi for the term of 4 years; reappointment.

CONFIRMATIONS

Executive nominations confirmed by the Senate April 26, 1971:

DEPARTMENT OF COMMERCE

James T. Lynn, of Ohio, to be Under Secretary of Commerce.

William N. Letson, of Ohio, to be General Counsel of the Department of Commerce.

NATIONAL TRANSPORTATION SAFETY BOARD

John H. Reed, of Maine, to be a member of the National Transportation Safety Board for the term expiring December 31, 1975.

U.S. COAST GUARD

The following-named officers of the Coast Guard for promotion to the grade of rear admiral:

James W. Moreau
Joseph R. Steele
Owen W. Siler