By Mr. FRENZEL:

H.R. 14329. A bill to authorize the Secretary of State to furnish assistance for the resettlement of Soviet Jewish refugees in Israel; to the Committee on Foreign Affairs.

By Mr. FREY:

H.R. 14330. A bill to amend the Welfare and Pension Plans Disclosure Act; to the Committee on Education and Labor.

H.R. 14331. A bill to strengthen and improve the private retirement system by establishing minimum standards for participation in and for vesting of benefits under pension and profit-sharing retirement plans, by allowing deductions to individuals for personal savings for retirement, and by increasing contribution limitations for self-employed individuals and shareholder-employees of electing small business corporations; to the Committee on Ways and Means.

By Mr. HARRINGTON (for himself and Mr. NEDZI):

H.R. 14332. A bill to amend chapter 55 of title 10, United States Code, to provide maternity care in service facilities for certain members of the uniformed services and their dependents after such members are separated from active duty; to the Committee on Armed Services.

By Mr. HUNGATE (for himself, Mr. BURLISON of Missouri, Mr. ICHORD, and Mr. MELCHER):

H.R. 14333. A bill to provide price support for milk at not less than 85 percent of the parity price therefor; to the Committee on Agriculture.

By Mr. KOCH (for himself and Mr. SCHEUER):

H.R. 14334. A bill Newsmen's Privilege Act of 1972; to the Committee on the Judiciary.

By Mr. KOCH (for himself, Mrs. ABZUG, Mr. BELL, Mr. BOLAND, Mr. BURTON, Mr. O'HARA, and Mr. RYAN):

H.R. 14335. A bill to amend the Omnibus Crime Control and Safe Streets Act of 1968 to provide for grants to cities for improved street lighting; to the Committee on the Judiciary.

By Mr. KOCH (for himself and Mr. WOLFF):

H.R. 14336. A bill to amend chapter 3 of title 3, United States Code, to provide for the protection of foreign diplomatic missions; to the Committee on Public Works.

By Mr. ROE:

H.R. 14337. A bill to establish in the Department of Health, Education, and Welfare an Office for the Handicapped to coordinate programs for the handicapped, and for other purposes; to the Committee on Education and Labor.

By Mr. RYAN:

H.R. 14338. A bill to provide for the creation of correctional ombudsmen; to the Committee on the Judiciary.

By Mr. SAYLOR:

H.R. 14339. A bill to provide that the historic property known as the Congressional Cemetery may be acquired, protected, and administered by the Secretary of the Interior as part of the park system of the National Capital, and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. SCOTT:

H.R. 14340. A bill to limit the authority of the government of the District of Columbia with respect to the levying and collecting of certain taxes; to the Committee on District of Columbia.

By Mr. STAGGERS (for himself and Mr. SPRINGER):

H.R. 14341. A bill to amend the Public Health Service Act to increase the fiscal year 1973 authorizations for project grants for health services development and for project grants and contracts for family planning services; to the Committee on Interstate and Foreign Commerce.

H.R. 14342. A bill to provide certain benefits for American civilian prisoners of war in Southeast Asia, for Federal employees in a missing status, and for other purposes; to the Committee on Interstate and Foreign Commerce.

By Mr. THOMPSON of Georgia:

H.R. 14343. A bill to amend chapter 83 of title 5, United States Code, to eliminate the survivorship reduction during periods of nonmarriage of certain annuitants, and for other purposes; to the Committee on Post Office and Civil Service.

H.R. 14344. 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. WINN:

H.R. 14345. A bill to provide for the establishment of the Agricultural Hall of Fame National Cultural Park in the State of Kansas, and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. YOUNG of Florida:

H.R. 14346. A bill to amend title 39, United States Code, to restrict the mailing of chain letters containing statements implying or predicting harm or misfortune to recipients failing to transmit the letters or copies thereof according to instructions therein, and for other purposes; to the Committee on Post Office and Civil Service.

By Mr. BROTZMAN:

H.J. Res. 1154. Joint resolution to authorize the President to issue annually a proclamation designating the month of May in each year as "National Arthritis Month"; to the Committee on the Judiciary.

By Mr. GERALD R. FORD (for himself and Mr. MCKEVITT):

H.J. Res. 1155. Joint resolution proposing an amendment to the Constitution of the United States relating to the nomination of individuals for election to the offices of the President and Vice President of the United States; to the Committee on the Judiciary.

By Mr. LUJAN:

H.J. Res. 1156. Joint resolution to authorize the President to issue annually a proclamation designating the month of May in each year as "National Arthritis Month"; to the Committee on the Judiciary.

By Mr. MINSHALL:

H.J. Res. 1157. Joint resolution authorizing the President to proclaim the first Monday in May as Industry Day; to the Committee on the Judiciary.

By Mr. RARICK:

H.J. Res. 1158. Joint resolution to authorize the President to issue annually a proclamation designating the month of May in each year as "National Arthritis Month"; to the Committee on the Judiciary.

By Mr. ROE:

H.J. Res. 1159. Joint resolution to express the sense of Congress that a White House Conference on the Handicapped be called by the President of the United States; to the Committee on Education and Labor.

By Mr. KING:

H. Con. Res. 577. Concurrent resolution requesting the President to proclaim the week of June 18 through June 24, 1972, as "National Children's Theater Week"; to the Committee on the Judiciary.

By Mr. McDONALD of Michigan:

H. Con. Res. 578. Concurrent resolution relating to the denial of admission to any military service academy of the United States solely on the ground of sex; to the Committee on Armed Services.

MEMORIALS

Under clause 4 of rule XXII,

367. The SPEAKER presented a memorial of the Legislature of the Commonwealth of Virginia, requesting Congress to propose an amendment to the Constitution of the United States concerning the assignment of public school students; to the Committee on the Judiciary.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII,

Mr. SPRINGER introduced a bill (H.R. 14347) for the relief of Monroe A. Lucas, which was referred to the Committee on the Judiciary.

SENATE—*Wednesday, April 12, 1972*

The Senate met at 9:30 a.m. and was called to order by Hon. FRANK E. MOSS, a Senator from the State of Utah.

PRAYER

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

O Thou who art high and lifted up, Lord of our life and our salvation, come upon us here and throughout this land to be—

Lord of our homes
Lord of our schools
Lord of our churches
Lord of our ballot boxes
Lord of our Government
Lord of our peace tables
Lord of this Chamber.

Enable us to affirm by our lives and our actions that we are a nation "under God."

We pray in the name of our Lord and Master. 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 second assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., April 12, 1972.

To the Senate:

Being temporarily absent from the Senate on official duties, I appoint Hon. FRANK E. Moss, a Senator from the State of Utah, to perform the duties of the Chair during my absence.

ALLEN J. ELLENDER,
President pro tempore.

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

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

Tuesday, April 11, 1972, be dispensed with.

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

COMMITTEE MEETINGS DURING SENATE SESSION

Mr. ROBERT C. BYRD. 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.

THE CALENDAR

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order numbered 708, 709, and 710.

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

AUTHORIZATION TO FIX CERTAIN FEES

The bill (S. 1338) to authorize the government of the District of Columbia to fix certain fees was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the District of Columbia Council is authorized and empowered to fix, from time to time, in accordance with section 2 of this Act, the fees authorized to be charged by the following Acts or parts of Acts:

(1) Section 2 of the Act entitled "An Act to regulate the erection, hanging, placing, painting, display, and maintenance of outdoor signs and other forms of exterior advertising within the District of Columbia", approved March 3, 1931 (46 Stat. 1486; D.C. Code, sec. 1–232).

(2) Sections 571, 586a, 753, and 754 of the Act entitled "An Act to establish a code of law for the District of Columbia", approved March 3, 1901 (31 Stat. 1280, 1282, 1312), as amended (D.C. Code, secs. 1–514, 29–414, 35–905, and 35–906).

(3) Sections 5 and 6 of the Act entitled "An Act to regulate and license pawnbrokers in the District of Columbia", approved August 6, 1956 (70 Stat. 1037, 1038; D.C. Code, secs. 2–2005 and 2–2006).

(4) Sections 7, 40, and 42 of the Act entitled "An Act to amend the Code of the District of Columbia to provide for the organization and regulation of cooperative associations, and for other purposes", approved June 19, 1940 (54 Stat. 483, 490; D.C. Code, secs. 29–807, 29–840, and 29–844).

(5) Section 121 of the District of Columbia Business Corporation Act, approved June 8, 1954 (68 Stat. 228), as amended (D.C. Code, sec. 29–936).

(6) Section 92 of the District of Columbia Nonprofit Corporation Act, approved August 6, 1962 (76 Stat. 300, 301; D.C. Code, sec. 29–1092).

(7) Section 2 of Chapter 2 of the Act entitled "An Act to regulate the business of life insurance in the District of Columbia", approved June 19, 1934 (48 Stat. 1130; D.C. Code, sec. 35–402).

(8) Section 13 of title V of the Act entitled "An Act to regulate marine insurance in the District of Columbia, and for other purposes", approved March 4, 1922 (42 Stat. 408; D.C. Code, sec. 35–1113).

(9) Section 41 of chapter II and section 53 of chapter III of the Fire and Casualty Act, approved October 9, 1940 (54 Stat. 1081, 1082), as amended (D.C. Code, secs. 35–1345 and 35–1363).

(10) Section 7 of the Motor Vehicle Safety Responsibility Act of the District of Columbia, approved May 25, 1954 (68 Stat. 123), as amended (D.C. Code, sec. 40–423).

(11) The Act entitled "An Act relating to tax sales and taxes in the District of Columbia", approved February 6, 1879 (20 Stat. 283), as amended (D.C. Code, sec. 47–306).

(12) Section 21 of title II of the District of Columbia Revenue Act of 1939, approved July 26, 1939 (53 Stat. 1096; D.C. Code, sec. 47–1521).

(13) Section 4 of article I of title V of the District of Columbia Income and Franchise Tax Act of 1947, approved July 16, 1947 (61 Stat. 342; D.C. Code, sec. 47–1564c).

(14) Paragraphs 14, 15, and 16 of section 6, and paragraph 42 of section 7 of the Act entitled "An Act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and three, and for other purposes", approved July 1, 1902 (32 Stat. 621, 622, 628), as amended (D.C. Code, secs. 47–1706, 47–1707, 47–1708, and 47–2101).

(15) Sections 1 and 4 of title II of the District of Columbia Revenue Act of 1937, approved August 17, 1937 (50 Stat. 675; D.C. Code, secs. 47–1801 and 47–1804).

(16) Section 3 of the Act entitled "An Act to provide for a tax on motor-vehicle fuels sold within the District of Columbia, and for other purposes", approved April 23, 1924 (43 Stat. 107), as amended (D.C. Code, sec. 47–1903).

(17) Sections 1 and 3 of the Act entitled "An Act to create a revenue in the District of Columbia by levying a tax upon all dogs therein, to make such dogs personal property, and for other purposes" approved June 19, 1878 (20 Stat. 173, 174), as amended (D.C. Code, secs. 47–2001, 47–2002, and 47–2003).

(18) Section 2 of the Act entitled "An Act to prevent fraud at public auctions in the District of Columbia", approved September 8, 1916 (39 Stat. 846; D.C. Code, sec. 47–2202).

(19) Section 138 of the District of Columbia Sales Tax Act, approved May 27, 1949 (63 Stat. 113; D.C. Code, sec. 47–2615).

(20) Section 2 of the Act entitled "An Act to provide for the regulation of closing-out and fire sales in the District of Columbia", approved September 1, 1959 (73 Stat. 450; D.C. Code, sec. 47–3002).

(21) Section 1 of the Act entitled "An Act to authorize associations of employees in the District of Columbia to adopt a device to designate the products of the labor of their members, to punish illegal use or imitation of such device, and for other purposes", approved February 18, 1932 (47 Stat. 50), as amended (D.C. Code, sec. 48–401).

SEC. 2. The District of Columbia Council may, with respect to each of the fees established by the Acts or parts of Acts listed in the first section, after public hearing, increase or decrease such fees to such amounts as may, in the judgment of the Council, be reasonable in consideration of the interests of the public and the persons required to pay the fee, and in consideration of the approximate cost of administering each Act or part of Act to which the fee relates.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–739), explaining the purposes of the measure.

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

PURPOSE OF THE BILL

The purpose of the legislation is to vest authority in the District of Columbia Council, after public hearing, to set a variety of municipal fees, including fees for certain licenses and permits.

License and user fees are presently fixed by statute, and many such fees have not been adjusted over the years to reflect current costs for performing the governmental duties related to the activity for which the fee is charged.

NEED FOR LEGISLATION

The bill is part of the President's legislative program for the District of Columbia, and is fully described as to purpose and effect in the following letter to the President of the Senate from Graham W. Watt, Assistant to the Commissioner.

THE DISTRICT OF COLUMBIA,
Washington, D.C., January 26, 1971.

THE PRESIDENT,
U.S. Senate, Washington, D.C.

DEAR MR. PRESIDENT: The Commissioner of the District of Columbia has the honor to submit herewith a draft bill to authorize the Government of the District of Columbia to fix certain fees.

The purpose of this proposed legislation was stated by the President in his April 28, 1969, message to the Congress recommending legislation for the District of Columbia, as follows:

"The Reorganization Plan which established the present [District of Columbia] government left to Congress many mundane municipal functions which are burdensome chores to it but important functions for good local government. At present, Congress must allot a portion of its legislative calendar to setting ordinances for the District of Columbia, in effect performing the duties of a local City Council for the Capital. It thus deals with matters which are of little or no importance to the Nation as a whole—the setting of a fee, for example, to redeem a dog from the city pound. The concerns of the District are frequently shunted aside to allow for higher-priority legislative business. 'No policy can be worse than to mingle great and small concerns,' argued Augustus Woodward, one of the founders of our city, when Congress considered establishing a territorial form of government in 1800. 'The latter become absorbed in the former; are neglected and forgotten.'

"Legislation will be proposed to transfer a number of specific authorities to the District Government—*including authority to change various fees for user charges now fixed by statute,* * * * and modernize the licensing of various businesses, occupations and professions." (Emphasis and bracketed language supplied.)

The Commissioner of the District of Columbia accordingly proposes that the Congress enact legislation to authorize the District of Columbia Council to change, from time to time, a number of fees specified by the Congress in 21 separate statutes. The fees provided by the statutes presently range from ten cents for certain notary services to $500 for licenses for pawnbrokers, private banks, and the stock exchange. The Commissioner believes that these fees, which are listed and described in the attached chart, should be examined from time to time and, if appropriate, increased or decreased to such amounts as the Council determines after public hearing to be reasonable in consideration of the interests of the public and the persons required to pay the fee, and in con-

sideration of the approximate costs of administering each of the District's statutory duties related to the activity for which the fee is charged.

The Commissioner believes that legislation of this nature is highly desirable, both from the standpoint of relieving the Congress of these mundane municipal fee-fixing functions and from the standpoint of vesting in the municipal government and people of the District of Columbia more responsibility in local matters. Accordingly, the Commissioner recommends the enactment of the attached draft bill. The District of Columbia Council has expressed its support for this legislation.

Sincerely yours,

GRAHAM W. WATT,
Assistant to the Commissioner.
For: WALTER E. WASHINGTON,
Commissioner.

FEES SPECIFIED IN ACTS OF CONGRESS RELATING TO THE DISTRICT OF COLUMBIA

District of Columbia code citation	Type of fee	Amount
1. 1-232	License for an outdoor sign	$5 per year.
2. 1-514	Notary fees for various services	$0.10 to $1.75.
3. 2-2005, 2-2006.	Pawnbroker license	$500 for 1st year and $250 per year thereafter.
4. 29-414	Filing of certificate of incorporation of institution of learning.	$25.
5. 29-807	Filing of amendment of articles by cooperative association	$1.
6. 29-840	Filing of certified copy of amended articles by cooperative association.	$5.
7. 29-844	License of cooperative association	$10 per year.
8. 29-936	Fees for licenses, filing documents, etc., by business corporations.	$1 to $20.
9. 29-1092	Fees for filing documents and issuing certificates by nonprofit corporations.	$1 to $10.
10. 35-402	Various fees for life insurance companies	$5 to $50.
11. 35-905	Service of process of Superintendent of Insurance	$3.
12. 35-906	Permit to do business in District of Columbia from Superintendent of Insurance.	$5.
13. 35-1113	Marine insurance company fees	$100 to $200.
14. 35-1345	Various fire, casualty, and marine insurance fees	$5 to $50.
15. 35-1363	License fee for financing insurance premiums	$50 per year.
16. 40-423	Service of process on District Government for nonresident motorist.	$2.
17. 47-306	Certificate of taxes and assessments due	$1.
18. 47-1521	Copy of income tax return furnished to taxpayer for a year prior to 1947.	$1.
19. 47-1564c	Copy of income tax return furnished to taxpayer for 1947 and any year thereafter.	$2.
20. 47-1706	Unincorporated private banks	$500 per year.
21. 47-1707	For business done on Washington Stock Exchange	Do.
22. 47-1708	For note brokers	Do
23. 47-1801	Certificate of authority for insurance companies	$25 per year.
24. 47-1804	Filing of annual statement by insurance companies	$20 per year.
25. 47-1903	License fee for motor vehicle fuel importers	$5 per year.
26. 47-2101	For each dog owned or kept in the District of Columbia	$3 per year.
27. 47-2002	Certified copy of record of payment of dog fee	$0.25.
28. 47-2003	Impoundment fee for stray dogs	$2.
29. 47-2101	License fee for employment agencies	$100.
30. 47-2202	Public auction permit	Not to exceed $50.
31. 47-2615	Copy of sales tax return furnished to taxpayer	$2.
32. 47-3002	License for closing out sale	$100.
33. 48-401	Registration of union label	$1.

The committee fully endorses the above letter for the reasons stated therein.

HISTORY OF LEGISLATION

An identical bill to S. 1338 was introduced in the Senate during the 91st Congress and passed the Senate on August 13, 1970, but received no action in the House.

On January 26, 1971, the previously printed letter transmitted and recommended the proposed legislation. S. 1338 was introduced in the Senate on March 23, 1971, and hearings were held by the Subcommittee on Business, Commerce, and Judiciary of the Senate District Committee on December 1, 1971. Representatives of the District of Columbia testified in support of the legislation.

ANALYSIS OF THE BILL

Section 1 authorizes the District of Columbia Council to fix, from time to time, fees authorized to be charged by a number of acts or parts of acts. The affected activities are listed above in the letter from Mr. Watt.

Section 2 provides that in exercising its authority in section 1 the Council may increase or decrease such fees, after public hearing, to such amounts as, in the judgment of the Council, may be reasonable in consideration of the public interest and the persons required to pay the fee, and in consideration of the proximate cost of administering each act or part of act to which the fee relates.

DISTRICT OF COLUMBIA LICENSING PROCEDURES ACT

The Senate proceeded to consider the bill (S. 1363) to revise and modernize procedures relating to licensing by the District of Columbia of persons engaged in certain occupations, professions, businesses, trades, and callings, and for other purposes, which had been reported from the Committee on the District of Columbia with an amendment to strike out all after the enacting clause and insert:

SEC. 101. That this Act may be cited as the "District of Columbia Licensing Procedures Act".

SEC. 102. The Congress hereby finds it desirable that the government of the District of Columbia (hereinafter "District") revise and modernize procedures relating to the licensing by the District of persons engaged in certain occupations, professions, businesses, trades, and callings. The Congress further finds it to be in the interest of such licensees, of the general public, and of the District that such licensing procedures be made as nearly uniform as may be feasible, depending on the circumstances involved in each type of license. Accordingly, the Congress intends by this Act to vest in the District authority to adopt and promulgate regulations establishing licensing procedures relating to persons engaging in occupations, professions, businesses, trades, and callings in the District.

SEC. 103. The District of Columbia Council (hereinafter "Council") is authorized and empowered to make, from time to time, usual and reasonable regulations which require a license for any occupation, profession, business, trade, or calling, including those occupations, professions, businesses, trades, or callings heretofore regulated by Act of Congress. Such regulations many include, but are not limited to, provisions prescribing qualifications and standards for the licensing of persons to engage in the occupations, professions, businesses, trades, and callings affected by such regulations, establishing classes of such licenses, fixing license fees, prescribing grounds for the suspension or revocation of such licenses, prescribing procedures for the granting, renewal, denial, suspension, or revocation of such licenses, establishing the periods for which such licenses are to be valid, and fixing penalties of a fine not exceeding $300 or imprisonment for not exceeding ninety days, or both, for the violation of such regulations, including, but not limited to, any violation of a provision prohibiting a person from falsely holding himself out, in any manner, as being either qualified or duly licensed under the authority of regulations adopted by the Council pursuant to the provisions of this Act. The Council is further authorized and empowered, if it deems such to be necessary, to make regulations fixing penalties of a fine not exceeding $1000 or imprisonment for not exceeding three years, or both, for a second or any subsequent conviction of any violation of a provision prohibiting a person from falsely holding himself out in any manner, as being either qualified or duly licensed under the authority of regulations adopted by the Council pursuant to the provisions of this Act.

SEC. 104. The unlawful practice of the occupations, professions, businesses, trades, and callings as defined by the regulations made pursuant to this Act may be enjoined by the Superior Court of the District of Columbia, sitting as a court of equity, on petition by the Commissioner of the District of Columbia. In any such proceeding, it shall not be necessary to show that any person is individually injured by the act or acts complained of. A temporary restraining order may be issued by the court enjoining such unlawful practice prior to a hearing on the petition if the court determines that such order is necessary to protect the public. If, on the trial, it is shown that the respondent has unlawfully practiced an occupation, business, trade, or calling regulated pursuant to this Act, the court shall permanently enjoin him from so practicing or continuing to practice, unless and until he has been duly licensed. The remedy by injunction given hereby is in addition to criminal prosecution and punishment based thereon, and not in lieu thereof. Such cases shall be advanced for trial on the docket of the trial court, and shall be advanced and tried in the appellate court, in the same manner and under the same law and regulations as apply to other suits for injunction.

SEC. 105. The Commissioner of the District of Columbia is authorized, in accordance with regulations issued by the Council under the authority of this Act, to issue, deny, suspend, or revoke, for such cause as may be set forth in such regulations, any of the licenses authorized by any such regulations.

SEC. 106. All prosecutions for violations of any regulations issued by the Council under the authority of this Act and all proceedings looking toward the suspension or revocation of licenses or registration and toward the issue of injunctions, under the provisions of this Act or regulations made pursuant thereto, shall be conducted in the name of the District of Columbia by the Corporation Counsel or any of his assistants.

SEC. 107. Any judicial or administrative proceeding initiated prior to the effective date of this Act under any Act or part of Act specified in section 108 of this Act, or under regulations made pursuant to any of the said Acts or part of Act, shall proceed to its conclusion without regard to the provisions of this Act or of any regulations made pursuant thereto.

SEC. 108. The following Acts are repealed on the effective date of this Act:

(1) An Act to regulate the practice of the healing art to protect the public health in the District of Columbia, approved February 27, 1929 (45 Stat. 1326), as amended (D.C. Code, title 2, ch. 1).

(2) An Act to amend the Act for the regulation of the practice of dentistry in the District of Columbia, and for the protection of the people from empiricism in relation thereto, approved June 6, 1892, and Acts amendatory thereof, approved July 2, 1940 (54 Stat. 716), as amended (D.C. Code, title 2, ch. 3).

(3) An Act to define the term of "registered nurse" and to provide for the registration of nurses in the District of Columbia, approved February 9, 1907 (34 Stat. 887), as amended (D.C. Code, secs. 2–401 through 411).

(4) The District of Columbia Practical Nurses' Licensing Act, approved September 6, 1960 (74 Stat. 803; D.C. Code, secs. 2–421 through 440).

(5) The Physical Therapists Practice Act approved September 22, 1961 (75 Stat. 578; D.C. Code, secs. 2–451 through 472).

(6) An Act to regulate the practice of optometry in the District of Columbia, approved May 28, 1924 (43 Stat. 177; D.C. Code, title 2, ch. 5).

(7) An Act to regulate the practice of pharmacy and the sale of poisons in the District of Columbia, and for other purposes, approved May 7, 1906 (34 Stat. 175), as amended (D.C. Code, title 2, ch. 6).

(8) An Act to regulate the practice of podiatry in the District of Columbia, approved May 23, 1918 (40 Stat. 560), as amended (D.C. Code, title 2, ch. 7).

(9) An Act to regulate the practice of veterinary medicine in the District of Columbia, approved February 1, 1907 (34 Stat. 870), as amended (D.C. Code, title 2, ch. 8).

(10) An Act to provide for regulation of the professional practice of certified public accountants in the District of Columbia, including the examination, licensure, registration of certified public accountants, and for other purposes, approved September 16, 1966 (80 Stat. 785; D.C. Code, title 2, ch. 9).

(11) An Act to provide for the examination and registration of architects and to regulate the practice of architecture in the District of Columbia, approved December 13, 1924 (43 Stat. 713), as amended (D.C. Code, title 2, ch. 10).

(12) The District of Columbia Barber Act, approved June 7, 1938 (52 Stat. 620), as amended (D.C. Code, title 2, ch. 11).

(13) An Act to regulate boxing contests and exhibitions in the District of Columbia, and for other purposes, approved December 20, 1944 (58 Stat. 823), as amended (D.C. Code, title 2, ch. 12).

(14) An Act to provide for the examination and licensing of those engaging in the practice of cosmetology in the District of Columbia, approved June 7, 1938 (52 Stat. 611; D.C. Code, title 2, ch. 12).

(15) An Act to regulate plumbing and gas fitting in the District of Columbia, approved June 18, 1898 (30 Stat. 477), as amended (D.C. Code, title 2, ch. 14).

(16) An Act to regulate steam engineering in the District of Columbia, approved February 28, 1887 (24 Stat. 247), as amended (D.C. Code, title 2, ch. 15).

(17) The Professional Engineers' Regulation Act, approved September 19, 1950 (64 Stat. 845), as amended (D.C. Code, title 2, ch. 18).

(18) An Act to define, regulate, and license real estate brokers, business chance brokers, and real estate salesmen; to create a Real Estate Commission in the District of Columbia; to protect the public against fraud in real estate transactions; and for other purposes, approved August 25, 1937 (50 Stat. 787), as amended (D.C. Code, title 45, ch. 14).

(19) Paragraph 44A of section 7 of the Act approved July 1, 1902, as added by the Act approved August 1, 1947 (61 Stat. 711; D.C. Code, sec. 47–2344a), relating to the licensing of undertakers.

(20) Subsection (b) of the first section of the Act entitled "An Act to grant additional powers to the Commissioners of the District of Columbia, and for other purposes", approved December 20, 1944 (58 Stat. 819, 820), as amended (D.C. Code, sec. 1–244(b)), relating to the bonding of persons, firms, and corporations, other than utility companies, engaged in the business of plumbing or gas fitting, or of installing, maintaining, or repairing heating, ventilation, air conditioning, or mechanical refrigerating apparatus, equipment, appliances, systems or parts thereof, or of installing, maintaining, or repairing apparatus, equipment, fixtures, appliances, or wiring, using or conducting electric current.

(21) An Act to regulate the practice of psychology in the District of Columbia, approved January 8, 1971 (84 Stat. 1955; Public Law 91–657).

SEC. 109. This Act shall become effective one year after the date of enactment.

The amendment was agreed to.

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

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–740), explaining the purposes of the measure.

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

PURPOSE OF THE BILL

The purpose of the bill, S. 1363, is to provide for the modernization and streamlining of the laws governing the various occupations, professions, businesses, and trades in the District of Columbia, in order to better meet the needs of the general public and the regulated occupations and professions alike.

At the present time, the various occupations are licensed, registered, or certified under twenty one Acts of Congress, seventeen of which were last revised more than a dozen years ago. Because of the cumbersome and time consuming process of regulating by statute, the various laws lack uniformity and timeliness which creates difficulties in their administration and application.

NEED FOR LEGISLATION

The bill is part of the President's legislative program for the District of Columbia, and is fully described as to purpose and effect in the following letter to the President of the Senate from Graham W. Watt, Assistant to the Commissioner.

THE DISTRICT OF COLUMBIA,
Washington, D.C., January 29, 1971.

THE PRESIDENT,
U.S. *Senate,*
Washington, D.C.

DEAR MR. PRESIDENT: The Commissioner of the District of Columbia has the honor to submit for the consideration of the Congress a draft bill "To revise and modernize the licensing by the District of Columbia of persons engaged in certain occupations, professions, businesses, trades, and callings, and for other purposes." A section-by-section analysis and a statement of purpose and justification of the provisions of the bill are also included.

The purpose of this proposed legislation was stated by the President April 28, 1969 in his message to the Congress, recommending legislation for the District of Columbia, as follows:

"The Reorganization Plan which established the present government [of the District of Columbia] left to Congress many mundane municipal functions which are burdensome chores to it but important functions for good local government. At present, Congress must allot a portion of its legislative calendar to setting ordinances for the District of Columbia, in effect performing the duties of a local City Council for the Capital. It thus deals with matters which are of little or no importance to the nation as a whole—the setting of a fee, for example, to redeem a dog from the city pound. The concerns of the District are frequently shunted aside to allow for higher-priority legislative business. 'No policy can be worse than to mingle great and small concerns,' argued Augustus Woodward, one of the founders of our city, when Congress considered establishing a territorial form of government in 1800. 'The latter become absorbed in the former, are neglected and forgotten.'

"Legislation will be proposed to transfer a number of specific authorities to the District Government—including authority to . . . *modernize the licensing of various businesses, occupations, and professions.*" (Emphasis and bracketed language supplied)

The Commissioner of the District of Columbia accordingly proposes that the Congress enact legislation to vest in the District of Columbia Council authority to make regulations from time to time, as appropriate, upgrading the qualification requirements for a number of licenses, modernizing procedures and making such procedures as uniform as possible, modifying the grounds for suspension or revocation of these licenses, and increasing or decreasing fees connected with the issuances of such licenses.

The Commissioner strongly urges favorable consideration of this legislation, not only in order to relieve the Congress of the chore of involving itself in the details of the licensing of the various professions, occupations, businesses, trades, and callings affected by the bill, but also in order to vest in the municipal government of the District of Columbia more responsibility in local matters. The District of Columbia Council has expressed its support for this legislation.

Sincerely yours,

GRAHAM W. WATT,
Assistant to the Commissioner.
FOR: WALTER E. WASHINGTON,
Commissioner

STATEMENT OF PURPOSE AND JUSTIFICATION

Physicians, dentists, dental hygienists, registered nurses, practical nurses, physical therapists, optometrists, pharmacists, psychologists, podiatrists, veterinarians, certified public accountants, architects, barbers, persons participating in boxing contests, cosmetologists, plumbers and gas fitters, steam engineers, professional engineers, real estate and business chance brokers and salesmen, undertakers, and electrical and refrigeration and air conditioning contractors are licensed, registered, or certified, as the case may be, under the authority of twenty-one acts of Congress. The earliest of these Acts were enacted in 1887. The most recent was enacted in 1970. Thirteen of the Acts were enacted before 1939, while eight were enacted since 1944. The Commissioner believes that it may readily be appreciated that there is considerable need to modernize many if not all of these Acts which were enacted more than twelve years ago; i.e., seventeen of the twenty-one Acts.

From time to time, action is initiated by persons interested in a particular profession, occupation, business, trade, or calling to revise the Act of Congress relating to such profession, occupation, business, trade or calling. These revisions may range from a complete rewriting of an Act (such as has been proposed by the pharmacists, the optometrists the cosmetologists, the barbers, and the real estate brokers and salesmen) down to such a simple matter as permitting the acceptance of the results of national board examinations in connection with the licensing of podia-

trists. The number of Acts involved, and the need for revising them to meet changing needs, inevitably results in the submission to each Congress of requests for such changes.

The principal problems confronting the Government of the District of Columbia and the persons affected by these Acts of Congress are lack of uniformity in the methods and procedures prescribed by such Acts, and certain obsolescent or inadequate standards and requirements established by them. In the eighty-three year span between the earliest of the Acts and the most recent, the many Congresses have prescribed a variety of standards, requirements, and procedures which, by reason of their lack of uniformity, create difficulties in the administration and application of such Acts. Particularly affected by this lack of uniformity are those attorneys who may be retained by persons contesting the proposed denial, suspension, or revocation of a license, certificate, or reply on a standard, uniform procedures, must make sure that what registration, since an attorney so retained, rather than being able to rely on a standard, uniform procedure, must make sure that whatever action he takes conforms with the particular requirements of the applicable statute. Further, he must also familiarize himself with the regulations adopted under the authority of such statute, and these in turn, because of the requirements of the statute under which they are adopted, may also vary from regulations issued under the authority of other of the twenty-one Acts of Congress. In the August, 1963 issue of the Journal of the Bar Association of the District of Columbia, in an article by Marion Edwyn Harrison, Esquire, entitled "Licensing Procedures in the District of Columbia" (pages 395–411), the situation which has come to exist is described as follows (page 402):

"V. A POTPOURRI OF PROCEDURES: THE DEPARTMENT OF OCCUPATIONS AND PROFESSIONS

"Occupations and Professions in its present form was created by Reorganization Order No. 59 (1953), since amended, and it is an interesting and varied collection of committees, commissions and boards, with varying procedures, published and unpublished, and existing pursuant to various statutes and regulations. This variety stems partially from the collection of statutory enactments, seemingly created almost willy-nilly by Congress, and partly from the fact that the various committees, commissions and boards do not appear to correlate their activities or unduly to be aware of the existence of each other."

The other principal problem is that relating to the standards and requirements established by the various Acts. Certain of them do not prescribe educational or experiential qualifications best designed to meet the needs of the public, as measured by present-day standards. Other standards relating to the grounds for the suspension or revocation of licenses are, in the view of the Commissioner, inadequate to protect the public interest. It is the recommendation of the Commissioner that, in order to meet the needs of the public and to protect its interests, the District be given authority to take action to improve and up-grade the educational and experiential requirements of the various Acts, and to prescribe, for the suspension or revocation of licenses, standards which will adequately protect the interests of the general public.

The Commissioner believes there is considerable need to revise and modernize most of the twenty-one Acts of Congress providing for the licensing, registration, or certification of persons engaging in certain professions, occupations, businesses, trades, or callings. The Commissioner believes, however, that even were the Congress able to undertake and accomplish a thorough full-scale revision and modernization of these Acts, the needs of the public would not fully be met, since the piecemeal revision and modernization of these Acts would very likely continue in existence the present lack of uniformity in standards, requirements, and procedures. Further, the Commissioner believes that there is need for consolidating, in one publication, a particular licensing act and the regulations issued under the authority of such Act, so that persons affected thereby may readily inform themselves of the requirements of the licensing act and the regulations issued pursuant thereto.

Accordingly, the Commissioner proposes that the District be authorized to issue regulations revising and modernizing certain specified Acts or parts of Acts of Congress establishing licensing procedures relating to persons engaging in certain occupations, professions, businesses, trades, and callings. Further, the Commissioner proposes that the District be authorized, in such regulations, to restate the language of the applicable statute together with the language of such additional implementing regulations as the District has adopted or may adopt pursuant to the authority contained in such statute, all to the end of making it more convenient for persons affected by a particular licensing statute and the regulations issued pursuant thereto to acquaint themselves with the requirements of such statute and regulations and to reduce to a minimum the differences in the qualifications and procedures established by such licensing statutes and their accompanying regulations.

In furtherance of the effort to meet a long-recognized need for a simplified method of accomplishing desired changes in the written requirements, policies, and procedures applicable to the various licensing programs administered by the Department of Economic Development of the Government of the District of Columbia, the Commissioner has prepared a bill which would authorize the District of Columbia Council, after public hearing, to adopt regulations which would, in their form, be a combination of the language contained in a particular statute and the language of regulations adopted by the District of Columbia Government under the authority of that statute, with such revisions and modernizations in the language of both the statute and such regulations as may, after such public hearing, be considered desirable. In short, the bill is designed to authorize the District, by regulation, to revise and modernize some twenty-one Acts of Congress, retaining or improving upon (or perhaps in some cases deleting) the requirements and procedures established by the specified twenty-one Acts of Congress, and retaining or improving the qualifications for licensing established by such Acts.

Amendment

The amendment in the nature of a substitute is merely a more direct way of achieving the same objectives as the original language of S. 1363. It was explained in the testimony of Graham W. Watt, Assistant to the Commissioner, as follows:

Since submission of this legislation, we have continued to review the proposal and the problems with which we have been confronted in the regulation of occupations and professions.

While I continue to believe S. 1363 would be adequate to allow the gradual amendment of the various acts of Congress, a more far-reaching approach would be one which simply repeals the 21 existing laws and authorizes the District government to regulate all occupations, professions, businesses, trades, and calls in the District.

This new proposal . . . has exactly the same objective as S. 1363—the modernization and streamlining of the laws affecting occupations and professions—but does so in a more concise and straightforward manner. The new proposal is also consistent with recent efforts to transfer local authority and local functions to the local government.

History of the legislation

On January 29, 1971, the Commissioner of the District of Columbia wrote a letter, previously printed in this report, to the President of the Senate transmitting and recommending the proposed legislation. S. 1363 was introduced in the Senate on March 24, 1971, and hearings were held by the Subcommittee on Business, Commerce, and Judiciary of the District Committee on December 1, 1971. Representatives of the District of Columbia government testified for the bill.

THE DISTRICT OF COLUMBIA LAW ENFORCEMENT AND CRIMINAL JUSTICE ACT

The Senate proceeded to consider the bill (S. 2209) relating to crime and law enforcement in the District of Columbia which had been reported from the Committee on the District of Columbia with amendments on page 3, after line 5, strike out:

OBTAINING CONTROL OF CREDIT CARD AS SECURITY FOR DEBT

SEC. 104. A person who obtains possession or exerts control over a credit card as security for a debt shall be fined not more than $500 or imprisoned for not more than one year, or both.

At the beginning of line 13, change the section from "105" to "104"; on page 4, at the beginning of line 3, change the section number from "106" to "105"; at the beginning of line 18, change the section number from "107" to "106"; on page 5, at the beginning of line 3, change the section number from "108" to "107"; in line 9, after the word "card", strike out "which he knows or reasonably should know is expired or revoked" and insert "which he knows or has cause to believe is expired, revoked, or illegally possessed"; at the beginning of line 20, change the section number from "109" to "108"; on page 6, after line 4, strike out:

DEFENSES NOT AVAILABLE

SEC. 110. In any prosecution for violation of this title, the Government is not required to establish and it is no defense that some of the acts constituting the crime did not occur in the District of Columbia or were not a crime or element of a crime where they did occur.

At the beginning of line 12, change the section number from "111" to "109"; at the beginning of line 18, change the section number from "112" to "110"; on page 7, line 20, after the word "knows", strike out "or should know" and insert "or has cause to believe"; on page 9, at the beginning of line 16, strike out "amended by inserting the subsection designation "(a)" immediately before the first word of such subsection and by adding the following new subsection" and insert "amended by adding the following new subsection"; and at the beginning of line 20, strike out "(b)" and insert "(d)"; so as to make the bill read:

S. 2209

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "The District of Columbia Law Enforcement and Criminal Justice Act".

TITLE I—PROHIBIT THE UNAUTHORIZED USE AND POSSESSION OF CREDIT CARDS IN THE DISTRICT OF COLUMBIA

SHORT TITLE

SEC. 101. This title may be cited as the "District of Columbia Credit Card Crime Act".

DEFINITIONS

SEC. 102. (a) CARDHOLDER.—"Cardholder" means the person or organization named on the face of a credit card to whom or for whose benefit the credit card is issued by an issuer.

(b) CREDIT CARD.—"Credit card" means any instrument or device, whether known as a credit card, credit plate, or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services, or anything else of value on credit.

(c) EXPIRED CREDIT CARD.—"Expired credit card" means a credit card which is no longer valid because the term shown on it has elapsed.

(d) ISSUER.—"Issuer" means the business organization or financial institution or its duly authorized agent which issues a credit card.

(e) REVOKED CREDIT CARD.—"Revoked credit card" means a credit card which is no longer valid because permission to use it has been suspended or terminated by the issuer.

(f) INCOMPLETE CREDIT CARD.—A credit card is "incomplete" if part of the matter other than the signature of the cardholder, which an issuer requires to appear on the credit card before it can be used by a cardholder, has not yet been stamped, embossed, imprinted, or written on the credit card.

PURCHASE OF CREDIT CARD OF ANOTHER

SEC. 103. A person who buys or rents a credit card from a person other than the issuer shall be fined not more than $500 or be imprisoned for not more than one year, or both.

ILLEGAL POSSESSION OF CREDIT CARD OF ANOTHER

SEC. 104. (a) A person who possesses a credit card without the consent of the cardholder or the issuer shall be fined not more than $500 or imprisoned not more than one year, or both.

(b) A person who possesses a credit card issued to another with intent to use the same to defraud the issuer, cardholder, or any other person shall be fined not more than $5,000 or imprisoned not more than five years, or both. A person in possession of two or more credit cards issued to two or more persons other than himself without the consent of the issuer or the cardholder shall be presumed to have violated this subsection.

FRAUDULENT USE OF REVOKED OR EXPIRED CREDIT CARD

SEC. 105. A person who, with intent to defraud the issuer, a person or organization providing money, goods, services or anything else of value, or any other person, uses for the purpose of obtaining money, goods, services or anything else of value a credit card which he knows is expired or revoked shall, if the value of all money, goods, services and other things of value obtained in violation of this section does not exceed $500 in any six-month period, be fined not more than $1,000 or imprisoned for not more than one year, or both, and shall, if such value does exceed $500 in any six-month period, be fined not more than $5,000 or imprisoned for not more than five years, or both. Knowledge by the cardholder of revocation shall be presumed upon return of a requested receipt.

FRAUDULENT TRANSFER OF CREDIT CARD

SEC. 106. A person other than the issuer who, without the consent of the cardholder, sells, exchanges, transfers, or delivers a credit card issued to another, or a person other than the issuer who sells, exchanges, transfers, or delivers an incomplete credit card, or a counterfeit, forged, or falsely made or altered credit card, shall be fined not more than $5,000 or imprisoned for not more than five years, or both.

FRAUD BY PERSON AUTHORIZED TO PROVIDE GOODS OR SERVICES

SEC. 107. A person who is authorized by an issuer to furnish money, goods, services, or anything else of value upon presentation of a credit card by the cardholder, or any agent or employee of such person, who, with intent to defraud the issuer or the cardholder, furnishes money, goods, services, or anything else of value upon presentation of a credit card which he knows or has cause to believe is expired, revoked, or illegally possessed shall if the value of all money, goods, services, and other things of value furnished in violation of this section does not exceed $500 in any six-month period be fined not more than $1,000 or imprisoned for not more than one year, or both, and shall if such value exceeds $500 in any six-month period be fined not more than $5,000 or imprisoned for not more than five years, or both.

POSSESSION OF MACHINERY, PLATES, OR OTHER DEVICES, OR COUNTERFEIT, OR INCOMPLETE CREDIT CARDS

SEC. 108. A person, other than the cardholder, possessing an incomplete credit card with intent to complete it without the consent of the issuer, or a person possessing, with knowledge of its character, a counterfeit, forged, or falsely made or altered credit card, or machinery, plates, or any other device designed to reproduce instruments purporting to be credit cards of an issuer who has not consented to the preparation of such credit cards, shall be fined not more than $5,000 or imprisoned for not more than five years, or both.

TITLE NOT EXCLUSIVE

SEC. 109. This title shall not be construed to preclude the applicability of any other provision of the criminal law which presently applies or may in the future apply to any transaction which violates this title, unless such provision is clearly inconsistent with the terms of this title.

SEVERABILITY

SEC. 110. If any provision of this title or its application to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the title which can be given effect without the invalid provision or application, and to this end the provisions of this title are declared to be severable.

TITLE II—LICENSING SECONDHAND DEALERS

SEC. 201. The last sentence of subparagraph (c) of paragraph 39 of section 7 of the Act entitled "An Act making appropriations to provide for the government of the District of Columbia for the fiscal year ending June 30, 1903, and for other purposes", approved July 1, 1902, as amended (D.C. Code, sec. 47–2339(c)), is amended to read as follows: "For the purpose of this paragraph 39, the term 'secondhand personal property' shall not include any item of personal property (1) which the possessor thereof has acquired by reason of its return to him for credit, refund, or exchange by a person having purchased such item from such possessor, or (2) which is offered for sale, trade, or exchange by the person who repossesses the same."

TITLE III—ASSAULTS AGAINST POLICE OFFICERS AND FIREMEN

SEC. 301. Section 432 of the Revised Statutes, relating to the District of Columbia, as amended (D.C. Code, sec. 22–505), is amended by adding the following new subsection:

"(c) Whoever within the District of Columbia throws any stone or other missile into or in the direction of any group of five or more persons and who knows *or has cause to believe* that there is present in said group any officer or member of any police force operating in the District of Columbia or any officer or member of any fire department operating in the District of Columbia, who is engaged in the performance of his official duties, shall be fined not more than $5,000 or imprisoned for not more than five years, or both. For purposes of this subsection, the term 'missile' shall mean any object which when thrown, under the circumstances, caused or could have caused bodily injury."

TITLE IV—PROHIBIT POSSESSION OF FLASH PAPER OR WATER SOLUBLE PAPER

SEC. 401. Section 863a of the Act entitled "An Act to establish a code of law for the District of Columbia", approved March 3, 1901, as amended (D.C. Code, sec. 22–1502), is amended to read as follows:

"SEC. 863a. (a) It shall be unlawful for any person, within the District of Columbia, knowingly to have in his possession or under his control any record, notation, receipt, ticket, certificate, bill, slip, token, paper, or writing, current or not current, used or to be used in violating the provisions of section 863, 865, or 869 of this Act.

"(b) It shall be unlawful for any person, within the District of Columbia, to knowingly have in his possession or under his control any paper, whether blank or with writing upon it, which is commonly referred to as 'flash paper' or which is commonly referred to as 'water soluble paper'.

"(c) As used in this section the term 'flash paper' means any paper which, when heat or flame is applied to it, combusts nearly instantaneously and is completely destroyed leaving little or no ash. As used in this section the term 'water soluble paper' means any paper which, when water is applied to it, rapidly disintegrates and loses its characteristic as paper.

"(d) For the purpose of this section, possession of any record, notation, receipt, ticket, certificate, bill, slip, token, paper, writing, flash paper, or water soluble paper shall be presumed to be knowing possession thereof.

"(e) Any person who violates the provisions of subsections (a) or (b) of this section shall, upon conviction of each such offense, be fined not more than $1,000 or be imprisoned for not more than one year, or both."

TITLE V—AUTHORITY TO SEIZE MOTOR VEHICLES USED IN NARCOTICS VIOLATIONS

SEC. 501. Section 17 of the Uniform Narcotic Drug Act, approved June 30, 1960 (D.C. Code, sec. 33–423) is amended by adding the following new subsection:

"(d) Any conveyance, including an aircraft, vehicle, or vessel, which is used, or intended for use, in violating any provision of this Act shall be subject to seizure by any member of the Metropolitan Police force or the United States Park Police, or by the United States Marshal for the District of Columbia or any of his deputies, and any such conveyance so seized, regardless of its value, shall be proceeded against in the Superior Court of the District of Columbia by libel action brought in the name of the District of Columbia by the Corporation Council or any of his assistants, and shall, unless good cause be shown to the contrary, be forfeited to the District of Columbia and shall be made available for the use of any agency of the government of the District of Columbia, or otherwise disposed of as the District of Columbia Council may, by regulation, provide, except that (a) no conveyance used by any person as a common carrier shall be forfeited under this Act unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to a violation of this Act;

and (b) no conveyance shall be forfeited under the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or of the District of Columbia, or of any State. If there be any bona fide lien against the property so forfeited, the government of the District of Columbia may make payment of such lien and retain the property, or the property shall be disposed of by public auction. The proceeds of the sale of such property shall be available, first, for the payment of all expenses incident to such forfeiture; and, second, for the payment of such liens; and the remainder shall be deposited in the Treasury of the United States to the credit of the District of Columbia. To the extent necessary, liens against said property so forfeited shall, on good cause shown by the lienor, be transferred from the property to the proceeds of the sale of the property."

TITLE VI—AUTHORIZE THE DISTRICT OF COLUMBIA TO MORE FULLY UTILIZE POLICE RESERVE CORPS VOLUNTEERS FOR ACTIVE POLICE DUTY

SEC. 601. (a) The Commissioner of the District of Columbia (hereinafter, "Commissioner") is authorized to select, organize, train, and equip as reserve police officers (hereinafter, "reserve officers") individuals who may volunteer for duty in connection with the policing of the District of Columbia: *Provided,* That the Commissioner shall, with respect to the selection of such reserve officers, establish such standards relating to personal character and physical and mental health, as will best insure the proper performance of their duties: *Provided further,* That such reserve officers shall be given such training in the use of firearms as the Commissioner deems appropriate to the performance of the duties to which they will be assigned. Reserve officers shall have such of the powers, and perform such of the duties of regular officers and members of the Metropolitan Police force of the District, as the Commissioner may vest in and impose upon them. Reserve officers shall serve without compensation, but otherwise shall be considered employees of the government of the District of Columbia and members of the Metropolitan Police force for all purposes and under all provisions of law except those relating to retirement, insurance, health benefits, veterans' preference, or any other law under which benefits are made available only to compensated employees of such government, unless otherwise provided in this title or in regulations adopted pursuant to this title. The provisions of the Act approved July 7, 1898 (30 Stat. 666; D.C. Code, sec. 1–215) or of any other law prohibiting the acceptance by the District of Columbia of volunteer services shall not apply to the acceptance of volunteer services of reserve police officers pursuant to this title.

(b) The District of Columbia Council is authorized to make rules and regulations to carry out the purposes of this title, including, without limitation, (1) provisions for suspension or dismissal of reserve officers, with or without trial, and (2) provisions prohibiting, permitting, regulating, and controlling the possession, carrying, and use by reserve officers of weapons (including firearms).

SEC. 602. (a) Reserve officers serving under the authority of this title shall be deemed to be employees of the District of Columbia for the purposes of eligibility under subchapter I of chapter 81 of title 5, United States Code (relating to compensation for work injuries), and any subsequent amendment thereto. Said subchapter shall apply and be administered by the Secretary of Labor in the same manner and to the same extent as if such reserve officer were a civil employee of the District of Columbia injured while in the performance of his duty: *Provided,* That for purposes of benefit computation under said subchapter, regardless of pay or status, such reserve officer shall be deemed to have had a monthly pay of one-twelfth of the current annual rate of basic compensation for a police private, class 1, subclass (a), in the Metropolitan Police force who had been employed for the same length of time that the reserve officer had been selected as a member of the reserve force.

(b) For the purposes of section 8116(c) of title 5, United States Code, in determining the rights of all employees of the District of Columbia, including reserve officers under this title, the term "United States" shall be deemed to include the District of Columbia.

SEC. 603. The Commissioner is authorized to delegate any function vested in him by this title.

SEC. 604. Appropriations are hereby authorized to carry out the purposes of this title.

TITLE VII—ISSUANCE OF MOTOR VEHICLE OPERATORS' PERMITS, WITHOUT COST, TO POLICE OFFICERS DRIVING POLICE VEHICLES IN THE DISTRICT OF COLUMBIA

SEC. 701. Subsection (a) of section 7 of the District of Columbia Traffic Act, 1925, as amended (D.C. Code, sec. 40–301(a)), is amended by adding at the end thereof the following new paragraph:

"(7) Any officer or member of any police force operating in the District of Columbia shall be issued, without charge, a permit to operate Government-owned vehicles, including passenger vehicles, motorcycles, and motor bicycles, while engaged in official business, upon the presentation of a certificate from the chief of such police force or his delegate, to the effect that he is assigned to operate a Government vehicle and is qualified to drive, and upon proving to the satisfaction of the Director of Motor Vehicles that he is familiar with the traffic regulations of the District of Columbia."

TITLE VIII—AUTHORIZE PAYMENT FOR LABOR OF IMPRISONED PERSONS

SEC. 801. Section 1192 of the Act of March 3, 1901 (D.C. Code, sec. 24–412), is amended to read as follows:

"SEC. 1192. Persons sentenced to imprisonment in any facility of the Department of Corrections may be employed at such labor and under such regulations as may be prescribed by the Commissioner. Payments for such labor in such amounts as the Commissioner may authorize may be made to such persons or to their dependents or for other purposes intended to provide innovative aid in their rehabilitation as the Commissioner deems proper."

TITLE IX—DISTRICT OF COLUMBIA AUTHORIZED TO ADHERE TO INTERSTATE PAROLE AND PROBATION COMPACT

SEC. 901. As used in this title, the term "State" means any of the several States of the United States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and the District of Columbia, and the term "Governor" means the chief executive officer of any such jurisdiction.

SEC. 902. The Commissioner of the District of Columbia is hereby authorized to execute a compact on behalf of the District of Columbia with any of the States legally joining therein in the form substantially as follows:

"A COMPACT

"Entered into by and among the contracting states, signatories hereto, with the consent of the Congress of the United States of America (4 U.S.C. 112) given to states (including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and the District of Columbia) to enter into compacts for cooperative effort and mutual assistance in the prevention of crime and in the enforcement of their respective criminal laws and policies.

"The contracting states solemnly agree:

"(1) That it shall be competent for the duly constituted judicial and administrative authorities of a state party to this compact (herein called 'sending state') to permit any person convicted of an offense within such state and placed on probation or released on parole to reside in any other state party to this compact (herein called 'receiving state') while on probation or parole if—

"(a) Such person is in fact a resident of or has his family residing within the receiving state and can obtain employment there;

"(b) Though not a resident of the receiving state and not having his family residing there, the receiving state consents to such person's being sent there.

"Before granting such permission, opportunity shall be granted to the receiving state to investigate the home and prospective employment of such person.

"A resident of the receiving state, within the meaning of this section, is one who has been an actual inhabitant of such state continuously for more than one year prior to his coming to the sending state and has not resided within the sending state more than six continuous months immediately preceding the commission of the offense for which he has been convicted.

"(2) That each receiving state will assume the duties of visitation of and supervision over probationers or parolees of any sending state and in the exercise of those duties will be governed by the same standards that prevail for its own probationers and parolees.

"(3) That duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any person on probation or parole. For that purpose no formalities will be required other than establishing the authority of the officer and the identity of the person to be retaken. All legal requirements to obtain extradition of fugitives from justice are hereby expressly waived on the part of the states party hereto, as to such persons. The decision of the sending state to retake a person on probation or parole shall be conclusive upon and not reviewable within the receiving state: *Provided, however,* That if at the time when a state seeks to retake a probationer or parolee there should be pending against him within the receiving state any criminal charge, or he should be suspected of having committed within such a state a criminal offense, he shall not be retaken without the consent of the receiving state until discharged from prosecution or from imprisonment for such offense.

"(4) That the duly accredited officers of the sending state will be permitted to transport prisoners being retaken through any and all states parties to this compact, without interference.

"(5) That the governor of each state may designate an officer who, acting jointly with like officers of other contracting states, if and when appointed, shall promulgate such rules and regulations as may be deemed necessary to more effectively carry out the terms of this compact.

"(6) That this compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.

"(7) That this compact shall continue in force and remain binding upon each executing state until renounced by it. The duties and obligations hereunder of a renouncing state shall continue as to parolees or probationers residing therein at the time of withdrawal until retaken or finally discharged by the sending state. Renunciation of this compact shall be by the same authority which executed it, by sending six months' notice in

writing of its intention to withdraw from the compact to the other states party hereto."

TITLE X—INCREASE AUTHORITY OF PAROLE BOARD

SEC. 1001. Section 6 of the Act of July 15, 1932, entitled "An Act to establish a Board of Indeterminate Sentence and Parole for the District of Columbia and to determine its functions, and for other purposes" (D.C. Code, sec. 24–206), is amended by striking out "shall not" in the last sentence of the first paragraph and inserting in lieu thereof "may in the discretion of the Parole Board".

TITLE XI—PROHIBIT POSSESSION OF A KNIFE WITH UNLAWFUL INTENT

SEC. 1101. Subsection (b) of section 14 of the Act approved July 8, 1932 (47 Stat. 650, 654; D.C. Code, sec. 22–3214(b)), relating to the possession of certain dangerous weapons, is amended by striking out "or knife with a blade longer than three inches" and inserting in lieu thereof "knife."

TITLE XII—TECHNICAL AMENDMENT

SEC. 1201. The second paragraph under the subheading "For Executive Office" of section 1 of the Act approved July 1, 1902, entitled "An Act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and three, and for other purposes" (32 Stat. 591; D.C. Code, sec. 22–702), is amended (a) by striking out "Commissioners" and inserting in lieu thereof "Commissioner" and (b) by striking out "them" and inserting in lieu thereof "him".

The amendments were agreed to.

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

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–741), explaining the purposes of the measure.

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

PURPOSE OF THE BILL

S. 2209 is an omnibus bill designed to accomplish several varied purposes. First, the legislation defines certain credit card abuses as an offense and establishes a penalty for violations. Heretofore, prosecutions were usually based on the generalized statutes of forgery, larceny, and false pretenses. Second, the bill authorizes the District government to regulate between 25 and 30 stores, which receive secondhand property, usually as trade-ins and which presently are not required to report the receipt of these items to the police. Except for these 25 to 30 stores, all other dealers (approximately 275) in secondhand personal property are licensed and required to report all secondhand property to the police for possible identification. Third, the legislation fills the gap in our criminal law by making it an offense for throwing missiles in the direction of any group of five or more persons if the thrower knows, or has cause to believe that an officer of the police or fire department is present in the group.

The legislation also makes it a crime to possess flash paper or water soluble paper which are both used to record illegal bets by organized gambling operations. Further, S. 2209 authorizes the seizure of motor vehicles used in a narcotics violations. At the present time, Federal officers including the U.S. Marshal in the District may seize motor vehicles employed in narcotics violations.

Specifically, the purposes of S. 2209 are as follows:

Title I: To prohibit the unauthorized use and possession of credit cards in the District of Columbia.

Title II: To regulate and license certain dealers in second-hand personal property in order to restrict the sale or trade of stolen merchandise.

Title III: To prohibit acts on policemen and firemen not otherwise considered an assault.

Title IV: To prohibit the possession of "flash paper" and "water soluable paper," so as to limit the ability of those involved in gambling enterprises to destroy certain evidence.

Title V: To authorize members of the Metropolitan Police Force or U.S. Park Police, and the U.S. Marshal and his deputies to seize motor vehicles used in narcotics violations.

Title VI: To authorize the District to more fully utilize police reserve corps volunteers for active police duties.

Title VII: To authorize the issuance of motor vehicles operators' permits, without cost, to police officers driving police vehicles in the District.

Title VIII: To authorize such appropriations as are necessary for inmate pay and incentive pay for prisoners employed under the auspices of the District government.

Title IX: To authorize the District to become a signatory member of the Interstate Parole and Probation Compact, thereby enabling it to participate in a nation-wide program in which the various jurisdictions serve as each other's agent in the supervision of persons on probation or parole.

Title X: To authorize the Parole Board to credit "street time" for a prisoner whose parole is revoked.

Title XI: To prohibit possession of any knife with the intent to use it unlawfully.

Title XII: To make a perfecting amendment to existing law (D.C. Code 22–702).

PROVISIONS OF THE BILL

Title I

Title I of the legislation defines credit card abuses and establishes penalties for that offense. Such conduct in the District of Columbia must not be prosecuted under statutes relating to forgery, false pretenses, larceny, robbery, or receiving stolen goods. A statute specifically prescribing the most flagrant abuses of credit cards is needed.

The fraudulent use of credit cards is one of the fastest growing criminal activities throughout the nation. In a report compiled by United Press International in the latter part of 1967, total losses were estimated at $150 million annually, with organized crime deriving $100 million a year from credit card rackets. In the past two years, the amount of credit outstanding under bank credit cards alone has more than doubled. Increases of credit outstanding under department store and oil company credit cards have also been recorded. The continued growth of the use of credit cards is inevitable; a corresponding growth in the number of frauds will not be avoided unless strong measures are taken to combat this crime.

In the past year, criminal indictments in Chicago and New York City, to mention only two metropolitan areas, have charged organized credit card swindles involving more than 12 million dollars. Investigations of such frauds by postal inspectors have increased over 700 per cent in the past four years. Recently, an official of the First National City Bank of New York testified before a State legislative committee that "demands for stolen credit cards by the organized underworld far surpassed the supply." Prices paid for cards, he said, go as high as $200 each.

Credit cards are unique, in that many relatively small transactions can be fraudulently effected in a short period of time in scattered locations. High total credit charges may be accumulated before a card holder even realizes the loss of his card. Moreover, the time required to simply communicate a card loss to all business organizations honoring the card gives ample time for multiple criminal acts to be committed.

Although all major metropolitan areas have experienced an expanding pattern of criminal credit card activities, a survey of a nationwide department store chain showed that the Washington area leads the country in credit frauds. Offenses in greater Washington have more than doubled annually for the last three years, causing losses in the millions which must be absorbed by local consumers and businessmen. Credit cards are being sold and rented daily on the streets of the District of Columbia. Prices charged range from $25 to $100 each.

The local traffic in stolen credit cards is either the objective or the profitable by-product of robberies, purse-snatchings and muggings. Merchants report that perpetrators of credit card thefts and frauds often are drug users who use this form of crime to support their habits. There is little doubt that the proceeds of credit frauds are funneled to suppliers of illicit drugs as well as to "fences" and other receivers of stolen goods.

Forty-nine States have laws on their statute books specifically relating to credit card abuses.

Only the State of Louisiana and the District of Columbia are lacking in this regard. Some States have very comprehensive laws relating to credit card crimes; a law enacted in the neighboring Commonwealth of Virginia is an example. The State of Maryland in 1967 amended its bad check law to include credit card frauds.

As stated, the District of Columbia has no law on the books designed specifically to deal with credit card crimes. Prosecutions must now be based on generalized statutes of forgery, larceny, and false pretenses. The lack of specific law unduly complicates the investigation and handling of credit card crimes.

The Commissioner recommends strong, specific credit card crime legislation for a number of reasons. For one, the lack of such specific laws probably leads criminal elements to belief that there is a loophole in existing law, and thus encourages them to think they can take advantage, with impunity, of this gap in the local criminal code. If clear prohibitions are provided in the law, this will in itself be a deterrent to attempts to commit credit card frauds. Further, the law of larceny in the District requires a taking, plus a criminal intent. This is a difficult burden to sustain when it is so easily alleged that a credit card was merely found or given to the person possessing a credit card belonging to another. Under this title the willful withholding of a card without the issuer's or cardholder's consent, or the unjustified possession of a credit card belonging to another, would be sufficient to establish a violation. Further, under District of Columbia law there is no clear-cut provision to deal with a person who sells or rents a credit card to another person who uses it fraudulently.

One particularly vexing problem is with respect to the multiple use of a stolen credit card. Here, losses may run up into many hundreds or thousands of dollars, but each transaction may consist of less than one hundred dollars. In such instances, the charge under present law is only one or more misdemeanors. Title I would permit the accumulation of all offenses during a six-month period for purposes of determining whether the charge should be a felony or a misdemeanor.

The proposed legislation is not intended to replace existing remedies now provided in the District law to counter credit card frauds. Its purpose is to complement existing law, including that relating to larceny, false pretenses, and forgery. For example, the District of Columbia forgery law (D.C. Code, sec. 22–1401) would continue to apply with respect to credit cards which are stolen.

The wrongful possession and the fraudulent use and sale or other transfer of credit cards, specifically prohibited in this title, have proven to be extremely costly to law abiding citizens, merchants, and those who issue credit cards. It is apparent that existing laws are not adequate to deal with this serious and growing problem.

Several members of the criminal bar of the District of Columbia Bar Association advised the Committee that sections 104 and 110 were unnecessary and conceptually unsound. After much consideration, and discussions with representatives of the District government, the Committee decided to strike these sections from the bill. The legislation as amended makes the District laws more effective and efficient in regulating the use of credit cards in our Nation's Capital.

Title II

Pursuant to the Act approved July 3, 1956 (D.C. Code, sec. 47–2339), the District of Columbia is authorized to license and regulate certain dealers in second-hand personal property. Any business in the District which buys or sells second-hand personal property is presently regulated by provisions contained in the Police Regulations. Such businesses as pawn shops, second-hand furniture stores, and certain large department stores are required to obtain a license as second-hand personal property dealers from the Metropolitan Police Department. These businesses are required to submit daily reports to the Metropolitan Police Department of all items of second-hand personal property which come into their possession. The regulations also require such dealers to hold these items of property for 15 days before disposing of the property in any way.

This regulatory procedure is an extremely important law enforcement tool. Large quantities of stolen property are recovered each year because of the reporting requirements. If a citizen's apartment is burglarized and certain items of property are stolen, the Police Department is immediately notified if the thief sells that property to any dealer in second-hand personal property. Not only will the stolen property be recovered and returned to the true owner, but important investigative leads will thereby be provided which may lead to the ascertainment of the identity of the felon.

At present, approximately 275 dealers in second-hand personal property are licensed and regulated pursuant to statute. In recent years, it has come to the attention of the Metropolitan Police Department that approximately 25 or 30 businesses in the District of Columbia which, in effect, deal in second-hand personal property, are expressly excluded by statute from regulation. These businesses, which include certain jewelry stores, camera shops, household appliance stores, and stores selling office equipment, obtain possession of second-hand personal property as partial payment for the sale of new or rebuilt personal property. As these stores are not required to report to the police any item of second-hand personal property which they obtain, persons who have stolen property such as jewelry, typewriters, or cameras, will take such items to one of these stores and "trade it in" for new or rebuilt typewriters, jewelry, or cameras.

Since a great deal of stolen property is disposed of in this manner, an amendment to existing law which would permit the District to regulate these 25 or 30 businesses would be an important additional law enforcement tool. The additional burden which would be placed thereby on these businesses would be relatively minor—a burden already carried by some 275 other second-hand dealers in the District of Columbia. The benefit to law enforcement and the public in recovering substantial quantities of stolen property and identifying felons would, however, be substantial.

Title III

The District of Columbia, as the seat of the Federal Government, has been the site of many peaceful demonstrations in recent years. Occasionally, however, some groups of citizens have gone beyond peaceful demonstration and have resorted to violence.

During a number of recent demonstrations there have been incidents in which persons have thrown rocks, bottles, broken glass, and even Molotov cocktails at police lines or at firemen, causing, in come cases, injury to officers and members of the Departments. Ostensibly, whenever any police officer is injured by an object thrown by a demonstrator, the latter can be charged with assault on a police officer or assault with a dangerous weapon. As a practical matter, however, such a prosecution is not feasible. In order to successfully prosecute a charge of assault on a police officer or assault with a deadly weapon the Government must prove beyond a reasonable doubt that the defendant assaulted the particular police officer who was injured. In demonstrations a police line may be established in front of which may be a crowd of hundreds of persons. Those who are intent upon throwing missiles at the police line many remain deep in the crowd and hurl their missiles in the general vicinity of the police line. Even if an officer should see a particular demonstrator throwing a missile, the Government would be unable to prove, beyond a reasonable doubt, at which police officer the missile was being thrown. In fact, when the individual throws the missile, his intention often is not to assault a particular police officer; but rather that, by chance, the missile will hit and injure any police officer who happens to be within range. As a consequence officers are injured by these randomly hurled missiles, and the individuals are injured by these randomly hurled missiles, and the individuals throwing such missiles cannot be readily prosecuted for assault on a police officer or assault with a dangerous weapon. Under present law, the only criminal violation which can be charged is that provided under section 22–1109 of the D.C. Code relating to the throwing of stones or missiles. This law, enacted in 1892, provides as a maximum penalty a fine of $5.

In order to fill this serious gap in the criminal law of the District, it is proposed that the penalty for throwing missiles be substantially increased, and that the offense be extended to include members of any fire department operating in the District of Columbia.

Title IV

Flash paper is specifically treated with chemicals such as nitric acid and when heat or flame is applied to it, it almost instantaneously consumed leaving little or no ash. Water soluble paper, when dropped into a bucket of water, almost completely dissolves when the water is agitated. These two kinds of paper have in recent years been consistently used by organized gambling operations to keep records of illicit bets. Gamblers use this paper so that in the event of a raid, they can quickly drop a match into the pile of paper or drop the paper into a container of water as the officers are coming in and thereby destroy the evidence of their illicit gambling activities. The officers see only a yellow low burst of flame if the gamblers use flash paper. If the gambler is using water soluble paper, the officers merely find a container of milky white water with colored ink suspended on it.

At the present time two companies within the United States manufacture flash paper. Water soluble paper is manufactured only in Europe and Japan. The sole legitimate use for flash paper is as a novelty item. Amateur magicians sometimes use it because of its surprisingly quick combustion. From a public policy point of view, the value of this very limited legitimate use of flash paper is far outweighed by the harmful illicit use of flash paper by illegal gambling operations. At present, organized gamblers can buy flash paper in large quantities on the open market at novelty shops. By making possession of flash paper and water soluble paper illegal, organized gamblers will not be able to buy this relatively expensive type of paper as easily on the open market. Consequently, it will be less likely that gamblers will continue to use this paper to readily destroy the evidence of their illicit activities.

It is the intention of the Committee that the person actually knows that the paper in his possession or under his control is, in fact, flash paper or water soluble paper. We hasten to add that the Committee does not view this title as a haven for charging innocent persons with an offense. The short of it is that we recognize the need of the District government to have this law to arrest the ever increasing gambling activities in our Nation's Capital. Similarly, we recognize that there are cases where persons may have this type of paper in their possession or under their control and not be aware that it is flash paper or water soluble paper. Under the latter circumstances, the Committee does not intend that the innocent party be charged with an offense.

Title V

This provision authorizes the seizure by any member of the Metropolitan Police Force or the United States Park Police, or by the United States Marshal for the District of Columbia or any of his deputies, of conveyances used in narcotics violations, in like manner as they are presently authorized to be seized in connection with gambling violations (D.C. Code, sec. 22–1505). Such authority will constitute a useful enforcement tool and obviate the present unsatisfactory procedures whereby the Metropolitan Police Department relies on the Federal Narcotic Agency to seize vehicles used in narcotics violations under a provision of the Federal Statute (U.S. Code, sec. 26–7302; property used in violation of internal revenue laws).

Title VI

The purpose of title VI is to authorize the District Government to select, organize, train, and equip reserve police officers for duty in connection with the policing of the District of Columbia. The Commissioner would, in addition, be authorized to bestow upon such police reserve officers such of the powers and duties of regular officers and members of the Metropolitan Police Department as he may deem necessary and proper. The bill also provides that reserve officers shall serve without compensation, but otherwise shall be considered employees of the Government of the District of Columbia and members of the Metropolitan Police force for all purposes and under all provisions of law, with certain specified exceptions. The bill would effectively broaden and improve present law, contained in section 4–133, D.C. Code, concerning reserve police activities in the District of Columbia.

Section 601(b) of title VI authorizes the District of Columbia Council to make rules and regulations to carry out the purposes of the title, including rules and regulations governing suspension or dismissal of reserve officers, with or without trial, and regulations governing the possession, carrying and use of weapons (including firearms) by reserve officers.

Pursuant to section 402(93) of Reorganization Plan No. 3 of 1967 the District of Columbia Council has been vested with the function of "(m)aking and modifying rules and regulations for the proper government, conduct, discipline, and good name of the Metropolitan Police force . . ". In conjunction with this authority, the Committee believes it to be appropriate that the function of making rules and regulations governing the police reserves also be vested in the Council.

Section 602(a) provides that the provisions of law commonly referred to as the "Federal

Employees' Compensation Act" (5 U.S.C. § 8101, et seq.) shall apply in cases of injury or death of reserve officers. Since the reserve officers are not compensated under the bill, they are deemed to have a monthly pay of one-twelfth of the current annual rate of basic compensation for a police private, class 1, subclass (a), in the Metropolitan Police Department, modified according to the length of service, for the purposes of the Federal Employees' Compensation Act.

Section 602(b) makes applicable to reserve officers the provisions of section 8116 (c) of title 5, providing that "the liability of the United States or an instrumentality thereof" under the so-called Federal Employees' Compensation Act shall be exclusive. Further, in view of the fact that employees of the District of Columbia are subject to the provisions of the Act, in like manner and to the same extent as Federal employees (5 U.S.C. § 8101), the limiting language in section 8116(c), making, as it does, a distinction between the United States and the District of Columbia, appears to be an inadvertence. Accordingly, in order to provide for the equal treatment of Federal and District employees, insofar as the liability of both governments under the Federal Employees' Compensation Act is concerned, section 602(b) provides that the term "United States" as used in the above-quoted phrase from section 8116(c) shall be deemed to include the District of Columbia.

The Committee believes that the objective of title VI in permitting trained volunteers to assume certain active police duties with the Metropolitan Police Department, and in freeing regular police officers for more comprehensive protection of the District, is a desirable one. The use of police reserves in this fashion can be expected to contribute greatly to the District's fight against crime and to provide an effective tool in this effort. It is not, however, contemplated by the District that the reserve officers will be utilized in such manner as to require them to deal directly with persons committing the more serious criminal acts. Nor will the reserve officers engage in actions which require highly professional performance on the part of a regular member of the Metropolitan Police force. The reserve officers will supplement, but will not be a substitute for, the regular members of the force, and, which such reserve officers may accompany the regular members of the force in the performance of the duties of such regular members, the reserve officers will be used only for those duties for which they are trained and qualified.

It is anticipated that reserve police would not be—used for patrol duty in the high crime areas of the District; permitted to make or participate in any search or seizure; or utilized for any police duty requiring a high level of qualified police performance.

Notwithstanding the foregoing limitations on the anticipated use of the reserve officers, it can nevertheless be expected that they will make a substantial contribution toward the solution of the crime problem in the District, by freeing from the performance of routine police duties the regular members of the Metropolitan Police force, thereby allowing their use in high crime areas or in police activities requiring the use of highly qualified personnel.

Of equal and perhaps even greater importance, the establishment of a police reserve corps comprised of persons who may be assigned to perform their duties in those areas of the city in which may be located their residences or places of employment or business, of necessity will bring the community into a closer relationship with the Metropolitan Police force and promote better community-police relations.

The Committee believes that the benefits to be derived from title VI, as set forth above, will exceed considerably the cost of establishing such a program, estimated at $226,000 for the first year, based on providing uniforms and equipment for 700 members of the reserve, while the subsequent annual cost may approximate $80,000.

Title VII

Officers in the Metropolitan Police Department residing in Maryland and Virginia have motor vehicle operators' licenses issued by such jurisdictions authorizing them to drive passenger vehicles. Many of these officers are assigned to drive motorcycles and motor scooters in the District of Columbia and must obtain a special license from either Maryland or Virginia to operate such vehicles. To obtain these special licenses for motorcycles and motor scooters, the officers must pay additional fees and take written examinations and road tests administered by either the Maryland or Virginia Department of Motor Vehicles. The problem is complicated even more by the fact that motor scooter officers, unlike officers operating motorcycles, are not permanently assigned to a particular motor scooter. Each Department-owned motor scooter is operated 24 hours a day by a different officer during each 8-hour shift. Consequently, after a group of officers has completed its motor scooter training, the Department has had to load a number of motor scooters on a van and transport the scooters and the officers to an appropriate testing station in Maryland or Virginia. Virginia officials recently agreed to send testing officers into the District to administer the written examination and the road test to police officers. Although Maryland officials will administer the road test in the District, the police officers must take the written test in Maryland. This procedure keeps officers from their more important law enforcement duties for as much as a full day.

The above procedures were informally agreed to by officials in Maryland and Virginia as a courtesy to the Metropolitan Police Department. However, at any time the Department may have to revert to the more cumbersome procedure of transporting vehicles and men to Virginia and Maryland for written examinations and road tests.

Officers secure such operators' licenses and pay the requisite fees solely in order to operate official police vehicles while on duty in the District of Columbia. Accordingly, it is proposed that existing law be amended to provide for licensing police officers operating official vehicles within the District in a manner similar to that authorized under section 40–301(a)(5) of the D.C. Code for members of the Armed Forces who operate official vehicles in the District of Columbia. The proposed amendment would provide for the issuance of licenses without fee to police officers by the District's Department of Motor Vehicles and would authorize these officers to operate official vehicles of the Metropolitan Police Department while on duty in the District. Such licenses would be issued only after appropriate certification by the Chief of the Metropolitan Police Department or his designated agent.

Title VIII

The Commissioner is now empowered to authorize retention of accumulated profits from the Correctional Industries Fund for payments to inmates other than those employed in industrial operations, or for payments to their dependents of such amounts as the Commissioner deems proper. (78 Stat. 1000; Pub. L. 88–622; D.C. Code, sec. 24–454.)

The Department of Corrections currently employs inmates in various positions within its facilities utilizing profits from the Correctional Industries Fund as payments for their labor. However, these profits have declined, and may not be adequate to continue these worthwhile, highly desirable and necessary applications of proper rehabilitative treatment.

The cost of additional personnel required by the Department to properly function if the utilization of inmate labor in certain specified areas were no longer possible, would greatly exceed the cost of inmate pay and incentive pay.

Title IX

This provision of the bill authorizes the District of Columbia to become a signatory member of the Interstate Parole and Probation Compact, thereby enabling the District to participate in a nationwide program in a nationwide program in which the States, Puerto Rico, and the Virgin Islands cooperate and serve as each other's agents in the supervision of persons on probation or parole.

The compact is applicable to all adult probationers and parolees. It would enable the District of Columbia to place its potential parolees, mandatory releasees, and probationers in their resident jurisdictions in a more orderly and effective manner. It would also provide for the more orderly placement, return, and control of adult probationers and parolees who come from other jurisdictions to live in the District of Columbia.

Adherence to the compact, as authorized by this article, would also enable law enforcement agencies in the District of Columbia to remove fugitives and violators from the District of Columbia with greater speed and less cost than at the present time. Authorities in other jurisdictions would also be better able to return parolees and probationers from other jurisdictions to the District of Columbia when such persons have been declared to be violators. However, members of the criminal bar of the District of Columbia Bar Association have raised the question of whether it is legally sound to permit an officer of the District government to enter a party State to apprehend and return the person to the District without minimal due process. The Compact provides for the party State to waive all requirements of extradition and rely entirely upon the District's decision to retake. Equally so is the case where a party State comes into the District to apprehend and retake a person on parole or probation. No exception is made for special cases.

The Committee views the practice as terribly disturbing and unwise. However, there are compelling reasons for favoring the enactment of the Compact. It is the Committee's understanding that any tinkering with the provisions of the Compact would affect the District's chances of membership. Believing, as we do, that the Compact, as a whole, is a gigantic step forward in modernizing our criminal justice laws, we urge the enactment of this title.

The Committee hopes that the District government will devise a plan which minimally requires that its officers take an individual to a judicial officer in a party State prior to returning him to the District. Similarly, that it negotiates with member States to take a person to a judicial officer in the District before returning to their State. It is not the Committee's intention that a full extradition hearing be required. Rather, a simple procedure to ascertain proper identification and a statement of rights would appear to suffice.

The District of Columbia is the only remaining jurisdiction eligible to become a signator to the pact that has not done so. Enactment of this title and signing of the compact will provide for the more uniform administration of parole and probation procedures throughout the United States.

Title X

Section 6 of the Act of July 15, 1932 (D.C. Code, sec. 24–206) has been consistently construed by the United States Court of Appeals for the District of Columbia Circuit to deny a parole violator credit against his original sentence for "street time" on parole prior to revocation. See for instance, *Bates* v. *Rivers*, 116 U.S. App. D.C. 306, 323 Fed. 2d 311 (1963).

where the majority opinion stated that "The language of the statute is clear and the import of similar language under the general federal parole statute has been acknowledged in numerous cases."

The District of Columbia Board of Parole has stated that this provision of law, prohibiting the deduction of the time that the parole violator spent under supervision from the unexpired term of his imprisonment, is "most restrictive and oppressive and prohibits them from deciding a violator's case on a realistic individual basis."

The D.C. Parole Board has further stated:

"There are many cases where men under the jurisdiction of the Board have responded excellently to supervision for a number of years, yet, for a variety of reasons and circumstances, have been returned to custody for violation of the conditions of their release. In these cases, if the violations are serious enough to warrant revocation, and in many cases they are, the Board has no alternative but to revoke and require the individual to start serving the balance of the sentence remaining. Quite often these men are returned to Lorton feeling resentful, hostile and with an attitude that prevents affirmative response to the rehabilitative process, and their chances for successful reentry into society upon their eventual release are considerably lessened. Too, the Board feels that legislation to allow credit for all or any part of the time spent under supervision would be a most valuable correctional tool and would provide continuity in parole procedures."

Parole procedures in the District of Columbia are contained in title 24 of the D.C. Code, sections 201–209. Section 204 states that:

"While on parole, a prisoner shall remain in the legal custody and under the control of the Attorney General of the United States or his authorized representative until the expiration of the maximum of the term or terms specified in his sentence without regard to good time allowance."

Parole may be regarded as just one segment of the overall spectrum of custody which may include solitary confinement with reduced diet, "normal" imprisonment, trusteeship, work release, parole, probation, examination in a mental hospital and variations of the foregoing.

The courts have recognized that the restraints imposed on a parolee are real and substantial. In *Jones* v. *Cunningham*, 371 U.S. 236, 242 (1963), the Supreme Court stated that ". . . . in fact, as well as in theory, the custody and control of the Parole Board involve significant restraints on petitioner's liberty because of his conviction . . .". The court noted that the parolee was "confined . . . to a particular . . . house and job, . . . admonished to keep good company and . . . live a clean, honest and temperate life."

When a prisoner fails to receive credit for the period he was on parole, he remains in custody for a period of time greater than that specified in his original sentence The unfairness in a particular situation is apparent from a hypothetical example of two prisoners paroled after 5 years of a 10-year sentence. One spends four years on parole with no violations, then loses his job, begins drinking and has his parole revoked. He returns to jail for five years. The other spends one week on parole, loses his job and begins drinking. He returns to jail for five years and has lost only the one week on parole. It is evident that under the present law, the penalty for a parole violation increases each day the parolee is on parole. Both committed the same act, yet one had to not only serve his entire prison term, but also spend four years in the custody and under the control of the Parole Board.

As has been demonstrated above, revocation of parole accompanied by the denial of credit for time spent on parole results in the imposition of additional imprisonment.

The Committee favors the enactment of title X because, as stated by the Parole Board, the statutory provision contained in section 206 of title 24 of the D.C. Code, in its present form, is most restrictive and oppressive and prohibits the Board from deciding a violator's case on a realistic individual basis.

Title XI

Existing law (D.C. Code, sec. 22–3214(b)), prohibits possession, with intent to use unlawfully against another, of a knife with a blade longer than three inches. Title XI deletes the three-inch requirement in existing law so as to provide that possession of a knife of any length, when coupled with the intent to use unlawfully against another person, shall constitute an offense. The proposed deletion will overcome the ambiguity in existing law since, in the case of a knife less than three inches in length, it is now necessary to prosecute the offense under section 22–3204 of the D.C. Code, which does not expressly refer to an intent to use a knife unlawfully.

Title XII

This title substitutes the word "Commissioner" for the word "Commissioners" in section 22–702 of the District of Columbia Code, relating to bribery. This amendment is necessary because of a decision by the District of Columbia Court of Appeals in the case of *United States* v. *Bishton*, D.C. App. No. 5081, decided April 13, 1970, in which it was held that a prosecution could not be brought under section 22–702 of the D.C. Code because that section referred to "Commissioners" rather than "Commissioner".

HISTORY

On June 7, 1971, the Commissioner of the District of Columbia wrote a letter to the President of the Senate transmitting and recommending the proposed legislation. S. 2209 was introduced in the Senate on June 30, 1971. Hearings were held on S. 2209 by the Subcommittee on Business, Commerce, and Judiciary of the Senate District Committee on December 1, 1971. Representatives of the District of Columbia Government testified in support of the legislation. No testimony was received in opposition to the bill, nor has any expression of opposition been received by the Committee.

AMENDMENTS

The amendments to title I were necessary to strike sections 104 and 110 which the Committee determined were unwise and conceptually unsound.

The amendment on page 7, is technical in nature and is considered better language for a criminal statute. The words "or should know" are usually found in a tort statute. Whereas, "has cause to believe," is the generally accepted criminal analogy.

The amendment on page 5, increases the burden on persons authorized to provide goods or services to ascertain not only whether the credit card has expired or is revoked but whether it is "illegally possessed."

The two additional amendments are technical in nature and were proposed by the District government for changes which have occurred since the bill was originally transmitted.

CONCLUSION

For the reasons indicated above, the Committee is of the opinion that the provisions of this bill will provide for a more effective and desirable administration of criminal justice and law enforcement in the Nation's Capital. Accordingly, the Committee urges that S. 2209 be enacted.

EXECUTIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider nominations on the Executive Calendar under "New Reports."

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

SPECIAL ACTION OFFICE FOR DRUG ABUSE PREVENTION

The ACTING PRESIDENT pro tempore. The clerk will state the first nomination on the Executive Calendar under "New Reports."

The second assistant legislative clerk proceeded to read the nominations under "Special Action Office for Drug Abuse Prevention."

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that those nominations be considered en bloc.

The ACTING PRESIDENT pro tempore. Without objection, the nominations will be considered en bloc; and, without objection, they are confirmed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of the nominations.

The ACTING PRESIDENT pro tempore. Without objection, the President will be so notified.

LEGISLATIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate return to the consideration of legislative business.

There being no objection, the Senate resumed the consideration of legislative business.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Is there recognition for the minority side? Apparently not.

Under the previous order, the Senator from Maryland (Mr. BEALL) is to be recognized.

Mr. MATHIAS. Mr. President, I ask unanimous consent that I may proceed. We are working together on this project, as on all other projects——

The ACTING PRESIDENT pro tempore. The junior Senator from Maryland has arrived, and under the previous order he will be recognized for 15 minutes.

Mr. BEALL. I thank the Chair. Mr. President, I yield to the senior Senator from Maryland so that he may conclude the sentence he was in the middle of.

Mr. MATHIAS. I was just going to say that we work closely together on all these matters, and we are interested in a little colloquy this morning which we will engage in with our colleagues the Senators from the Commonwealth of Virginia. So I would suggest that the junior Senator from Maryland proceed, and we will carry on our colloquy for the next 15 minutes as arranged.

The ACTING PRESIDENT pro tempore. The junior Senator from Maryland is recognized.

PROPOSED TAX BY DISTRICT OF COLUMBIA COUNCIL ON AUTOMOBILES PARKED IN COMMERCIAL PARKING LOTS

Mr. BEALL. Mr. President, I thank my senior colleague from the State of Maryland and point out that we have,

indeed, worked across the river, between Maryland, Virginia, and the District of Columbia, to try to jointly solve problems that affect the whole metropolitan area, and to find solutions for these problems equitably and, hopefully, for the good of all the people who live in the community; but we are disturbed by the recent proposal by the District of Columbia Council which would have the effect of adding an additional tax on motor vehicles parked in commercial lots in the District of Columbia. The Council feels it has authority to do this under the air pollution legislation passed by the Congress, and it has proposed that automobiles parked in commercial parking lots in the District of Columbia be taxed at the rate of $1 per car per day.

We who live in these areas feel this is a rather unfair and inequitable tax. The Council gives as a reason for the tax that it would result in a reduction of the number of vehicles coming into the District of Columbia and would thereby bring about a reduction in the air pollution from automobiles coming into the District of Columbia. That may be true. If fewer automobiles come into the District of Columbia, however, it seems to me that other means of transportation would have to be found, and it seems that the only other means of transportation available to the people living in the area is by bus, and buses are available in a rather limited number. I do not believe that buses could be classified as nonpolluters.

It seems to me that all of the people who live in the area should be responsible for the problems of air pollution and all should be responsible for trying to reduce air pollution. I do not think the solution should be a burden only on the man or woman who must park in a commercial parking lot. The responsibility must be shared by all. I think the proposed tax is a highly inequitable one and, at the same time, it is a tax that is very regressive in nature, because it would tax those least able to pay it.

The person who is forced to park on a private commercial lot is being told that he has to pay the tax, but the more so-called "important" public official or the higher paid employee of a private corporation who has the benefit of a parking place or the Federal employee who is provided a parking space by the Federal Government is not called upon to pay the tax. So really the tax is upon those who are least able to pay, rather than upon those who can afford to pay the tax. So such a tax on those who depend on their cars for a livelihood is a very regressive tax.

Also, it occurs to me that people must get to work, but if they cannot come into the District of Columbia by automobile, they must do so by other means. The only other available means is to come by bus. Unfortunately, buses are not available in sufficient quantities to provide for the needs of all the people who would be called upon to pay that additional cost.

It is interesting to note that, because of intergovernmental cooperation—and by "intergovernmental" I mean the District of Columbia, the State of Virginia, and the State of Maryland—we are in the process of building a metro system in this area. My colleagues, the senior Senator from Maryland and the Senators from Virginia all played a part in the creation of that legislation before I arrived in the Congress. This system will greatly improve the opportunity for public transportation in and out of the District of Columbia and will work to the benefit of all those who live in the suburbs and certainly help the people of the District of Columbia in promoting the general economy of the area; but the metro is far from completed. It seems to me that before we penalize those people who have to get back and forth to work, we should provide some alternative method of transportation which would be available to those people.

So I hope that those who run the District of Columbia will think twice before pursuing this kind of legislation.

An interesting editorial published in the Washington Evening Star last night indicated that in the opinion of that great newspaper, this action is precipitate. I ask unanimous consent that the editorial be printed in the RECORD at the conclusion of the colloquy between the Senators from Maryland and the Senator from Virginia.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. (See exhibit 1.)

Mr. BEALL. I am happy to yield to one of my colleagues for further discussion of this matter.

Mr. MATHIAS. Mr. President, I thank my colleagues for yielding.

I simply want to say that we are engaged now in some very interesting projects to improve transportation in and about the District of Columbia and throughout the Washington metropolitan area. We are engaged in the construction of a subway system which some people have described as the largest public works project in the history of the world. We are considering some changes in the bus system. There is considerable public discussion and controversy, at least, about the need for some changes. We are engaged in highway construction. We are right in the middle of a number of significant changes. The railroads are now, I think, awakening to their responsibility for carrying some commuters. We do not have all the problems resolved there, but at least we are in the middle of a period of change.

We do not have any of the new systems completed yet, and it seems to me to be the height of folly to talk about restrictions and restrictive and inhibiting methods of taxation before we have alternatives prepared. I think this is one of the things that drives the public up the wall about the confusion that exists at the various levels of Government. We are talking about, unhappily, some restrictions on some of the rail traffic coming into Washington, which does provide service for commuters, at the same time that we are talking about limiting the number of private automobiles that can come into the District. There is considerable confusion of thought.

So I think this would be very premature action. I think what we need to do is consider very carefully which a balanced transportation to serve the needs of the metropolitan area should be, in all its aspects, all the ways it can be made to work, all the ways it can serve people. When we have considered that, then I think we will be in a position to talk about solutions for different facets of the problem. But it seems to me that this is the big picture which we ought to be trying to get, and that premature action now does not lend itself to comprehension of the big picture.

Mr. BEALL. I thank the Senator.

Mr. President, I yield to the Senator from Virginia.

Mr. SPONG. Mr. President, I thank the Senator from Maryland. I am very pleased to join my colleagues from Maryland in a discussion of this proposed tax. Before focusing on the tax itself, I should like to comment further on something the Senator from Maryland (Mr. MATHIAS) has just said.

The Committee on Commerce recently held hearings on the need for areas and regions to improve their long-range planning for balanced transportation, and I observed then that this area—the Nation's capital—was providing a miserable example for other jurisdictions in the United States to follow. Here, as the Senator from Maryland has just pointed out, after several years of marching up the hill and down again, we still are not proceeding with either the highway system or the Metro system as planned. We have, as I have been moved to remind the Senate on numerous occasions, the most unbalanced regional airport plan of any area in the United States. The Maryland airport is going bankrupt unless the State rescues it, as I understand it is trying to do, and one of the government airports in Virginia is under-utilized while the other is overcrowded. So I quite agree that it is the height of folly to engage in new schemes affecting transportation until we complete something of what has been undertaken in the past decade.

Mr. President, the District of Columbia City Council is now considering a proposed tax on all-day commercial parking within the District on grounds that it will contribute to improvement of air quality within the city.

While I fully support the objective of air pollution control, I do not believe the proposed District parking tax is either a fair or practical means to that end.

In my opinion, the proposal is discriminatory in that it exempts parking facilities operated by the Federal and District governments, as well as those provided by private businesses for their employees and customers. Surely, autos using exempted lots contribute as much to pollution as those which are targeted for this tax.

It seems to me grossly unfair to levy this tax on Federal employees who are unfortunate enough to have to pay for their parking in commercial lots, while exempting those lucky enough to have an assigned parking space. I was not aware that the auto of a GS–5 secretary makes more pollution than that of her GS–14 boss.

In this town, by the nature of things,

a Federal employee who is forced to use a commercial lot is almost always in the lower grades and least able to afford an additional tax. Frankly, I believe that all Federal employees should be treated equally. The tax now being discussed by the City Council is a tax on the lower-grade employees of the Federal Government.

Coming at this time, the parking tax proposal seems to me most impractical since even with an added economic incentive it is unlikely that many commuters will turn to bus transit. We may all wish that it were otherwise, but the fact is bus service to the suburbs is today expensive, slow and not always reliable.

When the Metro is in operation and we have a general upgrading of bus transit service, a tax of the kind proposed may make more sense.

If the City Council is in earnest about cleaning up the air in the District of Columbia, and not simply finding new sources of revenue, I would suggest it explore the possibility of taxing each jet aircraft coming into or leaving National Airport a certain amount, say $100. Not only would this help to offset the cost of aircraft noise and pollution, but it might also serve as a financial inducement to the air carriers to transfer some of their operations to Dulles and Friendship Airports.

I was recently advised by the Environmental Protection Agency that:

> Airport facilities are required to meet applicable air and water quality standards established under the Clean Air Act and Federal Water Pollution Control Act, respectively.

Even though the District is prohibited from taxing within the boundaries of National Airport, it might be possible for both the District and the affected Virginia and Maryland suburbs to take some action under the quoted authority.

In any event, Mr. President, I want to go on record as strongly opposed to the proposed parking tax now pending before the District of Columbia City Council, and have so advised the chairman of the Council, Mr. Gilbert Hahn, by letter.

Mr. President, if there is any time remaining of the time assigned to me, I should be glad to share it with my colleagues, if they have any further comments.

Mr. BEALL. Mr. President, how much time remains?

The ACTING PRESIDENT pro tempore. The time of the Senator from Maryland has expired.

The Senator from Virginia is entitled to 15 minutes, under the previous order. Therefore, the Chair recognizes the Senator from Virginia for not to exceed 15 minutes, and he may yield time if he wishes.

Mr. SPONG. Mr. President, I was under the impression that I had used part of my time. But I yield to either Senator from Maryland for any comments he may wish to make.

Mr. BEALL. I thank the Senator from Virginia.

I think it is important to observe that I did make some comment about the equity of this tax. The credibility of any government really relates to the manner in which it imposes its taxes. Does it impose its taxes in a fair and equitable manner? I think it is obvious from the remarks of the Senator from Virginia that a tax of this sort is extremely regressive in nature and is contrary to the principles of good, fair, equitable taxation; because, as the Senator eloquently pointed out, this is a tax upon the people who are least able to pay. The person who is lucky, who has the status symbol of a free parking space provided by the Federal Government or by his corporation, is exempt from this kind of tax.

It is inconceivable to me that the District Council could even consider such a proposal when we are all concerned about the equity with which we impose taxes.

Another facet that has to be considered is the human element involved. I heard from a constituent in upper Montgomery County, and he pointed out that he used to ride the bus to work, but it took 4 hours per day in commuting time. Out of desperation, so that he could spend some time with his family, so that he could lead a more or less normal life, he went to driving his car. This kind of tax would put him back on the bus, with 4 hours of commuting each day.

I do not think we ought to impose that kind of hardship on people until we have adequately provided alternate kinds of transportation for them.

Mr. SPONG. I thank the Senator.

There is no question that alternative modes of transportation are not being provided at the present time.

I yield to Senator MATHIAS.

Mr. MATHIAS. I thank the Senator for yielding.

I think the Senator from Virginia has brought up an important element in this matter—the question of what happens to Government employees under such a radical change. After all, Government is the largest single business in the Washington metropolitan area. It is why the area was created. I believe that we have a very serious responsibility toward those who carry on the day-to-day chores of government.

We are not only faced here with the seriously escalating cost to the Government employees who park in commercial facilities. We are also faced with the somewhat chaotic and unpredictable situation which would be created if the proposal which is now under consideration by the Office of Management and Budget, to eliminate all assistance of special parking for selected Government employees, were to go into effect on the 30th of June. I do not know what impact that would have. But I can see that it would have an enormous impact on the transportation patterns. It involves between 25,000 and 30,000 parking spaces which are controlled or owned by the Government, and presumably it involves between 25,000 and 30,000 cars that are coming into various Government facilities.

This is just a new element of the chaos which could be created, and I think it suggests that we have to look at this problem as an overall problem, not just as one which has a single face, a single facet.

I believe there is also an element of comity. Governments of adjoining jurisdictions have to work together. There is no doubt about how this provision is viewed by the government of Maryland.

Mr. President, I ask unanimous consent to have Resolution 164 of the Maryland Senate printed in the RECORD.

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

SENATE RESOLUTION NO. 164

Senate Resolution requesting the Maryland Delegation in the Senate and House of Representatives of the United States to procure the enactment of legislation preventing a commuter's parking tax in Washington, D.C.

Whereas, U.S. District Court Judge John L. Smith, Jr. has ruled that the D.C. City Council, without specific congressional authorization, has the power to impose a dumping fee on private trash haulers; and

Whereas, Gilbert Hahn, Jr., the Chairman of the D.C. City Council has asserted that this decision also means that the Council has authority to impose a tax on commuters who park their cars downtown while working; and

Whereas, Such a parking tax has already been proposed by the D.C. City Council; and

Whereas, The Chairman of the City Council believes that as a result of Judge Smith's decision, the enacting of a parking tax on commuters could be blocked only by congressional action; and

Whereas, The Senate of Maryland has repeatedly demonstrated its sense of comity through its cooperative efforts to deal with regional problems of recreation, transportation, police, pollution and water supply emanating from the Federal City; and

Whereas, Those citizens of Maryland who commute to work in the District of Columbia already bear a substantial tax burden imposed on them through taxes they pay as consumers in the Federal City; now, therefore, be it

Resolved by the Senate of Maryland, That the Maryland Delegation in the Senate and House of Representatives of the United States is requested to use all available means and all due diligence to procure the enactment of legislation to prevent the D.C. City Council from imposing a parking tax on commuters; and be it further

Resolved, That copies of this Resolution be sent to each member of the Maryland delegation in the Senate and House of Representatives of the United States.

Mr. SPONG. Mr. President, the Senator from Maryland has just brought up the matter of the possibility, as reported in this morning's newspaper, of the Government's removing all free parking assistance to Federal employees in the District. I have just read that story. My office is seeking to determine just what the impact would be in terms of the parking spaces now available. If this suggestion is pursued, I shall want to comment on it to the Senate at a later date.

As of now, I agree with what the Senators from Maryland have said this morning—that what is done by the District Council should be equitable. In my judgment, the proposed tax is not equitable.

Second, whatever is done with regard to the transportation problems in this area must be done within a far greater regional context than is now taking

place, despite the best efforts of the District and some of the subdivisions.

To get back to my original observation to Senator MATHIAS: If there is any place in the United States today that needs a more balanced approach in long range planning with respect to its transportation and needs, it is certainly this area. Congress certainly is involved in this matter so far as the District of Columbia is concerned, and I find it regrettable that we have not always provided the best example to the rest of the Nation, not only in how to plan, but also in how to achieve results.

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

Mr. SPONG. I yield.

Mr. MATHIAS. The Senator has used the word "regional," and that is really the key to what we are concerned with here this morning—a regional consideration.

I have been an advocate of home rule since 2 or 3 years after I came to Congress, and I believe in it very deeply. I am not suggesting anything which abrogates the principles of home rule. But I say to the Senate that the City Council of the District of Columbia can no more stop the stream of cars by its action alone than it can stop the Potomac River from coming down over its accustomed course. It cannot be stopped by any single action. But what can be done is to regulate and control and ameliorate the conditions by regional action based on long-range planning. That is what has to be done.

If anything cries out for early action, it is the coordinated effort of the District, of Virginia, and of Maryland to deal with the whole problem of transportation.

These are human problems of getting people to jobs, giving them an opportunity to earn a living, to maintain their families, with the minimum amount of time spent in unnecessary travel. These are the kinds of long-range problems we ought to be thinking about, not doing the little piecemeal things which exacerbate rather than help.

Mr. SPONG. I agree with the Senator from Maryland.

EXHIBIT 1

[From the Washington Evening Star, April 11, 1972]

HAHN'S SECOND THOUGHTS

Prior to the D.C. City Council's hearings the other day we questioned the basis of Chairman Gilbert Hahn's claims in proposing a $1 parking tax in the downtown area, and that proposition apparently is now undergoing radical surgery. While second thoughts are in order, however, the revisions—as reported—present more new questions than answers.

According to Hahn, the justification for the new tax is to discourage automobile use by commuters in order to (1) advance the District's legal obligation to clean up the city's air and (2) turn a large number of motorists into bus riders. But the degree to which either of these goals actually would be achieved by a parking tax, and the question of whether the gains, if any, could offset the problems created, are fuzzier now than ever.

The council hearings last week, for example, produced a paucity of evidence and no solid data on the clean-air issue. The most expert pollution witness, a federal Environmental Protection Agency official, guessed that the deterrent effect might be to eliminate about 1 percent of the city's annual auto-pollutant emissions but conceded that his agency has not completed a real evaluation. On switching motorists to buses, one witness estimated 7,000 commuters a day might be encouraged to go the transit route; Hahn cites a figure of 14,000—and obviously no one really knows. It was the view of several witnesses sympathetic to the tax concept, in fact, that a $1 levy for all-day parking would be insufficient to have any appreciable effects. They advised a higher tax.

Yet, in the revision being drafted, Chairman Hahn and Councilman Henry Willard say they are now backing a 50-cent tax on all-day parking downtown instead of $1, with a 25-cent levy imposed on parking lots on the downtown's periphery. These and a number of other changes presumably are responsive to protests that a $1 tax would severely impair the central city's economy and encourage more commuting suburban motorists to fringe-park on the city's already congested residential streets. There is no doubt that the latter would occur.

But what happens—with the proposed reduction—to Hahn's arguments on clean air and transit? If, as appears to be the case, a $1 tax would have a minimal impact on the District's dirty air, how can a 50-cent tax possibly be defended as vital to the health and welfare of the Nation's Capital? It is highly dubious, by the same token, that such a tax—as bitterly resisted as it would be—would persuade many motorists to leave their cars at home in favor of the sorry transit service now available.

It is not our position, as noted previously, that the concept of a parking tax is totally unworthy of consideration. A $1 tax—or 50 cents for that matter—would of course return a tidy sum to the city treasury in urgently needed revenues, and a more rational argument, at least, might be advanced for it on those grounds. But that is not the justification—or the legal authority—cited for the current proposals.

The unanswered questions, the uncertain effects and the flimsy study given the subject thus far offer no support whatever for Chairman Hahn's advocacy of a hurry-up vote on the issue this month, and the City Council should flatly reject the pressure.

Mr. SPONG. Mr. President, unless either Senator from Maryland has anything further to say, I am prepared to yield back the remainder of my time.

Mr. ROBERT C. BYRD. Would the Senator reserve his time and request a quorum call?

Mr. SPONG. 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. ROBERT C. BYRD. 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.

AMENDMENT OF THE UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that, at such time as the distinguished Senator from Tennessee (Mr. BROCK) is recognized under the order previously entered, the Senate proceed to the consideration of Calendar No. 692, S. 1819.

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

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

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

At this time, in accordance with the previous order, the Chair now recognizes the distinguished Senator from Tennessee (Mr. BROCK).

Also in accordance with the previous order, at this time, the Chair lays before the Senate Calendar No. 692, S. 1819, which the clerk will please state.

The assistant legislative clerk read as follows:

S. 1819 to amend the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 to provide for minimum Federal payments after July 1, 1972, for relocation assistance made available under federally assisted programs.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Government Operations with an amendment to strike out all after the enacting clause and insert:

That (a) section 207 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1898) is amended by striking out "in the case of any real property acquisition or displacement occurring prior to July 1, 1972," and by inserting before the period at the end of such section, "required by section 210".

(b) Section 211(a) of such Act is amended by striking out "215, and 305, on account of any acquisition or displacement occurring prior to July 1, 1972" and inserting in lieu thereof "and 215".

(c) Section 221(b) of such Act is amended by striking out "1972" wherever it appears and inserting in lieu thereof "1973, or the end of the thirty-day period which begins on the last day of the first regular session of the State legislature commencing after July 1, 1972, whichever is earlier" and by adding at the end of such subsection (b) the following: "Notwithstanding the foregoing provisions of this subsection, section 210(3) shall be completely applicable to all States after July 1, 1972".

(d) Title II of such Act is amended by adding at the end thereof the following new section:

"INTERIM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION EXPENSES

"SEC. 222. (a) At any time during the period from July 1, 1972, through June 30, 1973, during which section 210 (other than paragraph (3) of such section) or section 305 is not completely applicable to a State, the head of a Federal agency authorized to provide Federal assitance to a State agency of that State under any grant, contract, or agreement of the kind referred to in such sections, shall take all steps necessary to insure that

the payments, assistance and services to displaced persons, and expenses to property owners authorized by such sections shall be provided.

"(b) On and after July 1, 1972, or such earlier date that a State is able, under its laws, to comply with sections 210 and 305, the head of a Federal agency shall not approve any grant to, or contract or agreement with, any State agency, of the kind referred to in such sections, unless such State agency satisfies the head of the Federal agency that the State is taking appropriate measures to pay to the United States an amount equal to the payments made by the Federal agency in carrying out subsection (a) of this section that the State would have paid if it had been in full compliance with such sections after July 1, 1972.".

Mr. BROCK. Mr. President, I was pleased to introduce this measure jointly with the Senator from Tennessee (Mr. BAKER) last May 11, and am gratified that since that time it has received the bipartisan endorsement of some 28 additional Senators.

The bill has been examined indepth by the Senate Government Operations Committee, and I am satisfied that the measure we consider today will greatly enhance the workability of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. The act for the first time established a single uniform Federal policy for relocating persons forced to move from their homes or businesses which were located on land acquired for a Federal or federally assisted program. Certainly, Public Law 91–646 represents a major social accomplishment of the 91st Congress.

S. 1819 amends the 1970 act by extending indefinitely the compliance date for State and local participation in relocation assistance made available under federally assisted programs. The bill will insure that local project agencies will not be required to participate in the cost of relocation payments mandated under the act on the same basis that they share in other project costs. I strongly believe the Congress did not intend to place a new financial burden on the State and local governments when it passed the law, and this measure assures that we do not.

The Government Operations Committee, under the very able and experienced leadership of the Senator from Arkansas (Mr. MCCLELLAN) has amended the bill to postpone the effective date of the act to give any State unable under its laws to come into compliance—additional time to pass legislation authorizing State and local agencies to comply with the act's requirements.

Additionally, language has been included which will assure that relocation payments are not denied to eligible individuals after the present effective date, July 1, 1972, by authorizing Federal agencies to make payments that would otherwise be made, and partially shared, by State and local agencies where legal obstacles prevent States from making those payments. The bill further provides that such States must take appropriate measures to reimburse the Federal Government for such payments.

On the basis of convincing evidence from many local communities that they will not be able to meet the matching share requirement within their limited resources by July 1, 1972, I fervently hope the Senate will wholeheartedly support S. 1819 and send it quickly to the House of Representatives so that the issue can be resolved at an early date.

Mr. CHILES. Mr. President, I want to express my support for the amendment to the Uniform Relocation Act, S. 1819. Hearings were held on this bill before the Subcommittee on Intergovernmental Relations on February 24, 1972. I was acting chairman and had a good opportunity to study this proposal as well as the testimonies that were submitted at that time.

The Uniform Relocation Act was enacted at the end of the last Congress after years of consideration by that subcommittee. That act established a single uniform Federal policy for relocating persons forced to move from residences or business located in the path of Federal or federally assisted projects.

Federal and federally assisted projects force an estimated million or more families to be displaced every 10 years. Before the Uniform Relocation Act, State and local programs had inconsistent or inadequate policies regarding displacement and relocation and the real victims of this confusion were the families themselves. The Uniform Relocation Act was designed to bring order to the chaos. It increased relocation benefits and required that these benefits be provided equitably to all families, businesses, and farms displaced by Federal or federally assisted programs. But the act also provided that the Federal Government would fully reimburse a State agency for the first $25,000 of any relocation payment required by the act only until July 1, 1972. That is, after July 1 of this year, the States will be required to share all relocation costs with the Federal Government on a formula basis. S. 1819 would delete the reference to July 1 and make the current full Federal funding a permanent feature of the law.

I believe cost sharing would impose severe financial hardships on State and local governments. The testimony I heard at the hearing and the numerous letters I have received in my office from State and local officials clearly indicate to me that local governments would be forced to curtail renewal projects in order to come up with the matching funds. I think one mayor of a city in Florida summed it up pretty well when he said:

> If this law is not rescinded, amended, or the time for the cities to participate extended, it is going to kill urban renewal in most cities, large and small alike.

The provisions of S. 1819 would also promote an efficient uniformity in the implementation of the act, because it would provide full Federal funding for all relocation costs regardless of the cost-sharing formula governing a particular program.

In addition to providing for full Federal funding, S. 1819 would also postpone the effective date of the act to give the States the chance to pass legislation authorizing State and local agencies to comply with all the act's requirements. Another provision has been included to assure that relocation payments will not be denied to eligible individuals after the July 1, 1972, effective date. Federal agencies are authorized to make payments that would otherwise be made, and partially shared, by State or local agencies where legal obstacles prevent States from making those payments.

Just as I welcomed the assistance the 1970 act provided, I now welcome the amendment to this act which would make sure that Federal relocation help is available not only through fiscal year 1971, but indefinitely.

Mr. SCOTT. Mr. President, I rise in support of S. 1819, a bill to continue, after July 1, 1972, full Federal funding for the first $25,000 in relocation payments made by State and local agencies under the act to assist persons displaced from their homes, businesses, or farms by federally-assisted programs and projects.

The Uniform Relocation Assistance and Real Property Acquisition Policies Act became law over 1 year ago. It provided that the Federal Government would absorb 100 percent of the first $25,000 of each individual payment required by the act through June 30, 1972.

S. 1819, of which I am a sponsor, extends indefinitely the period during which the Federal Government pays the entire amount of any payment $25,000 or less. At a time when massive Federal programs are underway to revitalize our Nation's urban and rural areas, the unhampered continuation of this relocation assistance program is vital. Real progress can never be achieved or maintained unless we can compensate those who may become the "victims" of progress. This bill provides a genuine answer to this problem, and I urge its enactment as soon as possible.

Mr. BROCK. Mr. President, my colleague (Mr. BAKER) and the Senator from Maine (Mr. MUSKIE) and I have prepared an amendment which I send to the desk at this time and ask that it be stated.

The PRESIDING OFFICER. The amendment will please be stated.

The assistant legislative clerk read as follows:

At the end of the bill, add the following new subsection:

(e)(1) Section 101(3) of such Act is amended to read as follows:

"(3) The term 'State agency' means the National Capital Housing Authority, the District of Columbia Redevelopment Land Agency, a State, and any department, agency, or instrumentality of two or more States or of two or more political subdivisions of a State or States."

(2) Title II of such Act, as amended by subsection (d) of this section, is amended by adding at the end thereof the following new section:

"ASSISTANCE TO PROGRAMS AND PROJECTS UNDERTAKEN DIRECTLY BY PERSONS

"SEC. 223. (a) Notwithstanding any other provision of law, whenever the acquisition of real property for a program or project, to be undertaken by a person furnished Federal financial assistance by a Federal agency pursuant to a grant, contract, or agreement, will result in the forced displacement of any person on or after the effective date of this Act, the head of the Federal agency furnishing such financial assistance shall provide—

"(1) fair and reasonable relocation pay-

ments and assistance to or for such displaced persons, as are required to be provided by a Federal agency under sections 202, 203, and 204 of this title;

"(2) relocation assistance programs offering the services described in section 205 to or for such displaced persons; and

"(3) within a reasonable period of time prior to displacement, decent, safe, and sanitary replacement dwellings to such displaced persons in accordance with section 205(c)(3).

"(b) With respect to any person displaced under this section after the effective date of this Act but prior to the effective date of this section, the head of the Federal agency administering the program that resulted in such displacement shall take all reasonable and necessary steps to assure that such displaced person is made aware of his entitlements under this section and that the payments, services, and other benefits due such person under this section are provided.

Mr. BROCK. Mr. President, I ask unanimous consent that prepared remarks of the senior Senator from Tennessee (Mr. BAKER) be printed in the RECORD.

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

STATEMENT BY SENATOR BAKER

The purpose of this amendment is quite simple, and I will not long detain the Senate in my exposition of it.

It is abundantly and unarguably clear from the long legislative history of Public Law 91-646 that the purpose of the Act was to extend its benefits to any person displaced as a result of Federal and federally assisted programs. That is the clear and simple mandate of the Act. Wherever a federal dollar reaches, there lie the rights and benefits guaranteed by the Act.

However, it has come to my attention that an extremely narrow construction of the language of section 210 of the Act might result in situations where persons are displaced as a result of federally assisted programs without being provided the rights and benefits due them under the Act. My amendment seeks to end, once and for all, any questions as to the extent of the reach of the Act.

Section 210 of the Act as now written prohibits the head of any federal agency from approving any grant to, or contract or agreement with, "a State agency, under which Federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the displacement of any person" unless such State agency provides satisfactory assurances that such person or persons will be provided the rights and benefits set out in the Act. The clear intent of section 210 was to assure that all federally assisted programs and projects would be brought immediately under the ambit of the Act.

However, because section 210 makes mention only of contracts and agreements with or grants to "a State agency," questions have arisen as to whether the Act applies to federal grants, contracts, and agreements when the recipient of the federal assistance is a State itself (as opposed to an agency of the State) or when the recipient of the federal assistance is a private person, corporation, or any entity other than a "State agency." My amendment would make it perfectly clear, if there lingers any doubt, that State governments and any "person" as defined in section 101(5) of the Act are covered by the Act.

This amendment would amend section 101(3) of the Act to include "a State" in the definition of a "State agency." This will assure that where a State, acting as a State and not through one of its agencies, will be covered by the provisions of section 210.

The amendment would also add a new section 223 to the Act, which would make clear the fact that any federal agency providing assistance to recipient other than a state agency, i.e. a "person" as defined in section 101(5), would be required to provide the benefits of the Act to any person displaced as the result of the program or project being so assisted. For example, if a federal agency contracts with, enters into an agreement with, or makes a grant to a private contractor or other "person," to undertake a project that will result in the involuntary displacement of any person, the agency head must provide to any person displaced the benefits set out in new section 223.

I wish further to emphasize in the strongest possible terms that the benefits of the Act extend to affected individuals wherever federal funds are involved, regardless of how indirect the funding route may be. For example, if a federal agency were to contract with a private developer for the purpose of rehabilitating existing housing, such a contract would clearly fall within the meaning of new section 223.

I would also make it clear that my amendment is intended to cover any and all dislocations that may have occurred since the date of enactment of Public Law 91-646. If any agency has made any grant to, or approved any contract or agreement with, any State or "person" which resulted in the dislocation of any person on or after January 2, 1971, that agency has the affirmative responsibility to see to it that any such dislocated person receives the benefits to which he is entitled under the Act, except in any case where a State was unable to comply under its laws with section 210, as provided for in section 221(b) of the Act.

Mr. BROCK. Mr. President, the purpose of the amendment is to be sure that a narrow construction of the act does not hamper the achievement of the desired end result, which is that displaced persons received deserved assistance.

We have had instances of very limited construction of the prior act where some individuals who were aggrieved simply did not have adequate protection. This was particularly true in Federal assistance programs other than direct Federal programs. This amendment seeks to end once and for all any question of the reach of this Federal act.

Mr. GAMBRELL. Mr. President, will the Senator yield for a question?

Mr. BROCK. I yield to the Senator from Georgia.

Mr. GAMBRELL. Mr. President, I would like to ask the distinguished Senator from Tennessee how the amendment offered by the two Senators from Tennessee and the Senator from Maine (Mr. MUSKIE) would relate to private enterprises and whether such private enterprises might have the power of condemnation.

Mr. BROCK. Mr. President, normally a private enterprise does not have the right of eminent domain obviously. But even so, in the case of a citizen who does not own his dwelling, such as a tenant farmer in Tennessee or Georgia, such a person has very limited rights. If someone wants to build a private hospital on that land with Hill-Burton funds, they can purchase the land from the landowner, and this tenant farmer would be displaced without any choice in the matter at all. We are trying to protect those kinds of people.

There is this additional problem which I would like to address for the purpose of the legislative history. That concerns the area where a small landowner owns his own land and it is acquired by persons or industry for section 235 housing or Hill-Burton hospital construction. We do not intend to allow the developer to pay a lower price for that land and then have the landowner sue the Government for relocation assistance. That is not the purpose at all. The bill is entitled to help those people who are forced to move and move involuntarily and who are not in a position to negotiate a fair purchase price for their property. The benefits of the act are not extended to persons who are free to refuse a purchase offer from a buyer who has no eminent domain authority.

Mr. GAMBRELL. Mr. President, it is not the purpose or intent of this amendment to permit the Government to be required to pay for any of the cost of redevelopment. Is that correct?

Mr. BROCK. No, it is not. The purpose of this amendment is to protect those individuals who have no rights and are forced to be relocated, and at some considerable expense, such as a small business or small tenant farmer or tenant in a residential unit. These people have no protection unless we agree to this amendment. The amendment is not intended in any way to have the Federal Government participate in property acquisition costs that should be borne by a university, hospital, developer, or other entity receiving Federal financial assistance.

Mr. GAMBRELL. I thank the Senator from Tennessee.

Mr. BROCK. I thank the Senator for his clarification. I hope that the legislative history will reflect our full intent and purpose.

Mr. President, I have no further comment with regard to this particular amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment to the committee substitute.

The amendment was agreed to.

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

Mr. GAMBRELL. Mr. President, at this time I call up amendment No. 1116 and ask that it be stated.

The PRESIDING OFFICER. The amendment will be reported.

The assistant legislative clerk proceeded to state the amendment.

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

The PRESIDING OFFICER. Without objection, it is so ordered; and the amendment will be printed in the RECORD.

The amendment reads as follows:

On page 3, beginning with line 15, strike out all through line 25, and insert in lieu thereof, the following:

"(b) On and after July 1, 1973, or such earlier date that a State is able, under its laws, to comply with sections 210 and 305, the head of a Federal agency shall (1) not approve any grant to, or contract or agreement with, any State agency, of the kind referred to in such sections, unless such State agency satisfies the head of the Federal agency that the State is taking appropriate measures to pay to the United States an amount equal to the payments made by

the Federal agency in carrying out subsection (a) of this section that the State would have paid if it had been in full compliance with such sections after July 1, 1972, or (2) after giving the State agency a reasonable period of time to seek funds to pay the United States such amount deduct sums totaling such amount from Federal assistance available under such grant, contract, or agreement (except relocation payments) to that agency, over a period and in a manner that shall not substantially and adversely affect the program or project so assisted."

Mr. GAMBRELL. Mr. President, I would like to make a few explanatory comments about some provisions of section 222(b).

Regarding the clause in section 222 (b), subsection (1)—

That the State is taking appropriate measures to pay to the United States—

The committee report No. 92-721 in other places, but in particular on page 10, it states that the State agency satisfy the head of the Federal agency—

That the State is taking all appropriate measures under its Constitution to pay to the United States—

What this means in simple terms is that the State, bound by its constitution and laws, is doing what it can to pay this amount to the United States. This does not of necessity require that the State follow any particular course of action nor that the procedures in every State be identical. It only requires that the State take the legal resources available to it and applying them make a good faith effort to comply with this subsection.

Now this leads me to offer an explanation of the substance of the amendment I propose today which would be section 222(b) subsection (2). In the event that after a State has exhausted the alternatives available to it to make the required payment to the United States then the option provided in subsection (2) may be applied. This alternative allows that after a State agency had a reasonable period of time to seek funds to pay the United States and fails in this effort then the amount which the State owes the United States can be deducted from future Federal assistance available to that State agency spread over a period of time and in such a way so as not to substantially or adversely affect the program or project being assisted. Thus, the State legislature is given the first opportunity to satisfy the requirements of section 222(b). However, if for any reason these efforts are not satisfactory, the State agencies will not be penalized by a total loss of Federal funds because in the alternative they will be able to have these amounts deducted from future Federal assistance grants and in that way will be able to fully comply with requirements of section 222(b).

Mr. President, I would like to take this brief opportunity to congratulate the Senator from Tennessee (Mr. BROCK), the Senator from Tennessee (Mr. BAKER) and other members of the Government Operations Subcommittee for the outstanding work they have done in proposing the development of certain adjustments in the Relocation Assistance and Real Property Acquisition Policies Act of 1970 in order to make the operations of that act more equitable and fair not only to the local property owners, but also as mentioned, to the participation of the local agencies.

I support the bill pending in the Senate today.

The amendment which I have offered relates to a minor change which will accommodate the State of Georgia and agencies there, as well as those in a number of other States.

The Senator from Tennessee (Mr. BROCK) has outlined a proposal in the act to the effect that relief be extended to State agencies which are under legal restrictions against the participation requirements contained in the original act of 1970.

The bill pending on the floor today does contain those reliefs, but provides that where the participation requirements have been extended beyond July 1, 1972, provision should be made by the States and agencies for refunding that sum to the Government when those legal restrictions are eliminated.

My amendment would simply offer the additional or alternative method of making that provision. For instance, in the State of Georgia, we have a constitutional prohibition which we are in the process of removing at the present time. It will be voted on in a referendum this fall. But today in the State of Georgia, and in other States, it would be legally impossible to set aside any funds to refund the Government after July 1, 1972. My amendment would make it possible for this refund to be accomplished at a later date by a withholding on the part of the Federal Government of some of the participation funds for future projects, in order that the Federal Government might compensate and repay itself for moneys advanced after July 1, 1972.

I do not think there is any objection to this amendment. So, unless there is further debate, I ask that the question be put.

Mr. BROCK. Mr. President, I know of no objection to the amendment. I think it makes the matter clear and gives the States every opportunity to participate in this program. I appreciate the Senator's offering the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment in the nature of a substitute.

The amendment was agreed to.

Mr. GAMBRELL. Mr. President, I thank the Senator from Tennessee for his cooperation. I also thank the members of the committee and staff for helping work out this awfully difficult problem that we have in our State and in other States across the country.

Mr. BROCK. Mr. President, I appreciate the remarks of the Senator from Georgia. He has made an excellent contribution to the bill.

Mr. STEVENS. Mr. President, I am pleased today to speak in support of S. 1819, a bill amending the Uniform Relocation Assistance in Real Property Acquisition Policies Act of 1970. At the time that act was drafted, I was privileged to serve on the Government Operations Committee and to work with the able members of that committee in drafting this most important piece of legislation.

The act itself permits the establishment for the first time of a uniform Federal policy to assist in relocating persons who are forced to move from their homes or places of business because of Federal or federally financed programs. As such, the act alleviates some of the severe hardships imposed upon many people, particularly those who can least afford to bear the cost of a major move. Moreover, the act provides fair and uniform procedures to insure that people in like situations will be treated similarly. The act also increases the relocation benefits for such persons. The bill was designed to compensate such persons for their economic losses and to return them to an economic position comparable to that which they occupied prior to their relocation. Because this provision was beneficial to so many people, the bill received wide support and continued to be well received once it was enacted.

However, since the act's passage certain problems have arisen. Particularly important are problems concerning the cut-off date, July 1, 1972, which is the last date Federal reimbursement can be made to State agencies under the act. This bill before us today deletes that particular date. Second, the effective date of the act for each State is extended from July 1, 1972, until July 1, 1973, or the end of the 30-day period which begins on the last day of the regular session of the State legislature commencing after July 1, 1972, whichever is earlier.

This will permit many States constitutionally or legally prohibited from participating to reap the benefits accorded all the other States. Finally, this bill authorizes heads of Federal agencies to take all steps necessary to insure that relocation payments and assistance under the act are provided to all persons displaced by a federally assistance program after July 1, 1972. Under this bill Federal agencies may make relocation payments directly to displaced persons if necessary or require certain safeguards to insure Federal reimbursements by State agencies.

Once again, because this bill is so beneficial, to many different localities which are presently unable to participate or will be after July 1 of this year, I believe it will continue to receive wide support. I was very pleased to cosponsor this legislation and urge my colleagues to carefully consider its merits today.

The PRESIDING OFFICER. Does the Senator from Tennessee yield back the remainder of his time?

Mr. BROCK. I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment as amended, was agreed to.

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 OFFICERS. The bill

having been read the third time, the question is, shall it pass?

The bill (S. 1819) was passed, as follows:

S. 1819

An act to amend the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 to provide for minimum Federal payments after July 1, 1972, for relocation assistance made available under federally assisted programs and for an extension of the effective date of the Act

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 207 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1898) is amended by striking out "in the case of any real property acquisition or displacement occurring prior to July 1, 1972," and by inserting before the period at the end of such section, "required by section 210".

(b) Section 211(a) of such Act is amended by striking out "215, and 305, on account of any acquisition or displacement occurring prior to July 1, 1972" and inserting in lieu thereof "and 215".

(c) Section 221(b) of such Act is amended by striking out "1972" wherever it appears and inserting in lieu thereof "1973, or the end of the thirty-day period which begins on the last day of the first regular session of the State legislature commencing after July 1, 1972, wherever is earlier" and by adding at the end of such subsection (b) the following: "Notwithstanding the foregoing provisions of this subsection, section 210(3) shall be completely applicable to all States after July 1, 1972".

(d) Title II of such Act is amended by adding at the end thereof the following new section:

"INTERIM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION EXPENSES

"SEC. 222. (a) At any time during the period from July 1, 1972, through June 30, 1973, during which section 210 (other than paragraph (3) of such section) or section 305 is not completely applicable to a State, the head of a Federal agency authorized to provide Federal assistance to a State agency of that State under any grant, contract, or agreement of the kind referred to in such sections, shall take all steps necessary to insure that the payments, assistance, and services to displaced persons, and expenses to property owners authorized by such sections shall be provided.

"(b) On and after July 1, 1973, or such earlier date that a State is able, under its laws, to comply with sections 210 and 305, the head of a Federal agency shall (1) not approve any grant to, or contract or agreement with, any State agency, of the kind referred to in such sections, unless such State agency satisfies the head of the Federal agency that the State is taking appropriate measures to pay to the United States an amount equal to the payments made by the Federal agency in carrying out subsection (a) of this section that the State would have paid if it had been in full compliance with such sections after July 1, 1972, or (2) after giving the State agency a reasonable period of time to seek funds to pay the United States such amount deduct sums totaling such amount from Federal assistance available under such grant, contract, or agreement (except relocation payments) to that agency, over a period and in a manner that shall not substantially and adversely affect the program or project so assisted.".

(e)(1) Section 101(3) of such Act is amended to read as follows:

"(3) The term 'State agency' means the National Capital Housing Authority, the District of Columbia Redevelopment Land Agency, a State, and any department, agency, or instrumentality of two or more States or of two or more political subdivisions of a State or States."

(2) Title II of such Act, as amended by subsection (d) of this section, is amended by adding at the end thereof the following new section:

"ASSISTANCE TO PROGRAMS AND PROJECTS UNDERTAKEN DIRECTLY BY PERSONS

"SEC. 223. (a) Notwithstanding any other provision of law, whenever the acquisition of real property for a program or project, to be undertaken by a person furnished Federal financial assistance by a Federal agency pursuant to a grant, contract, or agreement, will result in the forced displacement of any person on or after the effective date of this Act, the head of the Federal agency furnishing such financial assistance shall provide—

"(1) fair and reasonable relocation payments and assistance to or for such displaced persons, as are required to be provided by a Federal agency under sections 202, 203, and 204 of this title;

"(2) relocation assistance programs offering the services described in section 205 to or for such displaced persons; and

"(3) within a reasonable period of time prior to displacement, decent, safe, and sanitary replacement dwellings to such displaced persons in accordance with section 205(c)(3).

"(b) With respect to any person displaced under this section after the effective date of this Act but prior to the effective date of this section, the head of the Federal agency administering the program that resulted in such displacement shall take all reasonable and necessary steps to assure that such displaced person is made aware of his entitlements under this section and that the payments, services, and other benefits due such person under this section are provided.".

The title was amended, so as to read: "A bill to amend the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 to provide for minimum Federal payments after July 1, 1972, for relocation assistance made available under federally assisted programs and for an extension of the effective date of the Act."

ORDER OF BUSINESS

The PRESIDING OFFICER. At this time, in accordance with the previous order, the Chair recognizes the junior Senator from California for not to exceed 15 minutes.

(The remarks Mr. TUNNEY made at this point on the introduction of S. 3487 are printed in the RECORD under Statements on Introduced Bills and Joint Resolutions.)

TRANSACTION OF ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. At this time, in accordance with the previous order, there will be a period for not to exceed 30 minutes for the transaction of routine morning business with speeches by Senators limited to 3 minutes. Is there morning business to be transacted at this time?

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

DEATH OF MRS. ABRAHAM A. RIBICOFF—LEAVE OF ABSENCE FOR SENATOR RIBICOFF

Mr. ROBERT C. BYRD. Mr. President, I am sorry at this time to have to announce to the Senate the sad news of the death this morning of the wife of our able and beloved colleague, the senior Senator from Connecticut (Mr. RIBICOFF). I am sure I express the sentiments of all of his colleagues in stating that our deepest sympathies are with Senator RIBICOFF during this time of great sorrow.

I ask unanimous consent, under rule V, that a leave of absence be granted to this supremely dedicated and able Member, the Senator from Connecticut, during today and during such additional days as may be necessary under the circumstances.

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

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

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

PROPOSED AMENDMENT OF TITLE 10, UNITED STATES CODE

A letter from the Acting Secretary of the Army, transmitting a draft of proposed legislation to amend title 10, United States Code, to suspend operation of the restrictions on authorized strength of Army officers in the grade of major for fiscal year 1972 (with an accompanying paper); to the Committee on Armed Services.

REPORT ON COMMITTEES ADVISING THE DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

A letter from the Secretary of Health, Education, and Welfare, transmitting, pursuant to law, a report on Committees which advise and consult with him in carrying out the functions of the Social Security Act, as amended, for the calendar year 1971 (with an accompanying report); to the Committee on Finance.

REPORT ON CERTAIN TECHNICAL SERVICES PROVIDED TO STATE OR LOCAL GOVERNMENTS BY NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

A letter from the Administrator, National Aeronautics and Space Administration, transmitting, pursuant to law, a report on certain technical services provided to State or local governments by that Administration, during the calendar year 1971 (with an accompanying report); to the Committee on Government Operations.

REPORT ON DISPOSAL OF CERTAIN FOREIGN EXCESS PROPERTY BY THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

A letter from the Administrator, National Aeronautics and Space Administration, reporting, pursuant to law, on the disposal of certain foreign excess property by that Administration; to the Committee on Government Operations.

REPORT OF THE COMPTROLLER GENERAL

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Opportunities for

Improving the Institutional Manpower Training Program in South Carolina," Department of Labor, Department of Health, Education, and Welfare, dated April 11, 1972 (with an accompanying report); to the Committee on Government Operations.

REPORT ON SOIL SURVEY AND LAND CLASSIFICATION IN THE OAHE UNIT, JAMES DIVISION, PICK-SLOAN MISSOURI BASIN PROGRAM

A letter from the Assistant Secretary of the Interior, reporting, pursuant to law, that an adequate soil survey and land classifications of the lands in the Oahe Unit, James Division, Pick-Sloan Missouri Basin program, has been completed (with an accompanying paper); to the Committee on Interior and Insular Affairs.

REPORT ON CONTRACTUAL ADJUSTMENT DENIED BY THE NASA CONTRACT ADJUSTMENT BOARD

A letter from the Administrator, National Aeronautics and Space Administration, reporting, pursuant to law, that during the calendar year 1971, that Administration had denied the Acme Machine & Tool Company, Inc. relief in the amount of $24,672.63; to the Committee on the Judiciary.

REPORT ON EXTRAORDINARY CONTRACTUAL ACTIONS TO FACILITATE THE NATIONAL DEFENSE

A letter from the Assistant Secretary of Defense (Installations and Logistics), transmitting, pursuant to law, a report on extraordinary contractual actions to facilitate the National defense, during the calendar year 1971 (with an accompanying report); to the Committee on the Judiciary.

PETITIONS

Petitions were laid before the Senate and referred as indicated:

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

A joint resolution of the General Assembly of the Commonwealth of Virginia; to the Committee on the Judiciary:

"SENATE JOINT RESOLUTION No. 7

"Memorializing the Congress to propose an amendment to the Constitution of the United States

"*Resolved by the Senate, the House of Delegates concurring,* That the Congress of the United States is hereby memorialized to adopt and offer to the states for ratification or rejection the following amendments to the Constitution of the United States, to be valid only if ratified by the legislatures of three-fourths of the several states within seven years after the date of final passage of this Joint Resolution;

"'Article —

"'SECTION 1. No public school student shall, because of his race, creed, or color, be assigned to or required to attend a particular school.'

"'SEC. 2. Congress shall have the power to enforce this article by appropriate legislation.' And be it further

"*Resolved,* That the Clerk of the Senate is hereby instructed to send copies of this Joint Resolution to the members of the Virginia delegation in the Congress of the United States, to the Clerk of the House of Representatives of the Congress, and the Clerk of the Senate of the Congress, and to the Governors of the several states of the United States.

"Agreed to by the Senate February 15, 1972.

"Agreed to by the House of Delegates March 8, 1972."

A joint resolution of the General Assembly of the Commonwealth of Virginia; to the Committee on Public Works:

"SENATE JOINT RESOLUTION No. 13

"Petitioning the U.S. Congress and the U.S. Department of Transportation for a critically needed extension of the Interstate and National Defense Highway System

"Whereas, the Hampton Roads Metropolitan Area is both a vital military complex and a centuries-old urban core exhibiting critical socio-economic problems; and

"Whereas, the vast amount of non-taxable federal property in metropolitan Hampton Roads warrants federal investments which could contribute to economic development; now, therefore, be it

"*Resolved by the Senate, the House of Delegates, concurring,* That the Virginia General Assembly hereby petitions the United States Congress and the United States Department of Transportation for legislative action to add a segment of approximately twelve miles to the system of Interstate and National Defense Highways for the purpose of completing a metropolitan circumferential "Beltway" from Interstate Highway 64 at its Bowers Hill terminus in the City of Chesapeake to Interstate Highway 664 at its Craney Island terminus in the City of Portsmouth; and in addition thereto 11.1 miles to be allocated for construction of a north-south expressway in the city of Newport News, so as to link Interstate Highway 664 to Interstate Highway 64 at a point at or near the Patrick Henry Airport interchange of Interstate Highway 64 in the city of Newport News, the 11.1 additional miles requested for allocation to the north-south expressway in the city of Newport News, however, is not requested or intended to modify or re-route the segment of Interstate Highway 664 in the cities of Hampton and Newport News as presently planned and approved. The General Assembly is informed that while this freeway corridor passes through what is defined by the United States Bureau of the Census as an "Urbanized Area", it would result in an insignificant dislocation of dwellings and businesses; and be it

"*Resolved further,* That the Commissioner of Highways is hereby authorized to pursue this matter; and be it

"*Finally resolved,* That the Clerk of the Senate is directed to send a copy of this resolution to each of the members of the Virginia Delegation to the United States Congress, and to the clerks of the United States Senate and House of Representatives, respectively.

"Agreed to by the Senate February 8, 1972.

"Agreed to by the House of Delegates March 8, 1972."

EXECUTIVE REPORTS OF COMMITTEES

Mr. MAGNUSON. Mr. President, as in executive session, from the Committee on Commerce, I report favorably sundry nominations in the Coast Guard which have previously appeared in the CONGRESSIONAL RECORD and, to save the expense of printing them on the Executive Calendar, I ask unanimous consent that they may lie on the Secretary's desk for the information of Senators.

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

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

John D. O'Malley, and sundry other officers, for promotion in the Coast Guard Reserve;

Eleanor C. L'Ecuyer, for promotion in the Coast Guard Women's Reserve;

Frances S. Turner, for reappointment in the Coast Guard Women's Reserve, from the temporary disability retired list;

Jules A. Peebles, for promotion in the Coast Guard; and

Eric J. Williams III, and sundry other officers, for permanent appointment in the Coast Guard.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first time and, by unanimous consent, the second time, and referred as indicated:

By Mr. TUNNEY:

S. 3487. A bill to amend the Public Health Service Act to provide for research into the chronic effects of microwave radiation. Referred to the Committee on Labor and Public Welfare.

By Mr. PEARSON:

S. 3488. A bill to provide for the assignment of Foreign Service officers to certain public organizations. Referred to the Committee on Foreign Relations.

By Mr. HARTKE:

S. 3489. A bill to amend title 38, United States Code, to permit eligible persons training under chapter 35 to pursue programs of education at certain educational institutions outside the United States. Referred to the Committee on Veterans' Affairs.

By Mr. GURNEY:

S. 3490. A bill to authorize and request the President to issue annually a proclamation designating August 26 of each year as "Women's Rights Day." Referred to the Committee on the Judiciary.

By Mr. SCHWEIKER:

S. 3491. A bill to amend the Flammable Fabrics Act to provide for a certification procedure, and for other purposes. Referred to the Committee on Commerce.

By Mr. MATHIAS (for himself, Mr. BEALL, Mr. BOGGS, Mr. BROOKE, Mr. CASE, Mr. COOPER, Mr. HATFIELD, Mr. JAVITS, Mr. PERCY, Mr. SAXBE, Mr. STEVENS, Mr. TAFT, and Mr. WEICKER):

S. 3492. A bill to provide for a comprehensive program designed to strengthen the criminal justice system in the United States, to attack urban street crime, to undertake new training programs for law enforcement personnel, to improve the training, care and rehabilitation of criminal offenders, and for other purposes. Referred to the Committee on the Judiciary.

By Mr. INOUYE:

S. 3493. A bill to provide for benefits in case of certain individuals interned during World War II. Referred to the Committee on Finance.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. TUNNEY:

S. 3487. A bill to amend the Public Health Service Act to provide for research into the chronic effects of microwave radiation. Referred to the Committee on Labor and Public Welfare.

Mr. TUNNEY. Mr. President, I am pleased to take this oportunity to introduce legislation to amend the Radiation Control for Health and Safety Act of 1968—a part of the Public Health Service Act—to provide for increased emphasis on research on the chronic effects of microwave radiation. This type of research is needed in order to determine the degree of risk associated with chronic exposures to microwave radiation and the possibility of disability later in life. With this type of information, controls can be enforced and the danger from unnecessary radiation avoided.

I consider this type of research to be

particularly important in view of the enormous increase in exposure to electromagnetic radiation which is predicted for the next several decades. Large numbers of our citizens are already exposed to environments which have an unusually high incidence of microwave radiation. Without information on the biological effects of continuous exposure to low levels of electromagnetic radiation we have no idea of the extent to which damage may be occurring.

While we do not know the extent of the damage, we do know that it is severe. We know that microwave radiation can cause severe damage to the eye, leading to blindness. We know that it can cause sterilization. We know that it can cause severe burns. We also know that it has been theorized that microwave radiation might cause severe psychological problems.

Scientists and engineers still have some differences of opinion as to exactly what portion of the energy spectrum they include in the term microwave. The frequencies generally considered to comprise the microwave band of the total electromagnetic spectrum range from about 10 million cycles per second—MHZ—to about 10,000 million—or 10 billion—cycles per second as defined by the American National Standards Institute or about 300 to 300,000 million cycles per second as defined in most European countries. Microwave radiation is a form of electromagnetic energy which is generated during the operation of such devices as radar, communication relay systems, electronic—microwave—ovens, medical and dental diathermy apparatus, alarm systems, microwave power devices, and certain other commercial and industrial apparatus.

The widespread use of microwave energy did not occur until the initiation of the Second World War although many of the characteristics of this energy had been under investigation prior to this time. Since World War II, there has been an enormous expansion in the numbers and types of devices which give off microwave radiation. Radars in military use have become more powerful and now utilize more frequencies. Private use of radar systems on boats and ships have become common. The use of various microwave devices in communications systems has grown almost expotentially.

As pointed out in a recent paper delivered by Dr. Wilbur A. Mills of the Environmental Protection Agency:

> In the meantime, the possibility of more people being exposed to more radio-frequency radiation increases: populations ease closer to transmitting towers, new stations are established, and new uses for the technology are developed. Recently, for example, a microwave system for transmitting converted solar energy in space to earth for conversion to electrical energy has been suggested. . . .
>
> The proliferation of the broadest sources of radiation, which are directed at people, plus the increasing use of nonionizing (microwave) radiation sources in industry and consumer products intensify a potential health hazard to an extremely large proportion of the population. That a hazard exists at current environmental levels has not been established. We must, however, measure and evaluate this radiation source before possible effects become apparent. *So large a population has never been exposed so nonselectively to any radiation source* (Emphasis added).

The Radiation Control for Health and Safety Act of 1968 (Public Law 90–602) assigned broad responsibilities to the Secretary of Health, Education, and Welfare to set and enforce performance standards for electronic products to protect the public health. In addition to other requirements, Public Law 90–602 requires the Secretary of Health, Education, and Welfare to study and evaluate emissions of, and conditions of exposure to, electronic product radiation and intense magnetic fields and to make grants and assign contracts in support of studies on the effect of electromagnetic radiation. The Secretary of Health, Education, and Welfare also is required to prepare reports to the Congress on the administration of Public Law 90–602.

A number of the comments provided within recent reports serve to emphasize the continuing and increasing danger of uncontrolled microwave radiation in the environment and also reveal that progress on the accumulation of knowledge about the chronic affects of exposure to such radiation is not occurring with any sense of urgency. For example, in the report for the year 1969—the 1969 annual report to the Congress—on the administration of Public Law 90–602, the comment is made that—

> A general problem facing the Department (HEW) is the lack of information to speak adequately to questions concerning the risk to human populations from insults of electronic product radiation. . . .

In the report to the Congress on progress during 1970, the following comments were noted:

> Little information is available of long-term biological effects associated with low-level exposure to most electromagnetic radiation. Epidemiological research during the past year has been principally confined to studies of ionizing radiation.
>
> Only a minute portion of these spectrums and a very limited biological area can be investigated with the current staff and budget. . . .

Although the report for 1971 is not available as yet, I have no reason to believe that the priority of work on biological effects has changed significantly.

I am convinced that the level of current effort to determine the long-term, as well as near-term, biological effects of electromagnetic radiation is not sufficient to promise any reasonably prompt development of data. It is my understanding that the Bureau of Radiological Health has programed about $3 million for work on electromagnetic radiation problems during fiscal year 1972. Most of this money is apparently directed toward electronic product surveillance. Less than $500,000 of these dollars are available for the study of the biological effects if radiation.

Nevertheless; it has come to my attention that the Office of Telecommunications Policy, Executive Office of the President, has studied carefully the possibility of radiation hazards from communications activities, which study was extended to include the hazards from electromagnetic radiation in general. OTC has developed a proposal which involves the expenditure of $63 million over a 5-year period. It is time to begin to provide the requisite funds to control the potential disaster which microwave radiation might create.

The bill which I am offering would require an increase in effort and require that the authorization for research on the biological effects of microwave radiation be increased by $10,000,000. This money would be specifically authorized for research in order to get answers as promptly as possible to the problem of determining the impact of nonionizing electromagnetic radiation on human beings. Research on this potential danger has been poorly supported for too long.

Public Law 90–602 indicates that it is the intent of the Congress to develop the solution to these problems and to protect the public from unnecessary exposure to electromagnetic radiation. Enactment of the legislation I am now introducing would serve notice that a higher priority is required in the conduct of research on this problem.

Mr. President, I send the bill to the desk for appropriate reference, and I ask unanimous consent that it 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. 3487

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 356(a) of the Public Health Service Act is amended by redesignating paragraph (6) as paragraph (7) and inserting immediately after paragraph (5) the following new paragraph:

"(6) conduct research on the chronic effects of microwave radiation;".

(b) Section 356 of such Act is further amended by adding at the end thereof the following new subsection:

"(c) There are authorized to be appropriated $10,000,000 for the purposes of carrying out research required under paragraph (6) of subsection (a) of this section. Amounts appropriated under this subsection shall be available until expended.".

By Mr. PEARSON:

S. 3488. A bill to provide for the assignment of Foreign Service officers to certain public organizations. Referred to the Committee on Foreign Relations.

Mr. PEARSON. Mr. President, the Foreign Service officers who represent the United States in countries around the world and perform vital foreign policy analysis in Washington are as fine a group of civil servants as this country has. Willing to serve anywhere in the world from Europe to dangerous assignments in Southeast Asia, time and again. Foreign Service officers have proven their expertise in the arts of diplomacy and execution of foreign policy. These men and women deserve the high esteem and thanks of us all.

Foreign Service officers recognize better than most that the Foreign Service and the Department of State are badly in need of reform. One of the most positive contributions made by Federal employees was the work done by the American Foreign Service Association's task forces which studied the Service and made rec-

ommendations for change. Those efforts at reform from within have already produced and will continue to produce positive changes in the Department of State and the Foreign Service.

The task of reform is, however, not yet complete. Too many outstanding young officers are leaving the Service, in part, because the number of qualified candidates for interesting, responsible and rewarding positions far exceeds the availability of those positions. Young people are turning elsewhere for careers in foreign affairs because they, too, understand that the Foreign Service may not have jobs to match their training and aspirations.

The legislation I introduce today would help to alleviate this problem, and alleviate it in a positive, productive way. This bill would make four basic contributions to the Foreign Service and to the United States. It would reduce the number of officers competing for the limited number of responsible positions. It would utilize the talents and training of Foreign Service Officers while providing badly needed skilled personnel to State and local governments and other public institutions in the United States. It would help to reacquaint the Foreign Service Officers with their own country at a time when they are on the threshold of assuming their most responsible posts. Finally, it would provide a new means of informing Americans in all parts of the country about American foreign policy.

This bill is not complex. It provides that each Foreign Service Officer serve 22 to 26 months in a position in the public service outside of Washington, D.C. between the eighth and 15th years of his Foreign Service career. At present, the Secretary of State has the necessary authority to assign officers to such service; this legislation simply makes such service mandatory unless the Secretary should waive its provisions in the interest of the United States. The officer may, of course, state preferences with respect to the type of organization and job to which he would be assigned and certainly should be encouraged to do so.

This bill would, in my opinion, offer several positive remedies to current problems. For the Foreign Service, it would provide interesting, rewarding positions for a larger number of officers. Those familiar with the Department understood how unfortunate it is for the bright, capable officer seeking responsibility to be given a task in the Department or abroad which underutilizes his talents and training. I believe that this underemployment of Foreign Service Officers is, in large part, responsible for the low morale of the Foreign Service. In addition to that, as the officers seek responsibility, they sometimes attempt to secure a "piece of the action" of foreign policy decisions. This too often adds to the list of horizontal and vertical clearances and unnecessarily slows down the decisionmaking process in the Department of State. This bill would help to alleviate both of those serious problems.

The quality of the positions Foreign Service officers hold under provisions of the bill is of critical importance. The Government of the United States will be paying their salaries and other expenses; they are, therefore, virtually free help for State and local governments and other public institutions in this country. I would anticipate a high demand for their services. The personnel office and the officers themselves should be quite demanding concerning the positions and the responsibilities involved in the job.

It would not be in the interest of the Foreign Service officers, the Department, or the host institution to ask for an officer unless the function he will perform is challenging and interesting to him. The positions may range from city manager of some small community to instructor in a community college. But the important point is that the task be a mutually beneficial one for the officer and the institution.

I believe that the corollary benefits to a 2-year assignment in the United States are almost as beneficial as the job itself. It is vital that the men and women who represent the United States and help formulate and execute its foreign policy remain in touch with their own country and its people. This is no idle, populist statement; it has a sound basis in principle.

Part of the function of the Foreign Service officer is to explain what is happening in the United States to officials and citizens of foreign countries. This cannot be done properly if one only reads about the United States from the New York Times, the Washington Post, or the International Herald-Tribune. To interpret properly events in this country, a diplomat must have what can only be described as a "feel" for what is happening in the United States. To acquire this understanding, a Foreign Service officer must spend time in this country, but not in Washington which, for all of its merits and attractions, is not representative of the entire Nation.

Finally, a Foreign Service officer living in a small community or even some larger cities would be a reservoir of knowledge and experiences about the foreign relations of this Nation that is seldom available to people outside of major metropolitan areas or university communities. To the extent that isolationism still exists, the experience and explanations of a foreign affairs professional could bring some of the intricacies of foreign affairs home to people of this country.

This legislation provides a simple, positive answer to some very complex problems and it does so at little or no additional cost to the American taxpayer. It is beneficial to the Foreign Service officers, to the Department of State, and to the country. I urge prompt consideration of this bill.

By Mr. HARTKE:

S. 3489. A bill to amend title 38, United States Code, to permit eligible persons training under chapter 35 to pursue programs of education at certain educational institutions outside the United States. Referred to the Committee on Veterans' Affairs.

Mr. HARTKE. Mr. President, I am introducing legislation today to remove a bar to the children of severely disabled veterans who desire to attend a university of their choice in a foreign country. Under existing legislation this limitation restricting school choice abroad does not apply to veterans who are themselves eligible for educational benefits, but it does act to preclude eligible children of 100 percent disabled veterans from attending a school located abroad. My attention was called to this inequity in the law by a double amputee rated 100 percent disabled by the Veterans' Administration, and I shall include in the RECORD his letter and the response received from the Veterans' Administration.

While this proposal may only affect a limited number of students, I feel very strongly that it is a group of students that is exceptionally entitled to select the school of their choice because of the many sacrifices made by their parents and sacrifices they themselves must make because of their parents' disabilities. I am hopeful that we can act early and in an affirmative manner to have this injustice removed.

Mr. President, I ask unanimous consent that Mr. Kaminsky's letter and the reply from the Veterans' Administration be printed in the RECORD as part of my statement.

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

NATIONAL AMPUTATION CHAPTER,
Whitestone, N.Y., March 22, 1972.

Senator VANCE HARTKE,
Chairman, Senate Veterans' Affairs Committee, Washington, D.C.

DEAR SENATOR HARTKE: As you know, I am a double leg amputee who lost my limbs in World War II. I am 100 percent service connected Disabled American Veteran and as a service connected veteran my dependents are entitled to educational assistance.

I was under the impression that my daughter Maxine was eligible for study at the American College in Jerusalem. She passed all the necessary examinations and has been accepted for enrollment in September 1972. I now learn that Maxine is not eligible for this college as she is only the dependent of a 100 percent service connected veteran.

For your information J. T. Taaffe, Jr., Director, Compensation, Pension and Education Services, of the Veterans' Administration wrote a letter on September 18, 1972, to the President of the American College in Jerusalem, that eligible veterans may receive educational assistance. This is being denied my daughter Maxine. She is heartbroken and I quite frankly cannot see their reasoning. If an eligible veteran is entitled to receive an education in this college, why not a dependent of a 100 percent service connected veteran?

Your help in this matter to allow my daughter Maxine to attend the American College in Jerusalem will be greatly appreciated.

Sincerely yours,

SOL KAMINSKY.

VETERANS' ADMINISTRATION,
Washington, D.C., April 5, 1972.

Hon. VANCE HARTKE,
Chairman, Committee on Veterans' Affairs, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to the inquiry on behalf of the daughter of Mr. Sol Kaminsky, who is interested in attending a school overseas under the War Orphans' and

Widows' Educational Assistance Act, as set forth in Chapter 35, Title 38 of the United States Code.

There is a prohibition in the existing law governing the program of educational assistance to children of veterans who have service connected disabilities totally and permanently disabled which limits payment of educational assistance to programs of education pursued in the United States or the Republic of the Philippines. Legislative change would be necessary to permit Miss Kaminsky to attend a college overseas and receive VA educational assistance.

We have asked The General Counsel to furnish your office with the legislative language necessary to accomplish a change in law which would permit children to train overseas. His office will furnish this to you shortly.

Sincerely yours,

OLNEY B. OWEN,
Chief Benefits Director.

By Mr. GURNEY:

S. 3490. A bill to authorize and request the President to issue annually a proclamation designating August 26 of each year as "Women's Rights Day." Referred to the Committee on the Judiciary.

Mr. GURNEY. Mr. President, I am introducing a bill calling for the designation of August 26 as "Women's Rights Day." My bill would set aside a day to commemorate our achievements in the field of women's rights. Unfortunately, as history shows, we have been all too slow in granting equality under the law to the women of this Nation—a group one could hardly term "minority."

August 26 represents a major landmark in the history of the struggle for equality, for on that day, in 1920, the 19th amendment giving women the right to vote was officially certified as part of our Constitution. It is only fitting therefore, that this day be designated women's rights day each year.

However, designation of this date will also recognize the culmination of the effort, which occurred just a few days ago when the Senate passed another landmark amendment, assuring equal rights under the law for men and women. As a cosponsor and strong supporter of the equal rights amendment, I was particularly pleased with the outcome of this vote, and I hope the States will move quickly to ratify this amendment.

The history behind both of these amendments, suffrage and equal rights, lends itself to an interesting comparison. It took the ladies almost three-quarters of a century to get congressional approval of their right to vote, but when it did pass, the margins were overwhelming: 304 to 90 in the House and 56 to 25 in the Senate. It took 36 State legislatures just over 1 year to ratify the amendment.

The track record for congressional approval of equal rights was similar; it took nearly 50 years to get this measure through Congress, but when it did pass Congress the votes were again overwhelming, 354 to 23 in the House and 84 to 8 in the Senate.

Mr. President, given these similiar legislative histories of these two historic amendments perhaps it is not too much to hope that the States will continue this comparison. As a matter of fact, we lopped nearly 25 years off the consideration process, and widened the congressional vote margin considerably, so if the States will do their part, we might even have ratification by August 26, 1972—all the more reason to celebrate "Women's Rights Day."

By Mr. SCHWEIKER:

S. 3491. A bill to amend the Flammable Fabrics Act to provide for a certification procedure, and for other purposes. Referred to the Committee on Commerce.

FLAMMABLE FABRICS ACT AMENDMENTS OF 1972

Mr. SCHWEIKER. Mr. President, I introduce a bill to amend the Flammable Fabrics Act to provide for a certification procedure, and for other purposes.

Mr. President, the Flammable Fabrics Act Amendments of 1972 are resigned to strengthen the existing Flammable Fabrics Act by speeding up the standard-setting procedure of the Department of Commerce and by giving the Federal Trade Commission new enforcement powers.

The original Flammable Fabrics Act was first enacted into law in 1953 after a series of tragic deaths in the late 1940's and early fifties which resulted mainly from burns received from children's rayon pile cowboy chaps and brushed rayon "torch" sweaters. At that time, the legislation applied only to wearing apparel.

The test of flammability was set by the statute. In 1954, in reaction to the rigid standard in the statute, an amendment was added to allow the marketing of apparel made from sheer fabrics like tulle and organdy.

Regretfully, the scope of the statute was too limited and the legislative standard was impractical.

Additional amendments were added in 1967 to apply the act to all articles of wearing apparel and to interior furnishings used in homes, offices, and other places of assembly or accommodation. The 1967 amendments did create a new mechanism for the setting of better flammability standards and the hope was that enforcement of the legislation would improve.

In the meantime, large numbers of serious injuries and deaths are still occurring from flammable fabrics. From 3,000 to 5,000 deaths a year occur. Nonfatal injuries amount to 150,000 to 250,000 per year. The financial loss is estimated to be over one-quarter billion dollars per year. Obviously, the pain and suffering caused to victims of these tragic burns cannot be estimated.

Our senior citizens, persons of 65 years or older, represent a large group of burn victims. Senior citizens account for about 10 percent of our country's total population, but they include 20 percent of all burned clothing cases.

Amazingly, the President's National Commission on Fire Prevention and Control has found that many firefighters use coats made of materials which the National Bureau of Standards has found to be unacceptable under the flammability standards recently issued for children's sleepwear.

In the history of this legislation, only three standards have been issued by the Commerce Department. In 1970, a standard was issued for small carpets and rugs.

On July 29, 1971, a standard was issued for children's sleepwear. Under the current procedures, which I intend to streamline with my legislation, the children's sleepwear standard will not become effective until July 29, 1972. Even then, cautionary labeling will be permitted for another year until July 29, 1973. Thus, 2 years will elapse between the initial publishing of the standard and its final applicability.

The third standard, originally issued back in 1970, deals with mattresses. Again, substantial delays have occurred in the setting of this standard.

One of the most serious problems has been the built-in delays in the standards-setting procedure. Under section 4(a) of the act, "Proceedings for the determination of an appropriate flammability standard" are to be instituted only after the Secretary of Commerce finds "that a new or amended flammability standard . . . may be needed . . ."

The procedural rules set up by the Secretary of Commerce involve two separate proceedings. An initial proceeding is for the development of an appropriate flammability standard. Later, after the conclusion of the initial proceeding, the Secretary either withdraws his finding that a new flammability standard may be needed or institutes a second "rule-making" proceeding for the actual determination of the flammability standard.

These procedures are not required by the statute. My legislation will make it clear that only a single proceeding for the development and determination of a standard will be instituted by the Commerce Department.

In addition to the other problems I have mentioned, the Federal Trade Commission which is charged with the responsibility of enforcing the legislation, has been seriously hampered by the statutory language. In June 1970, then Chairman, Caspar W. Weinberger of the Federal Trade Commission testified before the Subcommittee on Consumers of the Senate Committee on Commerce and recommended amendments to the existing legislation to improve the ability of the Commission to enforce the act. Although amendments incorporating Chairman Weinberger's suggestions have previously been before Congress, no changes have been made and I am incorporating these suggestions into the Flammable Fabrics Act Amendments of 1972 in the hope that they will be enacted into law soon.

Here is what the Flammable Fabrics Act Amendments of 1972 would do:

First, it would require the Secretary of Commerce to submit a report to the Congress within 90 days setting forth the specific types of fabrics for which new flammability standards should be adopted. The Secretary would also be required to submit a schedule describing when he intends to institute proceedings for the determination of such new standards. A specific section of the report will be required regarding the need for new standards covering senior citizens.

Second, it would streamline the standard-setting procedure by making clear

that only one administrative proceeding for the development and determination of an appropriate flammability standard should be held by the Commerce Department. Thus, the dual proceedings which are not now required by the statute would be done away with.

Third, my bill would speed up the standard-setting procedure by making new flammable fabrics standards effective immediately, not 1 year after the standard becomes final. At the present time, there is a grace period permitted by the statute which prevents new flammability standards from going into effect for 12 months following publication in the Federal Register.

In order to prevent an inequitable application of a new standard, however, my legislation would permit firms which can affirmatively show that they cannot comply with a new standard to obtain an exemption for 1 year if a cautionary label is included on the product. That label must indicate first that the fabric does not meet the new standard and therefore is flammable; second, that the fabric should not be worn near sources of fire; and third, the particular standard from which the fabric has been exempted. Thus, if the standard simply could not be met, a 1-year delay with a cautionary label would be permitted.

Fourth, this bill calls for a new certifying procedure. No products could be manufactured for sale or sold unless the product is certified by the manufacturer or the importer to meet the requirements of the applicable standard.

Violations of the certification provisions will be unlawful and will constitute an unfair method of competition and an unfair and deceptive act or practice in commerce under the Federal Trade Commission Act. The Federal Trade Commission would be charged with enforcement of the certification provisions.

Fifth, the legislation amends section 7 of the Flammable Fabrics Act which provides criminal sanctions for willful violations of the act. In accordance with suggestions made by the FTC, violations of the act "with knowledge," but not necessarily with "willfullness", will constitute felonies.

Sixth, the legislation specifically requires that within 6 months after the date of enactment, new standards be issued for children's sleepwear covering children up to the age of 12. Currently, proposed standards only cover children up to 6 years old, and this should be broadened.

Furthermore, any act in violation of the statute would be a misdemeanor.

Also, the legislation provides for civil penalties which will give the Federal Trade Commission an immediate sanction and will permit the Commission to go after violators where criminal sanctions are not appropriate.

Although this legislation is written to conform with the present statute which gives authority over the matter to the Commerce Department, if legislation to set up a new consumer safety agency is passed, jurisdiction over flammable fabrics might well become vested in the new agency. These amendments are equally applicable to any such new agency.

Mr. President, we have had the Flammable Fabrics Act on the books since 1953 and when you review the progress we have made in almost 20 years, it becomes clear that we simply have not done enough to meet the problem. I am hopeful that the Senate will act quickly on this much-needed legislation.

By Mr. MATHIAS (for himself, Mr. BEALL, Mr. BOGGS, Mr. BROOKE, Mr. CASE, Mr. COOPER, Mr. HATFIELD, Mr. JAVITS, Mr. PERCY, Mr. SAXBE, Mr. STEVENS, Mr. TAFT, and Mr. WEICKER):

S. 3492. A bill to provide for a comprehensive program designed to strengthen the criminal justice system in the United States, to attack urban street crime, to undertake new training programs for law enforcement personnel, to improve the training, care, and rehabilitation of criminal offenders, and for other purposes. Referred to the Committee on the Judiciary.

OMNIBUS CRIMINAL JUSTICE REFORM AMENDMENT OF 1972

Mr. MATHIAS. Mr. President, today Senators BEALL, BOGGS, BROOKE, CASE, COOPER, HATFIELD, JAVITS, PERCY, SAXBE, STEVENS, TAFT, WEICKER, and I are introducing the Criminal Justice Reform Amendments of 1972. It is a massive bill—nine titles, 68 pages, and 18 programs—making up one of the most comprehensive criminal justice reform bills ever introduced in this Congress. It calls for new expenditures of upwards of 1½ billion dollars.

This legislation results from many months and hours of work on the part of each of us. Most of the proposals are new; some reflect ideas already introduced in a preliminary form by the sponsoring Senators; and still others are refinements of bills introduced by Senators on the other side of the aisle. In putting this package together, some of us disagreed among ourselves on certain provisions. Some Senators would still like to modify certain proposals, but we have all agreed to stand behind the bill as a package and push hard for its enactment this year. The most important fact, however, is that the bills together represent one effort—one proposal, making the sum greater than any of its parts.

Crime is not a partisan issue, for surely if this Nation is to stop its growing crime rate, Republicans and Democrats alike must join together. Although the initial effort on this bill was undertaken by a group of Republican Senators, we welcome the support of all. Democrats and Republicans must be willing to have their names side by side on legislation if we are ever to go to the conference table and sit side by side to enact meaningful legislation.

The legislation encompasses the full range of the criminal justice system. It covers prison reform, juvenile delinquency, court administration, criminal court procedures, urban crime, prisoners' rights, training of law enforcement officers, rights of victims, and benefits for law enforcement officers. It calls for comprehensive studies of the whole thrust of our criminal justice system and especially its utility in the area of victimless crime.

If we are to tackle the criminal justice problem in America, we cannot do it in an isolated way. It is not enough to hire police if we do not fully train them; it is not enough to buy new court facilities when we have few professional court administrators to run them effectively; it is not enough to improve our jails if we ignore our courts and our police.

The criminal reform system is one chain linked together by people and institutions. The chain starts when a person is arrested and ends when he is released back into the community. The unfortunate thing about the role of the community, however, is that it often has the inappropriate burden to undo the failures of the criminal justice system, rather than to extend its success.

To make the chain effective, we must repair each link, for today the failure of one is the failure of all. For instance, if the prisons do not rehabilitate, it makes little difference whether the police are competent, but rather as we have seen, the failure of the prisons only provides more grease for the revolving doors of arrest-trial-prison.

The bill which we have introduced recognizes this need for a well-balanced, overall approach to criminal justice reform. We have put together a package which, if enacted, would move the entire system along the path toward greater responsiveness, responsibility, and public trust.

We believe this comprehensive approach as embodied in this bill will reduce the intolerably high level of crime in this country. It will reform our prisons, which now graduate those prepared and trained to commit more crimes. It will reform our courts which lack fairness and efficiency. It will aid our law enforcement personnel who desire and need greater training and professionalism. And, it will reform our attitude about the way we deal with the plight of the innocent victims of crime. These proposals will complement and supplement the great initiatives of this administration.

Let me briefly go through the bill. The summary which will follow these remarks should be sufficient for a detailed explanation.

A good deal of the legislation amends the Omnibus Crime Control and Safe Streets Act of 1968. This is the law which established the Law Enforcement Assistance Administration, alphabetically called the LEAA. This Administration, as many of you know, distributes almost all of the Federal Government's crime fighting money to the States in order to implement statewide plans to fight crime.

Titles I and II of our bill provide the Administrator of LEAA with three additional programs and with an additional authorization of $600 million. Both titles accept the notion that each State must develop and implement criminal justice reforms which they, as individual States and cities, deem appropirate. However, we feel it is necessary that each State and city that develops progressive reforms should be rewarded and encouraged by the Federal Government.

Title I appropriates money to States which enact certain reforms and which submits a statewide comprehensive cri-

minal justice reform plan designed to aid the police, corrections, and court administrators.

Title II creates two programs to directly assist our large metropolitan areas. One program is similar to the one in title I, except here money is passed directly to the large cities. The second is a codification of the President's program on impacted aid to fight "street crimes." The bill recognizes that the city is where the real crime battle must be waged and won.

Title III deals with juvenile delinquency. Few realize that 75 percent of all first-time juvenile offenders are likely to commit further offenses. Ninety percent of all adult felons have juvenile offense records. And to cite one more statistic—perhaps the most meaningful—over 50 percent of all serious crime in America is committed by persons under 18 years of age. Clearly, the juvenile crime of today is the adult crime of tomorrow, and unless we stop this progression, we will have guaranteed crime in America for generations to come. A dollar spent on a juvenile delinquent will be many dollars saved—and, more important, a juvenile saved.

LEAA, through its State plans, distributes the bulk of the money to combat juvenile delinquency, At present they are allocating about 20 percent or $120 million to juvenile delinquency; an amount woefully inadequate considering the amount of juvenile crime. The Youth Development Delinquency Prevention Administration, alphabetically called YDDPA, of the Department of Health, Education, and Welfare, distributes most of the remainder, approximately $10 million.

YDDPA as originally conceived, was to deal with prevention of juvenile delinquency, while LEAA was to deal with treatment and rehabilitation within the traditional criminal justice system. This bifurcation has been blurred and needs once again to be restated.

Title III requires each State to have within its statewide plan, as required by LEAA, a juvenile justice component; that is, a plan as to how the State anticipates to spend its money on juvenile delinquency. A certain percentage of the money which a State received from LEAA must be devoted to juvenile delinquency and this juvenile justice component.

Each State's juvenile plan must contain certain reforms, and $500 million is authorized to implement these reforms. Provision must be made for the existence and coordination of certain youth services and adequate resources for cities. Most important, I believe, is the requirement that States treat and detain juveniles in separate facilities from adults, and, among juveniles, that States treat and detain separately those juveniles who have committed offenses which, if committed by an adult, would not be a criminal act at all. If you put a high school pot smoker or car thief in the same cell as an adult murderer, the juvenile will be likely to suffer and come out a hardened criminal. It would also seem logical that if a child who has been charged as being a "runaway" or a "truant" is put in the same cell as a juvenile rapist, the former will hardly benefit.

This title repeals the YDDPA program and in its place sets up a full-fledged program within HEW for the prevention of juvenile delinquency. The program is a modification of a proposal suggested by LEAA. The Juvenile Delinquency Prevention and Coordination Administration is created with an authorized appropriation of 250 million dollars.

Each State, through an established State Planning Agency, would submit a comprehensive plan in the area of delinquency prevention. States would be allocated adequate money for the creation of such an agency, the required plan, and for the implementation of these plans. Provision must be made for the existence and coordination of certain youth services and adequate resources for cities.

The establishment of this new agency clearly puts HEW on an equal footing with LEAA in the area of juvenile delinquency.

The last section of this juvenile delinquency title sets forth the rights and privileges of juveniles before Federal courts. Until we are certain that the courts and correctional systems are truly going to protect the children of this Nation, we must enact the necessary safeguards. Parents and often judges themselves believe that once a juvenile is subject to the sanctions of the criminal justice system, his interests will be primarily considered. Such a trust has been proven to be illusive for we see the rights and dignity of juveniles trampled upon by the system.

These amendments codify to some extent recent Supreme Court rulings. Their purpose is to afford to juveniles the same procedural rights afforded to adults when appearing before Federal courts, for clearly experience has shown us that the correctional system and its effects make little distinction between adults and children.

Title IV creates regional academies. These academies will have the primary function of providing a uniform 3-year course of instruction for high school graduates desiring a college equivalent degree in one of the many law enforcement fields, including police science, courts, administration, and corrections. In order to graduate, a student must successfully complete a 1-year internship in his or her vocational field in the region in which the academy serves. This internship provides the graduate with a necessary local vocational experience.

The academies in addition would provide other training and educational services to State and Federal correctional personnel, the community, and related professions.

A competent and well-trained cadre of men and women to work in the law-enforcement field is the best guarantee to an efficient and fair criminal justice system. I find it astonishing that we spend millions to train men and women to walk on the moon and only pennies to train law-enforcement officers to walk the streets of our cities.

There is little professional input throughout the entire criminal system. Prosecuting attorneys are asked to decide whether a defendant should be diverted from the criminal justice system. Judges are asked to sentence criminals, and parole boards are asked to decide the appropriateness and the conditions of the offender's release. All of these responsibilities are placed upon these officials, but usually without any professional help. It is an unfair burden to these officials and to the individual offenders.

An administrator at a parole hearing will spend only a few minutes to make a decision that will affect an inmate's life and livelihood. The Board holds an average of 12,000 hearings every year amounting to more than 250 per each working day.

Defendants are now papered through the bail agency to the probation office, to the prison and then to the parole board with little continuity of supervision and with much duplication. It would be better if these functions were performed and coordinated by one body.

If rehabilitation is going to work, we must individualize treatment; we must assess the offender's needs, and relate to him our expectations. No one system of rehabilitation can be tailored for all inmates. To meet these objectives the bill creates a uniform and predictable system of Federal probation and parole administered by district boards. These boards, professionally staffed, will recommend appropriate sentencing, study the progress of the individual offender, recommend parole and conditions for parole, and, in general, provide the needed continuity and supervision which is now lacking.

Title V also creates a commission on correctional standards which will establish broad standards for all of America's prisons. If we are to expect graduates from our correctional system to act and live in society—95 percent of all inmates return to our society—we must treat them in a way which furthers their rehabilitation, rather than their alienation.

When we speak of standards we are not talking about providing a country club setting, but only the guarantee of adequate medical care, food, clothing, and basic constitutional rights. Prison is a place of confinement. But current problems of lack of human rights and dignity are adverse not only to the interests of the inmates themselves, but to the interests of the public in the administration of its justice and to the civilization which we are sustaining.

Title VI provides specific correctional reforms. Inmates in Federal prisons are paid between 17 and 49 cents per hour for work performed in the Federal prison industry. By providing greater benefits and incentives for inmates to work, you are strengthening the rehabilitative system as well as saving money. For instance, for those inmates who are heads of a household, by depriving them of adequate pay to sustain their families, you are furthering the likelihood of having that family's being placed on the welfare rolls to the fiscal burden of the Government. In addition, you are gradually separating the ties with the family, which can be the anchor for any rehabilitative efforts. If an inmate becomes accustomed to work and begins to enjoy it, and desires and receives employment because

of it, that is, many times all that is needed for adjustment to society.

Title VI gives inmates in Federal prisons a minimum hourly wage of 75 cents and, to encourage States to do the same, it forbids the Federal Government from purchasing goods produced by State prisons unless a similar wage scale is provided.

The amendment also provides that all profits from the prison industry be used for the rehabilitation of its inmates. Although the Federal Bureau of Prisons has the authority to accomplish this objective now, without legislation, this would make it mandatory and a declared congressional policy. The Federal prison industry must be concerned with producing men and women capable of functioning in society rather than producing profits.

Title VI enables all inmates to get social security credit for time spent working in prison industries. Again, if we are to expect adjustment by the inmates when they return to society, we must make this road to adjustment as short as possible.

The title specifically provides two necessary constitutional rights for all inmates. First, it gives all offenders the right to vote in Federal elections after they have been released from the jurisdiction of the courts. A similar measure was recently passed for the District of Columbia. States determine the qualifications of its citizens to vote. At times, the Congress, the courts and the Constitution have limited that power with regard to voting qualifications for Federal elections. This would create one more such limitation.

Some would extend this right to all elections. We do not go that far. Some would restore the right to vote immediately after release from prison and still others would prevent its denial. We do not go that far. What we say is that when the court no longer has jurisdiction over a particular defendent, at that time the State cannot deprive the offender of his right to vote in Federal elections. Of course, if a State restores this right earlier in the judicial process or never deprives it, then this amendment would have no application.

There is no greater symbolic act of acceptance, nor no greater act of rejection than the denial of the right or the right to vote. In a democratic, free, and dynamic society, the denial of the right to vote makes one less than a citizen for he is denied a most fundamental right. How can we expect ex-offenders to respect the political system—the system which created the courts and the prisons which judged and treated him—if they have no right to vote and exercise their opportunity to lawfully register his views in that system?

Graduates of our penal system should not be identified by society, but only with society.

If one commits an offense against the electoral process, it seems appropriate to deny him his right to vote, for, that would be a rational consequence of his illegal action. This amendment makes such a stipulation. But when one commits a crime, which is unrelated to his right to vote, it is unfair to deny him that right. It reminds me of the illogical application of the sanctions of the law when one is found guilty of stealing a car and the offender is deprived of his license to vote but not of his license to drive.

If our criminal penalties more appropriately fit the crime, all citizens including offenders, would have more respect and less resentment for the law. In the long run, in such a system, there would be greater chance of rehabilitation, for then rehabilitation would be a specific failure of taking into account a specific consequence of a specific act.

Second, a corresponding and relating amendment provides inmates with the right to sue in Federal courts for the restoration of their civil rights. Specifically, the amendment changes title 42, section 1988 of the U.S. Code. This is the section of Federal Civil Procedure which determines the rights of those to have standing to sue in Federal courts. Federal courts however apply the ruling of Erie against Thompson, that is, that applicable State rule on procedure must be applied with regard to the standing of the plaintiff to bring suit. All States have varying forms of procedure including some which provide no standing at all for certain offenders to bring civil action actions, making them—in the eyes of that State law and in their own eyes—civilly dead. This amendment would enable inmates to sue in Federal courts for vindication and restoration of these civil rights.

Lastly the title enables Federal surplus food commodities to be given to State and Federal prisons.

Title VII creates a Federal Commission on Victimless Crimes which will study and recommend to the Congress its findings as to the appropriateness of criminal sanctions to certain crimes where there is no recognized "victim" besides the perpetrator of the crime. Crimes such as drug addiction and use, prostitution, gambling, vagrancy, disorderly conduct, truancy, alcoholism, selective service violations, are some of the crimes which the Commission would consider.

Every major investigation into the criminal justice system in the United States, including the prestigious President's Commission on Law Enforcement and the Administration of Justice, have highlighted this problem. It is often said that if the courts and the correctional system discharges those who are in no need of criminal sanctions and rehabilitation, it would leave those men and women who were indeed criminally dangerous to society.

I would not be surprised to find that those who have been found guilty of victimless crimes become the second offenders—the recidivisits who we often talk about. When you put in the same cell or the same prison one found guilty of gambling or drug abuse with one who has been found guilty of homicide or rape, the results are obvious—the offender of the victimless crime will likely commit a crime with a victim.

Our institutions should deal with these people, but not at the expense of the public and the overburdened criminal justice system. The question is which is the best and most economic approach? It could be that in many cases, health and mental care would be less costly to the society and to the individual. The Commission, it would be hoped, would answer these questions.

Titles VIII and IX relate to a most important area—the real victims of crimes—the people who are robbed, killed, and raped, their families and those who must now care for the victim. And, also the law enforcement personnel who are killed in the line of duty. These are the direct and innocent victims of crime and it is about time the Congress provided for them.

Title VIII provides death benefits of up to $50,000 for law enforcement personnel killed in action. Title IX creates a comprehensive system of reimbursing these victims of crime. This bill is essentially the one introduced by Senator MANSFIELD and already considered by Senator MCCLELLAN'S Subcommittee on Criminal Laws and Procedures of the Senate Judiciary Committee. It provides a mechanism by which citizens who have been injured or killed by violent crimes can be compensated up to $25,000. Similar State programs would be able to be established and funded. The State of Maryland has already established such a system for victim compensation and they should be lauded for their leadership.

Crime, as we all know, is born out of poverty and frustration. This bill makes no attempt to attack all the causes of crime. It should be obvious, however, that we can create an efficient court system, produce trained and competent police, and build modern jails with successful rehabilitative techniques, but if the ex-offender is returned to the same destructive environment we would not have maximized our investment and a good deal of our efforts would be wasted. The cosponsors have addressed these social issues in other legislative proposals. Perhaps we will join together again in a legislative package toward attaining once again these objectives.

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

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

SUMMARY OF THE OMNIBUS CRIMINAL JUSTICE REFORM AMENDMENTS OF 1972

TITLE I: MODEL CRIMINAL JUSTICE GRANT PROGRAM

This Title enables the Law Enforcement Assistance Administration (LEAA) to administer funds to qualifying states under a model Criminal Justice Program. A state desiring to qualify for funds must set forth a comprehensive criminal justice reform program for the entire state and its local levels of government. The Federal Government would grant up to 75 percent of the cost of implementing approved projects. A state's comprehensive program must touch all of the facets of criminal justice, including programs designed to renovate facilities, improve law enforcement personnel, improve court administration and the correctional systems of the state. The moneys allocated to any state under the Plan would be *in addition to* any money received from LEAA under existing programs.

The Administrator of LEAA will prescribe basic criteria and requirements for applicant states. For instance, the Title provides that all states must establish: uniform recruitment, retirement and advancement standards, adequate compensation, and mandatory training for all law enforcement personnel.

With regard to court reform, each state and locality within such state must implement such reforms as will insure that the trial of all adult offenses will be commenced no later than 60 days from date of arrest or charge. These reforms may include increasing the number of prosecutors and judges and improving the efficiency of criminal court procedures and administration.

In the area of corrections, each state and where appropriate each locality, under this Title, must: (1) individualize treatment and security through classification procedures; (2) provide comprehensive vocational and educational programs; (3) provide separate detention facilities for juveniles; (4) establish statewide standards for jails; (5) provide extended parole and probationary services; (6) establish statewide training and compensation standards for correctional personnel; and (7) develop and operate community programs for drug and alcohol addicts.

Each state must have under study (1) the consolidation of the law enforcement agencies within the state and (2) the application of criminal laws to victimless crimes.

The Administrator is authorized to provide technical assistance to states and localities in order to implement the objectives of the Title.

The Administrator is authorized to waive some of the basic criteria.

Fifty percent of the funds appropriated under this Title shall be allocated to the State Planning Agencies established in Title I of the Safe Streets Act with the remaining 50 percent left to the discretion of the Administration to be divided among cities and other local governments.

TITLE II: AID TO THE CITIES

This Title authorizes the Law Enforcement Assistance Administration (LEAA) to grant to cities with a population of over 250,000, 300 million dollars to fight crime under either of two proposed programs. Any money received under either program would not decrease any allocated amount eligible to be received by that city under any other program administered by LEAA.

Program #1 (Police, Courts and Corrections) A program is established by which LEAA is authorized to grant up to 80 percent of the appropriated money to eligible cities in order to pay up to 90 percent of the costs of carrying out certain crime fighting programs. An "eligible city" is one which is among the top 25 cities in the United States having the highest crime index as determined by the Federal Bureau of Investigation.

An eligible city shall submit its application directly to the Administrator of LEAA. Such application shall set forth a program for:

(1) *strengthening the police,* including programs designed to: facilitate recruitment and training; improve administrative machinery; aid auxiliary police organizations; and aid enforcement of narcotics laws.

(2) *reforming the courts,* including projects designed to: improve efficiency of court administration; improve efficiency of personnel in connection wtih disposition of criminal cases; establish uniform criteria for pretrial detention; provide alternatives to the bail bond system and establish pretrial services.

(3) *improving the corrections,* including projects designed to: establish appropriate qualifications and standards for correctional officers; facilitate recruitment and training of such officers; provide separate detention facilities for juveniles and relieve overcrowding in existing correctional facilities.

Each eligible city can spend up to ⅓ of its funds on each of the above three components.

In addition, the application must set forth adequate assurances for fiscal control auditing and adequate reporting and evaluation.

Program #2 (Street Crimes) The purpose of this program is to reduce street crimes, such as robbery, rape and homicide and assault.

Any eligible city desiring to participate shall make an application directly to the Administrator of LEAA. Such application shall contain a detailed description of those activities which will best contribute to reducing street crime, including: Public education, increased police patrolling or any innovative police activity or equipment designed to reduce street crimes; programs to create priorities in prosecuting those who commit street crimes, programs for speedy trials and strengthened criminal court procedures and special rehabilitative efforts designed to help first offenders.

In addition, the application must set forth assurances for adequate auditing and evaluation.

The Administrator of LEAA can grant up to 20 percent of the appropriated money to carry out the purpose of this program. The Federal Government is authorized to pay 90 percent of the costs of any project.

TITLE III: JUVENILE DELINQUENCY

This Title repeals the present Juvenile Delinquency Prevention and Control Act of 1968 and creates in its place a comprehensive program to combat juvenile delinquency in America. It proposes a change in the operation of the Law Enforcement Assistance Administration, the Department of Health, Education and Welfare and their respective activities as they relate to juvenile delinquency as well as substantive changes in Title 18 of the U.S. Code governing the rights of juveniles in Federal courts.

A. *The Juvenile Delinquency Prevention and Coordination Administration.* It is envisioned that the Juvenile Delinquency Prevention and Coordination Administration (Federal agency) which is proposed to be created within the Department of Health, Education and Welfare, headed by a Presidentially appointed Administrator, will be the primary grantor of Federal planning and action money for the *prevention* of juvenile delinquency and for the coordination and implementation of youth services among the fifty states.

In order to encourage development of comprehensive approaches to the prevention of juvenile delinquency, the Federal agency is authorized to make grants for the establishment and operation of a State Juvenile Delinquency Prevention and Coordination Planning Agency (State agency). Any existing state-wide agency which meets the legislative requirements can qualify. The State Agency must have the authority to coordinate related juvenile delinquency prevention activities of state operating agencies involved in education, mental health, public health, welfare, youth development and vocational education. The State Agency must be representative of all agencies relating to the prevention of juvenile delinquency in the state and local governments.

The primary function of the State Agency is to develop and coordinate in accordance with regulations and guidelines set forth by the Federal agency, a state-wide comprehensive youth services system (or plan) for juvenile delinquency prevention. This plan shall set forth means in which the state and its localities intend to prevent juvenile delinquency including, but not limited to: individual, family and group counseling; diagnostic services; vocational remedial education and tutoring, and other educational opportunities outside the established school system; emergency shelters; halfway houses; extended probationary and parole services; after-care services; health services; drug abuse programs; social, cultural and recreational activities; para-professional volunteer programs; community awareness programs; runaway homes; foster care and shelter care homes and group homes.

The Federal government shall pay 100 percent of the costs for the establishment of such State Agencies and for the development of these Comprehensive Youth Services Plans. Each state shall receive $250,000 for this purpose and remaining planning money will be divided among the states according to their need and population. Provision is made to assure that adequate planning money will go to local levels of government.

The Federal Agency appropriates "action" money to implement these state-wide plans. However, no state plan will be approved as comprehensive and thus no action money appropriated unless the plan meets certain requirements. Among these are the need to devote adequate resources to (1) urban areas, and (2) alternative methods of handling traditional law enforcement problems which involve juvenile delinquents. The plan must meet certain technical qualifications; for instance, it must set forth a description of the state and local agencies and their juvenile delinquency prevention programs which are planned to be coordinated, five and ten year implementation goals and program coordination with the state LEAA administration. In addition, the Plan must adequately protect privacy rights, provide for assurances of adequate hearings, adequate evaluation and auditing proceedings and assurances that it will provide enough resources to minority and disadvantaged youth.

Seventy percent of the "action" money will be distributed among the states on the basis of their population, retaining 30 percent of these funds for direct distribution to the cities and other levels of government on the basis of need.

The program enables the state administration of courts and corrections upon their approval and designation, to take advantage of these programs as a part of their juvenile justice program.

The Federal agency will be authorized to provide both technical assistance and evaluating services to the states to assist them in carrying out the purposes of this Title. The Federal agency will also serve as a research center in the area of juvenile delinquency and related youth problems. And in order to test this research, the agency is authorized to give demonstration grants for innovative and experimental programs.

Finally, there is established an Inter-Agency Council to be headed by the Administrator of this newly created Federal Agency, and other Presidentially appointed members, for the purpose of coordinating all Federal activities and services relating to juvenile delinquency.

Two hundred and fifty million dollars is authorized to carry out the provisions of this Title.

B. *Amendments to the Crime Control and Safe Streets Act of 1968.*

This Title proposes changes in the operation of the Law Enforcement Assistance Administration as its programs relating to the treatment and rehabilitation of juvenile delinquents.

The Amendments provide that each comprehensive state-wide plan as now required by the Omnibus Crime Control and Safe Streets Act of 1968, must contain a juvenile justice component; that is, a plan by the state and its localities on how it intends to spend its Federal LEAA money for the treatment and rehabilitation of juvenile delinquents. Furthermore, the Amendments provide that a certain percentage of these LEAA

funds as determined by the Administrator of LEAA, must be devoted by each state to the implementation of this juvenile justice plan.

The plan to be funded must contain or provide, among other things that:

(1) at least 50 percent of its allocated resources be devoted to the development and use of alternative methods of incarceration and rehabilitation other than in the traditional detention center, training and reform schools and prisons.

(2) the state will treat and maintain in separate facilities and programs juveniles who have committed violations which, if committed by adults, would not be a criminal act, and

(3) sufficient advanced techniques in the development of services and facilities including community based services, diagnostic facilities, expanded use of probation as an alternative to incarceration, etc.

Five hundred million dollars is authorized to be appropriated to the states to implement these plans.

C. *Criminal Code Amendments:*

This Title amends Title 18 of the U.S. Code as it relates to the procedure and rights of juveniles before Federal courts. The Amendment does the following:

Trial Procedure:

(1) Juveniles will not be tried in a United States District Court unless there is no appropriate state juvenile court or state rehabilitation services associated with an existing juvenile court. The burden is upon the Attorney General to so certify; If the Attorney General does not so certify, the juvenile is surrendered to state authorities for appropriate action.

(2) If the Attorney General does so certify, the juvenile is proceeded against through an information (rather than instituting criminal prosecutions); however, criminal prosecutions can be initiated against the juvenile who has committed a crime which, if committed by an adult, would be a felony, provided after a hearing, it is found that there is no reasonable prospect for rehabilitating the juvenile before his majority.

(3) The Attorney General is not permitted to detain any juvenile alleged or found to be delinquent in any institution in which adults are convicted of a crime or awaiting trial.

Rights of the Juvenile Once Detained are set forth:

(A) Juveniles must be advised of legal rights upon initial detention and detailing offices must immediately notify Office of Attorney General and forthwith take juvenile before a committing magistrate.

(B) Juvenile can only be detained in a juvenile home or other suitable place designated by Attorney General. However, once arrested, the juvenile cannot be detained beyond the time than is necessary to produce the juvenile before a committing magistrate.

(C) The committing magistrate shall with all reasonable speed release the juvenile to his parents or appropriate guardians upon their promise to bring the juvenile before the court unless the committing magistrate determines that the juvenile should be detained because he is (1) danger to the community, (2) has no person to supervise his release, or (3) his return to court is uncertain.

(D) The juvenile shall have right to counsel (appointed if necessary) through all stages of the proceeding and unless advised by legal counsel no prior statements of the juvenile while in custody about his guilt or innocence is admissable in court.

(E) The juvenile shall be afforded the privilege against self-incrimination.

(F) Any extra-judicial statement or evidence which would be constitutionally inadmissable in a criminal proceeding against the juvenile shall not be admitted into evidence over the objections made by or in behalf of the juvenile.

(G) All confessions or admissions to support a finding that the juvenile committed the act must be corroborated.

TITLE IV: TRAINING AND EDUCATION PROGRAMS IN THE AREA OF LAW ENFORCEMENT

This Title creates a unique means of providing education and training for those who have an interest in law enforcement. To obtain this objective regional academies are created throughout the country under the supervision of a Coordinating Council.

An eleven member Coordinating Council for Regional Law Enforcement Academies (National Council) is authorized to assist the Secretary of HEW and the Administrator of the Law Enforcement Assistance Administration in creating not less than seven regional academies. The Council shall, among other things, supervise the operation of these academies, establishing general policy guidelines with respect to curriculum development and the general operation of the academies' grant degrees and report annually to the Congress on the operation of the academies.

The heart of the legislation is the creation of regional academies to serve the geographic region which the Academy represents. Although it shall be so located as to best serve the particular region, an existing college campus is given some priority. The regional academy is administered by a Regional Board comprised of two persons from each state within the region appointed by the State Planning Board established in the Omnibus Crime Control and Safe Streets Act of 1968.

The Regional Board's main function is to operate the regional academy. It shall appoint a chancellor and develop, along with guidelines set forth by the National Council, curriculums of study.

A wide spectrum of people will be eligible to attend the numerous types of programs at the Academy. Its major program will be a course of instruction which will lead to a degree in one or more areas in the field of law enforcement. The academy will be authorized to provide a three-year course of instruction for those interested in pursuing vocations in police, court administration, corrections and other related law enforcement fields. The three years of instruction will provide not only specific instuction in a particular vocational field, but also emphasis will be placed on a general liberal arts education including courses in humanities, community relations, civics, psychology, etc. The three year course of instruction in each academy is to be similar throughout the nation in order to achieve uniformity of instruction and competence among its graduates. However, to qualify for the degree and in order to make the education relevant to the region in which the Academy is located, a one-year internship program is required in a law enforcement agency located within the region. Those who attend this degree program will be eligible to receive Federal stipends.

The Regional Academy is authorized to provide full or part-time training programs for state and Federal correctional personnel. In addition, the Academy is authorized to establish programs which will enable it to serve as (1) a training institution for students and practitioners of criminal justice; (2) a centralized channel for the recruitment of criminal justice personnel for Federal, State and local criminal justice agencies; (3) a consultation center for criminal justice agencies and professional schools and (4) a research center for basic and applied studies in criminal justice; $100,000.00 is authorized to be appropriated to carry out the objectives of this Title.

TITLE V: CORRECTIONAL REORGANIZATION AND STANDARDS

A. Reorganization of Federal corrections

This Title creates a unique scheme of assuring uniformity and predictability and an underlining fairness with regard to the treatment of all Federal prisoners throughout all stages of their incarceration and court supervision. At the supervisory level is a Federal Circuit Offenders Disposition Board (Federal Circuit Board). This is an 11 member Presidentially appointed Board. Each appointee represents one of the eleven Federal judicial circuit throughout the country. The Board's main function is to oversee the operation and promulgate guidelines for the operation of the District Boards located within each Circuit Board.

The Circuit Board formulates a national policy for the treatment of offenders under the jurisdiction of all Federal courts. This policy shall include sentencing guidelines and standards for probation and parole.

In each judicial district within the eleven judicial circuits a District Court Disposition Board (District Board) is created. The District Board is to be well equipped and staffed and capable of assuming the functions previously performed by bail agencies, probation and parole boards.

The District Board shall have continuing authority over each defendant and have the responsibility of recommending to the Federal Court such things as the appropriate sentencing for the offender, goals for the offender to attain while incarcerated, and the appropriateness of parole and the type of parole supervision and programs.

The District Boards involvement commences after arraignment of a person charged with a Federal crime. The Board makes a complete investigation of the defendant's background, including family ties, employment record, etc. Where appropriate it shall order mental observations and tests for drug addiction and alcoholism. Within 30 days it submits a report of its findings to the defendant's counsel and the office of the U.S. Attorney having jurisdiction over the case. The report is made a permanent part of the defendant's record and shall include recommendations for alternatives to prosecution and other diversionary programs.

If the defendant is convicted the Board then files a report which recommends sentencing for the defendant.

The District Board, in order to carry out the functions of the Board of Parole and Probation, shall hold annual hearings for each offender. At the hearing the offender shall have the right to counsel and right to cross-examination. It shall make its recommendations to the court as to the form and time of release for the offender.

B. Correctional standards

This part creates a National Advisory Commission on Correctional Standards. The Commission would establish, after one year of study, national minimum standards of policy for the treatment of all inmates—in both state and Federal prisons.

Standards would be developed consistent with 13 general objectives set out in the bill—following hearings by the Commission. Members of the Commission are appointed by the President and will be broadly representative of all fields of criminal justice. Following presentation of standards to the Attorney General of the United States, they would not be changed except by a majority vote of the Commission. The created standards must be pursued by those state correction programs funded by the Law Enforcement Assistance Administration.

In addition, all state and local correctional departments must promulgate and implement within a reasonable period of time these established standards or face a cut off of Federal funds from the Law Enforcement Assistance Administration.

The standards are to be broad in nature and include not only legal rights and administrative policy, but general policies to foster improved inmates-institution relations. The 13 general objectives that the bill sets out can be summarized in four categories:

First, minimum standards to promote respect for the human rights of inmates. Basic needs of the prisoner for adequate food and medical care, sanitary living conditions, recreation facilities, hygienic needs and freedom from sexual attacks and abuse are here considered. Regulations will also cover the sending and receiving of mail, including the opening, censoring and confiscation of correspondence, the right to communicate with those outside the prison, at least with family and friends, access to legal assistance, the right to vote and visiting privileges.

Second, standards will apply to the establishment of mechanisms to raise issues and complaints relating to the basic conditions under which inmates live, the improvement of such conditions and the resolution of grievances. Regulations will also deal with the publication and notice of inmates of rules governing their conduct and the conduct of correctional personnel, and procedures to be followed in adjudicating charges for violations, minimum and maximum penalties and forms of punishment.

Third, standards will relate to the utilization and employment of professional and paraprofessional minority group personnel and to the inclusion of bilingual minimum education services in the prison.

Fourth, standards will relate to special rules applicable to the incarceration or detention of those who have been charged with, but not convicted of any crime, those who are juvenile delinquents and youth offenders, those who are felons and misdemeanants, and persons of different sex.

TITLE VI: CRIMINAL OFFENDERS' REHABILITATION AND RESTORATION OF RIGHTS

1. With regard to the Federal prisons and the operation of their "Prison Industries," this Title provides that—

(a) *all* profits shall be used for the rehabilitation of inmates under the jurisdiction of the Federal Bureau of Prisons;

(b) a minimum hourly wage of 75 cents per hour for inmates working in the Industry and further provides in order for the Federal Government to purchase goods from a State prison industry, that state prison must pay its inmates an hourly wage of 75 cents per hour.

2. This Title would enable:

(a) State and Federal prisons to deduct social security payments from the salary of inmates received while working in prison;

(b) all inmates in the country to have the right to sue for restoration of their civil rights under the Civil Rights Act.

3. This Title would provide for surplus commodities acquired through Federal price support operations to be given to State and Federal correctional institutions.

4. This Title would grant those convicted of a crime the right to vote in Federal elections when he or she has been pardoned or when he or she is no longer subject to the jurisdiction of the court which originally imposed the sentence.

TITLE VII: COMMISSION ON VICTIMLESS CRIMES

This Title creates a one-year National Commission on Victimless Crimes composed of 15 members appointed by the President. The Commission's function shall be to undertake a complete study and investigation of the application of criminal law and its sanctions to those Federal and state crimes whose only victim is the perpetrator of the crime, so called "victimless crimes." The Commission shall determine for the Congress the propriety of applying the sanction of the law to this area of activity and recommend to the Congress alternative means, if any, of dealing with such violations.

Victimless Crimes includes such crimes as prostitution, narcotic and drug addiction and use, gambling, vagrancy and disorderly conduct, alcoholism, truancy, runaways and other juvenile crimes which, if committed by an adult, would not be crimes.

TITLE VIII: DEATH BENEFITS—LAW ENFORCEMENT PERSONNEL

This Title enables the Federal Government, through its Law Enforcement Assistance Administration, upon certification that a full or part-time law enforcement officer was killed as a result of his employment, to grant $50,000 to the dependents or spouse of said officer. The term "law enforcement officer" is broadly defined to include police, sheriffs, deputy sheriffs, highway patrolmen, firemen, including voluntary firemen, parole and probation officers, correctional personnel, judges, magistrates, justices of the peace, and alcoholic beverage control agents.

The death benefits paid are excluded from one's gross income for purposes of the Federal Income Tax.

TITLE IX: COMPENSATION OF VICTIMS OF CRIMES

This Title creates an Independent Executive Agency run by a three-member Presidentially-appointed Commission called "The Violent Crimes Compensation Commission." The Commission's principal function is to receive and process applications for compensation to the victims of crimes.

Compensation may be awarded for "personal injury" or death which results from an enumerated list of violent crimes. Such crimes include assault, robbery, homicide, kidnapping, obscene acts, rape, indecent acts with children and other crimes which have as an essential element "force" to the person injured. The term "personal injury" for purposes of coverage, is defined broadly to include not only actual bodily harm, but also nervous shock, mental distress, injury to one's reputation and pregnancy.

Compensation may be awarded not only to the injured person but also to any person who incurred a pecuniary loss in maintaining for the victim. In the case of death of the victim, compensation may be awarded for the benefit of dependents or closest relative or again any person who suffered a pecuniary loss, such as funeral expenses. Attorney fees are recoverable under the Act.

Actual compensation may be given for not only the usual reasonable expenses, but also loss of earning power, pecuniary loss to dependents of deceased victims and pain and suffering to the victim. There is a $25,000 limit for any award on behalf of the victim. To be eligible to recover, an application must be filed within two years of the alleged injury.

The Commission and the compensation awarded is independent of any guilt or innocence of the person alleged to have caused the injury. Its only concern is that an act or omission did occur which resulted in a loss to the victim and to the extent of a loss, this Title declares that the Federal Government has a responsibility to compensate. If a person's guilt is determined in a court of law after due appeals are taken, this serves only as conclusive evidence that an offense has been committed.

The Title contains the novel provision that in order for the Commission to pay any claim, the victim must provide satisfactory evidence of a good faith attempt to recover damages from the offender.

The program of compensation covers only Federal crimes and those within the District of Columbia. However, the Act enables each state to adopt similar programs in order for the Federal Government to pay a share (75 percent) of the costs of such program with regard to state crimes.

Mr. TAFT. Mr. President, some people would have us believe that the words "law and order" are merely code words for racial prejudice and bigotry. I believe that the words "law and order" should properly reflect the concern which each man has for the safety of his wife on her way to the market and the safety of his children as they come home from school.

Crime in the inner-city is no myth. It affects black and white, rich and poor, worker and welfare recipient alike. During the decade from 1960 to 1970 our crime rate rose 144 percent. The violent crime rate increased 126 percent. In 1970, in our cities having a population over 250,000 the crime rate was 2½ times as great as it was in our suburban areas and over five times as great as in our rural areas. In 1970 the robbery rate in these cities was over 10 times as great as it was in our suburban communities and over 40 times as great as in our rural areas.

A recent survey published by Life magazine indicates that 78 percent of Americans feel unsafe in their own homes. Of big city residents, 80 percent are afraid to be in the streets at night. Four out of every 10 who responded said that they, or a member of their families were victimized by criminals last year. Thirty-percent keep a gun. Forty-one percent feel that police protection is inadequate.

In 1970, according to FBI statistics, 11 serious crimes were committed each minute. One murder was committed every 33 minutes. One aggravated assault was committed every 96 seconds. A robbery was committed every 91 seconds. Every 43 seconds, a violent crime was committed. Every 34 seconds an auto theft occurred. One larceny was committed every 18 seconds, and one burglary was committed every 15 seconds.

During that year over 100 police officers were slain in the performance of their duty.

Let us make no mistake about it, crime affects the lives of all inner-city residents.

When crime forces companies to take their factories out of the inner city it means a loss of jobs to the very people who can least afford to be unemployed. When burglars rob inner-city homes they steal from families which can least afford the loss. When women are afraid to shop in the inner city, they reduce the number of jobs and the tax base that the inner city needs if it is to survive.

Crime also affects blacks more than whites. In a recent year, out of 100,000 white women, 22 were raped, but out of 100,000 nonwhites, more than 82 were raped.

Out of 100,000 whites, 58 were victims of robbery, but 204 nonwhites were robbery victims; 186 whites were victims of assault but 347 nonwhites were assault victims; and 822 whites were victims of burglary compared with 1,306 nonwhites.

If crime goes unabated in our inner cities, America's great cities will be of uncertain fate. As the crime problem reaches out to our suburbs and our rural areas all of America has a vital interest in crime control.

I am pleased to join with my colleagues in introducing this comprehensive bill that will represent a major commitment on the part of each of us to deal with the crime problem. The time for rhetoric has passed. The time for responsible legislative solutions has arrived.

As this bill demonstrates, a concerned attack on the problems of crime it does

not have to be insensitive to our cherished civil liberties. Anticrime legislation does not have to erode the constitutional safeguards which are such a cherished part of America's heritage. But comprehensive crime legislation does have to be effective, and I believe that this measure reflects that balance.

Mr. BOGGS. Mr. President, it is indeed a great pleasure today to sponsor the "Omnibus Criminal Justice Reform Amendment of 1972." This is far-reaching legislation that touches upon every aspect of our war on crime—the criminal, the victim, the law enforcer, the prisons, the courts, and the law. It incorporates many progressive ideas advanced by the finest criminologists in the country and proven successful in test programs.

The people of Delaware, like people throughout the country, are alarmed at the increase in violent crime. In a recent poll taken by Governor Russell W. Peterson, Delawareans ranked crime as the issue that concerns them most and crime reduction as the goal which deserves top priority from the State government.

The response of State and local leaders to the crime problem has been commendable. There is significant movement in many areas. Governor Peterson, who recently took personal charge of the Delaware Agency to Reduce Crime, has announced an all-out drive against violent crime in the State and has made specific recommendations for court reform, prison reform and jobs for defendants. Similarly, Mayor Harry G. Haskell of Wilmington earlier this year declared that "war on crime" would be his No. 1 priority this year. In addition, State Senator Michael Castle, a former deputy Attorney General for Delaware, has introduced legislation into the State Legislature to modernize the State Criminal Code. And Delaware Supreme Court Justice Daniel Herrmann is leading a study into the possibility of dealing with victimless crimes outside of the criminal courts.

I am much encouraged by these developments. These are knowledgeable and dedicated men whose work to reduce crime on all fronts—on the streets, in the courts and in the prisons—will go far toward controlling this problem. I commend them for their efforts. But the Federal Government must take the lead in combating crime and its causes. We cannot expect the States to do it all.

Mr. President, the Congress has acted with vision and responsibility in the area of criminal justice over the last several years. In 1966 we passed the Narcotic Addict Rehabilitation Act. In 1968 we passed the Omnibus Crime Control and Safe Streets Act which created the Law Enforcement Assistance Administration. And in 1970 we passed the Omnibus Crime Control Act and the Organized Crime Control Act.

These measures have provided us with a good beginning and a solid foundation for our war on crime. I was pleased to support each one. Now, with several years of experience behind us, I believe it is time we take a good, hard look at what we have accomplished in this field and what still needs to be done. The "Omnibus Criminal Justice Reform Amendment of 1972" that we are introducing today builds on the foundation of this legislation, strengthening it in a number of ways.

Although significant advances have been made in reducing the number of violent crimes in some areas, we still have far to go. The facts speak for themselves. Drug-related crime is on the rise, in many communities accounting for as much as 50 percent or more of the robberies and burglaries. Court dockets are clogged with criminal cases, creating a backlog which allows offenders to commit more crime before they are brought to justice. Prisons are overcrowded and understaffed or lacking in personnel skilled in the most advanced methods of correctional rehabilitation.

Mr. President, we cannot hope to reduce violent crime by ignoring any one of these facts. Violent crime is the result of multiple causes calling for multiple remedies. That is why I am particularly pleased with the provisions of this bill relating to the special needs—for too long neglected—of the youthful offender, the drug-addicted offender, the law enforcement officer, and the victim of violent crime.

Under title III of this legislation, States applying for Federal law enforcement assistance funds would be required to place a heavy emphasis on juvenile justice in their State plan. Lifetime patterns of criminal activity are usually established during the adolescent years, and so I believe it is of the greatest importance that we concentrate our efforts on diverting the young offender from a life of crime at the earliest moment.

Under this bill, States would be encouraged to finance juvenile justice programs that have proven successful. These include half-way houses, foster homes, family counseling, drug treatment and expanded probationary services, all of which seek to give the youthful offender personalized attention in a noninstitutional atmosphere. The bill also enumerates the rights of a juvenile offender, including the right to be tried in a juvenile court whenever possible and the right to be kept apart from hardened criminals whenever he is confined.

The bill also proposes measures to relieve the Federal courts of much of the burden of drug-related crime. It would establish a District Court Disposition Board in each of the 96 Federal District Courts. The Disposition Boards would review the record of each defendant who is brought before the District Court to determine if he should be tried or diverted from the criminal justice system altogether. Drug addicts, alcoholics and first offenders could, on the recommendation of the Disposition Board, be committed to appropriate detoxification or rehabilitation programs rather than tried, released or imprisoned which would normally lead them to commit more crime. The District Court Disposition Boards provide an opportunity to break this costly cycle.

I might add that the importance of channeling drug-addicted offenders into rehabilitative programs rather than into the courts has been recognized on the Federal level. The city of Wilmington is currently under consideration by the Law Enforcement Assistance Administration for a pilot project of this nature. I am hopeful that it will soon be approved, as such a program would, I believe, have positive ramifications throughout the criminal justice system in Delaware and serve as an example to the Nation.

This legislation, I am happy to note, makes further proposals designed to relieve the courts of their current caseloads and to achieve a goal of trial within 60 days. Title I would provide general funds to States to improve their criminal justice machinery, and this money could be used to increase the number of judges, court administrators, pretrial investigators and other necessary personnel. Title VII would establish a Commission on Victimless Crimes which would undertake a national study of alternate methods of dealing with crimes of gambling, drug abuse, and vagrancy rather than through the overburdened criminal courts.

I am especially pleased with the provisions of this bill dealing with public safety officers including policemen, firemen. and correction officers. I have only the highest regard for these men and women who have an enormous responsibility in our society. They are on the front lines of the war on crime. They did not create the social and environmental conditions that lead to crime. They did not make the laws they must enforce. They do not run the courts or the correctional facilities which are inadequate to meet society's needs. Yet they must daily risk their lives to protect law-abiding citizens from the threat of violent crime. And they are often the most criticized simply because they are the most visible link in our criminal justice system.

Mr. President, I believe they are doing an outstanding job and they are deserving of our overwhelming support. The legislation that we are introducing today takes note of the crucial importance of law enforcement personnel. Grants to the States under title I may be used for the recruitment, training, and compensation of law enforcement officers. Title IV would establish regional law enforcement academies around the country so that police and corrections officers might benefit from the most advanced knowledge in their fields.

Title IX of this legislation takes special note of the needs of perhaps the most neglected group of all—the innocent victims of violent crime. Under this legislation a Federal Violent Crimes Compensation Commission would be created to provide up to $25,000 to needy victims of a violent crime against Federal law. It would also provide grants to States for up to 75 percent of the cost of carrying out similar programs for victims of violent State crimes. Such a system of reimbursement has proven highly successful in the seven States where it is now operating. I have sponsored similar legislation before, and I am pleased to do so again.

All of these features and others which I do not have time to mention merit our consideration. My special interest in this

legislation stems from title VII, the "law enforcement personnel death benefits program." This title would provide a death benefit of $50,000 to the survivors of any policeman, corrections officer, or fireman killed in the performance of his duties. I introduced this provision as separate legislation last year—S. 2748—and I was pleased that it was included in the "Victims of Crime Compensation Act of 1972"—S. 2994—introduced by the distinguished Senator from Arkansas (Mr. McCLELLAN).

Police officers, corrections personnel and firefighters, whether they be paid or volunteer, are no less the innocent victims of crime than the private citizens who are injured or slain. The fact is that public safety officers are much more likely to fall victim to violent crimes because of the hazardous nature of their duties.

In many States death indemnities and survivors' benefits for public safety officers are set at an adequate level. Congress, in fact, has already enacted a $50,000 death benefits for policemen in the District of Columbia. But this is not true in all States and all communities, many of which do not offer any death benefit beyond a survivors' pension based on a percentage of the officer's income.

This legislation would provide such a benefit nationwide for any public safety officer certified by the Governor of his State to have died in the line of duty. I believe we owe this protection to the wives and children of these men who must live with anguish and uncertainty each time their loved one is on the job. I also believe we cannot expect to continue to attract responsible family men and women into these increasingly hazardous occupations without offering this kind of benefit.

The need for this benefit was dramatized not long ago in my own State of Delaware when two State troopers, Ronald L. Carey and David C. Yarrington, were slain while pursuing a robbery suspect. They left two widows and four small children without breadwinners. Although the people of Delaware rallied to meet the immediate needs of these families, their needs will be great in the years ahead. As tragic as these deaths are, they are not isolated cases even in Delaware. In 1963 another Delaware State trooper, Robert M. Paris, was slain while on duty, and only a year ago, State Trooper William C. Keller died in a traffic accident while on duty.

Over the period from 1960 to 1970, 1,024 policemen died in the line of duty and 790 firefighters lost their lives. In 1970 alone 100 policemen were slain and 115 firefighters died in the performance of their duties. Comparable figures on the number of corrections officers who have died in the line of duty are not available, but recent disturbances at Attica and San Quentin would indicate that the number has risen sharply.

Mr. President, I conclude my remarks by stressing the importance of this legislation in terms of our continuing commitment to the reduction of violent crime in this country. There are many constructive proposals in this legislation, but I would hesitate to give my unqualified support to all of them without the benefit of full hearings. I urge that they be held at an early date.

Mr. SAXBE. Mr. President, despite fashionable charts and studies we find that crime still remains a serious problem in the United States. It is no longer possible to elude this fact by pretending that the soaring crime rate is the product of keener detection. The question is, What can we do about it? Frequently, the answer is to be compassionate and seek out the roots and primary causes of crime. However, I feel the answer must begin by balancing the rights of victims with the rights of the accused and convicted.

I am convinced that the legislation we are introducing today is an excellent beginning to equalize the rights of the victim and to rectify the injustices currently being done to people accused and convicted of crimes. I feel it is a giant step in the direction of criminal justice reform. And, I am encouraged by the Senators that are dedicating themselves and their energies to the laudable goal of swift, reliable justice for all.

My contribution to this omnibus bill was title I and title II.

Title I is entitled the "Model Criminal Justice Grant Program" and is designed to encourage State and local governments to embark upon a planned, comprehensive statewide program of cooperation to reform their criminal justice system. This title is much like a bill I introduced last year, S. 400, with Sentors BROOKE, MONDALE and EAGLETON. Senator BROOKE is here today and we plan to invite Senators MONDALE and EAGLETON as well as all members of the majority to cosponsor this legislation.

Title II is a codification of the President's high impact program to reduce street crime. It gives economic aid directly to cities of having over 250,000 people, to fight crime in either of two programs. The first parallels the statewide comprehensive reform program requiring a modernization of law enforcement agencies, municipal courts and city jails. Whereas, the second program is directed at stimulating immediate programs like public education, increased police patrolling or activity to immediately reduce street crimes such as robbery, rape, homicide, and assault.

All of us here today feel that this bill is a valid start in solving our pressing and long-term crime control problems. I sincerely hope that the Judiciary Committee will hear the bill in a prompt fashion and that the administration, especially LEAA, will give us their support and assistance.

REFORM OF THE CRIMINAL JUSTICE SYSTEM

Mr. PERCY. Mr. President, I join today with 11 of my distinguished Republican colleagues in introducing the Omnibus Criminal Justice Reform Amendments. The bill stands as a positive Republican initiative in the reform of the criminal justice system. It is the result of a great deal of hard work, and represents combined initiatives from all of us and our offices.

There are four parts of this bill which it was my responsibility to research and draft.

The first part is a reorganization of the system of parole, probation, and other related services on the Federal level. The new system proposed in title V of this bill would replace the diverse functions now being performed by the U.S. Board of Parole, the probation office, and bail agencies across the country. In their stead would be local disposition boards on a district court basis. Each District Board would have prime responsibility for an offender from the time of his arraignment through the time that he is released from the jurisdiction of the court.

At each stage of the criminal justice process, the District Board would recommend to the court various actions to be taken, which would range from actions such as drug addiction treatment, alcholic rehabilitation, diversion in lieu of trial, to sentence recommendation upon conviction. The local board would also have the responsibility for determining parole eligibility and in supervising any parole or probation release.

Since the time that I introduced this bill separately on February 17 as S. 3185, I have been heartened from the positive response that it has received from those both within the Government and interested parties in private life. I am pleased now to have the added support of the cosponsors of this bill.

The second part of the bill which I had the responsibility of drafting was that provision in title VI that insures that prisoners will be able to have social security payments deducted from whatever wages they earn while in prison. In this way, they will be qualified for the payment quarters that they spent in prison, and their benefits at a later time in life will be consequently increased. At the present time this is not being done, and this practice needs to be corrected immediately.

Former Secretary of Labor, George Shultz, supported this concept in a speech in Chicago on November 6, 1969, before the Second Annual Business Leader's Emergency Conference on Crime and Delinquency. At that time he stated:

> Provision should be established for prisons to make payments to . . . the social security system based on the prisoner's economic contribution to the prison industries or to the maintenance of the prison. Such a program would serve the need to provide a form of income support for the former prisoner. . . . Moreover, it would serve a psychological need of the prisoner to realize that he has not been completely isolated from the world of work and the community at large.

I look forward to the continued support of the administration in this area.

The third part of the bill which I authored is a provision to amend 42 United States Code 1988. This section governs the jurisdiction and procedural practice of the Federal courts in all civil and criminal matters arising under the civil rights provisions of both title 18 and title 42. As it presently is interpreted, prisoners in 13 States could be precluded from bringing an action to enforce any of their civil rights. This is because these 13 States have "civil death" statutes which deprive a prisoner from bringing any civil suit. I am happy to note that Illinois is not one of these States.

The amendment I propose today will rectify this potential injustice. We will never be able to effect true reforms of our

system of criminal justice as long as an individual can be denied the right to redress wrongs committed against him in the name of that system.

The last section of the bill, which I helped in the drafting of, was that part which reenfranchises ex-offenders. I was pleased to be able to join with Senator MATHIAS in the drafting of this section. Once an ex-offender has paid his debt to society, and society has exacted its pound of flesh, why in the world should we continue to punish that man? Continued punishment is directly contrary to a philosophy of rehabilitation. If we want a man to behave like any other citizen, then we should give him the tools to carry out his complete and total rehabilitation. Too often, by being refused the right to vote, a former offender is never quite permitted to live down what may have been a once-in-a-lifetime mistake, one for which he supposedly has paid his debt to society.

Mr. President, I believe that these four parts of the bill and all other parts deserve the attention of all the Members of Congress who are interested in positive initiatives that will help to reduce the problems of crime by reforming the system that attempts to control crime. I am proud to have joined with my colleagues in this endeavor.

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 1377

At the request of Mr. MATHIAS, the Senator from South Dakota (Mr. MCGOVERN) was added as a cosponsor of S. 1377, a bill to ban the sale of nonreturnable beverage containers in interstate commerce.

S. 2161

At the request of Mr. HARTKE, the Senator from New Hampshire (Mr. MCINTYRE) was added as a cosponsor of S. 2161, a bill to amend chapters 31, 34, and 35 of title 38, United States Code, to increase the vocational rehabilitation subsistence allowances, the educational assistance allowances, and the special training allowances paid to eligible veterans and persons under such chapters.

S. 2440

At the request of Mr. CRANSTON, the Senator from Minnesota (Mr. MONDALE) was added as a cosponsor of S. 2440, a bill to amend title 23 of the United States Code to authorize construction of exclusive or preferential bicycle lanes, and for other purposes.

S. 2657

At the request of Mr. BENTSEN, the Senator from Utah (Mr. BENNETT), the Senator from West Virginia (Mr. ROBERT C. BYRD), the Senator from South Carolina (Mr. HOLLINGS), and the Senator from North Dakota (Mr. YOUNG) were added as cosponsors of S. 2657, a bill to amend title 18 of the United States Code to define and limit the exclusionary rule in Federal criminal proceedings.

S. 3021

At the request of Mr. BENTSEN, the Senator from Arizona (Mr. FANNIN), the Senator from Colorado (Mr. DOMINICK), and the Senator from New Hampshire (Mr. MCINTYRE) were added as cosponsors of S. 3021, a bill to amend section 2031(b)(1) of title 10, United States Code, to remove the requirement that a Junior Reserve Officer Training Corps unit at any institution must have a minimum number of physically fit male students.

S. 3063

At the request of Mr. BIBLE (for Mr. MUSKIE) the Senator from Kentucky (Mr. COOPER) and the Senator from Virginia (Mr. SPONG) were added as cosponsors of S. 3063, a bill to amend the Internal Revenue Code to permit tax-exempt organizations to engage in communications with legislative bodies.

S. 3199

At the request of Mr. HATFIELD, the Senator from New York (Mr. BUCKLEY) was added as a cosponsor of S. 3199, a bill to provide for the conservation, protection, and propagation of species or subspecies of fish and wildlife that are threatened with extinction or likely within the foreseeable future to become threatened with extinction, and for other purposes.

S. 3380

At the request of Mr. Moss, the Senator from Rhode Island (Mr. PASTORE) was added as a cosponsor of S. 3380, a bill to permit immediate retirement of certain Federal employees.

S. 3393

At the request of Mr. COOK, the Senator from Nevada (Mr. BIBLE) and the Senator from Oklahoma (Mr. HARRIS) were added as cosponsors of S. 3393, a bill to amend title XVII of the Social Security Act to provide financial assistance to individuals suffering from chronic kidney disease who are unable to pay the costs of necessary treatment.

SENATE JOINT RESOLUTION 180

At the request of Mr. ROTH, the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of Senate Joint Resolution 180, authorizing the President to issue annually a proclamation designating the month of May in each year as "National Arthritis Month."

ADDITIONAL COSPONSORS OF RESOLUTIONS

SENATE RESOLUTION 38

At the request of Mr. STEVENS, the Senator from Delaware (Mr. BOGGS) and the Senator from Wisconsin (Mr. NELSON) were added as cosponsors of Senate Resolution 38, relative to the Select Committee on Small Business.

SENATE RESOLUTION 275

At the request of Mr. STEVENS, the Senator from Minnesota (Mr. MONDALE) and the Senator from Maine (Mr. MUSKIE) were added as cosponsors of Senate Resolution 275, authorizing Senators to hire interns.

NATIONAL INSTITUTE OF ADVERTISING, MARKETING, AND SOCIETY ACT—AMENDMENT

AMENDMENT NO. 1118

(Ordered to be printed and referred to the Committee on Commerce.)

Mr. MOSS. Mr. President, I submit for appropriate reference, an amendment to S. 1753, a bill to establish a National Institute of Advertising, Marketing, and Society.

Almost a year ago I introduced S. 1753 to establish a National Institute of Advertising, Marketing, and Society, and since then I have been most encouraged by the support shown for this legislation. On October 4, 1971, the Senate Commerce Committee held a hearing on S. 1753 as well as another piece of advertising legislation, S. 1461, the Trust in Advertising Act.

Following the hearing, I asked the Commerce Committee majority staff to meet with the minority staff to develop a compromise proposal which removed the few objections voiced concerning S. 1753 as originally introduced. I am pleased today to introduce an amendment to S. 1753 which incorporates most of the changes agreed to by the majority and minority staffs.

Of particular concern to the marketing and academic community is the revision of section 6, the Advisory Council on Advertising, Marketing, and Society. In the original legislation, the provision for our advisory council were insufficient to handle the scope of marketing problems. Therefore, I propose that an advisory council consisting of representatives of business, consumer groups, labor, the academic community, and other interested persons make up the advisory council. Several other minor changes are also incorporated in the text of the amendment.

Mr. President, I ask unanimous consent that the amendment be printed in the RECORD at the completion of my remarks.

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

Strike out everything following the enacting clause and insert in lieu thereof the following:

SHORT TITLE

SECTION 1. That this Act shall be known as the "National Institute of Advertising, Marketing and Society Act."

POLICY AND PURPOSE

SEC. 2. (a) The Congress hereby finds that—

(1) mass marketing and advertising have significant impact on American Society;

(2) marketing and advertising utilize highly refined techniques about which little information of significance is available to the public and to governmental agencies;

(3) the public interest requires the widest possible range of social and scientific research applied by an institution independent of economic and political pressures; and

(4) there is a need for a focused, scientifically sound program of behavioral research on the economic psychological and social impact of marketing and advertising to be conducted by an appropriate independent institution.

(b) It is the purpose of this Act, therefore, to establish the National Institute of Advertising, Marketing, and Society.

ESTABLISHMENT

SEC. 3. (a) There is hereby established within the National Science Foundation an agency to be known as the National Institute of Advertising, Marketing, and Society.

(b) The Institute shall be headed by a Director, who shall be appointed by the President, by and with the advice and consent of

the Senate, for a term of six years. Under the general supervision of the Director of the National Science Foundation, the Director of the Institute shall be responsible for carrying out the functions of the Institute and shall have authority and control over all personnel and activities of the Institute.

FUNCTIONS OF THE INSTITUTE

SEC. 4. (a) In order to carry out the objectives of this Act, the Institute shall—

(1) undertake, on its own initiative, research projects concerning the impact of advertising and marketing upon society, including the economic, psychological, and social effects of advertising and marketing techniques;

(2) undertake, at the request of any agency or the Advisory Council, specific research projects concerning the impact of advertising and marketing upon society;

(3) testify upon the request of any Federal agency with respect to any issue affecting the impact of advertising and marketing upon society;

(4) collect, analyze, and disseminate to the public relevant information on economic and behavior research relating to advertising and marketing; and

(5) prepare at least annually, and at such other times as the Director may deem appropriate, a report to the Congress concerning its activities together with such recommendations as the Director deems advisable.

(b) The Director shall, whenever feasible, enter into contracts with public or private educational or research institutions for the purpose of undertaking any particular study or research project authorized by this Act.

ADMINISTRATIVE PROVISIONS

SEC. 5. (a) In addition to any authority vested in it by other provisions of this Act, the Institute, in carrying out its functions, is authorized to—

(1) prescribe such regulations as it deems necessary governing the manner in which the Institute's functions shall be carried out;

(2) receive money and other property donated, bequeathed, or devised, without condition or restriction other than that it be used for the purposes of the Institute; and to use, sell, or otherwise dispose of such property for the purpose of carrying out its functions;

(3) in the discretion of the Institute, receive (and use, sell, or otherwise dispose of, in accordance with paragraph (2)) money and other property donated, bequeathed, or devised to the Institute with a condition or restriction, including a condition that the Institute use other funds of the Institute for the purposes of the gift;

(4) appoint and fix the compensation of such personnel as may be necessary to carry out the provisions of this Act without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but no more than three individuals so appointed shall receive compensation in excess of the rate prescribed for GS–18 in the General Schedule under section 5332 of title 5, United States Code;

(5) obtain the services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code, at rates for individuals not to exceed the rate prescribed for GS–18 in the General Schedule under section 5332 of title 5, United States Code;

(6) accept and utilize the services of voluntary and noncompensated personnel and reimburse them for travel expenses, including per diem, as authorized by section 5703 of title 5, United States Code;

(7) enter into contracts, grants or other arrangements, or modifications thereof to carry out the provisions of this Act, and such contracts or modifications thereof may be entered into without performance or other bonds, and without regard to section 3709 of the Revised Statutes, as amended (41 U.S.C. 5);

(8) provide for the making of such reports (including fund accounting reports) and the filing of such applications in such form and containing such information as the Director may reasonably require;

(9) make advances, progress, and other payments which the Director deems necessary under this Act without regard to the provisions of section 3648 of the Revised Statutes, as amended (31 U.S.C. 529);

(10) make other necessary expenditures;

(11) each recipient of a grant under this subsection shall keep such records as the Director may prescribe, including records which can be used to support fully the amount of his grant, and such records as will facilitate an effective audit; and

(12) the Director 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 subsection.

(b) Each member of a committee appointed pursuant to section 6 of this Act who is not an officer or employee of the Federal Government shall receive an amount equal to the maximum daily rate prescribed for GS–18 under section 5332 of title 5, United States Code, for each day he is engaged in the actual performance of his duties (including traveltime) as a member of a committee. Each committee member shall be entitled to reimbursement for necessary travel expenses (or in the alternative, mileage for use of his privately owned vehicle and a per diem in lieu of subsistence not to exceed the rates prescribed in 5 U.S.C. 5702, 5704), and other necessary expenses incurred by him in the performance of duties vested in the committee, without regard to the provisions of subchapter I, chapter 57 of title 5 of the United States Code, the Standardized Government Travel Regulations, or section 5731 of title 5, United States Code.

ADVISORY COUNCIL ON ADVERTISING, MARKETING, AND SOCIETY

SEC. 6. (a) There is hereby established in the Institute a National Advisory Council on Advertising, Marketing, and Society composed of twelve members appointed by the Director for terms of four years without regard to the provisions of title 5, United States Code, governing appointment in the competitive service, and composed of representatives of business, consumer groups, labor, the academic community, and other interested persons.

(b) In addition to the duties established in section 5(a)(7), the Council shall advise the Director of the Institute with respect to appropriate research projects to be conducted by the Institute and to suggest criteria for the priority of such projects.

(c)(1) Members shall be appointed for four-year terms, except that of the members first appointed, three shall be appointed for a term of one year, three shall be appointed for a term of two years, and three shall be appointed for a term of three years as designated by the Director at the time of appointment.

(2) Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall only serve for the remainder of such term. Members shall be eligible for reappointment and may serve after the expiration of their terms until their successors have taken office.

(3) A vacancy in the Council shall not affect its activities, and seven members thereof shall constitute a quorum.

(d) The Director shall designate the Chairman from among the members appointed to the Committee. The Committee shall meet at the call of the Chairman but not less often than four times a year. The Director shall be an ex officio member of the Council and is to be its Executive Secretary. The Council shall keep a complete summary of the proceedings of its meetings which shall be available to the public.

(e) Members of the Council who are not officers or employees of the United States shall receive compensation at an amount equal to the maximum daily rate prescribed for GS–18 under section 5332 of title 5, United States Code for each day he is engaged in the actual performance of his duties (including traveltime) as a member of the Council. Members of the Council shall be reimbursed for travel, subsistence, and necessary expenses incurred in the performance of their duties in accordance with section 5(b) of this Act.

(d) In addition to the authority vested in it by other provisions of this Act, the Institute is authorized to appoint one or more ad hoc committees composed of such private citizens as the Director deems advisable to advise the Institute with respect to its function under this Act.

COMPENSATION OF DIRECTOR AND DEPUTY DIRECTOR

SEC. 7. (a) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(95) Director, the National Institute of Advertising, Marketing, and Society.".

(b) Section 5316 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(130) Deputy Director, National Institute of Advertising, Marketing, and Society.".

DEFINITIONS

SEC. 8. As used in this Act the term—

(1) "Council" means the National Advisory Council on Advertising, Marketing, and Society;

(2) "Director" means the Director of the National Institute of Advertising, Marketing, and Society.

AUTHORIZATION OF APPROPRIATIONS

SEC. 9. There are authorized to be appropriated to carry out the provisions of this Act $5,000,000 for the fiscal year ending June 30, 1972, $5,000,000 for the fiscal year ending June 30, 1973, $6,000,000 for the fiscal year ending June 30, 1974, and $6,000,000 for the fiscal year ending June 30, 1975.

SOCIAL SECURITY AMENDMENTS OF 1972—AMENDMENT

AMENDMENT NO. 1119

(Ordered to be printed and referred to the Committee on Finance.)

Mr. INOUYE submitted an amendment intended to be proposed by him to the bill (H.R. 1) to amend the Social Security Act to increase benefits and improve eligibility and computation methods under the OASDI program, to make improvements in the medicare, medicaid, and maternal and child health programs with emphasis on improvements in their operating effectiveness, to replace the existing Federal-State public assistance programs with a Federal program of adult assistance and a Federal program of benefits to low-income families with children with incentives and requirements for employment and training to improve the capacity for employment of members of such families and for other purposes.

ADDITIONAL COSPONSOR OF AN AMENDMENT

AMENDMENT NO. 1100

At the request of Mr. STEVENSON, the Senator from Indiana (Mr. HARTKE) was added as a cosponsor of amendment No. 1100, intended to be proposed to the bill (S. 3193) a bill to provide for the continuation of programs authorized under the Economic Opportunity Act of 1964, and for other purposes.

ANNOUNCEMENT OF OPEN HEARINGS BY SUBCOMMITTEE ON PARKS AND RECREATION

Mr. BIBLE. Mr. President, I wish to announce for the information of the Senate and the public that open hearings have been scheduled by the Subcommittee on Parks and Recreation at 10 a.m. on April 20, and 21, in room 3110, New Senate Office Building, on the following bill:

S. 2465, to establish the Everglades-Big Cypress National Recreation Area in the State of Florida.

ADDITIONAL STATEMENTS

DEATH OF MRS. ABRAHAM A. RIBICOFF

Mr. ALLOTT. Mr. President, all those who were privileged to know Ruth Ribicoff were deeply saddened to learn of her death today.

The Senate is a community of friends who, although divided by political differences, are nonetheless united in a unique mutual respect and affection. Senate wives are not only included in this community of friends, they contribute immeasurably to the vitality and grace of the community. Ruth Ribicoff was a particularly gracious member of this community.

We are all diminished by her death, just as we were all fortunate to have known her.

Welda joins me in expressing our deepest sympathy to Senator RIBICOFF.

COG'S 15TH ANNIVERSARY

Mr. SPONG. Mr. President, the Metropolitan Washington Council of Governments had its 15th anniversary yesterday. This organization grew out of a simple realization that there were certain regional problems which could be best attacked through regional cooperation. Today, as it fulfills its potential for good, COG has won the recognition which its excellent record over the years justifies.

Metropolitan Washington is the fastest growing major metropolitan area in the Nation. The area grew from 2 million people in 1960 to 2.8 million people in 1970, an increase of 211 citizens every day.

With such a rapid rate of urban development, we realize the need for the Council of Governments as the most effective instrument to gain solutions to regional problems such as traffic congestion, inadequate housing, air pollution, water supply, crime and many other problems that do not stop at city or county lines.

The Metropolitan Washington Council of Governments, third oldest of the 250 regional organizations throughout the Nation, has instituted a variety of area-wide programs aimed at reducing these problems.

COG has established radio and teletype networks linking area police, fire and civil defense departments. An area-wide computerized police information system was also developed through COG. It developed a concept for allocating federally-subsidized lows and moderate-income housing throughout the District of Columbia area on a "fair share" basis. I am proud to say, Mr. President, that Fairfax County and Alexandria in my own State of Virginia, along with Montgomery County, Rockville and Bowie in Maryland, have adopted this concept.

"Buses only" express lanes on Virginia's Shirley Highway are another project begun through COG. Aimed at alleviating commuter traffic congestion, the project, now under the direction of the Northern Virginia Transportation Commission, has expanded its services with the addition of 90 new buses to be used exclusively for these lanes. Four thousand more people are riding these buses each day since the project started in 1969.

COG was instrumental in coordinating a high school course on drug abuse now being taught in seven area schools and three youth correctional institutions.

This same body established a data center to disseminate census information to the local jurisdictions on a continuous basis.

COG's efforts to curb the problems of waste and pollution include preparations for a regional sanitary landfill at Lorton, Va. The landfill will initially be able to handle 1,000 tons of refuse, paper, metal, and garbage per day and 2,000 tons per day within 6 months in a completely sanitary manner.

Across the Nation, the Metropolitan Washington Council of Governments has been recognized as the most successful of its kind. Evidence supporting this is the recognition it has received from members of regional organizations who voted members of the Metropolitan Washington COG to the top position of the National Association of Regional Councils in 3 of its first 5 years.

Even a list this long is not complete in this case. For all these achievements in behalf of our local governments and our citizens, I salute the Metropolitan Washington Council of Governments and wish it continued success for the future. Its success is truly our own.

THE ATTACK ON SOUTH VIETNAM

Mr. BENNETT. Mr. President a week ago today, the North Vietnamese military forces, armed with scores of tanks, other armored vehicles, missiles and artillery in direct violation of the Geneva Accords of 1954 and the understandings of 1968 concerning the DMZ, openly violated the DMZ and began a massive invasion of the territory of South Vietnam. This dastardly invasion, which is a direct departure from the guerrilla warfare, should not, and cannot be ignored by Congress, the American public, or the other democratic nations of the world. If we, as a nation, ignore this outright Communist invasion, to subjugate another democratic nation, we will have failed in our historical fight for freedom and self-determination.

There should not be any doubt in anyone's mind about who has prolonged this war and who has been the aggressor in this war. While the United States has been withdrawing its forces from South Vietnam—more than 450,000 men have been withdrawn—the North Vietnamese have been building-up their military forces and preparing for this brutal invasion. While the United States has been abiding by the 1968 understandings in refraining from bombing, the Communist North Vietnamese have once again demonstrated that understandings and agreements will be abiding by them only when it suits their military and political objectives.

The North Vietnamese objectives are quite clear. They are seeking to take over South Vietnam by any kind and all means possible to them—by using most of their combat divisions. They are out to disrupt the Vietnamization program which is designed to prepare the South Vietnamese to defend themselves. They are out to threaten the remaining U.S. forces, some 95,000, in South Vietnam—the vast majority of which are logistical or support troops. We cannot allow these enemy forces to threaten the safety of our diminishing forces. I believe that the United States should take whatever actions are necessary to prevent them from being successful in this dastardly attack on the South Vietnamese.

The North Vietnamese forces have already caused tens of thousands of refugees to flee their homes. They have caused and have inflicted a large number of civilian casualties. They have destroyed South Vietnamese outposts and fire bases by heavy artillery and mortar attacks and have advanced 10 or more miles on a broad front into South Vietnam. This wanton destruction by these forces cannot be ignored.

I hope that Members of Congress who have been calling for an immediate withdrawal of U.S. forces will recognize this dastardly attack by the North Vietnamese as an outright conventional attack and invasion on the South Vietnamese who are only trying to defend themselves and to have the right of self-determination. We cannot fail to help them have that right. Nor can we fail to protect our own remaining forces. The President is making every effort to terminate American involvement in the Vietnam war in a way to insure a lasting peace and to preserve the credibility of the United States to keep its commitments. I believe he deserves the support of Congress and the American people in this undertaking.

BOMBING IN INDOCHINA

Mr. EAGLETON. Mr. President, I returned from a fact-finding trip to Indochina 1 year ago this month. I did not claim that my trip had made me an instant Indochina expert, but I saw what I believed to be serious miscalculations on the part of our policymakers.

In testimony before the Foreign Relations Committee on May 11, 1971, I expressed some of my misgivings:

I come back convinced that the President . . . foresees an indefinite United States presence in Vietnam to insure the survival of a friendly Saigon regime; . . . predicates the safety of those U.S. troops left behind on an overly optimistic assessment of South Vietnamese capabilities and an unfounded hope for North Vietnamese inaction; . . . has taken a risk, by allowing American soldiers and prestige to be held hostage to Saigon's survival, that is neither wise nor acceptable in view of what can be gained.

In the full report of my Indochina trip I discussed what I felt were the long-range intentions of the North Vietnamese:

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 and U.S. politics.

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.

I believe the United States could avoid this dilemma by announcing a fixed withdrawal date now, and tailoring our policies accordingly.

Unfortunately, President Nixon did not agree with this assessment. It sometimes appears that nonexperts are more capable of seeing and admitting the failures of erroneous policies than the experts.

Mr. President, I do not claim to have a monopoly on vision, but I do expect that the administration, with its superior facility for gathering information, would not have a monopoly on myopia, either.

The Vietnamization program was wrong in 1971, and it is even more wrong today.

It is apparent now that the administration's "peace initiative" announced on January 25, 1972, was intended to gain the advantage, not at the negotiating table, but in the arena of partisan politics. Some commentators said at the time that the President had "bought time" for his Vietnamization program.

Mr. President, the time has run out.

What is the picture in April, 1972? We have resumed bombing the North. The South Vietnamese army is falling back. The list of POW's and MIA's is growing. We hear talk of recommitting U.S. combat forces.

And the negotiating table in Paris? Vacant.

The American people elected a man President in 1968 because he had a "plan to end the war." Mr. President, the time has run out.

On Sunday, April 9, 1972, the Washington Post published an editorial entitled "The Bombing." This excellent editorial contains some frightening statistics on the United States' bombing effort in Indochina since President Nixon took office.

Mr. President, I ask unanimous consent that the editorial be printed in the RECORD.

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

THE BOMBING

In his three years in the White House, Mr. Nixon has dropped more bombs by ton in Indochina, some three million tons, than Lyndon Johnson did in his five years. If you count the 500-pounders and the white phosphorous and the 7½-ton "Cheeseburgers" and all the rest, Mr. Nixon has dropped more than one ton of bombs per minute during every single minute of his administration. He has become—here's a "first" for you—the man who has assembled and let loose more devastation from the sky than anyone else in the history of creation; all this, mind you, while "winding down" the war.

Yet in the past week North Vietnam has been able to send some tens of thousands of troops, with heavy artillery and armor and antiaircraft and even SAMs, across the demilitarized zone into South Vietnam; it has an estimated 20,000 troops pushing off from the Cambodian border near Saigon; it is conducting other military operations in the Mekong Delta and elsewhere. Leaving aside the civilian and environmental damages, one is surely entitled to ask just what military purpose has been served by this torrentuous rain of explosives from the sky?

An obvious reply is, of course, that political constraints have prevented Mr. Nixon from bombing North Vietnam proper in the style to which his predecessor had become accustomed. Instead he has had to do most of his bombing elsewhere in Indochina, and he could not focus the daily devastation on the buildup above the DMZ. Yet the whole Johnson record indicates that although bombing raises Hanoi's costs, Hanoi is prepared to pay those costs. Even the heavy unconstrained bombing on the Ho Chi Minh Trail in Laos has not kept North Vietnam from mustering the threat it now poses in Cambodia opposite Saigon and in the Delta.

Moreover, Mr. Nixon has done much bombing in North Vietnam. Though Mr. Johnson ended regular daily attacks on the North in 1968, sorties by the thousands have been authorized by Mr. Nixon in the name of "protective reaction" against Vietnamese efforts to track or down American planes flying reconnaisance missions over the North and interdiction missions over Laos. Some of these "limited-duration protective-reaction strikes" have gone on for a week or more.

President Nixon's general bombing rationale, as restated by the American command in Saigon just the other day, has been "to help protect the lives of the diminishing United States forces in South Vietnam." Yet virtually none of he remaining Americans are in a combat role (except in the air) or in a combat zone: their lives are *not* threatened. Asked on Thursday about the current raids, Admiral Moorer, chairman of the Joint Chiefs, candidly avoided the customary misleading bows to "protective reaction" and "protecting American boys." The bombing will continue, he said, "so long as the battle that is currently going is supported with resources from North Vietnam . . . as long as there are valid military targets supporting this operation." Defense Secretary Laird confirmed the point on Friday. For at least the span of "this operation," then, we are back essentially to the Johnson policy of regular daily attacks on North Vietnam. A record 500 tactical aircraft and a record 100 B–52s are on the job; a record fifth carrier is being readied to steam into the waters off Vietnam. The ranks of American POWs are again being increased.

In sum, having established himself as the greatest bomber of all time, having surpassed Lyndon Johnson in havoc wrought to the land if not also to the people of Indochina having failed nonetheless to break the will of Hanoi or to deter its largest offensive since Dienbienphu, and having addicted Saigon more than ever to a reliance on American air power even while proclaiming ever greater success for "Vietnamization"—having done all this, Mr. Nixon is bombing still more, while the Russians, undeterred, are providing ever heavier firepower, in the form of artillery and SAM missiles, to their North Vietnamese allies. In what conceivable sense can this be described as "winding down"—let alone ending—the war?

OPPRESSION OF JEWISH CITIZENS OF SOVIET UNION

Mr. MATHIAS. Mr. President, the Congregation of B'nai Israel of Washington, D.C., has shown deep concern for the difficulties suffered by Jewish citizens of the Soviet Union. They are particularly concerned with the welfare of Eva and Hillel Butman and have adopted them as a family.

On March 21, 1972, Mort Yadin of the Congregation B'nai Israel had a revealing telephone conversation with Eva Butman. Hillel Butman is a prisoner of conscience in the Potma Labor Camp. Their dialogue offers a cogent appraisal of the tragic situation faced by many Soviet Jews.

I ask unanimous consent that the text of this conversation, along with a telegram from Congregation B'nai Israel to Ambassador Anatoly Dobrynin, be printed in the RECORD.

Ambassador ANATOLY DOBRYNIN,
Embassy U.S.S.R.,
Washington, D.C.

On March 20, Eva Butman, wife of Jewish prisoner Hillel Butman, was interrogated, searched, threatened and beaten by KGB agents Stochenko and Lovin after visiting her husband in Potma Prison Camp. As Congregation which adopted the Butman family, we protest this Hitlerite terror tactic against defenseless woman and request assurances it will not reoccur. Committee of this Congregation requests meeting with you to discuss matter. Please advise convenient time and date of such meeting.

HENRY SEGAL,
Rabbi.
WILLIARD MAZIE,
President, B'nai Israel Congregation.

CONVERSATION BETWEEN MORT YADIN AND EVA BUTMAN—WIFE OF HILLEL BUTMAN, INTERRED IN POTMA LABOR CAMP

M. Hello, Eva. Did you visit your husband on March 17th?

E. Yes, I visited him on the 17th, 18th and 19th. On Monday, March 20th, after I left my husband with my escort, Oleg Secheravi, and we arrived at the Potma station in order to go back to Leningrad, we were taken to

a militia station and detained on the basis of a fake document which was a provocative document prepared in advance. According to this false document, they said that we had some stolen diamonds and other valuables hidden on us. They conducted an internal and external search. Our request that they should call the prosecutor or produce a search warrant was ignored. And, I was beaten up.

M. Excuse me, were you beaten up?

E. Yes, I was beaten up. I was hit on the face, and my head was hit against the wall. All my face is disfigured and swollen.

M. Did they find anything on you?

E. No, on me, personally, nothing was found.

M. So they beat you up and let you go?

E. In some way they claimed that they found on my escort some notes that were allegedly written by my husband. I also wanted to tell that when I went to visit my husband, I took with me letters from our friends and relatives in Israel. Before going to visit my husband, I turned them in for an inspection so that my husband should be able to read them. After the visit, this correspondence was not returned to me. During the search, all of a sudden, this correspondence was found in the personal belongings of my escort, Oleg Secheravi. Also, they found some notes which were allegedly written by my husband (the handwriting was not my husband's). The search lasted for six hours, 2–8 p.m.; and, of course, no diamonds were found. After the search, two K.G.B. agents arrived, Stochenko and Lovin. Stochenko interrogated me. He asked how it happened that these notes got into the possession of my escort. He said these notes were written by my husband and that my husband will have to pay for this and will get. Do you understand?

M. Yes, I understand.

E. Today I will send a telegram to the camp commandant, Colonel Osipov.

M. I had a telephone conversation with Col. Osipov.

E. When?

M. On February 24th.

E. What did he tell you?

M. He did not give a reply to any of my questions. He said, "All questions concerning prisoners have to be addressed in writing to the Association of the Russian Red Cross. I cannot give any information concerning prisoners over the phone." I told him that in Washington everything is known and all the information will be relayed to President Nixon.

E. (she burst into tears) Please relay to the President that he should help the prisoners and that they, and we, should not perish here!

M. Do not worry, you will not perish; and we will not forget you. I will give all this information to the Press.

E. On February 11th, Penson's mother came to visit him.

M. We know of this incident. The authorities told her that the room for visitors was not ready yet; and after traveling all the way to Potma, she had to go back.

E. There was a four day hunger strike because Misha Shepshilovitch was not permitted a visit by his mother. For a hunger strike there is no prescribed punishment. You can only get solitary confinement. But they got punished anyway. Their extra food was taken away for a whole month. Extra hard labor, carrying of lumber, is done by *Zaslavsky, Penson* and *Kirshner*. They were working with their brigade and performing their quotas 100% and over. In spite of this, they lost their special allowance of two rubles, which they get when the prescribed work quota is done. With this they can buy additional food. Zaslavsky, Penson and Kirshner are not getting their two rubles. *Misha Shepshilovitch* is working in painting; and, although he preforms his quota, he also does not get his two rubles.

M. What else?

E. *Anatoly Goldfeld* is being threatened that he will not receive his parcels which he is supposed to receive after three months. Even the two parcels which a prisoner can receive a year are being threatened. *Lev Yagman's* health is still serious, and it has to be brought to the attention of the International Red Cross. After he left the hospital, he was supposed to get light work; but the doctor did not give a sick ticket; so he has to do hard labor. The only medication that he gets is drops to relieve his heart pains. When he was in the hospital, the doctor promised to assign him to light work but, when he left the hospital, the promise was not kept. *Victor Bugoslavsky* also had a heart attack. Now I can tell you about their diet.

M. Most probably borscht and black bread.

E. Breakfast: ½ litre of meatless, watery soup.

Lunch: 200 grams of peas or oats, which are fit for cattle to eat, or some kasha. 200 grams, that's all.

Supper: 20 grams of what they call fried fish (it does not look like fish) and some rotten potatoes (they even give them plates in which to throw the potatoes because they know they're not edible) and 15 grams of sugar per day.

M. Did you receive my letter?

E. Yes, I received your letter where you informed me that Mr. Goldkind sent me a parcel. I have, as yet, not received the parcel.

M. You will, most probably, get it soon.

E. Thank you very much. I told my husband that we have such good friends in Washington.

M. Did you receive the photograph of Hillel's chair that I sent you?

E. Yes, I received the letter with the photograph.

M. I also sent you a letter on December 15th. You did not receive this letter?

E. No, the December letter I have as yet not received.

M. I sent you a letter on February 29th, and I got the return receipt dated March 10th, signed by you. Is it your signature?

E. Yes, it is my signautre. It is very good that you sent your mail registered with return receipt.

M. This is what we always do. If the letter is not delivered and is not returned, the Soviet government has to pay a Fifteen Dollar fine.

E. Wonderful, wonderful. Very good. I told Hillel that we have wonderful "relatives" in Washington and that I found a good "uncle" who is concerned about us; and he was very glad to hear about our warm "relatives".

M. We will let the Press know what happened. Did you complain to the authorities?

E. Today I will write a complaint to the Minister of the Interior, Shokolov; and I will also send a telegram to Colonel Osipov, commandant of the camp where I will say that I was illegally detained and searched illegally, internally; and also that the K.G.B. agent, Stochenko, threatened to dispose of my husband in the appropriate manner.

M. How does Hillel feel, himself?

E. Fair. He does not have any appetite. I brought some good food. He looked at it, but did not eat any. He lost his appetite and his desire to live.

M. Do you know if the Prisoners receive the parcels that we send from America?

E. Let me give you an example. A food parcel was sent to Aron Shpilberg. The parcel was shown to him, and they said that they would store this parcel with his personal belongings; and when it rots, they would throw it out. Shpilberg asked that the parcel be returned, but they said, "No, it will rot with your personal belongings, and then we will throw it out." Hillel got a Fifty Dollar draft and made arrangements for me to receive his power of attorney in order to cash the draft; but I have not gotten the power of attorney. I think that I will receive it.

M. Some money has been sent to you. Did you receive this money?

E. Yes, yes, I received the money; and it is very helpful. I am grateful, for I could not do without it. Please thank all my "relatives" for it.

M. I will give all your "relatives" regards, and I will also ask your "relatives" to relate your predicament to President Nixon.

E. Now, please listen. The conditions in the camp are unbearable. The prisoners live 40 to a barrack, and they are not allowed to visit their friends in another barrack. If, even by accident, they happen to be in another barrack, another prisoner comes out and reports this to the authorities. Usually this other prisoner is a former Nazi who was responsible for the deaths of thousands of Jews. Immediately, a prison controller appears, and our boys are punished severely for this prison infraction. There is a lot of anti-semitism in the camp.

E. It would be beneficial if our prisoners could be separated from the other prisoners, since they consider themselves foreigners. Our prisoners have no future in the Soviet Union and do not want to have any ties with the U.S.S.R. Their future and ties are with Israel.

In your conversations with your governments or organs of the Red Cross, please stress that these prisoners do not want to have any ties with the Soviet Union, and they are in the camps for reeducation. Why reeducate them when they want to leave the Soviet Union and have no ties with the U.S.S.R.? If they would be let out, everybody would benefit—our husbands, their families and the Soviet Union—since the prisoners no longer consider themselves citizens of the U.S.S.R. and do not want to live in the Soviet Union.

M. We are writing to the International Red Cross, but it is unfortunate that the International Red Cross does not have a representative in the U.S.S.R.

E. Is it possible to have some kind of International inspection of the camps?

M. We are trying. We are sending letters and telegrams. I think that President Nixon will help.

E. We have great hopes in President Nixon.

M. He wrote a letter to Ruth Averbach (Alexandrovitch) and told her that he sympathized with the Jewish problem in the U.S.S.R. and the condition of the prisoners and that he would raise the issue during his Moscow visit. This letter was broadcast by Voice of America to the U.S.S.R. Did you hear it?

E. No, I did not. Do you know the time and the waves of these broadcasts?

M. No, I do not know. Do you listen to Kol Israel?

E. Yes, definitely, every day.

M. Two times a week the Voice of America broadcasts to the Soviet Union on the subject of Soviet Jews. The broadcasts are in Russian. Do you work?

E. Yes, I still work.

M. Where do you work, and in what capacity?

E. I work as an engineer. This is my second job. I was fired from my first job, and I do not know how long they will keep me here.

M. You have my address. Please write me a letter and mail me photographs of Hillel, yourself and your daughter.

E. I will definitely write you a letter.

M. The next call will be on Saturday night, April 1st, which is Passover.

E. Have a happy Pesach and wish all our "relatives" a happy holiday.

M. Be healthy and do not lose your spirits. We will not let you down!

GIL HODGES: A DISTINGUISHED HOOSIER

Mr. HARTKE. Mr. President, recently the world of baseball lost one of its most beloved and widely respected members in the untimely death of Gil Hodges.

We who are from Indiana were particularly saddened to hear of the passing of Gil Hodges for we were proud to have claimed him as one of our most renowned native sons.

Gil Hodges was born in Princeton, Ind., on April 4, 1924. His mother, Mrs. Irene Hodges, still lives in Petersburg, Ind., and his brother is a resident of Evansville.

During his youth and throughout high school, he was regarded as an outstanding player in both baseball and basketball. In fact, it was by virtue of a basketball scholarship that Gil was able to attend St. Joseph's College, in Rensselaer, Ind. During his sophomore year in college, however, Gil was spotted by a scout from the Brooklyn Dodgers and he immediately signed a contract to play for that team.

Little need be said about Gil Hodges' long and distinguished career as a member of the old Brooklyn Dodgers—a team that included such greats as Roy Campanella, Jackie Robinson, Pee Wee Reese, Duke Snider, and Carl Furillo. As the Dodgers' all-star first baseman, Gil compiled an impressive array of records—many of which still stand in both the American and National Leagues. He hit more home runs—370—than any other right-handed batting first-sacker in National League history; he collected a still-standing record of 14 career grand-slam home runs; he put together a string of seven successive seasons in which he had 100 or more RBI's; and finally, he was one of only six players ever to have hit four home runs in one game.

Following his playing days, Gil embarked upon equally distinguished career as a big-league baseball manager. From 1963 to 1968, Gil managed the now departed but scarcely missed Washington Senators—a thankless job, to be sure. Yet at the helm of the Senators, Hodges managed to improve the team's win-loss record each successive year.

In 1968, Gil Hodges assumed the duties of managing the New York Mets following the retirement of that team's first skipper, Casey Stengel. It was with the hapless, fledgling Mets that Hodges reached perhaps the zenith of his career—in just 3 short years, he piloted his errant crew of ragamuffins to a world's championship over the seemingly invincible Baltimore Orioles. This achievement, to most baseball fans, was truly the fulfillment of an impossible dream.

This, then, is the legacy of Gil Hodges. It is said of him that he was one of the nicest guys in all of baseball. Both on the field and off, he demonstrated an unflappability and poise uncharacteristic of most of his peers. Truly he was a man filled with goodness, humility, and gentleness. Not only will the world of sports be diminished by his passing—we shall all miss Gil Hodges.

CHIEF JUSTICE BURGER INSTALLED AS PRESIDENT OF BENTHAM CLUB

Mr. ALLOTT. Mr. President, the recently installed president of the Bentham Club, otherwise known as Chief Justice Warren Burger, has used the occasion of his installation in that office to deliver a most impressive address on "The Doctrine of Judicial Review: Mr. Marshall, Mr. Jefferson, and Mr. Marbury."

This address, delivered February 1 at the University College, London, not only proved that the Chief Justice is a master student of constitutional theory and history; and it not only proved what his service on the Court has already demonstrated—that he is a great servant of the law; it also proved that he was a wise choice to be honored as the first American invited to deliver the Bentham lecture.

It has been said that judicial review is the distinctively American contribution to the art of government. Perhaps that is true. What certainly is true is that it is the instrument by which our living written Constitution translates into power the reverence with which it is regarded by the people.

The existence of judicial review is conforting to all those who believe, as I do, that constitutionalism is the highest social achievement of mankind. And the presence of men such as the Chief Justice to administer judicial review—prudently, with due regard for the popular basis of our Government—is a comfort and an inspiration.

Mr. President, as an American I am deeply gratified by the honor accorded our Chief Justice. As a friend of the Chief Justice I am pleased, but in no way surprised, by the excellence of his address. As a Senator I wish to share his address with the Senate, so I ask unanimous consent that it be printed in the RECORD.

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

THE DOCTRINE OF JUDICIAL REVIEW—MR. MARSHALL, MR. JEFFERSON, AND MR. MARBURY

(Presidential address to the Bentham Club by Warren E. Burger, Chief Justice of the United States)

I do not know quite how to express my appreciation for being the first American invited to deliver the Bentham Lecture. I understand that by virtue of the invitation I am to join in the honored roll of Bentham Presidents. Perhaps it tells something of the crushing burdens of that office that it is assumed I will be able to perform from a distance of 3,000 miles!

There are countless American judges, lawyers and legal scholars who would have been more appropriate candidates for this lecture, but you extended the invitation and, in the euphoric mood that often surrounds engagements more than one year in the future, I immodestly accepted.

I was influenced, no doubt, by the pleasure that it would give me to visit London if only for a day or two in the middle of a Term of the Supreme Court. But more than that I felt honored to be given the opportunity not only to be the Bentham lecturer but to be included in this select company.

By sheer coincidence it was 182 years ago today (February 1) that the Supreme Court of the United States first sat—then under the title of the Supreme Judicial Court of the United States.

Reflecting on the background of the Bentham Society, and reading the learned lectures delivered by distinguished judges and scholars who have appeared here, I concluded I would be on safer ground by far if I selected as my subject an aspect of our constitutional jurisprudence that until fairly recent times has been unique to our system of jurisprudence and our form of government.

Lord Bryce once observed that "No feature of the government of the United States has awakened so much curiosity in the European mind, caused so much discussion, received so much admiration, and been more frequently misunderstood, than the duties assigned to the Supreme Court and the functions which it discharges in guarding the Ark of the Constitution." [1] I should add that in some quarters, the Supreme Court's guardianship of that Ark probably has received more guarded praise than in distant places where its impact is purely theoretical.

Lord Bryce, of course, had reference to the doctrine of judicial review, sometimes described as the doctrine of judicial supremacy, in the interpretation of constitutional terms and principles. The writings of Jeremy Bentham reveal little as to his views on this question other than fleeting and uncomplimentary references to the notion that mere judges should be able to declare null and void the acts of a legislative body,[2] and I gather that this view continues to have considerable acceptance in England.

It is helpful to an understanding of this subject to examine it in the setting in which *Marbury* v. *Madison* was decided in 1803 with all its momentous consequences for our country and to suggest to you that this great case had its antecedents in our colonial experience, and its taproots in the declarations of fundamental rights of Englishmen back to Magna Carta.

Very early in the history of our country the colonial experience of living under a parliamentary system with no check on the legislative or executive branch, except that of popular will in a limited way, led our Founding Fathers to feel strongly the need for limitations on all branches of government. The intellectual spadework for the system ultimately adopted for our federal government had been done, of course, by such 17th and 18th Century political theorists as Hobbes and Locke.[3] As we know, the great rationalist Montesquieu contributed the notion of a separation of powers within the government itself, in order that each branch might act as a sort of brake upon the others.[4] As the system works today, one of the checks exercised by the Supreme Court involves measuring executive or legislative action against the Constitution whenever a challenge to such action is first properly brought within the framework of a "case" or "controversy," [5] and then properly brought within the "appellate jurisdiction" [6] of the Supreme Court.

It has been suggested from time to time that the subject of judicial review of Congressional Acts was not in the minds of the delegates to the Constitutional Convention in 1787. However, such an obviously important question could not have entirely eluded their attention. Some of the delegates, without doubt, looked to an independent judiciary with fixed tenure as a means of protecting the states against the powers of the new national government, whose scope was as yet unseen and unknown and therefore feared. Others, particularly the propertied classes, probably regarded a Supreme Court and an independent Federal Judiciary as a source of protection against the egali-

Footnotes at end of article.

tarian popular government advocated by Jefferson. They could not fail to be aware that the exercise of such powers by the judiciary must in some way involve limitations on legislative and executive action.

Some residual controversy remains as to the exercise of judicial review today, but it is largely as to scope, not basic power. It is now accepted that the original assertion of the power was not judicial usurpation as Jefferson considered it.[7] Needless to say, the major challenges to the power have occurred during those periods when, for whatever reason, the Supreme Court has been under attack for its role in contemporary affairs. As an example, many polemics as well as some of the most thoughtful and scholarly challenges were written during the 1930's when, to many of its critics, the Supreme Court represented the dead hand of the past impeding legitimate experimentation and innovation in trying to cope with a crisis. At present, it is fair to say that, absent some unforeseeable convulsion of great magnitude, the doctrine of judicial review, as announced by Marshall in 1803 in *Marbury* v. *Madison*,[8] is likely to remain part of the American system.

It is often assumed that the doctrine was the invention of Chief Justice John Marshall in that most famous of all his opinions. It is true, of course, that Chief Justice Marshall first announced this keystone doctrine of our constitutional law in the *Marbury* case; and it is also true that our written Constitution makes no reference to the theory in defining judicial power.[9] But Marshall was not and never claimed to be the originator of the doctrine since he was well aware of a growing acceptance of the idea that constitutional adjudication was inherent in the very nature of a written constitution. This is not to disparage Marshall for he was the one who recognized the need to enunciate the doctrine as part of Federal jurisprudence and seized—some might say forced—the first opportunity to assert the power of the Court to measure an act of Congress by the yardstick of the Constitution.

But this takes me ahead of my story, and I must turn back to 1776, the very year of the Declaration of Independence. In that year the people of the town of Concord, Massachusetts, held a Town Meeting and adopted a resolution that "a Constitution alterable by the Supreme legislative is no security at all to the subject against encroachment of the Governing Party on any or all of their rights and privileges." Earlier, when the Colony of Massachusetts Bay was under British Colonial rule, the sturdy farm people of Berkshire County refused to let the Colonial courts sit from 1775 to 1780 until the people of Massachusetts adopted a Constitution with a Bill of Rights enforceable by judges.

Notice the premise in these events, 25 years before *Marbury*, that a written constitution would govern the acts of a legislature and protect fundamental liberties. And notice also the tacit assumption that the judicial branch was the appropriate vehicle for providing that protection.

In 1793, ten years before Marshall's decision in *Marbury* v. *Madison*, Spencer Roane, a great judge of the Virginia Court and an intimate of Thomas Jefferson, said, in the case of *Kamper* v. *Hawkins*,

"If the legislature may infringe this Constitution [of Virginia], it is no longer fixed; . . . and the liberties of the people are wholly at the mercy of the legislature."[10]

To be sure, Judge Roane was speaking to the power of the state courts to strike down legislative acts contrary to the Virginia Constitution, but conceptually the doctrine is indistinguishable from *Marbury*. In 1793 the Commonwealth of Virginia, of course, regarded itself as a sovereign at least equal to the new National Government. Some lawyers, including very good ones of that day, would later hesitate and ponder before taking the final step to make the doctrine equally applicable to a Federal Constitution and a Federal Legislature, but very quickly their strong sense of the rights of the states, that were widely viewed as sovereign in the 18th and early 19th Centuries, would impel them to accept such a restraint on the federal legislative body. Their hesitation was no more than that of thoughtful men chary of granting open-ended power to anyone.

Although I attributed a certain uniqueness to the American doctrine of judicial review as formally articulated in *Marbury* v. *Madison*, it is quite clear that this, like almost all else in our law, has its roots in English legal thought.

Magna Carta, of course, was primarily intended by the Barons as a limitation on King John; but it has come to stand for a limitation on princes and parliaments alike. In one of the very early opinions of the Supreme Court of the United States, *Bank of Columbia* v. *Okely*, 4 Wheat. 235, 244 (1819), one of many containing references to Magna Carta, it was said:

". . . after volumes spoken and written [about the guarantees of Magna Carta], the good sense of mankind has at length settled down to this: *that they were intended to secure the individual from the arbitrary exercise of the powers of government. . . .*" (Emphasis supplied.)

Another thread of influence originates with the struggle between Lord Coke and the Stuart kings. Coke's writings and Reports were well known to the American colonists and, even though the dictum in *Dr. Bonham's Case* has never been very closely followed in England, it has been seminal on ours. In that case Coke asserted that

". . . in many cases, the common law will controul Acts of Parliament, and sometimes adjudge them to be utterly void: for when an Act of Parliament is against common right and reason, or repugnant, or impossible to be performed, the common law will controul it, and adjudge such Act to be void." 8 Co. 113b, 118a, 77 Eng. Rep. 646, 652 (1610).[11]

And even that super authoritarian, Cromwell, said, 150 years before *Marbury* v. *Madison*,

"In every government, there must be something fundamental, somewhat like a Magna Carta which would be unalterable . . ."[12]

I doubt that the stern Mr. Cromwell intended to propound the idea a judicial body like our Supreme Court, independent of both the executive and legislative branches, should be empowered to act as a sort of umpire, but obviously he was concerned about unbridled legislative power.

A very important point of departure from England's jurisprudence was the American insistence on written guarantees that would be definite and would narrow the area for interpretation. Each of the thirteen original states of the Union had a written constitution, giving tangible expression to what the farmers of Concord and Berkshire, Massachusetts, demanded as early as 1775. Having said that the idea of written guarantees in a constitution departed in a sense from England's procedents, I am bound to note that even this idea traces directly back to Magna Carta and to the written charters of the colonies.

An important function of a constitution is its organic allocation of powers of government and in this area alone the authority must reside somewhere for a binding pronouncement that, for example, treaty making power is shared by the Executive and the Senate, that the veto power is exclusively for the Executive, the overriding power exclusively in the Congress. More than a decade before *Marbury*, Justices of the Supreme Court sitting on circuit held that state laws contrary to the Federal Constitution were invalid and this was confirmed in *Van Horne Lessee* v. *Dorrance*, 2 Dallas 304 (1795).[13] In his opinion in that case Justice Paterson, sitting on circuit, asserted flatly:

"I take it to be a clear position; that if a legislative act oppugns a constitutional principle, the former must give way, and . . . it will be the duty of the Court to adhere to the Constitution, and to declare the act null and void." *Id.*, at 309.

We see, therefore, that long before *Marbury* American political leaders, including many of the most distinguished lawyers and judges in the Colonies and in the original 13 states, accepted it as fundamental that a written Constitution was a restraint on every part of the federal government. It does not disparage John Marshall's greatness as a judge or a statesman to say that when he wrote the opinion in *Marbury* he was doing little more than declaring what was widely accepted by so many of the best legal minds of his day—at least when they could divorce politics from reason! If it had not come in *Marbury*, it would have come later but John Marshall was not a man to wait for perfect opportunities if a plausible one offered itself. It had to be said, and Marbury was the fortuitous circumstance that made it possible to establish this great principle early in our history.

The setting in which this great case developed is important. The incumbent President Adams was defeated by Thomas Jefferson in the election of November 1800. But between the time of the election and the following March when Jefferson actually took office, Adams remained in control of the government and in control of what we call a "lame duck" Congress.[14] One of the first things he did after his defeat was to encourage the ailing Chief Justice Ellsworth to resign. The Federalist Adam was, of course, deeply concerned about the future of the country, and undoubtedly about the future of the Supreme Court in the hands of Jefferson and his Republicans. Parenthetically, I should point out that political parties change their names in our country as well as in yours, for Jefferson's Republican Party became the present Democratic Party.

An interesting footnote to history, often overlooked in the appropriate recognition of John Marshall and the wisdom of John Marshall and the wisdom of John Adams in appointing him, emerges from the circumstance that Marshall was not Adams' first choice for Chief Justice after Ellsworth resigned. John Jay, who had served as the first Chief Justice of the United States by appointment of George Washington, resigned as Chief Justice in 1795 to become Governor of New York State. Adams wrote to Jay urging him to return to his old position as Chief Justice but he declined. Interestingly, Jay refused because, as he put it, "I left the [Supreme] Bench perfectly convinced that under a system so defective, it would not obtain the energy, weight and dignity which are essential to its affording due support to the National Government, nor acquire the public confidence and respect which, as the last resort of the justice of the nation, it should possess."[15] His decision not to return to the Court in that frame of mind, thus opening the way for Marshall, was one of the most fortuitous events in the two centuries of our history.

Whatever Jay may have thought of the office, you may be sure that Jefferson was anything but overjoyed at the eleventh hour appointment of John Marshall, who was his distant kinsman but not a friend.

Jefferson's deep and bitter hostility toward Marshall is one of the unplumbed mysteries of this complex man. Some historians explain it in terms of his opposition to Marshall's judicial philosophy, but other explanations are also suggested.[16] Jefferson's choice for Chief Justice, had Marshall not

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been appointed, was Spencer Roane, an able Virginia judge. Yet Judge Roane, described by Professor Charles Warren [17] as "an ardent strict constructionist of the Constitution," showed his basic agreement with Marshall in an opinion for the Virginia court in 1793, stating:

"It is the province of the judiciary to expound the laws. . . . It may say too, that an act of assembly has not changed the Constitution [of Virginia], though its words are expressly to that effect. . . . [I]t is conceived, for the reasons above mentioned that the legislature have not power to change the fundamental laws. . . . [W]ould you have them [judges] to shut their eyes against that law which is of the highest authority of any . . .? [18]

From the day Jefferson took office as President on March 4, 1801, those who were even slightly aware of his hostility toward the Supreme Court, the Federal Judicial Branch as a whole, and John Marshall in particular, could sense that these events foreshadowed a collision of two strong men who had quite different views as to how the United States could best fulfill its destiny.

Underlying the impending conflict was a very fundamental difference between the Federalist belief that a strong national government was the key to the future of the new nation and the opposing belief of the Jeffersonian radical Republicans who feared all centralized power and wanted to keep the states the strong and indeed the dominant political power. When he took office Jefferson still looked with considerable favor on the French Revolution, notwithstanding its later excesses and horrors. Jefferson had been largely aloof from the hardships of our war or rebellion; he lacked the firsthand experience that Washington, Hamilton, and even Marshall, as a junior officer, shared in a war in which 13 quarrelsome and disunited colony-states, functioning through an impotent confederation and a parochial Congress, fumbled and almost failed in raising, equipping and maintaining armies. Jefferson's lifelong passion for minimal government had never been subjected to the acid test of trying to conduct a war with a truly "minimal" government.

Jefferson's remarkable political instincts enabled him to see, far ahead of his contemporaries, that the latent power of the National Judiciary, and especially the Supreme Court, could be a major obstacle to his dream of a simple, loose-jointed national confederation, linking but not binding the several states.[19] But Jefferson was at heart a majoritarian. What the People wanted, the People would have.

Whatever his earlier beliefs, by 1800 Jefferson's distrust of an opposition to the federal judiciary had hardened. From 1800 onward, Jefferson did not waver in this attitude, and in 1820 we find him declaring that:

"To consider the judges as the ultimate arbiters of all constitutional questions . . . would place us under the despotism of an oligarchy." [20]

Similarly, in a letter to a friend dated August 18, 1821, Jefferson wrote—some would say, prophetically—

"It has long . . . been my opinion, and I have never shrunk from its expression . . . that the germ of dissolution of our federal government is in the Constitution of the federal judiciary; an irresponsible body (for impeachment is scarcely a scare-crow), working like gravity by night and by day, gaining a little to-day and a little to-morrow, and advancing its noiseless step like a thief, over the field of jurisdiction, until all shall be usurped from the States, and the government of all be consolidated into one. To this I am opposed; because when all government, domestic and foreign, in little as in great things, shall be drawn to Washington as the centre of all power, it will render powerless the checks provided of one government on another, and will become as venal and oppressive as the government from which we separated." [21]

From the time he was President to the end of his life, Jefferson did not alter his hostility either to strong central government or to the federal judiciary, and the Supreme Court, in particular, was the target of repeated bitter comments. Of course in the United States we judges have had to learn to accept philosophically all manner of "slings and arrows," and by modern standards Jefferson's characterization of Federal judges as "thieves" is a fairly moderate comment. If he ever recognized that the unsound pronouncements of the Supreme Court could be "reversed" through the constitutional amending process by the People he trusted to much, I have not discovered evidence of it. However, Jefferson would also well understand difficulties of the amending process.

So much for the setting. We now come to the final act.

As sometimes is true of great events in history, *Marbury* v. *Madison* was an accident. But it was an accident which the solid, steady and resourceful Marshall exploited to the fullest. The accident or fortuitous combination was the coincidence of a need, an opportunity, and a man—a man with the foresight, the wit and the courage to make the most of his chance.

Adams, as I have noted, was a "lame duck" President after November 1800, with a "lame duck" Congress on hand for five months after the election. Naturally he made as many appointments as possible. Persuading Ellsworth to resign to make way for Marshall as Chief Justice was one step. The appointment of a goodly number of Federal judges was another. But the far lesser post of Justice of the Peace was the grist of Marbury's case. The story is too well known to be chronicled in detail. Marbury was one of those whose commission as a Justice of the Peace was signed by President Adams and sealed by Marshall (who was still acting as President Adams' Secretary of State even after being appointed as Chief Justice and confirmed by the Senate). But Marbury's commission was not delivered. Legend, supported by letters, tells us this was because of Marshall's careless error as he hastened to complete his duties as Secretary of State and don his robe as Chief Justice before March 4, 1801.

The minor office of Justice of the Peace was hardly worth a lawsuit, but Marbury was a spunky fellow and he sought a direct mandamus in the Supreme Court against Madison, Jefferson's Secretary of State, to compel what Marbury rightly claimed was the purely ministerial act of delivering the commissions that Madison's predecessor Marshall, as Secretary of State, had forgotten to mail out. In the Supreme Court it can be assumed that the first reaction was, "of course," since the Judiciary Act provided that precise remedy—mandamus by an original action in the Supreme Court.

Marshall saw it otherwise. If mandamus issued and Jefferson's Administration ignored it—as was likely—the first confrontation between Court and Executive would be lost—and all of it over a Justice of the Peace commission! The Court could stand hard blows, but not ridicule, and the ale houses would rock with hilarious laughter. If the Court simply refused to issue mandamus in the face of the very explicit authority of the Federalist-drafted Judiciary Act of 1789, this, too, would be an ignominious retreat by the Court—a Court fearing to act because it would not be obeyed.

But if, as no one had even remotely suspected up to that time, Congress could not vest original jurisdiction in the Supreme Court in any cases except those specifically recited in Article III, then the Court could say, "Yes, Marbury was duly confirmed"; and "Yes, the Commission was duly signed and sealed"; and "Yes, this Court may examine into the manner in which the Executive conducts its own affairs"; and "Yes, delivery is a purely ministerial act," and "Yes, it is shameful that the new administration will not perform the simple, ministerial act of delivery"; but the Court could also say, "However, this Court has no power under the Constitution to entertain any original action except those specified in Article III, and hence Sec. 13 of the Judiciary Act of 1789 [22] purporting to give the Supreme Court such authority is invalid and, sadly, this action to compel the Executive to do its duty cannot be entertained here as an original action."

And this is precisely what Marshall persuaded the Court to do in a straight-faced, long-winded opinion that exhaustively—and exhaustingly—explored every possible alternative. After doing so, he sadly concluded that the Federalist Congress of 1789 had passed, and the Federalist President, George Washington, had signed, an Act—drafted by no less than Ellsworth, Marshall's distinguished predecessor—that everyone had thought excellent for 13 years, but Section 13 of which was void because it conflicted with Article III of the Constitution.

Jefferson's Secretary of State, Madison, had won the battle; Marbury, the Federalist, had lost, and the real war, the great war over the supremacy of the Supreme Court in constitutional adjudication, had been won by Marshall—and by the United States.

Because it was a small case—almost a joke—few people cared. But Jefferson the lawyer and politician saw that he had been outmaneuvered by the holding of the Court near the time of an election—1803—when it would be very difficult to make an issue of a case decided in his favor and against Marbury, his political opponent. Not even a Pyrrhic Victory! Small wonder he likened the federal judiciary to thieves in the night!

For salt and vinegar in Jefferson's wounds, in the same Term the Supreme Court announced in solemn tones with respect to another section of the same Judiciary Act of 1789 (as to which its Section 13 had now been declared void) that:

"Practice and acquiescence under it [the Act of 1789] for a period of several years [13 years!], commencing with the organization of the judicial system . . . has . . . fixed the construction . . . [and] is too strong . . . to be shaken . . . is at rest, and ought not now to be disturbed."

Marshall is spared the charge of judicial hypocrisy for, having sat as the trial judge on circuit, he took no part in the case in which this was said, *Stuart* v. *Laird*, 1 Cranch 299, 309 (1803).

Not for 54 years after *Marbury* did the Court hold another Act of Congress unconstitutional.[23] In another irony of history, the Court decided in 1857 that Congress had no power to ban slavery in the Louisiana Territory under an 1820 Act known as The Missouri Compromise. This case was the infamous Dred Scott Decision [24] that added fuel to the fires leading to our Civil War.

Another interesting footnote to Mr. Marbury's case is that after 10,000 words, more or less, Marshall held that the Court had no jurisdiction of the case since the statute purporting to create jurisdiction was void. So we have, perhaps, the most important single opinion of the Court in nearly 200 years pronounced in the context of a holding that the Court had no jurisdiction at all! From this, of course, we authoritatively conclude that the Court always has jurisdiction to decide its own jurisdiction!

As with so many great conceptions, the idea of judicial review of legislation, now seems simple and inevitable in the perspective of history. People, not governments, delegated certain powers to the national government and placed limits on those powers by specific and general reservations. The people having flatly stated certain guarantees relating to religious freedom, to speech, to searches, seizures and arrests, would it be

Footnotes at end of article.

reasonable to think that legislative action could alter those rights? The very explicit procedures for constitutional amendments, standing alone, negate the idea that a written constitution could be altered by legislative or executive action. The language of Article III vesting judicial power "in one supreme Court" for "all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States and Treaties . . ." would be sterile indeed if the Supreme Court would not exercise that judicial power by deciding conflicts between the Constitution, federal laws and treaties on the one hand, and Acts of Congress, the Executive, or States on the other.

To speak of the doctrine of judicial review and of *Marbury*, and fail to add at least a few more words on Marshall would be to serve a great claret without letting it breathe and in a thick porcelain mug.

When one speaks of the "Great Chief Justice" on our side of the Atlantic, every literate person knows the reference is to John Marshall. It does not disparage his unique qualities but rather emphasizes his unparalleled gifts to note that he had no formal education and read law at William and Mary College for a mere few weeks before he was admitted to practice. This becomes more important when we remember that his contemporaries included Alexander Hamilton, Thomas Jefferson, James Madison, and Aaron Burr, who were all highly educated in the classics, all deeply read and trained in law.

There are several other factors, all relating to the political climate, that may help to understand Marshall and his place in history. Going back to the appointment of the first Court in 1790, we must recall that there were no political parties and it was then devoutly hoped that none would evolve. But men who risk all to conduct a revolution must be passionate believers, and our Founding Fathers were just that.

Thus it is not at all surprising, therefore, that when the newly-created Supreme Judicial Court of the United States[25] met for the first time on February 1, 1790, it was composed of men who tended to reflect the views of George Washington and his administration. In short, they were all federalists—the word was not uniformly capitalized then—and they were firm believers in the need for a strong federal or national government as a condition of survival. The Federalists remained in power until Jefferson defeated them in 1800—over twelve years. Quite naturally, then, when Marshall came to the Supreme Court every one of its members shared his political and judicial philosophy.

Since the Court had delivered opinions in only a handful of cases when John Marshall was appointed, there could hardly be a more propitious moment for a judge of great intellectual capacity and remarkable qualities of statesmanship to ascend the highest court in the country. He had every advantage in his favor: he was very literally writing on a clean slate, with the support of five colleagues who shared his basic philosophy, and he had the wit and courage to make the most of his opportunity. As a soldier in the Continental Army, he had learned the need for a unified and strong national government to ensure the cohesiveness essential to survival of a new nation composed of 3 million highly individualistic and scattered people. As a political leader of Virginia, a member of its legislature, a member of the national Congress and a Secretary of State, he understood government. Moreover, as one of the leaders in the Virginia struggle to secure adoption of the new Constitution over the vigorous opposition of men of such stature as Thomas Jefferson and Patrick Henry, he knew how fragile were the ties that held the former colonies together.

Thus to the everlasting benefit of a country begotten in revolution and weaned in confusion and conflict, the United States of America was to be tutored in Constitutional law for 34 formative years by a man who knew precisely what was needed to make a strong nation.

Small wonder, then, that John Adams in 1823, looking back, saw his appointment of Marshall to the Court as one of his greatest contributions to his country. How indeed could there have been a greater one?

FOOTNOTES

[1] James Bryce, *The American Commonwealth*, Vol. I, New York: Macmillan & Co., 1931, p. 242.

[2] "By this unincompetence, by this negation of all limits, this also is to be understood, namely, that let the legislature do what it will, nothing that it does is to be regarded as null and void: in other words, it belongs not to any judge so to pronounce concerning it: for, to give such powers to any judge would be to give the judge . . . a power superior to that of the legislature itself." 9 *The Works of Jeremy Bentham* ("The Constitutional Code") 121 (Bowring ed. 1843).

[3] Thomas Jefferson, in writing the Declaration of Independence, relied heavily upon Locke's *Second Treatise on Government*, almost to the point of plagiarism.

[4] Montesquieu's *L'Esprit des Lois* contains the clearest expression of the principle.

[5] "The Judicial Power shall extend to . . . Cases . . . [and] Controversies. . . ." U.S. Const. Art. III, § 2, cl. 1

[6] [T]he Supreme Court shall have appellate Jurisdiction both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make." U.S. Const. Art. III, § 2, cl. 2.

[7] Although most scholars agree that Article III (granting the judicial power and extending it to "Cases . . . arising under this Constitution, [and] the Laws of the United States . . .") coupled with the Supremacy Clause in Article VI, cl. 2, necessarily includes the power to disregard state or federal statutes found to be unconstitutional, several major efforts to lay a scholarly basis for the contrary conclusion have been made. *See, e.g.*, Boudin, *Government by Judiciary* (1932), and Crosskey, *Politics and the Constitution in the History of the United States* (1953). However, the understanding of the Constitutional Convention seems to have been quite clearly in favor of such a power, *see, e.g.*, Farrand, *The Framing of the Constitution* (1913), and C. Warren, *The Making of the Constitution* (1937 ed.). *See generally* Hart and Wechsler, *The Federal Courts and the Federal System*, 7–37.

[8] 1 Cranch 137 (1803).

[9] The reasons for not writing it into the Constitution are speculative at best. Perhaps it would have been too controversial for some; it could have delayed the final draft; others may have thought it part of the warp and woof of a system of delegated and divided power. In any event, since our Constitution is a document to divide and assign powers and governing functions, the choice of the "one supreme Court" to construe and enforce "the supreme Law of the Land" seems simple, and the grant of power a necessary corollary of that choice. Thus the omission of any reference to the theory may have been due to an unwillingness to elucidate the obvious.

[10] *Kamper* v. *Hawkins*, 1 Virginia Cases 20, 38 (1793). This is by no means the only state case in which state legislative acts were declared unconstitutional by state courts or in which the principle of judicial review was announced. In addition to Virginia, a number of states had each either announced the principle or strongly hinted at it. Among them were Maryland (*Whittington* v. *Polk*, 1 Harris & Johnson 236, 241 (1802)), South Carolina (*Lindsay* v. *Comm'rs.*, 2 Bay 38, 61–62 (1796); also *Bowman* v. *Middleton*, 1 Bay 252, 254 (1792), a conspicuous case in which the court declared an act void because it was against "common right" and "magna charta"), North Carolina (*State* v. ————, 1 Haywood 28, 29, 40 (1794)), Kentucky (*Stidger* v. *Rogers*, 2 Kentucky 52 (1801)), New Jersey (*State* v. *Parkhurst*, 4 Halstead 427 (1802)), and Pennsylvania (*Austin* v. *Univ. of Pennsylvania*, 1 Yeates 260 (1793)). For further detail and a more complete list of early State cases *see* McLaughlin *A Constitutional History of the United States*, 312 n. 34.

[11] For a more complete discussion *see* Haines, *The American Doctrine of Judicial Supremacy*, 29–43 (1959).

[12] Oliver Cromwell, *Letters and Speeches* (Carlyle), Part 7, Speech 3 (Sept. 12, 1654).

[13] Sec. 25 of the Judiciary Act of 1789 in terms granted federal appellate jurisdiction to review judgments of state courts concerning the validity of a treaty or statute of the United States under the Federal Constitution. Sec. 1 Statutes at Large 85.

[14] In Marshall's time, the old Congress met in December after the November elections, and the newly elected Members did not take their seats until the following March. Since some of the old Members had been voted out of office, the December to March sitting came to be called a "lame duck Congress." The problem has been solved by the 20th Amendment which shortens the delay between the time a Member is elected and the time he takes his seat.

[15] C. Warren, 1 *The Supreme Court in United States History* 173.

[16] S. E. Morison, *The Oxford History of the American People*, at 362, states: "Toward Marshall his kinsman Jefferson entertained an inplacable hatred because he [Marshall] had shown him up and broken the sentimental . . . bubble in the XYZ affair."

[17] C. Warren, *Congress, The Constitution and the Supreme Court* (1935 ed.) 58–59.

[18] *Kamper* v. *Hawkins*, 1 Virginia Cases 20, 38 (1793), *supra*

[19] Somewhere along the line in the development of his political philosophy, Jefferson had lost trust in the belief, expressed in a letter to a friend in 1798, that:

"The laws of the land, administered by upright judges, would protect you from any exercise of power unauthorized by the Constitution of the United States." Jefferson to Rowan, 9/26/1798 *writings;* Ford ed., VIII, 448.

[20] Jefferson to Jarvis, 9/28/1820 *Writings;* Ford ed., XII, 162.

[21] *The Writings of Thomas Jefferson*, H. A. Washington Ed., VII, 216.

[22] Sec. 13 of the First Judiciary Act provided: "The Supreme Court . . . shall have power to issue writs of . . . mandamus . . . to any courts appointed, or persons holding office, . . . of the United States." 1 Stat. 81.

[23] However, in *Martin* v. *Hunter's Lessee*, 1 Wheaton 304 (1816), Justice Story for the Court firmly asserted the power of the Supreme Court to invalidate a state statute contrary to the Federal Constitution.

[24] *Scott* v. *Sandford*, 19 Howard 393 (1857).

[25] The Journal of the Court used this title for the Court until the February 1791 Session.

GENOCIDE AND THE GRAND ILLUSION

Mr. PROXMIRE. Mr. President, the eye of the artist often perceives our society with far greater clarity than we do ourselves. Perhaps this stems from a certain detachment, but somehow the picture of mankind revealed through literature, art, and music strikes to the very depths of our humanity and civilization. It reveals a truth and simplicity that we but rarely comprehend.

This has been true of all the great

artistic masterpieces. We examine them and are refreshed by a new and clearer understanding of the strengths and weaknesses of our own character and of our collective humanity. One such artistic creation was the brilliant cinematic work by Renoir, La Grande Illusion. For those of us who have had the great fortune to see this film classic, our very perception of life has been heightened.

I raise this piece of artistry in connection with the treaty for the prevention and punishment of genocide, for it teaches a lesson. Renoir's masterpiece depicted the inanity of war and the senselessness of violence. Set during World War I, the film focused on the conflict between Frenchman and German, but with uniforms set aside it became the story of every man. It became the tale of class conflict, of rampant militarism, and of covert anti-Semitism. In a brilliantly subtle pattern the director wove together the intricate threads that make up mortal man; his love and hate, courage and fear, friendship and fickleness.

But the most crucial and profound revelation of the film was man's inexhaustible ability to delude himself. Renoir saw in all mankind the penchant to believe that problems would solve themselves. War and its concomitant misery would be swiftly ended, evil could be wished away. The untainted goodness of nature would prevail. This, Renoir poignantly reveals, is the grandest of illusions.

Certainly optimism is a virtue in life, but only when tempered with realism. Renoir realized this and, so must we. The evils of the world never can or will be swept away by good intentions or wishful thinking. Rather, bold initiatives and concrete steps must be taken to move mankind forward and to insure a free and peaceful world community.

The Genocide Treaty represents such a forthright initiative. If we are ever to get out from under the tragic grand illusion which Renoir perceived, we must move to ratify this treaty to outlaw mass violence and brutality. No longer can we sit idly by, waiting for a better world.

NATIONALIZATION OF U.S. RAILROADS WOULD BE A COLOSSAL MISTAKE

Mr. TAFT. Mr. President, with five of America's major eastern railroads in bankruptcy, there are increasing suggestions that our railroads should be nationalized. The enthusiasts of nationalization fail to recognize that America's railroads, despite their handicaps, generally earn more money and generally have lower rates than nationalized systems. In 1968, for example, the profit and loss picture for major world railways excluding subsidiaries, was as follows:

	Millions
United States (All class I)	$565
Canadian Pacific Railway	21
Netherlands Railways	(41)
Canadian National Railways	(116)
British Railways	(354)
Japanese National Railways	(376)
Italian State Railways	(578)
German Federal Railway	(704)
French National Railways	(901)

During that same year, freight revenue per ton mile was as follows:

	Cents
Canadian Pacific Railway	1.28
United States (All class I)	1.31
Canadian National Railways	1.32
Japanese National Railways	1.66
Netherlands Railways	2.07
Italian State Railways	2.40
French National Railway	2.83
German Federal Railway	2.88
British Railways	3.34

In my judgment, nationalization would be a colossal mistake. I believe that it is far preferable for us to implement policies which would permit the railway industry to regain its competitive posture and regenerate itself. Since March of last year I have repeatedly pointed out the extent to which unproductive branch lines sap the vitality of our railway systems. Others have pointed out the extent to which other discriminatory policies adversely affect our railway systems The American taxpayer does not need to be saddled with the burden of operating or subsidizing our railways, if we can only provide the type of economic climate in which an intelligent railway management can operate.

The General Electric Corp. has recently issued a statement with respect to America's railways entitled "The Spirit of 1776." I ask unanimous consent that the statement be printed in the RECORD.

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

THE SPIRIT OF 1776

Liberty is the breath of progress . . . the opportunity to explore, to experiment, to start fresh, and to succeed.

It is freedom of thought and thrust . . . freedom to move forward without arbitrary influence and freedom to contribute to the great American enterprise.

Liberty . . . the spirit of free men in a free economy . . . the spirit of our forefathers and, God grant, the spirit we hand our sons and daughters.

Now, as our nation stands on the threshold of its 200th anniversary, we need, more than ever before, a rekindling of this spirit of '76 in the minds of Americans.

This is the destiny of Seaboard Coast Line Locomotive 1776.

Colors flying as it powers its way throughout the countryside or under lights in ceremonial glory, Locomotive 1776 serves as a visual testimony of the vital role which free railroads and free enterprise, working together, have played in building America's health and strength.

Continuation of our national growth depends on the improved service which a strong rail network will contribute in a balanced transportation system.

To this balanced utilization of all modes, the steel wheel on the steel rail brings unique assets.

It alone has the ability to move the massive volume of freight that our expanding economy will generate.

In addition, railroads hold the answer to several ecological challenges. They consume less resources per ton mile of traffic, while helping reduce pollution and congestion.

Railroads have helped meet the national growth challenges with progressive technologies like high horsepower locomotives, automatic car identification, development of piggyback traffic, and the unit train.

These advances allow the same number of locomotives to move 31% more ton miles of freight than they did in 1961.

Yet, the industry's financial position has never been so vulnerable.

In the face of unequal taxes and regulation, as well as policies which force the continuation of uneconomical services, it is losing its ability to build for the future.

The financial stress caused by this imbalance has led some to advocate federal ownership of American railroads.

Perhaps, then, it is appropriate to remind ourselves of the benefits provided by our privately-owned railroads.

A recent study shows that the cost of moving freight is higher on nationalized railroads than on those in America.

Moreover, the study points out that only privately-owned railroads operate at a profit—inadequate though it may be to revitalize them.

These facts substantiate what the experts have long known . . . that nationalization is not the answer.

History tells us that once the discipline of private ownership is removed from one industry, costly nationalization spreads.

Thus, our privately-owned railroads must be allowed to modernize through legislation that provides equal regulation and balanced opportunity.

General Electric supports the objective of restoring railroads to the viable industry this nation must have if it is to enjoy continued growth and prosperity.

Many of the following proposals designed to strengthen the railroad industry should be seriously considered:

Loan guarantee policies, financial assistance programs, and investment tax credits which allow railroads to continue long-term modernization required to meet the transportation needs of an expanding economy and population.

Balanced regulation among all transportation modes, rate levels adequate to cover costs and a fair return on investment, and the freedom of adjusting rates in order to attract new business, retain present traffic and improve earning.

Elimination of unequal tax assessments imposed on railroads by states and municipalities.

Permission to abandon facilities and light density lines which do not generate the revenue required to offset operating costs.

Allocation of transportation trust funds to increase safety at rail-highway crossings.

Removal of preference taxes from present amortization available to railroads and speeding up depreciation guidelines for rolling stock. A depreciation program which covers investment in fixed plant.

Inclusion of railroads in the federal assistance that other modes receive after damage caused by acts of nature.

A railroad industry-government research program and the balancing of federal research and development efforts among all modes. In 1969, only 2% of the $463.3 million allocated to transportation research was spent on railroads.

Increased government support of commuter and medium-distance service pending the conclusion of market research.

These proposals, if made effective, will give railroads equal opportunity in a balanced and progressive national transportation system.

They will help the railroad industry keep pace with our national growth by allowing it to invest in a panorama of exciting new customer service concepts and retain its prominent position in the greatest free enterprise system in the world . . . a system conceived and nurtured by generations of patriots who dedicated their vision, their vitality, their very lives, to the American dream and what it means—a dream in which stirs the spirit of '76 and the breath of progress.

FOREIGN TRADE AND INVESTMENT ACT

Mr. HARTKE. Mr. President, this past month, the United States suffered its second highest trade deficit in history. Imports exceeded exports by more than $597 million dollars in February—an increase of $278 million over the January deficit.

Despite the rhetoric of rosy promises, the administration's approach of currency devaluation, negotiations and more studies is not going to bring us out of the trade crisis, save American industry nor find jobs for the hundreds of thousands of Americans that have been thrown out of work because of imports.

Despite the evident exporting of hundreds of thousands of American jobs, there have recently been a host of studies that purport to show that transnational companies have created domestic jobs. Most of these have come from private associations of transnational firms. It is no surprise that these studies and surveys have been self-serving. Relevant questions are not asked, the firms covered by a survey remain anonymous so that an independent check is precluded and the figures are usually not corrected for acquisitions. What is shocking is that the U.S. Department of Commerce has become involved in similar manipulations of data.

Mr. President, Mr. George Meany, president of the AFL–CIO, recently wrote to Commerce Secretary Peterson pointing out distortions in the Commerce Department study of transnational firms. Although a Government department is supposed to be on the side of the public and a servant of the truth, the study questioned by Mr. Meany involved ignoring damaging data to make transnational firms look good. As Mr. Meany put it, Commerce simply "omits half of the iceberg."

Because Mr. Meany's letter so clearly points up a distortion in this area of growing public debate, I ask unanimous consent that it be printed in the RECORD.

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

MARCH 20, 1972.

Hon. PETER G. PETERSON,
Secretary of Commerce,
Washington, D.C.

DEAR SECRETARY PETERSON: A Commerce Department report, "Policy Aspects of Foreign Investment by Multinational Firms," misrepresents AFL–CIO views on international trade and investment. The report even presents an unfair analysis of employment figures to conclude that "an examination of the relevant data . . . does not bear out labor's contention that overseas investment operations result in declining employment." I urge you to correct the public record.

The AFL–CIO has asked for modernization of U.S. trade, tax, investment and related international policies, because the world has changed and jobs of millions of Americans are now adversely affected. The AFL–CIO also supports the Burke-Hartke bill, H.R. 10914 and S. 2592, legislation designed to modernize U.S. laws on international trade, taxes and related issues. The Commerce Department report emphasizes only multinational firms with misleading analysis.

Unemployment is a serious problem in the United States. The AFL–CIO has stated that complex changes, including the operations of multinational firms, increase that unemployment. Any fair examination even of the employment figures used in the report as "relevant data" shows that the analysis is distorted:

For employment figures, the Commerce Department selected 14 industries "which include the largest overseas investors" to suggest the multinational firms' relationship to employment.

Employment gains of 11 industries with rising employment are said to be "nearly equal" to total U.S. employment gains between 1965 and 1970.

A fair analysis would show that total U.S. employment rose 2½ times faster than employment in the 14 industries selected. The reason for the difference is that the report's analysis included only 11 industries with rising employment in its comparison with total employment rises of all U.S. industries. In other words, the analysis omitted three industries with declining employment of the total 14 selected in a comparison with total employment gains of all industries. All 14 industries—those with declining and rising employment—showed a 7% employment increase, and all U.S. industries—those with declining and rising employment—showed a 17% employment increase. A fair analysis would have made that comparison instead of omitting three industries with declining employment and comparing 11 out of the 14 with all U.S. industries to show that the employment gains were "nearly equal."

The three industries with declining employment accounted for 44% of the 14 industries' employment in 1965. The analysis does not mention this relationship and thus omits half of the iceberg. These three industries showed a decline of over 80,000 jobs in the five-year period. By 1970, their share of employment fell to 39%.

The 14 industries' share of total U.S. employment dropped from 6.2% in 1965 to 5.6% in 1970. The analysis does not mention this fact.

The employment figures used for the 14 industries selected are for all workers in those industries, not just employees of multinational firms. Thus the figures do not even reflect the employment trends of firms with overseas investment or employment trends of multinational firms which have production in those industries. If BLS data on all U.S. industries were used to compare those industries with rising employment and the 11 industries with rising employment the percentages would be 21% and 16% between 1965 and 1970.

Therefore, the analysis is biased and the conclusion is false.

In the interest of accurate public information, I urge you to correct the public record.

Sincerely,

/s/ GEORGE MEANY,
President, AFL–CIO.

OPPRESSION IN THE SOVIET UNION

Mr. ALLOTT. Mr. President, the current shameful persecution of Alexander L. Solzhenitsyn by the Soviet authorities should sharpen our awareness of the persecution suffered by all the oppressed persons in the Soviet Union.

A principal case in point is provided by the Byelorussian people. We have recently commemorated the 14th anniversary of the proclamation of the Declaration of Independence of the Byelorussian Democratic Republic.

The independence of that Republic was short lived. It now enjoys only a fictitious freedom. But like the brave Solzhenitsyn, we should all rededicate ourselves to bring about the day when sham freedom will be replaced by real independence for all the peoples currently suffering under Soviet domination.

HATCH ACT REFORM HEARINGS: "SALUTE TO THE PRESIDENT"

Mr. MOSS. Mr. President, on April 26, the Senate Committee on Post Office and Civil Service will begin hearings on several long overdue proposals to reform the Hatch Act—the statute which has restricted the political activities of Government employees for the past 30 years.

The purpose of these reform measures is twofold:

To permit Government workers greater participation in our democratic processes, while at the same time protecting the same employees from pressure to make financial or any other politically related contributions, in order to maintain their status in the Government service.

For a long time, now, I have been concerned primarily with the first of these goals—the liberalization of the Hatch Act to permit Government employees their fullest rights of citizenship, including the right to participate actively in political organizations and campaigning.

Reform would be incomplete, however, if it failed to take account of the second goal. Existing law has proved itself inadequate in protecting Federal employees from pressure to make financial contributions to the political activities of the incumbent administration.

Early this year, six ranking executives in the GSA's Federal Supply Service were charged with Hatch Act violations. They were accused, specifically, of pressuring their subordinates to buy $7,000 in tickets to a nationwide "Salute to the President" dinner staged on November 9.

A number of serious unanswered questions surrounding this case demand investigation by Congress.

First of all, why did the Civil Service Commission, which is responsible for enforcement of the Hatch Act, fail to take any action whatsoever in this GSA matter until November 24, and then only after the story had already appeared in the newspaper?

Second, why has the Justice Department failed to take criminal action against those indicted by the Civil Service Commission even though the actions with which they are charged also constitute infractions against Federal statutes prohibiting the solicitation for political purposes on Federal property?

A more interesting question revolves around the quota system itself. Why has the Justice Department failed to investigate the Government-wide implications of the Federal agency being pressured into buying a certain number of tickets to the Presidential dinner?

These are among subjects related to the GSA case which should be taken up in the Hatch Act reform hearings.

DANVILLE, ILL., POLICE INSTITUTE PEDESTRIAN SAFETY PROGRAM AMONG GRAMMAR SCHOOL CHILDREN

Mr. PERCY. Mr. President, automobiles are more lethal than all of the armaments of war. And, as in wartime, the victims are most often the innocent. The number of automobile fatalities is alarmingly high. Last year alone, nearly 55,000 people were killed in automobile accidents. Of these, 10,400 were pedestrians, and of this figure, in turn, one-third of those killed were children.

In Danville, Ill., something is being done about the problem. The local police there have instituted a program among the grammar school children in Vermilion County to emphasize pedestrian safety.

Of course, it is impossible to say how many young lives will be saved as a result of this police initiative. I think, however, that, if one child's life is preserved, the program will have paid for itself many times over.

Mr. President, I ask unanimous consent that an article published in the April issue of the FBI Law Enforcement Bulletin be printed in the RECORD. The article was written by William Brey, chief of police in Danville, who deserves great credit for initiating this important program.

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

FRIENDLY TOWN

(By William Brey)

During the fall of 1969 the members of the Danville Police Department, after reviewing accident statistics for a number of years, determined that the normal accident prevention programs used within the city were not reaching the persons who were increasingly becoming involved in motor vehicle collisions.

The pedestrian accident rate involving children aged 4 through 9 was increasing at an alarming rate, and it was evident that our programs were reaching into the elementary school too late to prevent many of the tragedies which were occurring on the streets in our community. To effectively combat this problem, we would obviously have to take a fresh approach to educate our preschool and elementary school children in the basic principles of traffic safety.

Members of the police department staff and interested city officials, after reviewing programs which had been conducted in other cities the size of Danville, decided that the best approach to the problem would be an offstreet facility. There police officers and other persons interested in traffic safety could instruct young people in a controlled situation having all the elements necessary to create an effective learning process. Offstreet projects had been constructed in other cities throughout the country, but, since each community has its own peculiar traffic problems, we decided that our program would be designed for the particular problem in Danville.

Members of the city council and the mayor pledged their support to the program and, in addition, placed approximately 1½ acres in a city public park at the disposal of the police department for construction of the project. Since the time involved in the program would be extensive, the Vermilion County Civil Defense Director, Mr. Earl Winland, volunteered his services as project coordinator and was appointed as such by the City Council of Danville, Initial planning began in 1970, and the rough sketches and draft of the street complex in the program were given to a local architect who volunteered his time to develop the initial plan into a final draft.

At this time it became apparent from contacts with various groups in the community that some support other than public contributions would be needed if the program was to become operational within the near future.

The coordinator and members of the police department staff presented a program on the planned construction of the project to the county board of supervisors and members of the city council and obtained approval to submit a request for funds through the State to the National Highway Safety Bureau.

The project application was submitted and approved by Federal and State authorities, and $32,000 was allotted in Federal matching funds for the construction of the project.

In the meantime, to stimulate public support, members of the police department and other interested persons appeared at every possible public gathering and civic club to explain the concept of traffic safety education for elementary school children. A scale model of the project was constructed by an interested citizen to help illustrate the program.

The name Friendly Town was applied to the project at this time to express the idea that it is designed not only to stimulate awareness of traffic safety, but also to make young people realize that the policemen involved in the project are their friends and persons to be respected in the community.

CLASSROOM AND FIELD STUDY

In spring 1970 the project received final approval from Federal authorities, and construction of the street complex and sidewalks was begun in March 1970. After many delays and problems, construction of the first building, a full-size classroom, was completed in September 1970. The first class, grade school students from an elementary school in Danville, began on October 19.

To teach the program, we assigned an officer from the department to supervise activities of Friendly Town on a full-time basis. Other officers are assigned on a part-time basis. The local school system contributed classroom equipment, including desks, chairs, and audiovisual aids. The classroom is fully equipped for that phase of the instruction.

Both the county and city school systems cooperated in the development of the lesson plans for the project, and every class that visits it during the school year is accompanied by its teacher. The students begin their instruction in the air-conditioned facility, and the emphasis during the classroom instruction is on identification of traffic safety signs, use of crosswalks, and obedience to traffic signals. The local telephone company installed a closed-circuit telephone system for use in instruction on reporting an emergency. A valuable teaching aid, this system permits students and instructors to simulate emergency situations.

Setting an age limit was an obvious necessity, for accepting the thousands of students throughout the county who might want to attend would be impossible. Therefore, the age group of 4 through 9 years was selected by experienced persons in the school system who felt that this is the group exposed to the most hazards in traffic safety and with the least knowledge of the subject.

After the students have completed their classroom instruction of approximately 1 hour, they move into the field operation, where each group of students is closely supervised by a trained police officer. Fully operative signals and marked crosswalks give the children experience in realistic traffic situations, and while one half of the class is being instructed in pedestrian safety, the other half is instructed in motor vehicle safety. Eleven small electric vehicles used in the training were contributed by interested businessmen or citizens in the community. Officers explain to the drivers the meaning of traffic control signs and road markings and the importance of obeying all these regulations. Particular emphasis is placed on seatbelts, and each child is required to use his seatbelt when in a Friendly Town vehicle.

The instructors also emphasize that the same laws apply to both the driver of a motor vehicle and the rider of a bicycle. In this way we correlate the child's thinking so he understands that, with the exception of the driver's license law, all motor vehicle operators and bicycle riders are subject to the same regulations and have the same problems traveling through traffic on city streets or on rural highways.

During the field instruction, the drivers and pedestrians are rotated to give each child instruction in both vehicular and pedestrian safety. At the completion of the field instruction, the children return to the classroom for a short critique and review of what they have learned in the field and also a brief review of the classroom instruction. Classes are conducted from approximately April 1 through the middle of November, depending largely on weather conditions. During the summer months, a 4-hour, 8-hour session is conducted, with children attending either 2 hours in the morning or 2 hours in the afternoon. It is, of course, the belief of the department that the 8-hour session is far superior to the short field trip instruction of 2 hours given during the school year. However, an expansion of time for safety instruction is difficult because the schools have their time planned, to a large degree, for other academic programs during the school year.

FACILITIES

The project, as it was finally constructed, encompasses approximately 64,000 square feet and has 1,800 feet of paved roadway as well as 1,200 feet of sidewalk and curb. The remaining 600 feet of roadway has no sidewalk or curb and is used to instruct children from rural areas the safe way to walk along a highway, which they often do in going to and from school. The traffic signs used throughout the project are all full size and conform to the State traffic code. The two signalized intersections have full-size traffic lights contributed by the city to Danville. These lights are fully operative and controlled by automatic timing devices. In addition, an operating railroad crossing with flashing red signals and bell was installed to, again, teach pedestrians as well as drivers their obligation at a railroad crossing.

The project presently has, in addition to the full-size classroom, six other buildings which were constructed by interested organizations, including the Danville Police and Fire Departments, the Vermilion County Civil Defense Agency, and private businessmen who contributed their time, effort, and funds to make Friendly Town a complete city. The buildings are generally used as storage facilities for either the vehicles or other equipment necessary for the maintenance of the project; an exception is the police department building, which is being developed into a museum and display on police activities and general information regarding the Danville Police Department. The last building constructed in the project was completed during June 1971 and is unusual in two respects.

First, it is a nondenominational chapel, and although it is only approximately 12 by 16 feet in size, it actually seats approximately 18 adults and is furnished in the interior as any other church or chapel would be. The second unusual aspect of this building is the fact that it was constructed almost entirely with funds from only two persons. The mayor of Danville and his wife, Mr. and Mrs. Rolland Craig, dedicated this chapel to the memory of their parents and financed the construction so that our Friendly Town would be complete in all respects, including a religious structure.

ADDITIONAL FACILITIES

We do not anticipate at this time that additional buildings will be constructed on the project site because our instructors must have adequate space to supervise the young people taking field instruction. All buildings have been placed in such a way that vision is not obstructed.

In reviewing the program as we have outlined it in this article, it is, of course, impossible to give credit to the literally hundreds of people who gave so much of their valuable time to make the project a reality, and it is difficult to enumerate the many aspects of the program which we believe have made Friendly Town a success in our city. However, the most gratifying part of the program has been the outstanding assistance received from Federal, State, county, and local officials in the development of the program and the time and funds contributed by the many businessmen and private citizens to make it successful.

In addition, many of our officers within the department have contributed literally hundreds of hours to assist in the instruction in the program and to provide the necessary maintenance to keep the vehicles and buildings in operable condition.

PUBLIC RELATIONS

Although Friendly Town was conceived basically as a pedestrian and safety education center, it has become one of the most effective police-community relations devices that I have seen in my career as a police officer. The young children who attend the program in their formative years are exposed to police officers who are engaged in the most positive type of approach—that of helping and assisting young people to be better citizens and, we hope, ultimately safe pedestrians as well as safe drivers.

These young children who will someday be the leaders of our community are certainly exposed to a different view of the police officer in the city of Danville. The program is, of course, dedicated to these young children and hopefully is helping them to solve some of the problems that they have in traffic and in other areas of safety. In a plaque which has been placed on the front of our classroom building, a simple quotation from the Bible expresses our hope for the future: "And a little child shall lead them." Isaiah 11: 6.

OIL FACTS—API MISREPRESENTATIONS

Mr. PROXMIRE. Mr. President, the American Petroleum Institute produces an enormous amount of material defending the oil industry. Although I have often disagreed with their interpretation of the facts, until now I have not had occasion to question the accuracy of those facts. I must now.

The API has printed who knows how many thousands of booklets containing Dr. Richard Gonzales' testimony before the Subcommittee on Priorities and Economy in Government of the Joint Economic Committee and distributed them as an accurate assessment of the facts relating to the oil industry and the oil import quota program. The API has done this knowing full well that Dr. Gonzales has radically changed his analysis in response to some staff studies of his "facts."

Dr. Gonzales in the testimony which the API is distributing originally estimated that the natural gas consumers of this country received benefits of about $3 billion from the oil import program. This seemed much too high a figure to me so I had my staff look at his figures. They came up with a benefit figure of about $314 million using Dr. Gonzales' analysis.

Dr. Gonzales responded that, yes, his first analysis—the one the API is now distributing—was inaccurate, that the gas consumers only received a benefit of $1.3 billion from the oil import quota program. This still seemed high to me so I had my staff look at his new analysis and we concluded the best benefit that his facts would support was $220.6 million, or about 4.4 percent of the cost of the oil import quota program.

Putting aside for the moment the question whether Dr. Gonzales' second estimate or my staff's estimate is correct, I think the important fact here is that the API is now distributing information it knows to be inaccurate. Even Dr. Gonzales admitted the first analysis he presented was erroneous. Yet, the API continues to distribute it. I think in the interests of fair play and accuracy the API ought to distribute to all those who got the original testimony a revised version reflecting Dr. Gonzales subsequent discussion.

In order that there be no mistake about these "facts," I ask unanimous consent that Dr. Gonzales' original speech and the subsequent analyses be printed in the RECORD.

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

OIL AND GAS—TO SERVE AMERICA'S NEEDS

I. INTRODUCTION

My name is Richard J. Gonzales. I am a consulting economist with experience in teaching and in business. My association with Humble Oil & Refining Company as economist, treasurer, and director, extended from 1937 to 1965. I am a member of the National Petroleum Council and was chairman of its committee responsible for a report on "Factors Affecting U.S. Exploration and Development, 1946–1965." I am also a member of the Energy Advisory Committee to the Secretary of the Interior.

I have been active for many years in committees of several industry associations, including the American Petroleum Institute. I have been a consultant to the American Petroleum Institute for the past 2 years. In that capacity, I have agreed to appear on its behalf at these hearings.

This statement presents my own analyses and views. While this statement may differ in some details from views held by others in the industry, I believe that there is widespread agreement on the key points that (1) consideration must be given to oil and gas together, not to oil alone; and (2) federal policies should be designed to encourage investments in the discovery and development of U.S. energy resources which are needed to insure that the public interest may be well served with respect to economic progress, increasing productivity, reasonably stable prices, a better environment, and national security.

The major energy issue facing the United States is the need for the development of additional supplies of secure energy which will be required for the achievement of many economic and social goals. Consumers prefer clean energy, such as gas, in order to reduce pollution. This preference and the prospect that domestic supplies of crude oil and natural gas may not be able to keep pace with demands have led to serious consideration of processes and plants for producing synthetic oil and gas from coal at substantially higher costs. Environmental regulations requiring the use of more expensive low-sulphur fuels and the steps being proposed to provide expensive substitutes for natural gas indicate that the public wants both clean fuels and adequate supplies of energy as insurance against any disruptions of normal economic activities. The public is not likely to be tolerant of even the temporary reduction of employment at plants that are forced to shut down by the diversion of gas on interruptible contracts to other uses during periods of peak winter demands.

The issue of petroleum prices must be considered in terms of adequacy of supplies in the forms desired for environmental reasons as well as of costs bearing on prices and inflation. Oil and gas are joint products of petroleum exploration and development. Gas has become more important as a source of energy from domestic petroleum operations than oil. Since federal petroleum policies, including oil import controls, affect supply and price for both of these fuels, my analysis will stress the need to consider oil and gas together.

Realization of major goals of full employment, reduction of poverty, increasing productivity, less inflation, and national security requires federal petroleum policies designed to provide secure supplies of energy in all forms, including nuclear power and synthetic fuels if necessary. It is also desirable that fuel supplies be provided at the most reasonable costs and prices consistent with values placed on other goals, such as national security and a good environment.

The extreme proposal made by a few people that the nation must plan to use less energy to achieve a better environment would mean less output of goods and services, more poverty, and a general reduction in living standards. I do not believe that the public will accept these alternatives. The public wants both better economic conditions and a better physical environment with a proper balance between these 2 goals. The quality of air and water is being improved and can be restored to good levels at reasonable cost without sacrificing economic progress. It should be noted, however, that the achievement of these 2 goals will require more energy: more energy to support economic progress, and more energy to process and reclaim waste materials, and to reduce undesirable emissions from the combustion of fuels.

II. OIL AND GAS SUPPLIES, PRICES, AND INFLATION

Control of inflation over the long run requires increased productivity and steadily rising real output of goods and services. Gains in productivity and real output are closely related to the use of mineral energy. These relationships mean that increasing supplies of energy are needed to combat inflation. Shortages of energy adversely affect production and employment, thereby causing additional inflationary pressures.

The close relationship between the use of commercial fuels and the real value of national production can be seen in the variation of living standards among nations and in the progress of any nation over a period of time. The United States experienced gains

between 1950 and 1970 of slightly more than 100 per cent in both real gross national product and energy consumption. Almost all of the additional energy used in this period was obtained from oil and gas in about equal proportion in terms of heat content.

Efforts to improve living standards among the world would have caused a great surge in demands for energy. World energy use increased more in the decade of the 60's than in the prior 35 years (1925–60). If the rest of the world is to make the progress it desires in raising living standards even slightly toward the level enjoyed in the United States, foreign use of energy particularly oil and gas, will rise very rapidly for the rest of this century. Such an effort will affect the availability and cost of imported oil and gas in the future much more than in the past when temporary foreign surpluses existed. We must bear in mind that the United States with less than 6 per cent of the world population uses about one-third of the world output of fuels, or about 8 times as much energy per capita as the average for foreign countries. There is a limit on how much energy the United States can expect to import without adversely affecting other countries and causing prices for foreign energy to rise sharply.

In the United States, continuing progress toward realization of many economic and social goals will require expansion of real national product at about 4 per cent per year and comparable gains in the use of energy for improved productivity and greater output. At that rate, energy used in the United States would increase by at least 80 per cent between 1970 and 1985. Even under optimistic assumptions about growth in the use of coal and nuclear power, the demands for both oil and gas can be expected to increase by more than 60 per cent if sufficient supplies can be made available.

Consumers naturally want to obtain needed supplies of secure energy at the best possible prices immediately and for the long run. However, short-term savings secured at the expense of inadequate future supplies are no bargain. Indeed, misguided short-run policies can result in an increase in the total cost of energy to consumers over a period of years. This situation is now developing for natural gas as shortages caused by federal price regulation force consumers to use more expensive and less desirable alternatives. The public interest is served best by prices that bring forth the desired level of supplies on a continuing basis.

III. MAGNITUDE OF THE OIL AND GAS SUPPLY PROBLEM

In 1970 the U.S. consumed 5.4 billion barrels of liquid petroleum products and 22 trillion cubic feet of natural gas. These quantities represented 44 per cent and 33 per cent, respectively, of total energy used in the U.S. By 1985, the requirement for these fuels probably will be in the range of 9 billion barrels of oil and at least 33 trillion cubic feet of gas. Cumulative requirements for the 15-year period are expected to exceed 100 billion barrels of oil and 420 trillion cubic feet of gas if the necessary supplies can be made available.

In 1970, U.S. wells supplied 3.5 billion barrels of crude oil (including lease condensate), 22 trillion cubic feet of gas, and 606 million barrels of liquids extracted from natural gas. Combined production of oil and gas is very close to maximum capacity except for the giant Prudhoe Bay field on the North Slope of Alaska.

Development of new petroleum resources in the U.S. during the period 1950–70 (by discoveries, extensions, and revisions in estimates of proved reserves) averaged about 3.3 billion barrels of crude oil per year and 19 trillion cubic feet of natural gas, including Prudhoe Bay. This rate of development has now been exceeded by production.

Prudhoe Bay is the largest oil field ever discovered in this country. The second largest field, East Texas with about 6 billion barrels of recoverable oil, was found in 1930 and not followed by any other discovery of similar size. Whether Prudhoe Bay is also a unique giant in an area with much smaller fields, or only one of several giants, is a matter of great importance to the consumers of this nation. The answer can be determined only by further drilling and development on the North Slope after transportation facilities are approved and completed, and additional investments become economically feasible. Even if construction begins in 1972, Prudhoe Bay reserves will not be a source of supply before 1975 or 1976.

Now that domestic production is near capacity, steadily increasing demands for oil and gas required to achieve national goals can be met most economically by the right combination of more rapid development of potential resources in the United States plus limited use of additional imports, preferably from areas with minimum risk of disruption of shipments.

The potential exists for more rapid development of U.S. oil and gas resources if accelerated exploration, drilling, and recovery become economically attractive. The large volume of sedimentary formations considered favorable for accumulations of oil and gas deposits leaves no doubt that many more fields remain to be found, particularly in the major new geologic provinces of Alaska and the offshore Continental Shelf, if the decline in exploratory drilling for the past 15 years due to decreasing profitability can be reversed by a change in federal policies. The potential for future discovery and recovery, in addition to presently known reserves, is generally rated in the range of several hundred billion barrels of oil and around 1,000 trillion cubic feet of natural gas. These resources are ample in relation to prospective demands, but the amount and rate of discovery and development of potential resources will depend on governmental policies and the prospective profitability of new petroleum investments relative to other opportunities. For example, all leasing of the other Continental Shelf is subject to federal control, with the result that decisions to delay or prevent leasing for petroleum exploration would reduce drastically the potential of future domestic supplies of oil and gas.

Imports are another possible source for meeting additional demands. They now supply about 23 per cent of the oil used in the United States and less than 4 per cent of the natural gas. Venezuela and Canada are our principal sources of supply in the Western Hemisphere, but it does not appear likely at this time that they can provide much larger shipments of oil to the U.S. since their spare capacity is nominal in relation to our increasing demands. Canada has recently rejected an application for substantial exports of gas to the U.S. in order to maintain assured supplies for its own expanding needs. Venezuela has adopted laws placing control of prices and other costs entirely in the hands of the government.

Additional imports of oil and gas would have to come primarily from the Eastern Hemisphere over long routes. The movement of oil from these sources has been disrupted periodically in the past by various circumstances, including nationalization, embargoes on exports, enforced curtailment of production by government orders, and military conflicts. Eight major producing nations a year ago threatened a joint embargo to enforce higher prices. In addition, the cost of foreign oil is increasing as a result of the sharp rise in demand relative to supply enabling exporting countries to modify long-term concessions and impose such higher taxes on their production. Rapidly growing demands and the effect of these demands on taxes, the major element in the cost of foreign oil, raise serious questions for the United States about the long-run availability and cost of imported oil and gas.

In comparing the cost of foreign and domestic petroleum, both oil and gas must be taken into account because the United States needs and wants more gas as well as more oil. Statistics on production and reserves show that domestic petroleum operations supply about 6 MCF of natural gas per barrel of crude oil produced or discovered. Environmental considerations place even greater emphasis on gas relative to oil for the future. Therefore, the development of additional supplies of secure energy from petroleum at favorable costs and prices must be viewed in terms of both gas and oil and not in terms of oil alone.

IV. RELATIVE COST OF DOMESTIC AND FOREIGN OIL AND GAS

Comparisons of relative costs of domestic and foreign petroleum have been misleading in their emphasis on crude oil only. Conditions in the 1960's caused some to assume that the price of foreign oil would remain low indefinitely and always be available in unlimited amounts. While the nation could enjoy both cheap U.S. natural gas and cheap foreign oil, warnings about the long-run consequences of such a course were often described as being special interest pleadings not worthy of attention.

Conditions have changed greatly in the past 3 years. Awareness that development of new gas resources depends upon exploration for both oil and gas is increasing. The shortage of natural gas has become a reality and a matter of common knowledge. Some local public utility regulatory boards have even had to forbid the connection of new customers. Spare productive capacity for crude oil in the U.S. has virtually been exhausted. This change limits the ability of the U.S. to cope effectively with disruptions in the movement of foreign oil as it did in the past.

Foreign crude oil prices have increased sharply reflecting increased payments to producing country governments. Since the fall of 1970, payments to governments have increased by some 40¢ per barrel on typical Persian Gulf crudes and substantially more on short-haul Libyan and Nigerian crudes. Further periodic increases are scheduled through 1975. Despite the 5-year settlements arrived at in early 1971 in Tehran and Tripoli with member countries of the Organization of Petroleum Exporting Countries (OPEC), these countries are already demanding still further upward adjustments in prices and government participation in existing concessions.

Various developments have combined to reduce the differential advantage in the East Coast delivered cost of foreign oil of comparable quality to U.S. production. Worldwide economic and political forces are working to increase foreign crude oil prices substantially and to move the delivered cost of foreign oil still closer to equilibrium with U.S. prices.

Reliance on foreign oil will lead inevitably to the use of more expensive alternatives in place of U.S. natural gas because imports affect development of both gas and oil. Proposals have already been made for large imports of liquefied natural gas (LNG) from Algeria and for the manufacture of synthetic gas from naphtha, principally from foreign scurces. These alternates will cost in the range of $1.00 to $1.25 per MCF delivered to the city gate or to large industrial users. (The reported cargo price of LNG aboard ship at U.S. ports should not be misinterpreted as the total cost of this alternate since unloading, storage, regasification, and transmission to points of consumption will add materially to the delivered price.) The long-run cost of gas from overseas sources is likely to be above rather than below $1.00 per MCF.

By comparison U.S. gas was delivered at average wholesale prices of 35¢ per MCF in 1970 as indicated by the cost of 12 trillion cubic feet consumed by industrial users, including electric utilities. These delivered prices ranged from 22¢ per MCF in the South Central states (near sources of production) to 50¢ along the East Coast. The advantage to U.S. consumers in 1970 of domestic gas over imported LNG was about 65¢ per MCF. Even a substantial increase in domestic petroleum prices designed to bring forth large additional supplies of domestic oil and gas would still leave average delivered wholesale prices for U.S. natural gas more than 50 per cent or 50¢ per MCF below the probable cost of imported LNG.

This cost differential between U.S. and overseas gas must be considered along with the differential for crude oil in determining what consumers can expect to pay for meeting their additional demands for petroleum in the ratio of 6 MCF of natural gas per barrel of oil, which has been the actual experience of the past 15 years (1955–70). The basic choice is between U.S. oil and gas developed in the relationship of 6 MCF of natural gas per barrel of oil and imports in the same ratio.

Assuming that foreign oil would be available in the quantities needed to meet all additional demands without any disruption in deliveries and at a long-run price advantage of 90¢ per barrel over domestic crude oil at U.S. ports, that advantage would be entirely offset by the use of 6 MCF of imported LNG if the premium for that gas were as low as 15¢ per MCF over U.S. natural gas. The prospective price advantage of U.S. natural gas over imported LNG of at least 50¢ per MCF far outweighs the maximum probable gain in using foreign crude oil in place of the domestic oil that must be developed and produced in order to supply additional gas.

The advantage of using domestic oil and gas rather than foreign supplies varies regionally because of transportation costs and differences in the relative use of gas and oil. Even for the East Coast, which will need 2 to 3 MCF of gas per barrel of oil to cope with pollution problems, the cost saving on U.S. natural gas relative to imported LNG fully offsets the price advantage of foreign crude oil.

This analysis shows that crude oil and natural gas in the mix characteristic of U.S. petroleum development and usage over the past 15 years will cost consumers more if supplied from foreign rather than domestic sources. This would be true even if there should be a substantial advance in U.S. prices of oil and gas to the extent necessary to stimulate exploration and development in keeping with growth of demands.

V. OTHER CONSIDERATIONS AFFECTING RELIANCE ON IMPORTED OIL AND GAS

Considerations other than those of relative prices must be taken into account in determining national policies with respect to imports of oil and gas.

First, a large increase in imports would seriously impair the U.S. international trade balance at a time when the nation is working hard to improve that balance. Considering annual increases in U.S. demand in the range of 200 million barrels of oil and more than a trillion cubic feet of gas, it is apparent that meeting additional demands largely through imports would require additional payments of billions of dollars for foreign currencies. Some of this outflow would be recovered in different ways, but the amounts involved would aggravate existing problems in balancing our international payments.

Second, there are risks and costs involved in increased reliance on imports from distant sources in the Eastern Hemisphere. The East Coast is more than 95 per cent dependent on imports for residual oil and is approaching 50 per cent overall dependence on imported oil. The East Coast could be in serious trouble in case of a prolonged disruption of imports.

Third, heavy reliance on foreign oil involves risks to national security and to freedom of action in international affairs. These risks are not limited to situations involving the United States in war. Oil producing countries have imposed embargoes on exports in the past and can be expected to do the same in the future in an effort to promote their own economic and political objectives.

Fourth, oil import controls assure the continuation of competition in domestic petroleum operations. In the absence of import quotas, only the large international companies could survive. They could draw on foreign reserves to remain in business, but small operators would have to liquidate and withdraw.

These points are highly crucial and carry weight in favor of limiting reliance on imports even though opinions may differ as to the risks and costs involved in greater use of foreign oil and gas. When oil and gas taken together (in the mix desirable for environmental reasons) are cheaper from U.S. sources than from foreign sources, as would still be the case even with somewhat higher prices, these fuels from domestic sources are a real bargain.

The question is sometimes raised whether controls on imports have been of any value since they have not achieved the objective of increasing the rate of development of new resources in keeping with demands. The answer is that the situation would have become much worse without import controls. These controls resulted in major discoveries and the development of reserves on the Continental Shelf and in Alaska which would not otherwise have been made. To that extent import controls have contributed to added supplies of oil and gas for consumers and to national security by limiting dependence on insecure foreign oil to a fraction of what it would otherwise be.

VI. ALTERNATIVES FOR LIMITING PETROLEUM COST AND PRICE INCREASES

The prospect of having to pay more in order to secure increasing supplies of energy in the forms needed for economic and environmental reasons naturally leads to consideration of possible ways of limiting cost and price increases. Several points are relevant in this connection.

Consideration must be given first to the impact of environmental regulations on the supply and cost of fuels. Air pollution standards limiting the sulphur content of fuels have reduced the choice of using coal, increased demands for gas and low-sulphur fuel oils, and added substantially to the cost of fuels used by utilities and industry. The price of coal has increased by about $4.20 a ton since 1968 or more than 60 per cent on new purchases according to statistics published by the government. This increase is equivalent to $1.05 a barrel for high-sulphur fuel oil and 17¢ per MCF for natural gas. Examination of the impact of air pollution regulations on fuel costs is essential as a basis for intelligent decisions about the relationship of benefits to costs. Development of effective and low-cost methods for removing sulphur from coal is highly desirable in order for the nation to make effective use of an abundant potential resource which could be of help in controlling energy costs and prices.

Other environmental regulations are also affecting the supply and price of fuels. Measures affecting surface mining of coal, for example, limit output and raise energy costs. Delays and added costs incident to construction of pipeline to move oil from the North Slope of Alaska postpone the availability of a large new known source of supply and work against the exploration and drilling needed to test the further potential of the North Slope. These delays in Alaska, restrictions on the development of oil off the coast of California, delays in offshore leasing by the federal government and opposition to offshore leasing along the East Coast all serve to limit future supplies and to increase future prices to consumers. The best chance for limiting future cost and price increases on domestic oil and gas is for several giant fields to be found and developed promptly in new areas.

Concern about pollution incident to petroleum operations, including that caused by tankers bringing foreign oil to the United States, is commendable only up to the point that benefits exceed the costs of actions that limit supplies and raise energy prices. An unstated but important premise for much of the opposition to oil and gas developments offshore and in Alaska is the incorrect assumption that alternative supplies of energy can be secured from other sources without added costs and with less pollution. In fact, there are high costs involved in foregoing development of potential petroleum resources in the U.S. These costs are environmental as well as economic in view of the need for gas to reduce air pollution and of the added worldwide oil pollution likely as the reliance on more imports by tankers increases the risk of oil spills. The public deserves to be informed about all the facts concerning costs of foregoing the development of potential U.S. resources, including loss of jobs, as well as of the estimated value of any net environmental benefits.

It should be noted that the petroleum industry has been pressing for an opportunity to develop resources offshore and in Alaska more rapidly. Such action, if permitted, would make more supplies available and help to control prices. Opposition to these efforts based on environmental considerations has ignored the resulting economic impact on oil and gas supplies and prices and other offsetting environmental costs. This unsatisfactory situation for the public should be resolved by Congress and the Administration by prompt analysis of relative priorities and of the relationship of net environmental benefits to economic costs.

The possibilities of securing more gas relative to oil and of clean synthetic fuels from U.S. coal and shale also deserve consideration. If much more gas could be secured by modest increases in gas prices alone, without corresponding changes for oil, that might permit continued enjoyment of both cheap gas and cheap imported oil as in the past. Theoretical econometric models have been designed to indicate that large additional supplies of gas could be secured through limited increases in prices for new gas only. However, in my opinion these models do not reflect correctly the economic realities of the joint nature of oil and gas exploration or the relationship of required outlays to revenues derived from higher prices for new gas. Higher gas prices will, of course, bring forth additional gas supplies, but not in amounts sufficient to meet demands unless prices for oil also operate to stimulate exploration for both oil and gas.

Synthetic fuels from coal and shale have been under study for a long time. The processes for extracting oil and gas from such sources are well known, but the problem has been to make costs competitive with crude oil and natural gas. Some synthetic fuel plants are being planned now because of the urgent need for supplies even though anticipated costs are much higher than present or prospective prices for crude oil and natural gas. To the extent that needed supplies can be secured from crude oil and natural gas at lower costs than from synthetics, the interests of consumers and the nation will be served best by encouraging more rapid development of conventional petroleum resources in this country.

Creation of government owned reserves fully developed for use only in case of emergencies has also been proposed. Such reserve capacity would involve large investments of billions of dollars and substantial annual interest, maintenance, and standby costs. Furthermore, these plans deal only with oil and not with gas, whereas a correct appraisal of costs must consider both gas and oil. Calculations as to the incremental cost of reserve capacity in the Elk Hills Naval Reserve in California are misleading and of no help in estimating correctly the total cost of endeavoring to establish the millions of barrels daily of reserve producing capacity which would be required if imports were unrestricted and should rise sharply above the current level of about 4 million barrels daily.

VII. SAFEGUARDS AGAINST RUNNING OUT OF OIL

Actual and impending shortages of oil and gas cause some people to worry that U.S. resources are about to be exhausted. In that case they conclude that it would be a mistake to accelerate discovery, development, and production. They suggest instead that U.S. oil resources be saved for future use and that we use as much foreign oil as possible when it is available.

This superficially appealing proposition rests on 2 incorrect assumptions: (1) that the U.S. is about to run out of oil and gas, and (2) that the nation can wait until an emergency arises to develop more oil and gas.

The U.S. is not about to run out of oil and gas and will not do so if prices are allowed to serve their proper function of balancing demand and supply. Resource experts in government and in industry agree that very large potential exists for additional recovery from known fields as well as the discovery of new fields. Potential resources are more than adequate for the relevant planning period (20 to 30 years) of concern to consumers and investors making decisions now with respect to fuel use and supply. Considering synthetic fuels as well, the U.S. can continue to meet its energy needs for scores of years.

In the unfortunate event that disruption of imports of oil and gas should cause an emergency, the nation could not hope to cope with the resulting problems by a crash program to find and develop more domestic resources. The long lead-time of 5 to 10 years for development of major new supplies (either from new fields or from synthetic plants) means that we must act now to prepare for the possibility of emergencies that hopefully will not come sooner than 5 years hence. In an emergency, only fully developed reserves and facilities capable of immediate use would be of help.

Reliance on foreign oil and gas discourages exploration and drilling required to convert potential but undiscovered and undeveloped U.S. resources into developed reserves and supplies useful in meeting demands. Potential resources are of no help in holding down costs and prices.

The most effective means of serving the public interest in adequate, secure supplies of energy to promote economic progress and combat inflation will be to encourage more rapid development of potential U.S. resources of all forms of energy for the long run in keeping with expanding needs.

In conclusion, I wish to express my appreciation to the Committee for the opportunity to present this statement on important petroleum problems affecting the public interest.

SUPPLEMENTAL STATEMENTS

Following the presentation of the statement on January 12, two supplemental statements by Doctor Gonzales were submitted for the Committee record:

January 12, 1972:

1. A shortage of natural gas exists and is of great concern for both economic and environmental reasons. U.S. natural gas is far cheaper than imported LNG, and will continue to be cheaper even if U.S. gas prices were to rise substantially. This emphasizes the point made in my testimony that domestic oil and gas are cheaper than foreign supplies in the quantities used and desired by consumers.

2. Oil import controls have provided large benefits to consumers and the nation in terms of additional supplies of secure energy at attractive prices. U.S. production of oil and gas in 1970 was 31 per cent higher than in 1965. In the absence of import controls, production would surely have been lower. The increase in production between 1965 and 1970 was 659 million barrels of crude oil and 5.9 trillion cubic feet of gas, or about 9 MCF of natural gas per barrel of oil. Domestic oil and gas production increased by 10.3 quadrillion Btu's in 1965–70 (from 33.6 to 43.9), and accounted for about 73 per cent of the increase in U.S. consumption of energy of 14.1 quadrillion Btu's.

Without import quotas, I am convinced that:

a. There would have been less exploration for and development of oil and gas in the U.S.;

b. Oil and gas reserves and productive capacity would be far below current levels; and

c. The U. S. would be importing more oil, with a serious impact on its balance of payments, and short of gas by much more than it is now.

All these developments would already have been detrimental to the nation and to consumers and would continue to be increasingly detrimental over the years.

3. If oil import controls had been changed from quotas to tariffs in 1970, as recommended by the Cabinet Task Force, the survival of small independent refiners and marketers would have been jeopardized because they would have lost the assured advantage that quotas provide for them as to a large part of their supplies. International companies with foreign supplies could adjust more readily to such transition provided the tariffs set were not used to drive prices down, but the degree of competition from small firms would tend to be reduced. Furthermore, any system whereby the U.S. Treasury collects large tax revenues on foreign production would have been an invitation to exporting countries to raise their taxes on exports so that they rather than the U.S. would realize the added revenues. The Cabinet Task Force report provided an additional measure for exporting nations as to the value of their oil resources. As such, it was another factor, in my opinion, contributing to sharp increases in foreign oil taxes and prices in 1970–71. The Venezuelan government has now taken the additional step to fixing oil prices unilaterally on the basis of its needs and evaluation of world markets.

4. The key point about the movement of oil from northern Alaska is that these supplies are needed to meet increasing U.S. demands as soon as possible, preferably not later than 1975, in order to strengthen the position of all consuming nations relative to oil exporting countries when present price contracts expire. The longer access to these resources is delayed the weaker the position of major oil consuming nations will be relative to the oil exporting countries. The ideal situation would be development of large additional resources in northern Alaska and in the Arctic areas of Canada, as stated in my testimony, so that more supplies of secure oil and gas may be forthcoming within a few years for both Canada and the U.S. However, that ideal has little chance of timely realization unless the proposed pipeline across Alaska can be built promptly.

The alternative of a pipeline through Canada would mean further delay of several years at best, but cannot be considered unless and until the Canadian government indicates that it is willing to authorize construction of such a line on terms acceptable to investors who will have to provide the billions of dollars of capital required for construction. It is to be hoped that the Arctic areas of Alaska and Canada may develop large resources of both oil and gas at reasonable costs for use in Canada and the U.S. Canada will not export oil and gas that it considers necessary for its own future needs. Controls on oil imports into North America are essential to development of potential Canadian petroleum resources. It would be mutually beneficial for Canada and the U.S. to cooperate in formulating policies for more rapid expansion of North America resources, but we must remember that Canada is a sovereign nation sensitive about pressures from us which appear designed to exploit its resources for our benefit.

5. On the issue of differential tax provisions for petroleum and mining, such as percentage depletion and the current expensing of intangible development costs. I have testified on this subject at length before the House Ways and Means Committee and submit that testimony for the record of these hearings. The essential point about these provisions is that they do attract capital into exploration and drilling that would not otherwise be risked, that they do increase supplies of oil and gas that are of great benefit to our economy, and that they make it possible for consumers to have more oil and gas at lower costs and prices than would otherwise be possible. These provisions are not subsidies paid in addition to market prices, but differentials that affect costs and market prices. If Congress wants to increase taxes on oil and gas by changing these provisions, as it did by reducing percentage depletion from 27½ per cent to 22 per cent in the Tax Reform Act, then it must recognize that the higher taxes are costs that will have to be paid for by consumers in terms of smaller supplies and higher prices.

6. As for the foreign income tax credit, it must be kept in mind that the provision applies to all foreign operations of U.S. companies it is designed to avoid double taxation of the same income and to assure that income taxes paid on foreign operations are at least as high as the U.S. would apply on those operations. Foreign income taxes on petroleum generally exceed those that would be due to the U.S. on such operations. Those tax costs as well as all other costs reflected in prices are paid by the consumers of the foreign oil. U.S. consumers pay for foreign taxes on petroleum only to the extent that the U.S. relies on imports of oil and gas.

7. Joint pipeline ventures are required to achieve the important economies of large diameter lines in reducing transportation costs. The regulated rates for such ventures will certainly not be any lower if the shippers are precluded from owning the joint line, and may be higher due to greater interest costs if the credit rating of the alternate owners of the line is not as good as that of the shippers supplying the oil for the line.

8. Proposals that refining and marketing be divorced from production appear to be based on concern that integrated major companies keep prices of gasoline and other products lower than they might otherwise be. To the extent that such a situation exists, enforced divestiture might result in higher rather than lower costs and prices for consumers.

9. Any proposal for a direct subsidy of exploration must cope with the complex problems that the government would face in deciding on which of the thousands of exploratory wells drilled annually should be subsidized and on how much subsidy each well should receive. Unless the subsidy is related to success in discovery, as percentage depletion is automatically through its

relation to revenues on production, the subsidy may be effective only in stimulating efforts to make money off of drilling without any corresponding contribution to reserves. If the subsidy is related to success, it must be similar to percentage depletion in terms of relation to production or else involve the government in the task of estimating the reserves of each well that is subsidized. The serious administrative problems encountered in reaching agreement on the discovery value of new wells led Congress to change to percentage depletion in 1926. The problems now would be greater because of the larger number of exploratory wells drilled.

APPRAISAL OF THE COST OF OIL IMPORT CONTROLS

January 17, 1972:

An important reason why estimates that oil import controls cost consumers billions of dollars annually are incorrect is that they do not take into account offsetting gains to consumers from the use of additional gas made possible by the larger reserves of both gas and oil due to the influence of those controls on petroleum exploration and drilling in the United States.

The total effect of the program on consumers can be determined only by considering gas as well as oil, not by looking at oil alone as in the estimates of "Minimum Consumer Cost of Oil Import Quota Program" prepared by the staff of the Joint Economic Committee. This staff memorandum estimates a consumer cost based on the value of import allocations (unsupported by any evidence as to how this value was determined) of $10,666 million for 1959–64 and $18,066 million for 1965–70, or $7,400 million more in the 6 years 1965–70 than in the preceding period 1959–64. These figures show an estimated averaged annual cost of $2,445 million for the 11.75 years from April 1959 through 1970 and of $2,587 million in 1970.

Testimony that I presented at the hearings of the Subcommittee on Priorities and Economy in Government of the Joint Economic Committee on January 12, 1972, showed that in 1970 consumers enjoyed an advantage in the delivered price of natural gas over imported liquefied natural gas of at least 65¢ per thousand cubic feet. This testimony also pointed out that U.S. operations of the petroleum producing industry develop and supply more than 6 MCF of natural gas per barrel of crude oil and noted that the demand for gas in 1970 exceeded the available supply.

In view of the importance and economic as well as environmental advantages of natural gas to consumers, the net effect of the oil import control program depends on the relationship of the savings on gas to the estimated additional costs for oil. The necessary calculations can be made by taking into account the effect of the estimated cost of the program to oil consumers on the supply of gas and resulting cost savings on gas to consumers.

If the oil import program cost consumers $28.7 billion for the period 1959–70, then it must have added that much to the gross revenue of petroleum producers in the U.S. The gross revenue on U.S. production of oil and gas in the years 1959–70 was $133 billion. If the staff estimate for oil is accepted as correct, it means that import controls increased gross revenues by about 28 per cent from $104.3 billion without controls to $133 billion with controls.

If import controls increased gross revenues on U.S. oil and gas production by 28 per cent, their impact on cash flow and profits and on the ability and incentives to invest in new oil and gas must have been increased by more than 28 percent because of the leverage that incremental revenues exert in relation to costs. Therefore, the staff estimate leads to the conclusion that import controls must have served to bring about expeditures for discovery and development of new oil and gas reserves exceeding the levels that would have prevailed without import controls by much more than 28 per cent. These relationships mean that the most conservative estimates of the impact of oil controls on gas reserves and supplies would start from the premise that such controls have been responsible for at least 28 per cent of the gross additions to new reserves of gas in the period 1959–70.

Gross additions to gas reserves in the years 1959–70 were 206 trillion cubic feet of natural gas, excluding the reserves of Prudhoe Bay, which would raise the total by more than 10 per cent. Applying a minimum figure of 28 per cent to the gross additions to gas reserves means that the oil import control program must be given credit for the favorable economic results due to the addition of at least 57.7 trillion cubic feet of natural gas for 1959–70.

Gas production is 1970 was 22 trillion cubic feet equivalent to 8 per cent of the reserves at the beginning of the year. At that rate of production, the minimum additional gas reserves attributable to the oil import program of 57.7 trillion cubic feet provided no less than 4.6 trillion cubic feet. On this production, consumers saved at least 65¢ per thousand cubic feet compared with the cost of imported liquefied natural gas. Therefore, the savings on gas due to the oil import program were at least $2,990 million in 1970.

The staff memorandum estimated that import controls increased costs to consumers by $2,587 million for oil in 1970. If the staff estimates for 1959–70 are accepted as correct and used to calculate the total consequences for oil and gas, the savings to consumers on natural gas in 1970 turn out to be in excess of $2,990 million. Correct appraisal of the cost of oil import controls requires that both of these figures be considered together because of the joint nature of oil and gas exploration and development and of the fact that U.S. petroleum operations supply more energy as gas than as oil.

Considering both gas and oil, the preceding calculations based on the estimates of the staff of the Joint Economic Committee show that the oil import program resulted in net savings to consumers of oil and gas in 1970 in excess of $403 million.

COMMENTS ON DR. RICHARD GONZALES' SUPPLEMENTAL STATEMENT

(By Martin Lobel)

Dr. Gonzales supplemental statement on behalf of the American Petroleum Institute makes three points which must be examined before any rational cost benefit analysis can be made of our Nation's oil policies.

1. STAFF ESTIMATES OF OIL IMPORT QUOTA PROGRAM'S COST

Although Dr. Gonzales said that the staff estimates are "unsupported by any evidence as to how this value was determined," this is not true. The record shows that the staff estimates were based on Official Office of Emergency Preparedness statistics furnished to Senator Proxmire on December 3, 1971.

As a matter of fact, the committee staff estimates are much too low because they do not take into consideration the economic distortions caused by the oil import quota program to our economy and they are based on figures from OEP which are much lower than the figures OEP supplied to President Nixon's Cabinet Task Force on Oil Import Control. The OEP estimates furnished to Senator Proxmire put the 1969 market value of oil import tickets at $1.30 a barrel in District I, $.80 in Districts II–IV and $.95 in District V. Yet, the OEP estimates to the Task Force for the same time span were $1.50, $1.10 and $.85 just about the estimates of the Interior Department to the Task Force of $1.40, $1.10 and $.95.

The staff recognized that its estimates were too low because its estimates were headlined "minimum consumer cost". Even General Lincoln recognized that fact because he stated in his estimates to Senator Proxmire they are "implicit unit market values realized by refiners without foreign overseas crude oil which trade out allocations." The actual value differentials are much higher and would be reflected in the market if imports were competitively obtained rather than allocated by government fiat. There are other additional costs of the oil import quota program such as its distortive effects on the location and structure of the oil industry as well as the composition of demand patterns that ought to be included in an accurate cost benefit analysis of the oil import quota program. To take just one example, vast quantities of energy, oil and gas as well as capital are devoted to extracting otherwise abnormal proportions of light ends from each barrel of crude oil in refining while consumers are being forced to use increasingly scarce natural gas for heating rather than oil.

Even Standard Oil of New Jersey, the largest oil company in the world, recognized in its submission to the Cabinet Task Force on Oil Import Control that elimination of the oil import quota program would result in immediate consumer savings of $3.45 billion in 1969. It also recognized that the immediate savings would be less than the full cost of the program because ". . . short run factors . . . would prevent consumers from enjoying the full benefits of unrestricted trade in the first year of decontrol."

2. NATURAL GAS AS AN COPRODUCT

Dr. Gonzales' estimate of consumer savings on natural gas because of increased oil prices resulting from the oil import quota program is based on 3 assumptions: 1—all natural gas availability is derived from oil exploration and development, 2—the increased revenues to the oil industry from the higher oil prices caused by the oil import quota program result in a proportionate expansion of outlays on oil and gas exploration which yield a corresponding increase in natural gas reserves, and 3—the cost savings to consumers of natural gas is equal to the difference between the projected cost of imported liquified natural gas (LNG) and the average cost of natural gas from domestic sources.

He thus estimated that consumers saved $2.99 billion in 1970 on natural gas as a result of the oil import quota program. Unfortunately, even if we adopt his theory, the facts indicate the actual savings to be only $314 million compared to a cost of the oil import quota program of at least $5 billion. Thus, even if we adopt Dr. Gonzales' theory users of natural gas received benefits amounting to about 6% of the cost of the oil import quota program.

The Report of the Cabinet Task Force on Oil Import Control estimated that only 28% of natural gas is related to oil. This means that Dr. Gonzales' estimate of consumer benefit has to be reduced to 28% of his figure because he has assumed that the impact of oil prices affected 100% of natural gas supplies.

Dr. Gonzales' assumed that increased expenditures are proportionate to the increased receipts from higher oil prices. But during the years 1965 to 1970 as compared to 1959 to 1964 revenues were up 30% while expenditures for exploration and drilling went up only 22.3%. Thus, we must conclude that increased revenues only yield a ¾ increase in expenditures so we must reduce Dr. Gonzales' estimate of consumer savings from 28% to 21% of his original figure.

Next he assumes that the gas which is attributable to the oil import quota program would be replaced by LNG costing 65¢ per MCF more than domestic gas. But this is like comparing apples and oranges. The 65¢ is the spread between the *average* cost of the domestic gas and the *marginal* cost of imported LNG. The relevant comparison is with new

domestic gas delivered to the east coast where imported LNG is to be used. There the actual unit cost differential is about ½ of the 65¢ used by Dr. Gonzales. Accordingly, the 21% needs to be reduced to 10.5%.

Thus, after applying Dr. Gonzales' theory to the facts we conclude that the consumer savings on natural gas from the oil import quota program is about $314 million as against a cost of the oil import quota program of at least $5 billion. In other words, even if Dr. Gonzales is right, the consumers of natural gas get a benefit worth about 6% of the cost of the oil import quota program. But even this 6% figure is high because other factors reduce this benefit further. For example, the adjustments do not take account of reduced yield of reserves of the incremental investment or the impact of the substitution of oil for natural gas if the oil import quota program were abolished.

ANALYSIS OF JOINT ECONOMIC COMMITTEE STAFF COMMENTS ON THE RELATION OF GAS BENEFITS TO OIL COSTS DUE TO IMPORT CONTROLS

(By Richard J. Gonzales)

1. In testimony before the Subcommittee on Priorities and Economy in Government of the Joint Economic Committee on January 12, 1972, I made the point that oil import controls provide large benefits for consumers in terms of gas supplies that must be considered as a major offset to the estimated costs considering oil alone.

2. In a supplementary statement of January 17, 1972, I submitted calculations for 1970 on the estimated benefits from added gas supplies due to oil import controls that exceeded the estimate of costs for oil used by the staff of $2,587 million in that year by $403 million.

3. Mr. Martin Lobel of the Joint Economic Committee staff has released a comment on the calculations in the supplementary statement. His comment recognizes the validity of the point made in my testimony that the oil import control program does provide benefits for consumers through its impact on gas supplies which must be taken into account along with the commonly used estimates that consider only oil.

4. The comment makes incorrect adjustments in my estimates of gas benefits by cumulative reductions based on various assumptions first by 72 per cent, then by 25 per cent, and finally by 50 per cent to arrive at a figure of $314 million, equal to 10.5 per cent of my estimate of $2,990 million.

5. The reduced gas benefit estimate of $314 million is based on a difference in delivered cost between domestic gas and imported liquefied natural gas of $0.325 per Mcf applied to 966 billion cubic feet of gas attributed to the oil import program. Both of these assumptions are entirely too low, as can readily be demonstrated.

(a) The 1972 report of the Council of Economic Advisers places the advantage of domestic gas over imported LNG delivered to the same market at $0.50 per Mcf or more (Pages 121–122 of the Economic Report of the President, 1972).

(b) The estimate of 966 billion cubic feet represents less than 20 per cent of the actual production of associated and dissolved gas alone in 1970 of 4,846 billion cubic feet, whereas that production would have declined far more in the absence of oil import controls, even before any consideration of the admitted impact of oil exploration on discovery and production of non-associated gas.

6. The comment endeavors to minimize the significance of gas benefits still further by relating the incorrect figure of $314 million to an oil cost said to be at least $5 billion in 1970, or about twice the cost estimate of $2,587 million used at the hearings on January 10–12, 1972. If the cost estimates are to be revised upward, then corresponding adjustments must also be made in estimates of the impact on gas supplies and benefits to consumers. These two estimates are inescapably interrelated regardless of efforts that may be made to place high values on oil costs and low values on gas benefits.

7. My supplementary statement used a simplified approach to estimate benefits from gas supplies attributable to oil import controls in order to show that these benefits were large in 1970 in relation to estimated oil costs, in the same manner that estimates of oil costs are arrived at by simplified assumptions based on exchange values for import tickets without regard to the added transportation costs for moving imported supplies inland to the extent that dependence on imports would exceed consumption at coastal cities in the absence of controls. If more complex procedures are to be applied to calculate costs and benefits, they must be used for oil as well as for gas.

8. As stated in my supplementary statement, I used a very conservative estimate of the impact that a sharp cut in domestic oil prices (implied as the result of absence of controls by the estimate of oil costs) would have on exploration and drilling affecting both oil and gas. A reduction in gross revenues for the period 1959–70 from $133 billion ($103 for oil and $30 for gas) to $104 billion, as implied by the estimated cost of $28.7 billion on oil due to import controls, would affect profits and incentives to invest by much more than the 28 per cent figure used in my supplementary analysis.

9. If the estimated oil cost of $28.7 billion is to be analyzed in terms of impact on oil and gas separately, then the appropriate basis for analysis is the reduction in oil revenues from $103 billion to $74 billion. If the operating margin before income taxes were assumed to be as high as 40 per cent of gross revenue, then the reduction of $28.7 billion in the absence of oil import controls would have caused a decline in profit margins of about 70 per cent in 1959–70.

10. Because of the very conservative approach used in calculating the impact of lower oil prices on the exploration and drilling that resulted in gross additions to reserves of 32 billion barrels of crude oil and 206 trillion cubic feet (Tcf) of natural gas in 1959–70 (excluding Prudhoe Bay), my supplementary statement did not deal with oil and gas separately.

11. Calculations of the effect that import controls have on oil and gas are desirable, though more involved and dependent on more assumptions, provided that appropriate factors are used and due consideration is given to associated and dissolved gas developed along with crude oil as well as to non-associated gas.

12. The estimated oil cost of $28.7 billion for import controls in 1959–70 represents $0.85 per barrel on actual crude oil production of 33.5 billion barrels. A reduction of this amount if there had been no controls would have reduced operating profit margins by 70 percent. Under these circumstances, it is conservative to assume that there would have been a 50 percent reduction in the search for oil if removal of oil import controls had caused oil revenues to decline by $28.7 billion.

13. For 1959–70, new oil reserves from discoveries, extensions, and revisions were 32 billion barrels, on which a reduction of 50 per cent would amount to 16 billion barrels. Associated and dissolved gas has generally been from one to two thousand cubic feet per barrel of crude oil. (At the beginning of 1970, associated and dissolved gas reserves [59.6 Tcf] were about 2 Mcf per barrel in relation to crude oil reserves of 29.6 billion barrels.) A conservative estimate would be that lack of oil import controls in 1959–70 causing a decrease in oil revenues of $28.7 billion would have resulted in failure to locate and develop 1.5 Mcf per barrel on 16 billion barrels of crude oil, or 24 Tcf of associated and dissolved gas.

14. In 1970, associated and dissolved gas production of 4.8 Tcf was 8 per cent of initial reserves. That rate applied to 24 Tcf results in an estimate that the cost of oil import controls presented by the staff for 1959–70 served to provide about 1.92 Tcf of associated and dissolved gas in 1970.

15. Total new gas reserves from discoveries, extensions, and revisions in 1959–70 were 206 Tcf. On the basis of 1.5 Mcf per barrel for the 32 billion barrels of new crude oil, this figure represents the sum of 48 Tcf of associated and dissolved gas and 158 Tcf of non-associated gas.

16. If operators can anticipate correctly 85 per cent of the time whether a successful exploratory well will find principally oil or gas, my analyses of drilling experience since 1946 indicate that about 30 per cent of gas discoveries have been due to the search for oil. If oil exploration alone had been depressed, the proportion of gas discoveries due to oil exploration could have dropped to 20 per cent, as estimated by the Cabinet Task Force staff in the report on oil imports.

17. Assuming that only 20 per cent of non-associated gas supplies respond in proportion to oil price changes and that without import control oil prices would have decreased by $0.85 a barrel or 28 per cent on the average price of $3.00, it follows that these controls deserve credit for about 8.85 Tcf of new non-associated gas in 1959–70 (158 Tcf x 0.20 x 0.28).

18. The relation of non-associated production of 17.1 Tcf in 1970 to initial reserves of 21.9 Tcf was 8 per cent. This rate applied to 8.85 Tcf indicates that import controls added 0.71 Tcf of non-associated gas to 1970 supplies.

19. Adding 1.92 Tcf of associated and dissolved gas and 0.7 Tcf of nonassociated gas raises to 2.62 Tcf the total 1970 gas supplies on which benefits due to oil import controls must be calculated.

20. Since gas consumption on the East Coast from Florida to Maine in 1970 was 3.6 Tcf, it is highly unlikely that all of the gas supplies in 1970 due to oil import controls can reasonably be assumed to affect only that area. Even if that were assumed to be the case, the benefits would have to be calculated on the basis of a savings relative to imported LNG of at least 50¢ per Mcf.

21. The benefits of 1970 gas supplies attributable to oil import controls by this type of analysis appear to be in the range of $1.3 billion at 50¢ per Mcf and $1.7 billion at 65¢ per Mcf in relation to the estimates of oil costs used by the staff, which were $2,587 million in 1970 and $28.7 billion for the period 1959–70. The estimated gas benefits offset about 50–65 per cent of the estimated oil costs.

22. The simplified estimate in my supplementary statement indicated gas benefits equal to 115 per cent of the estimated oil costs of import controls for 1970. On the basis of analysis of oil and gas separately, the gas benefits offset 50–65 per cent of the estimated oil costs.

23. Both analyses support the basic conclusion advanced in my testimony that import controls result in gas benefits that must not be ignored in discussing the cost of those controls. Failure to take both factors into account has been misleading and is proving expensive to consumers and the nation because of shortages of gas that is in great demand for many reasons. Consumers prefer to use gas rather than oil because gas is more convenient and attractively priced. They are not forced to use gas, as alleged in the comment. Stringent environmental standards are placing even greater value on gas, with the result that the relation of gas benefits to oil costs for import controls will be more favorable in the rest of this decade than in 1970.

DR. GONZALES' ESTIMATE OF NATURAL GAS BENEFITS FROM OIL IMPORT QUOTA PROGRAM: SECOND REBUTTAL

INTRODUCTION

Dr. Richard Gonzales testified before the Joint Economic Committee on behalf of the American Petroleum Institute on January 17, 1972. At that time he estimated that the oil import quota program resulted in indirect consumer savings from lower natural gas prices of $3 billion. Subsequently, on February 16, 1972 in response to my first rebuttal which showed the true consumer savings according to his calculations to be only $314 million, he lowered his estimate of consumer savings to $1.3 billion.

An examination of his new analysis shows that the real consumer savings attributable to lower priced natural gas discovered because of the oil import quota program is only $220.6 million, not the claimed $1.3 billion. This means that the estimated consumer benefit from natural gas attributable to the oil import quota program is just over 4.4% of its estimated $5 billion a year cost.

I reduced his estimate by specific steps to clarify why his estimate was too high, although my estimate is based on his formulation. My new estimate of $220.6 million is lower than my first estimate of $314 million because Dr. Gonzales provided a new starting point on a different theory and some new factors were incorporated into the analysis such as oil-associated gas found in the search for non-associated gas, the substitution of oil for gas in consumption, and the foreign component of the extra costs of the program.

Although it may appear that there are duplicate reductions, I have avoided duplication by applying successive modifications to the reduced base. The same percentage adjustments could be applied in a different sequence and still give the same result.

SCALING DOWN THE NEW ESTIMATE—SUMMARY

1. His $1.3 billion estimate is cut 24.4% to $982.8 million because his assumption as to the amount of associated gas per barrel of crude oil discovered as a result of increased exploration and development was too high.

2. This is then reduced 8.44% to $900 million on account of associated natural gas reserves estimated to be found in the search for gas but credited to crude oil.

3. This is then reduced 33.3% to $600 million because he applied his assumed exploration stimulus to the wrong base.

4. This is then reduced 50% to $300 million because his exploration stimulus factor was too large.

5. This is then reduced 14% to $258 million because that portion of the extra costs of the program is realized on the imported oil and is, therefore, not a stimulant to domestic oil and gas.

6. Finally, this is reduced 14.5% to $220.6 million to account for the substitution of oil for natural gas if oil imports were available at world competitive prices.

COMPARISON WITH COST OF OIL IMPORT CONTROLS

Dr. Gonzales wanted to compare the natural gas savings with my minimum consumer cost estimate for 1970 of $2.587 billion. But that would be an erroneous comparison. First, my memorandum showed *minimum consumer cost* not true economic cost. This cost was based on OEP figures supplied to me that were at least 10% below the figures supplied by OEP to the Cabinet Task Force on Oil Import Control. These figures were ticket value realizations in exchanges as the indicator of the unit costs of the program. Those figures did not include the values retained by the international oil companies who made the exchanges—substantial values protected from competition by the quota system. The sluggishness with which ticket exchange values responded to reduced tanker rates in 1971 and 1972 shows that such values understate the costs of oil import controls. The importation of overseas crude oil into Districts II and III further illustrate both the understatement of the costs of the program as measured by ticket values and additional inefficiencies of the program. Finally, 1970 was not a typical year because high tanker rates in the second half cut the realizable exchange values of crude oil allocations.

A much more realistic estimate of the costs of the oil import quota program is $5 billion a year. The figure used by the Interior Department in its January 15, 1972, Addendum to its Final Environmental Impact Statement for the proposed offshore Eastern Louisiana lease sale.

QUESTIONS ON NATURAL GAS AVAILABILITY

Although for purposes of this memorandum the need to import LNG or oil from which to make gas at quite high prices has been accepted, this need should be closely scrutinized. Natural gas reserve figures are open to question as even the FPC admits. For example, committed reserves reported to the FPC in New Mexico far exceed its American Gas Association proved reserves. Similarly, the wide gap between productive capacity and natural gas production should be examined. AGA figures indicate that Southern Louisiana had capacity to produce 8.6 trillion cubic feet of non-associated gas in 1970, but it produced less than 6.3 trillion cubic feet of such gas.

The FPC staff supposedly estimated a supply shortfall of .9 trillion cubic feet during 1971. But one might ask if the 1970 capacity-production gas were sustained in 1971, could there have been more than that amount of spare capacity in Southern Louisiana? Other questions that need be asked include: what is the risk of consumers being committed to unjustifiably high gas costs, what unusual features in gas supply such as reserve and productive capacity data exist and what special arrangements including subsidized tankers and international deals have been consummated? All these questions should be answered before imports of LNG or oil for the production of gas are permitted. Hopefully, OEP will provide answers to these questions in its probe of proposed imports of petroleum feedstocks for the production of pipeline gas, but if history is any guide I wouldn't hold my breath.

DETAILS OF COST ESTIMATE REDUCTIONS

Dr. Gonzales reduced his original estimate of consumer savings on natural gas from $3 billion to $1.3 billion, a reduction of $1.7 billion, because of a more realistic assumption regarding the differential between the cost of gas from imported oil and the cost of new contract U.S. natural gas delivered to the East Coast. The $1.3 billion figure he uses in his new estimate is based on the Council of Economic Advisers' estimate of a difference of 50¢ per thousand cubic feet of natural gas. Although the 50¢ differential is high, I have used it for the purpose of this analysis.

Although Dr. Gonzales recognized after it was pointed out to him that not all natural gas is associated gas and accordingly dropped his original estimate by $1.7 billion, he has still failed to take into several significant considerations which lower the benefits still further—all the way down to $220.6 million.

1. *Associated Gas per Barrel of Crude Oil Reserves:*

Dr. Gonzales assumed 1,500 cubic feet of associated natural gas per barrel of crude oil discovered. However, for the 5 years 1966 to 1970, the official AGA API statistics show a relationship of only 694 cubic feet of gas per barrel of oil discovered (exclusive of Alaska). While one could use this figure with some justification, I think in all fairness a higher figure should be used. I chose 1,000 cubic feet as a fair approximation because it is halfway between Dr. Gonzales figure and the AGA figure for 1966–70. Unfortunately, the AGA did not publish figures for associated natural gas production prior to 1966 when there was probably a higher relationship so I had to use an educated guess rather than hard data to arrive at 1,000 cubic feet.

Use of 1,000 cubic feet of associated natural gas with each barrel of discovered oil requires that we reduce by ⅓ the associated natural gas Dr. Gonzales attributes to oil import controls. Of the 2.62 trillion cubic feet of 1970 natural gas he assigns to the oil import program, 1.92 trillion were on account of associated gas. A reduction by ⅓ of the associated gas cuts total gas involved by 24.4%, and his consumer benefit estimate is reduced accordingly to $982.8 million.

Dr. Gonzales assumed that additional investment in exploration would result in a proportionate increase in reserves, but this is not true. Experience indicates that the reserves would increase less proportionately than the investment, but I have not factored that in to this analysis.

2. *Associated Gas Attributable to Exploration for Non-Associated Gas:*

The Federal Power Commission staff in its submission to the Cabinet Task Force on Oil Import Control estimated that about 20% of non-associated gas was discovered by oil exploration. This is what is called "directionality" or the extent to which exploration for oil yields oil. Naturally, this is a two way street and oil is found although gas is being sought. According to the API reports for the period 1966 to 1971, the number of gas exploratory wells was equal to 57.6% of oil exploratory wells. Assuming a 20% directionality which Dr. Gonzales does, we multiply 57.6% times 20% and conclude that 11.5% of crude oil reserves are found in the search for gas. Consequently, the 11.5% gas associated with these oil reserves, which 8.44% of natural gas, should not be credited to the search for oil and the estimate is accordingly reduced to $900 million.

3. *Exploration Stimulus Base:*

Dr. Gonzales estimated that oil import controls increased industry revenue 28% which he assumed increased exploration and development 50%. He then attributed 50% of oil reserves proven during 1959 to 1970 to oil import controls. Even if his theory were correct, his arithmetic is wrong. A 50% effect would mean that exploration and development goes from 100 to 150, a 50 increase on a base of 100. But he took 50% of 150, an increase of 75, rather than the actual increase of 50. This means that his result must be cut 25 or 33.3%. Correcting his arithmetic reduces his estimate from $900 million to $600 million.

As a matter of fact, recent API statistics indicate that oil exploration and development may be even less responsive to increased revenue than he assumed. According to recent API statistics, between 1968 and 1971 development oil well footage declined 17.1%, exploratory oil well footage declined 30.5%, and stratigraphic and core test footage declined 92%, although crude oil prices increased more than 15%. However, rather than pursue this approach I have adopted Dr. Gonzales' approach for purposes of analysing his figures and conclude in the next section we have to reduce his figures still further.

4. *Exploration Stimulus Factor:*

I had to reduce Dr. Gonzales' estimate further because, in addition to applying his assumed stimulus to the wrong base, he uses too high a stimulus factor.

In his earlier analysis he assumed that a 28% increase in revenue from oil import controls resulted in a 28% increase in expenditures on exploration and development. Now, he stipulates that a 28% increase in revenues stimulated a 50% increase in expenditures on exploration and development of oil which increased discoveries 50%. Without any real explanation he tilted the impact of additional finds nearly two fold (actually 1.78). Part of the impact of the tilt

was reduced by adjusting the 50% factor to 33.3% by applying it to the correct base, but the tilt must be reduced further to correspond to reality.

In my first rebuttal I pointed out that although industry revenues increased 28% in the last 6 years, exploration and development outlays increased only 20%. In other words, outlays on exploration and development increased at about 75% of the rate of increase in revenues.

The 20% factor applies to the lower level of exploration and development which would be experienced in the absence of the revenue stimulant, not to the resultant. In terms of the effect on that larger base, the impact is 16.67% not 20%. (I inadvertently omitted this in my earlier rebuttal.) So, the exploration and development expenditure impact is 16.67% instead of the adjusted 33.3% in Dr. Gonzales' model after adjusting for the use of the incorrect base. This reduces his estimate by 50% to $300 million.

5. *Discount for Value Attributed to Imported Oil:*

Dr. Gonzales' estimate of increased exploration attributable to higher oil costs caused by the oil import quota program must be reduced by the amount of extra costs that the consumer pays for imported oil. The anti-competitive character of the quota program prevents the consumers from getting the benefits of low priced imported oil. Imported oil is sold in the United States at domestic prices even though it costs much less and the differential is pocketed by the international major oil companies. I don't believe anyone would claim that the additional income on foreign production spurs domestic exploration. Thus, we must discount Dr. Gonzales' figure by the cost of the program applied to imported oil. The report of the Cabinet Task Force on Oil Import control estimated that in 1969 approximately 14% of the cost of the oil import quota program was on imported oil. 20% in District I, 5% in District II–IV, and 25% in District V. According Dr. Gonzales' estimate must be reduced 14% to $258 million.

6. *Substitutibility of Oil for Natural Gas:*

Dr. Gonzales did not take into account user substitutibility of oil for natural gas that would have resulted if more oil were available and natural gas prices climbs. He estimated that the East Coast used 3.6 trillion cubic feet of natural gas in 1970, of which 2.62 trillion cubic feet were available because of oil import controls. According to the AGA, gas utilities average about $1.25 per thousand cubic feet of natural gas sold to consumers. If costs increased 50 cents per thousand cubic feet on 2.62 or the 3.6 trillion cubic feet he says were used in East Coast States, the combined average would be $1.62 per thousand cubic feet, an increase of 29%. Although the response of demand to natural gas prices is sluggish, it is reasonable to expect that over a decade a 29% cost increase would be accompanied by a demand reduction of half that percentage or 14.5%. Such a reduction would still mean a considerable growth in the use of natural gas on the East Coast. Deliveries there increased by nearly 96% between 1959 and 1970. Consequently, the estimate is reduced to $220.6 million. This reduction would involve a reduction of 522 billion cubic feet of natural gas demand which corresponds to about 255,000 barrels a day of oil, a readily feasible number compared with 1970 actual demand in the East Coast States of over 5.93 million barrels a day for all petroleum products. Such a 4.3% increase in a demand should pose no problems.

PROPOSED PRINCIPLES AND CRITERIA ON WATER RESOURCE PROJECT ANALYSIS

Mr. ALLOTT. Mr. President, on March 20 and 21, 1972, hearings were held in Washington, D.C., by the Water Resources Council on the proposed new standards and principles for planning water and related land resources.

I am informed that none of the statutory members of the Water Resources Council were present at any of the hearings. This lack of attendance could be attributed to one of two factors: either the Water Resources Council is so bureaucratically arrogant that the views of the public, the planners, the engineers, the users, the local officials, and most important those whose dreams and aspirations depend upon the control and beneficial uses of our limited and essential water resources were of no interest to the Council; or, the decision to publish the proposed standards and principles was tantamount to publication for implementation, and therefore, the hearings were merely a formality—an empty gesture—a hoax.

Perhaps a more accurate conjecture would be that the Water Resources Council had little voice in the conjuration of the proposed principles and standards, and thus robbed of its statutory responsibilities, the members boycotted the hearings in silent protest.

Whatever the reason for the conspicuous absence of the Council members, in order that the Nation can be aware of at least some of the comments of witnesses, I intend to place some of their statements in the RECORD from time to time. If the hearings of the Water Resources Council cannot provide an opportunity for views to be heard, perhaps the Council will find time to at least read them; and by placing these statements in the CONGRESSIONAL RECORD Members of Congress will know what views are being expressed on a subject so vital to the well-being of so many Americans.

Mr. President, I ask unanimous consent that the following statements made to the Water Resources Council be printed in the RECORD.

First. Statement of Felix L. Sparks, director, Colorado Water Conservation Board.

Second. Statement of Roland C. Fischer, secretary-engineer, Colorado River Water Conservation District.

Third. Statement of Russell Alley, mayor, city of Montrose, Colo.

Fourth. Statement of Robert Lewis, president, Five Projects Council of Colorado.

Fifth. Statement of Richard Edmondson, manager, Tri-County Water Conservancy District, Colorado.

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

PROPOSED PRINCIPLES AND STANDARDS FOR PLANNING WATER AND RELATED LAND RESOURCES

(Statement of Felix L. Sparks, director, Colorado Water Conservation Board)

Mr. Chairman and Gentlemen of the Council:

I appear here today as a representative and director of the Water Conservation Board of the state of Colorado at the direction of the members of that board to express opposition to many of the salient features of the proposed principles and standards. The Colorado Water Conservation Board is charged by statute with the responsibility for protecting, developing and conserving the waters of the state of Colorado and the prevention of floods. The board has overall responsibility for state water planning and has the specific responsibility of coordinating its activities with those of other states and the federal government. It was one of the first state water planning agencies established in the United States and has functioned in this capacity now for over thirty years.

The state of Colorado supported the enactment of the Water Resources Planning Act in 1965. We were in accord with Section 103 of that act which directs this council to develop uniform procedures for federal participation in the planning and development of this nation's water resources. We are, however, appalled at the results.

The principles now under consideration have been proposed for the use of the many thousands of people in the state and federal governments who are responsible for water resource planning. They should, therefore, be comprehensible to the average person engaged in such endeavor. Unfortunately, the principles consist mostly of random economic theories expressed in rambling and extensive prose. No precise analysis of much of the verbal garbage contained in the proposed principles is possible. However, the conclusion is inescapable that an initial decision was made that water resource development is an evil thing which could be best controlled by a process of bureaucratic strangulation. While it was not easy to reach these conclusions in the mind-numbing process of analyzing the proposed principles, we offer the following supportng observations.

The water resource planning process is already a time consuming and costly endeavor. The average time lag for projects in Colorado from date of initial study to construction exceeds twenty years. For many projects this time lag has exceeded thirty years. It can hardly be argued that water resource projects are hastily conceived and thereafter hastily constructed.

Nevertheless, this interminable delay is to be stretched out even further, and perhaps into the millennium, if the proposed principles are adopted. The ingredients for this delay are contained in the quixotic assumptions that everyone from the man in the street to the man in the White House should be directly involved in the planning process, assisted by layer upon layer of governmental agencies.

The more obvious tool for delay is the fluctuation of the so-called discount rate. This fluctuation is not new but only aggravated by the proposed principles, as I shall illustrate.

In 1965 a series of disastrous floods occurred in the state of Colorado with the tragic loss of over twenty human lives and staggering property damages in excess of a half a billion dollars. The greatest flood in terms of water volume, but not in property damage, occurred in the Bijou Creek drainage of northeastern Colorado. The Corps of Engineers was immediately requested, among other things, to initiate planning leading to the control of floods on Bijou Creek. By late 1969 the Corps had developed a feasible plan for controlling floods originating in that area. Those plans were then submitted for review at the Washington level, but a funny thing happened. They were returned to the Omaha office for reformulation using a new and higher interest rate. Under this new criteria, the Corps presented its revised plans to the state water board about two weeks ago, almost seven years after the 1965 flood. The revised plan drastically reduces the previously planned control of Bijou Creek floods. Since this revised plan cannot be submitted to the Congress before next year, it will be subject to another new and increased interest rate if the proposed principles are adopted. And so ad infinitum.

It is most interesting to note that the proposed principles apparently place no value on human life nor on human suffering. Apparently these elements have no monetary value.

Having made these generalized unkind observations, I would like to turn a few more specific criticisms, including the proposed seven percent discount rate. I do not purport to fully understand the theoretical opportunity cost of federal investment as it relates to the discount rate, a rate actually described in the principles as being at ten percent. This rate apparently is borrowed from a study made by Mr. J. A. Stockfisch in 1969 for the Institute for Defense Analyses. If in fact the average rate of return on the investment of private capital is ten percent, then the millions of Americans who annually invest their capital at a lesser rate should be somewhat surprised. Why, for instance, should Americans invest millions of dollars annually in treasury bills which are currently returning less than four percent. Perhaps all investors should hold out for a ten percent rate, or even seven percent. The results on the American economy would be interesting and probably catastrophic.

The originators of the proposed discount rate also suggest that the opportunity rate is based in part on the alleged fact that the federal government foregoes tax revenues when it competes with the private market to build water resource projects. It has long been my understanding that the federal government taxes the interest which is received by investors on government securities. No weight apparently was given to this fact, nor the fact that water resource projects in themselves generate considerable tax revenues, or, in the case of flood control projects, reduce tax deduction by reducing casualty losses.

I realize that these criticisms of the proposed discount rate may not be accurate. Those of us who live in the real world sometimes find it difficult to adjust our thinking to the Olympian world of abstract economics. Nevertheless, the proposed rate smells more like a device to prevent further water resource development in this country than it does to promote the welfare of its citizens, a welfare based to a major extent on the use of water and the prevention of water-caused disasters.

In the event the proposed discount rate is not sufficient to destroy federal participation in water resource development, the five year construction start requirement can be used to administer the coup de grace. As we read the proposed principles, authorized projects on which actual construction or other similar activity is not commenced within five years from date of authorization will be reviewed in accordance with the proposed principles. The words "or other similar activity" are confusing. We know of no activity which is similar to construction except construction itself. We urge that as a minimum change, the Council consider inserting the words "or advance planning", in lieu of the words "or other similar activity".

It is extremely rare to have construction commence on any project within five years of date of authorization. The time lag between authorization and the initial appropriation for advance planning is usually at least two years. A time lag of four or five years is not unusual. Advance planning usually consumes another three or four years, primarily because of fiscal limitations.

As an example of the already ridiculous time lag, I cite the example of the Savery-Pot Hook unit, a joint Colorado-Wyoming project. This project was accorded a top priority by the Colorado Water Board in 1938. It was finally authorized by the Congress in 1964. Although advance planning was completed several years ago, construction has not yet started. However, construction funds have been appropriated by the Congress for the past two years but withheld by the Office of Management and Budget. By what legal authority that agency is able to flaunt the laws of Congress, we have not been able to determine.

We are not unaware of the domination of the Office of Management and Budget in the preparation of the proposed principles, although the Water Resources Planning Act gives that agency no such authority. The ironic comedy of the five year limitation is that the Office of Management and Budget can, and is, making it impossible to get project construction started within the five year period.

Insulated and protected from normal democratic procedures, the administrative branches of this government are rapidly assuming the total executive, judicial and legislative functions separately reserved by the Constitution. If the laws enacted by Congress can be ignored and rejected by the shadowy fourth body of administrative government, the question remains as to why we bother with the elective process in the first place.

During the past decade, ten multi-purpose water resource and flood control projects have been authorized by the Congress for construction in the state of Colorado, on which construction has not yet started. Because of past limitations, there is no way that construction on seven of these projects can be started within the proposed five year time limit. With a little more help from the Office of Management and Budget, the other three projects can also be pushed into the never ending cycle of re-analysis. Cumulatively, over 200 years of planning effort and several millions of dollars have been applied to achieve the present status of these projects. Now it is proposed that the hopes, dreams and aspirations of thousands of our citizens be callously crushed by administrative fiat. We may be forced to submit to this type of administrative tyranny, but not without a fight.

We vigorously dissent to this limitation in all of its aspects. Its adoption would constitute a flagrant invasion of the powers reserved to the Congress. Its use would constitute an effective veto over acts of Congress in a manner neither contemplated nor permitted by the Constitution or statutory law. Not even a tortured construction of the Water Resources Planning Act can justify this limitation as a part of planning principles and standards. We therefore urge that this provision be eliminated.

The proposed principles provide that: "The regional development objective will be used in formulating alternative plans only when directed." While we are not sure what this means, the statement appears to violate Section 104 of the Water Resources Planning Act. That section plainly states without reservation that special regard shall be given to achieving optimum use of water in the area involved. While national goals are also to be given special consideration under the quoted section, there is nothing in the act which indicates that national goals are to have any preference.

Neither national goals nor the national economy are separate entities. They are merely the total of many component parts. National goals are at the best difficult to define and are constantly changing. If regional objections must be subjugated to some mystic and ever changing national goal, then this nation is doomed to stagnation. We therefore urge that the proposed principles follow the mandate prescribed by Congress.

We note that the Council reserves the authority to amend whatever standards are adopted from time to time. This provision appears to be necessary and in accordance with the powers granted by the Congress. However, we find neither comfort nor justification in the statement that such amendments are subjected to concurrence by the Office of Management and Budget. The question naturally arises as to whether or not Congress created a Water Resources Council or a subservient arm of the Office of Management and Budget. A careful reading of the Water Resources Planning Act does not reveal that the Office of Management and Budget was to play any part in the formulation of water resource planning principles. This is a futile argument, but we make it anyway.

It has been reported that a former huckster for Lipton tea has made the statement: "All dams are an obscenity. Floods and pestilence have been a means of controlling population." The gentleman is entitled to his opinion, but there are others who would disagree. There are people in West Virginia today, both living and dead, who would certainly disagree. I know from past association that this Council would also disagree with the statement, but I am not so sure about the other agency which participated in the preparation of these proposed principles.

In Colorado, as in most western states, about fifty percent of our total yearly water supply flows down our rivers during two months of the year. In order to support our current population and economy, we must store the excess waters of the spring runoff for use during the remainder of the year. This requires dams.

Most civilizations and their cities developed along perennial streams and rivers. Such was and is the case here in the United States. I am sure that most people do not feel that they should be drowned or their property destroyed because of mankind's ancient habits. Flood protection also requires dams. If all of these dams are obscene, then let us be classed as an obscene people.

We believe that the proposed principles and standards for water resource planning unjustly and illogically single out water resource development for discriminatory treatment. We know of no other governmental activity, either federal or state, which is subjected to a similar discount rate or planning procedures.

There have been, and probably will continue to be, errors in judgment in the development of our natural resources and the treatment of our environment. Remedial measures are necessary. However, the proposed principles appear to be more punitive than remedial. We therefore urge that they be revised in their entirety in a comprehensible form, with the objective in mind that both water resource development and flood control will forever be essential to the welfare of the people of this nation.

STATEMENT OF THE COLORADO RIVER WATER CONSERVATION DISTRICT, PROPOSED PRINCIPLES AND STANDARDS FOR PLANNING WATER AND RELATED LAND RESOURCES

Mr. Chairman and Members of the Water Resources Council, I am Roland C. Fischer, Secretary-Engineer of The Colorado River Water Conservation District. This District is a quasi-municipal corporation of the State of Colorado, established by the State Legislature in 1937 (CRS 1963, Chapter 150, Article 7), and is governed by a Board of 15 Directors, who are appointed by the Boards of County Commissioners of the 12 counties and parts of 3 counties included within the District. The Board of Directors has authorized my appearance here today.

The location of The Colorado River Water Conservation District is shown on Map 1 attached to this statement; it also shows the 1972 Directors and their respective counties. The total area of the District is approximately 29,000 square miles, which is nearly equal to the combined areas of the States of Maryland, Massachusetts, New Hampshire and Rhode Island. The principal headwaters of the Colorado River

originate within the District; they contribute over 60% of the flow of the Colorado River at Lees Ferry, Arizona (the dividing point between the Upper and Lower Basins); before the massive transversions of water from the high mountain streams, the percentage was even higher. Map 2 shows some of these headwater streams.

The goals and responsibilities of this District and the Water Resources Council are marketedly similar. As set forth in its legislative declaration, this District is established to safeguard and encourage the conservation, use and development of the water resources of the Colorado River and its principal tributaries to which the State of Colorado is equitably entitled under the Colorado River Compact (now there are two compacts relating to the Colorado River Basin). The Water Resources Planning Act of 1965 (PL 89–80) established the Water Resources Council "to encourage the conservation, development and utilization of water and related land resources of the United States on a comprehensive and coordinated basis . . .".

In meeting its reponsibilities, this District has applied for and been awarded many decrees for the beneficial use of the waters of the Colorado River Basin in Colorado by the State Courts under Colorado's appropriation system. The District has also been active in water resources in the Federal Courts. In two 1971 cases, the United States Supreme Court ruled unanimously that agencies of the United States must adjudicate its claims for water in the State Courts of Colorado. Federal claims are now being adjudicated in Colorado State Courts; the results can affect the Water Resources Council's future activities and policies.

The Water Resources Council and its staff are to be commended for the work so thoroughly done in carrying out the mandate of the Water Resources Planning Act of 1965. The result of the work to date is published as to the Proposed Principles and Standards in the December 21, 1971 Federal Register. The work was necessarily extensive and the Proposed Principles and Standards are complex. They are difficult to understand and so their potential effect on water resources development projects in Colorado cannot be estimated at this time, but the effect would surely be serious and far reaching.

At page 24144 there is a discussion of the work of the Council's Special Task Force, which after extensive review, evaluation and public hearings submitted its final recommendations to the Council.

The Findings and Recommendations of the Special Task Force are set forth in a July 31, 1970 memorandum and report (Senate Committee Print, Serial No. 92–20, 92nd Congress, 1st Session "Procedures for Evaluation of Water and Related Land Resource Projects—Findings and Recommendations of the Special Task Force of the United States Water Resources Council"). In the memorandum the Special Task Force concludes and recommends that planning for the use of water and related land resources can best be carried out in the context of four broad objectives and that each of the objectives should be given equal consideration in the management and use of our water and land resources. The objectives are to enhance:

1. National economic development
2. Quality of the environment
3. Social well-being
4. Regional development

However, as now published (p. 24145 of the above referenced Federal Register) the Council has changed the objectives to 3; they are to enhance:

A. National economic development
B. Quality of the environment
C. Regional development

This District urges the Council to re-establish the Task Force's social well-being objective. The regional development objective as published in the Federal Register is de-emphasized in favor of the other two categories; the District urges Regional Development be given equal consideration.

Since the Task Force recommendations of objectives were prepared, there has been extensive review, both public and official, and the Proposed Principles and Standards have been published. The Task Force objectives were originally somewhat flexible, but with more and more review and comment, the published objectives will tend to become fixed and inflexible. The original flexibility should be retained.

Water Resources development is one of the few, perhaps the only, class of projects that has historically been and is now subject to any benefit-cost analysis at all. Other federally-assisted programs are not required to prove their worth. In field tests the guidelines for implementation of the Task Force objectives proved stringent and difficult to meet but there was some opportunity to include heretofore unrecognized benefits.

Colorado and the West must develop its water resources to have an economy and living standards comparable to the rest of the nation, which has already developed regional resources and built a strong economy on them. To develop our water resources, we must go to the only banker capable of loaning the funds for these necessarily large-scale projects with long term payouts; that banker is the United States Government. The banker's loan committee is the United States Congress. The water user is unique; he repays all or most of the principal of the loan.

Even though the Congress authorizes water resource projects after careful analysis and ultimately appropriates construction funds intending that projects be built; they are not being built. The will of the Congress is not being carried out apparently because of administrative veto by the Office of Management and Budget, which prevents the spending of construction funds appropriated by the Congress by putting them into "reserve" or simply not releasing them. We have authorized projects in Western Colorado for which the Congress has repeatedly appropriated construction funds and Office of Management and Budget has repeatedly refused to release the funds.

On Page 24150 (Federal Register, December 21, 1971, under para. E, "Schedule for Applying Standards") we read: "Plans, Programs or Projects which have been authorized by the Congress and on which actual construction or other similar activity has not commenced within 5 years after authorization will be reviewed in accordance with these principles and standards".

Water projects by their very nature are not hastily authorized or hastily funded. Only rarely is construction started within 5 years of authorization; the whole process necessarily takes a long time. Table I (attached) is a partial list of Western Colorado projects with dates of relevant legislation. The elapsed times indicated are not at all unusual; the Congress seems to prefer it this way.

Although some of the conservancy districts and water users on the list will submit independent statements to the Council, this District also represents all of their interest and the interests of approximately 18 more water user groups within its boundaries.

The normal process requires more than 5 years from Congressional authorization to construction; this is difficult enough. Now the Office of Management and Budget can withhold appropriated construction funds and make it impossible to meet the requirement to start construction within 5 years.

By this procedure there is, in fact, no review or evaluation of water resource projects under any criteria. Projects are simply not built no matter the will of the Congress or the people.

During the period of delay when appropriated construction funds are not released, inflationary forces continue to drive project costs up. Water resource projects are then criticized because of high costs as if the water user is responsible for inflation.

In fact, the Proposed Principles and Standards are not needed; the system of evaluating water resources development projects used historically has worked. In addition to concern about the effect of the general principles and standards, we are concerned about detailed specific proposals. Of the detailed proposals, the proposal to adopt a 7% discount rate for evaluating water resource plans and projects is the most onerous. Use of a 7% discount rate will retard vitally needed water resource development in the west and western Colorado. The Special Task Force (page IV–8, "D. Discount Rate" of "Findings and Recommendations of the Special Task Force . . .", Senate Committee Print, Serial 92–20, cited above) recommended: "The rate to be established on the adoption of these standards is 5½ percent.".

The 7% discount rate should not be used. The Council's own Task Force report opposes it. The Task Force recommendation of 5½% is much more realistic and closer to the contemporary figure of 5⅜%, which is significantly higher than the 3¼% used prior to 1968.

This District would like to point out that the "opportunity cost" concept the Council uses in arriving at the discount rate is unrealistic. There are very legitimate differences of opinion that a 7% discount rate accurately measures the real rate of return on Federal investments. The case for the opportunity cost method is partly based on the thesis that the Federal Government forgoes tax reviews when it competes for funds; no mention is made of the fact that water resource projects generate significant tax revenues.

The adoption of a discount rate based on opportunity cost as related to the "private sector" of the economy indicates a turnabout from the historic concept that the people have a role and a voice in setting policies concerning land and water resources. The responsibilities and benefits associated with Federally-assisted water projects are not the same as those of the "private entrepreneur". Public benefits and public desires, as expressed through the Congress, include values not measured in terms of short-term economic efficiency. Private and Federally planned water resource projects are virtually not comparable. The two types of projects are almost never physically alike and the benefits not the same. The differences are usually in areas that are rightfully not the concern of private financiers.

This District would like to ask if planning based on a high discount rate in the name of economic efficiency takes into account the important social and regional considerations recommended by the Task Force. The national well-being is the sum of regional and local well-being.

This District agrees that some discount rate must be used in project evaluation. A rate that is too low could waste valuable resources; one that is too high will prevent development of vitally-needed water resources. We urge that the Council hold hearings specifically to determine an equitable discount rate.

Several administrations and congresses have expressed a policy of population dispersal. Water resource development and associated economic growth in under-developed areas will prevent additional social and economic costs to the nation in the long term.

We would like to point out to the Council that the proposed criteria, especially the 7% discount rate, will tend to further concentrate population in already heavily impacted, heavily polluted areas. Problems of

population concentration, increasing urban welfare costs and rural economic development will ultimately be greatly aggravated. Interestingly, rural water resource project areas have few, if any, social problems.

Of the 15 counties comprising this District, 6 counties lost population in the 10 years ending 1970, but some gain was recorded and new businesses are moving in. However, the area of this District is predominantly rural in character and has been relatively slow to develop economically and the water it generates is used to subsidize the growth of metropolitan eastern Colorado, Southern California, Central Arizona and Central Utah. This is probably one of the biggest water subsidies in the history of the United States.

This District is relatively large; the area is rich in natural resources, including the world's largest reserves of oil shale. It is vitally important to the well-being of the nation. The enactment of the proposed principles and standards will tend to support publicly and privately financed water resource speculators to the everlasting detriment of the area and the nation. The result will be that less and less of the water originating in the District will be available for its own use. It is in the long term best interests of the nation to actively encourage the development and use of these water resources within the District. Therefore, the Colorado River Water Conservation District urges that the Council's Proposed Principles and Standards, as published, not be adopted.

Respectfully submitted,

ROLAND C. FISCHER,
Secretary-Engineer.

PARTIAL LIST OF WATER RESOURCE DEVELOPMENT PROJECTS WITHIN BOUNDARIES OF THE COLORADO RIVER WATER CONSERVATION DISTRICT

Project Name, Legislation and Date

Basalt, PL 87–590 (July 16, 1962) Secretary of Interior to expedite planning as a participating projects under CRSPA.

Bluestone, Participating Project, CRSPA, (April 11, 1956).

Fruitland Mesa, PL 88–568 (September 2, 1964).

Grand Mesa, PL 485 (April 11, 1956).

Lower Yampa, Investigation: PL 90–537 Colorado River Basin Project Act (September 30, 1968).

Middle Park, First USBR Report 1946 PL 90–537 (September 30, 1968) Secretary of Interior to give priority to completion of planning report.

Savery-Pot Hook, PL 88–568 (September 2, 1964).

Dallas Creek, PL 90–537 (September 30, 1968) To be constructed simultaneously with Central Arizona Project.

Upper Gunnison, PL 90–537 (September 30, 1968).

Upper Yampa, PL 90–537 (September 30, 1968).

West Divide, PL–483 (April 11, 1956) PL 90–537 (September 30, 1968) To be constructed simultaneously with Central Arizona Project.

Yellow Jacket, PL 485 (April 11, 1956) Secretary of Interior to give priority to completion of planning report.

NOTE.—PL 485 is Colorado River Storage Project Act (April 11, 1956), abbreviated as CRSPAR.

PROPOSED PRINCIPLES AND STANDARDS FOR PLANNING WATER AND RELATED LAND RESOURCES

(Statement of city of Montrose, Colo.)

The National Water Resources Council has published in the Federal Register of December 21, 1971, Proposed Principles and Standards for Planning Water and Related Land Resources, which contemplate the use for calculating water project benefits and costs of an interest or discount rate, based on "opportunity cost", which roughly approximates the average return from private investment and which is estimated at 10 per cent. These standards set this discount rate initially at 7 per cent for a five-year period.

The City of Montrose, Colorado, believes that this proposed 7 per cent interest rate is unfair, inequitable and contrary to the public interest because:

(1) This policy of restricting water storage project construction, conflicts with the administration's declared objective of strengthening the economy and reducing unemployment.

(2) It will make impossible, the construction of many major water projects, that are badly needed to meet the economic and environmental needs of Colorado and the Western United States.

(3) It, in effect, enforces a moratorium on planning of future water projects, conceivably, to a time when water shortages occur, leaving inadequate time to get needed projects reauthorized and time to get these projects built.

(4) The interest rate cannot be economically justified, either on the basis of the average long term interest cost on money borrowed by the federal government or of the average private industry or business.

(5) There is a substantial division among federal officials on the feasibility of the 7 per cent interest rate, as evidenced by the recommendation of a Task Force of the National Water Resources Council, that a 5.5 per cent rate be used, as well as the opposition of many federal officials and members of Congress.

(6) The interest rate discriminates against water projects, since no other form of federal construction activity is faced with such restrictive criteria.

The City of Montrose opposes the proposed 7 per cent interest rate and urges the Water Resource Council to delay implementation of the proposed Principles and Standards, until Congress has had the opportunity to hold hearings on the full effects of this proposed criteria. Congress should, under our Democratic form of government, vote on these proposals and, therefore, have the final word in the form of a law, by the people and for the people.

This seems much more just, than having these Principles and Standards set by appointees, rather than by people, who are selected by the citizens of the United States.

FIVE PROJECT COUNCIL

(Statement by Robert Lewis)

Gentlemen:

I am Robert Lewis, President of the Five Projects Council. I have also served for 14 years as President of the Tri-County Water Conservancy District Board and am presently serving as an Executive Director of that board. I have been in the livestock operation for roughly 40 years in south west Colorado. The past 8 years, because of some heart trouble, these operations are seriously curtailed. I consider that I am well informed upon water as well as most of the things affecting the economy of the area.

The Five Projects Council was formed in March 1969, after the authorization of the Central Arizona Project. It was formed for the express purpose of co-ordinating funds for the construction of the five projects, which lie in Colorado but are an integral part of the 1968 Act, S. 1004—the Lower Colorado River Basin Act, which provides that all six projects proceed concurrently.

This Council also attempts to disseminate information regarding the five projects to both the Upper Colorado River Conservation Board as well as the Southwestern Water Conservation District. From time to time we are asked for information by The Colorado Water Conservation Board, regarding priorities within the "Five Projects." I have served as President since its founding in March 1969.

My understanding from the Bureau of Reclamation is, that if construction is not started upon a project within five years after authorization by Congress, a different formula must be used, involving a 7% interest rate or possibly up to 10%, whatever might parallel those rates used by private business, in figuring benefit cost ratios on new starts.

I am sure that this Council is as aware as I am, that such action would close the door on all funding for new starts in our Western States.

So, we are here to urge you not to use this criteria in determining approval of funding for our Colorado projects. It is my understanding that the Council's own releases do not evaluate on this criteria.

It also appears to me that hearings should decide the discount rate, provided those hearings are advertised, so that the parties affected are aware they are being held.

The Federal Register is not generally available to Water Conservation Districts who are not Federal employees.

I feel sure that it was the intent of the Congress to build these projects mentioned in S1004 concurrently, because the bill is so worded. Therefore, this Five Projects Council will take the attitude that any start on any of the six projects within the five years, after authorization period, automatically qualifies the other five projects.

Certainly gentlemen, unless we wish to further widen the "creditibility gap", more road blocks should not be thrown in the way of these six fine projects.

I would like to thank you for your time and patience in hearing me and especially commend your office in making it possible for me to present testimony, even though I was late.

Thank you.

TRI-COUNTY WATER CONSERVANCY DISTRICT

(Statement by Richard Edmondson)

Gentlemen:

I am appearing here today on behalf of the Tri-County Water Conservancy District of Colorado.

We would like to appeal to you to change your new proposed criteria. Tri-County represents three Colorado Counties, consisting of 4,704 square miles and 34,214 people. This area has been a depressed area since the days of the gold and silver era. We feel the water development that has been done has kept our people from completely moving away and into the cities.

We have had a good agricultural valley but the economy has been limited because of poor access to the markets. We have seen our area start to become a tourist area since we have been working on the "Dallas Creek Project." We are also seeing many people from the conjested areas of the United States moving into our valley to get away from the problems of the city.

We just recently were blessed with the announcement of Russell Stovers Candy Company moving to Montrose with a factory that will employ 600 people. It will also use large quantities of water.

We also have two new cities planned within the District that HUD and E.D.A. are involved in and these people are going to need water. Our authorized project has 65% of its stored water already committed for Municipal and Industrial Water. This water will be used by the Towns of Montrose, Ridgway, Colorado Pines, Voice of Youth, Olathe and Delta, along with our own rural domestic system that is now in and being used by 5,814 people. We anticipate that in two years we will be serving 13,500 people.

We are one of the last frontiers of the United States but without water we cannot grow. One of the factors that has hurt us, is that only 28% of the land pays taxes. The remainder of the land is Federally owned, but our local governmental units have to maintain the roads, furnish police and fire

protection, garbage and trash collection. Now that we can see our economy start to bloom, w- are gravely concerned over these new proposed changes by your group on water development.

We have heard Congress and our present Executive Branch talk about stopping the rush of people from the rural areas into the cities, and consequently, being untrained when they reach the city and ending up on the welfare rolls. We are concerned also about our youth that leave the rural areas and go to college and then settle in the cities because jobs are not available in the rural areas.

In almost every area that water has been developed, we have seen new industries developed and in so doing, creating new jobs and new supporting industries, businesses and services. We want to enjoy this type of economy, as do a good share of the areas in the United States.

We feel that as long as REA is only paying 2% for their loans from the Government, low income housing loans are only 2½% and HUD and EDA give away grant funds that do not have to be repaid, that the present 5⅜% interest is more than sufficient for water development, Bureau of Reclamation Project.

We have seen HUD give away many millions of dollars for model cities and new water and sewage treatment plants. Without a supply of water stored, there would be no need for water treatment plants.

Short Term Government Bonds are at 3½% and Long Term Bonds are at 4½%, which is a far cry from the 7% discount rate that your Council is proposing. We feel that all Government loans should be based on the same interest rate and it must be a rate that is economically feasible for the citizens of the United States to pay back.

Another item that we are strongly in opposition to, is the Principle that states: "Plans, programs or projects which have been authorized by the Congress and on which actual construction or other similar activity has not commenced within five years after authorization, will be reviewed in accordance with these principles and standards."

It is extremely rare to have construction commence on any project within 5 years of authorization. If final planning can be construed as a similar activity, then our project has a chance, but if not, we will probably be de-authorized. Our final planning was delayed and segmented out over the past three years. This was not done by us or the Bureau of Reclamation or the Congress of the United States but by the Office of Management and Budget. It is highly possible under this proposed policy that the Office of Management and Budget could hold up our funds and everyone else's funds, past the five year period, making it impossible for any and all Bureau of Reclamation projects to be able to fulfill the five year construction requirement.

Many people in Colorado feel that this proposed new criteria is intended to stop any and all water development in the rural undeveloped areas in the United States.

NEW EXCUSES FOR UNEMPLOYMENT

Mr. MOSS. Mr. President. unemployment remains a serious national problem. On Friday, the Department of Labor reported that the Nation's jobless rate, long predicted to decline, had climbed to 5.9 percent of the work force—its highest monthly level since 1971.

These March jobless figures must have come as one more blow to the employment prospects of those Americans out looking for work but unable to find it.

To the administration, on the other hand, the report offered just one more opportunity to exercise unemployment "double-talk."

For 2½ years, Nixon policymakers argued that a high jobless rate was the necessary sacrifice for price stability. The only way to fight inflation, they argued, was by cutting back on employment.

Now the administration economists have come up with a new excuse. Unemployment is high, they argue, not because of their own mismanagement, but because of the influx of so many women and young people into the work force.

The logic of their new argument leaves a lot to be desired. Joblessness is no less severe because it affects women, most of whom are their family's breadwinners, than when it affects men. As Hobart Rowen, financial columnist for the Washington Post, put it yesterday:

> The administration has been trying to grapple with the unemployment problem by redefining it.
>
> Mr. Rowen maintained that—
>
> The honest thing for [the Administration] to say, if that's [their] policy, is the country cannot afford full employment for a couple of years. Of course, they don't have the nerve to put it that way.

Mr. President, I believe it is articles like this that keep the administration "honest" on a problem that is all too real to the families of those affected. 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:

NIXON TEAM MAKES LIGHT OF WORKING WOMEN'S ROLE

(By Hobart Rowen)

The Nixon administration has been trying to grapple with the unemployment problem by redefining it. The last Economic Report, for example, complains that the estimate of 4 per cent unemployment as the equivalent of "full" employment was more or less an historical accident, the "result of repetition, even though the 4 per cent rate was seldom achieved."

Both Economic Council Chairman Herbert Stein and Treasury Secretary John Connally have indicated they think that 5 per cent unemployment is a more realistic definition of full employment in the context of today's labor force because more women and teenagers (who have higher unemployment rates than men) are involved.

In March, in the figures just reported by the Labor Department (overall rate: 5.9 per cent), adult male unemployment was at a rate of 4.1 per cent, while the jobless level among women was 5.4 per cent and, for teenagers, 17.9 per cent, or roughly the highest level in 9 years.

How to reconcile full employment and reasonable price stability has been the central economic dilemma perplexing this nation (and other major industrial countries) since World War II.

It has been the subject of a great deal of learned literature in the last couple of years, typified by George Perry's Brookings paper at the end of 1970, suggesting that the "tradeoff" between inflation and unemployment has worsened in the last decade.

But the difference between Perry and other academic analysts on the one hand, and the administration on the other is that Nixon's men have thrown up their hands and quit. As Walter Heller said a few weeks ago in a letter to Rep. Henry S. Reuss, supporting Reuss' "Jobs Now" bill, just because it's tougher to get down to 4 per cent than it used to be is "no excuse for ignoring the social costs and tensions" created.

But what Mr. Stein & Co. have now decided is that to strive for the full potential of the economy too quickly will cause a dangerous inflation. But the honest thing for them to say, if that's the policy, is that the country can't afford full employment for a couple of years. Of course, they don't have the nerve to put it that way.

Instead, the administration is trying to make us believe that the present prospective situation isn't too bad, because the women and young people employed aren't as important as men.

The simple fact is that what happens to working women is more important than ever before. An article in the current Monthly Labor Review of the Department of Labor shows, for example, that increasing numbers of women with family responsibilities are looking for jobs. By 1971, the Review says, one-third of the women in the labor force had both husbands and dependent children.

Dr. Carolyn Bell Shaw, a Wellesley College economics professor, suggested in a recent speech that the administration is slandering "the contribution of women to the economy."

Dr. Bell took particular umbrage at a hypothetical table in the latest economic report which shows that, if the age-sex composition of the 1971 labor force had been the same as it was in 1956 (that is, fewer women), the unemployment rate for the year would have been only 4.5 per cent instead of 5.9 per cent.

"The projection that women will continue to constitute a high proportion of the labor force," the Stein council said, "suggests a continuing relatively high level of transitional unemployment."

For Dr. Bell, the real translation of the above paragraph is that "we (should) get used to a high level of unemployment. They're only women . . .

"If, they suggest, you pretend that the labor force today was 70 per cent male and only 30 per cent female, the way it used to be, then you could see that, in fact, the economic policies followed by the administration have succeeded. If it weren't for all those troublesome women, the unemployment rate (the CEA is saying) today would be very close to the goal of 4 per cent."

Dr. Bell then marshaled some interesting facts, which Messrs. Stein and Connally would do well to consider:

Since 1950, the labor force has increased by only 7 million men and by about 13 million women. Thus, women account for a major hunk of the rise in national output. "The people who recalculated the labor force to get unemployment down," Dr. Bell observes, "conveniently forgot that such a recalculation would also, inevitably, result in a smaller national output and income."

Although the myth is widely-held that most women are part-time workers, 4 out of 5 adult women (over 20) are full-time workers. And the same 80 per cent ratio applies to unemployed women: 4 out of 5 are looking for full-time jobs.

Contradicting the notion that only adult married men are the "breadwinners," over half of the married men in the U.S. had wives who worked at some time during 1971. The Labor Department's own statistics show that almost 8 million wives in 1970 earned between $4,000 and $7,000, and two-thirds of them were married to men who earned less than $10,000. These working wives contribute more than $1 out of every $4 in total family income. That's a lot of bread by anyone's definition. As a matter of fact, more than 20,000,000 persons look upon a woman as "breadwinner" in the family, including 6,000,000 households which depend solely on a woman for their means of support. Besides, there is an unknown number of families with the man listed as "head of household," but with the woman actually the

breadwinner because the husband is ill or unable to work.

Most of these female breadwinners are poor, and an important percentage is black. Black or white, the choice of jobs is not the same as available to men. (The Urban Coalition's Counterbudget, published last year, provides a supporting analysis of the "blatant discrimination against women in the labor market.")

This critique of the administration, for an anti-social, crass attitude toward women, applies as well to teen agers. We can't complain about the radicalization of youth if we tell them as they approach manhood that whether they have a job isn't economically significant.

No one denies that Messrs. Nixon and Stein have a problem on their hands (which they helped to create with an excessively depressing "game plan" in 1969 and 1970). But it won't go away just by changing the definition of full employment.

EQUAL EMPLOYMENT—MORE THAN A HIRING POLICY

Mr. BROOKE. Mr. President, too often the commitment to equal employment opportunity stops with "employment." But opportunity for minority workers should not end with the hiring process. Each employee deserves and must have have an equal chance on the way up. It is perhaps not an easy task. It is certainly not a task to which all large companies have been committed.

But I am pleased that progress is being made in some firms, and I invite the attention of Senators to a speech by Samuel Higginbottom, president and chief operating officer of Eastern Airlines, outlining what Eastern is doing to insure that equal opportunity is more than a hiring policy.

I ask unanimous consent that Mr. Higginbottom's remarks before the Black Achievers Dinner in New York on March 16 be printed in the RECORD.

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

THE NEW FRONTIERS OF OPPORTUNITY

(By Samuel L. Higginbottom)

Good evening. Before I start I should tell you that I approached this evening with some trepidation—not because I'm apprehensive about what I'm going to say—but rather because I have always been ill at ease talking to any group outside of my own company. Your committee tonight anticipated that though and surprised me with a table full of my friends from Eastern, some of whom are being honored—so I say without any hesistancy, I'm at ease—and it really is a pleasure for me to be here tonight. This annual dinner is an important indication, I think, of two vital facts of American life: First, that we are committed to achievement, encouraging and honoring it; and second, that we have finally come to recognize that black achievement is not only desirable, but in fact essential to our national progress.

This too is a time for taking stock. In this place, in the presence of so many people who have overcome so many obstacles to both carve out their niche in our society and in the process to contribute so much to the life of this country, we should look around us and ask some fundamental questions. What can we as a nation do to encourage more of the achievement on which our future depends? What can we as a nation do to broaden the opportunities for *everybody* in this land—regardless of skin color, religion, or national heritage—to go as far and as fast as their talents will take them?

Very soon now, this country will be celebrating its 200th birthday. We are now in what might be called the countdown period before the 1976 bicentennial. At this time, then, and on this very fitting occasion, perhaps you will permit me to share with you a few thoughts I have on this country as a whole and what we—all of us, in one way or another, members of minority groups—can do to make our lives and those of our children more satisfying, more productive, more fulfilling than ever.

Since 1776, when this country was born, we've come a long way. We have espoused great purposes. We have said many times—and these are not empty words—that our goal is the extension of peace and prosperity, and true equality of opportunity. But still in today's society, all too often, considerations of birth, of religion of regional or racial differences, still outweigh considerations of merit, ability, and character. Nevertheless, there has been notable change in the right direction, as vividly evidenced by the high caliber, and the number, of honorees assembled here tonight. But that fundamental goal of true equality of opportunity has certainly not yet been reached.

It is mandatory that we achieve this goal of real democracy in practice, not just in theory. If this country is to fulfill its true potential—and if we, its citizens, are to be whole men—the frontier of opportunity must be opened wider now. Without achievement of this goal, we will continue to spend much of our nation's energies and talents on internal bickerings and devisiveness—at a time in history when we need all of our talents applied to securing our leadership dominance in the emerging multi-national world society. My industry which is already competing on a worldwide basis perhaps feels and sees this need sooner than most industries. That not only gives us the opportunity to speak earlier than some other more parochial industries, it gives us the absolute obligation to take positive actions to assure we do in fact have democracy being practiced.

I noticed that most of you achievers here tonight are also from the corporate sector. You particularly can appreciate this point and can do much to help assure such action in your own companies.

Thomas Jefferson, returning from his ambassadorship to France, was one of the first to foresee the problems we are facing today. Standing on a ship off Virginia, awaiting the tide that would permit him to dock. He commented to an aide that this country would grow and prosper so long as there was room for physical expansion. Then, he said, it would encounter the difficulties of urbanization that were already prevalent in Europe.

From that time until the relatively recent past, his prophecy held true. When individual frustrations reached unbearable proportions, young people in quest of better opportunity and freedom moved on to less restricted geographical frontiers. That was what made this rich land a mecca for immigrants from all parts of the globe. But today our geographical frontiers are no longer and we are contending with all of the problems of urbanization.

Like it or not, our social system today depends in great measure on the strength of our urban centers, and their efficiency and effectiveness as centers of commerce, industry, financing, and transportation.

Without denying the importance of rural and suburban America, it would appear that as our cities go, so will go the nation. Yet our cities today, in so many respects, are ailing.

The problem is rooted deeply in a number of interrelated areas—employment, education, housing, public safety, welfare, mass transportation and the solutions will come from the youth of today, who are the leaders of tomorrow.

So we must develop a strategy to improve the lot of *all* youth. Not just black youth, but all those to whom the mantle of leadership in this Nation will one day be passed.

During the past 20 years or so, many of the handicaps and barriers that for so long blocked the paths particularly of black youngsters—and men and women—from social and economic improvement have been removed. The process of lowering and removing these barriers is continuing and their total dissolution promises to become a way of life rather than an exception to it.

In the past our bigger corporations have for the most part only paid lip service to upward mobility. Now we're going to have to change that. It's not going to be enough to simply hire minority group employees. We're going to have to promote blacks and other minority group members into the ranks of management and on up the ladder to executive policy making authority. When department heads tell us there aren't any qualified minority applicants, we must tell them that's not true! Look again, and find the man or woman who can do the job and promote him or her now, and must insist that it happen. And that practice must spread throughout our society.

We are doing that today in Eastern Airlines, and while progress has been slower than I hoped for as our company shrank in size these past months, we are again growing and progress will now be much more rapid.

But of more importance, our minority group management people are proving themselves to be outstanding managers—and are doing more by example to break down barriers than I can ever do by edict—or even persuasion. Take one example: In electing Jim Plinton to a vice presidency, we were aware that we were opening a new frontier. Sure we hoped that our example would be followed by other airlines, and other companies in every line of business.

But we didn't hire Jim just because he's black. A company that takes in over a billion dollars a year, yet can't keep a penny on the dollar as profit, simply can't afford to hire minority group officers just to keep the equal opportunity enforcement people off our backs. We hired Jim because we thought he could make money for us. That is the reason we make any man a vice president.

We needed Jim—more than he needed us. I worked for Trans World Airlines when Jim was there. I saw how he helped that airline expand into Africa. We are looking for expansion into the Caribbean, and Jim is helping us immeasurably in establishing strong relations with the burgeoning new island nations in that area—and in developing our marketing strategies so that we are capturing more than our fair share of travel to those vacation destinations.

So we were more than altruistic in our motives. Competitive businessmen *have* to be in the pursuit of profitability. Jim is a capable, experienced executive with drive, ideas and ambition—and we got an unexpected bonus in Jim, for he directly and by example has been more instrumental than any other member of our management in breaking down the barriers against minority hiring and promotion. We would have been foolish indeed to deny ourselves Jim's talents. So, too, would we be shortsighted to deny ourselves the services of the pilots, stewardesses and other minority group members who are now part of Eastern Airlines, all told nearly 3500 of them—or to tolerate any thwarting of their progression on merit.

What then do we do to further open the way for more Jim Plintons, Milt Branches, Joe Forrests, Joan Bryans? No one company or industry, no matter how committed, can do this alone. Widening the frontiers of opportunity involves the corporate sector,

Government, *and* those in leadership positions within the critical urban areas. Not necessarily individual leaders, but agencies such as the Harlem YMCA, where programs devised around the slogan "Youth Is Our Business" can and must succeed. These programs must deal with more than the relatively obvious unemployment. They must also come to grips with the alarming level of *under*-employment. Talking with Henry Lenoir gives me great encouragement—he's so far ahead of my shallow thoughts—I'm glad I'm concentrating presently on what one airline can do!

The force of Government, long applied to assist developing nations, must be more effectively committed to developing these underdeveloped parts of our urban centers. The call is growing for a reorientation of our Nation as well as local priorities. There is a public demand that we concentrate more programs and funding on our domestic problems.

All of this will help—but for some of these actions we will have to wait. And yet there are many things that can be done right now without waiting for government. At eastern, for example, as a matter of high priority corporate policy, we *are* proceeding to upgrade as many of our minority employees as possible, and on an urgent basis. We recognize that the time has come when we must, through positive action, demonstrate that their efforts to educate and train themselves will be rewarded.

Our program, instituted last year, has three objectives. One, to demonstrate to *all* personnel that top management is dead serious about the practice of equal opportunity. Two, to fill job vacancies with more black and other minority group youth, and get them started on the upward road. And three, to encourage all minority group employees. This latter we can best do by letting them witness the fact that the productive employee no matter what his origin is being rewarded with opportunities for advancement and promotion. As so many of you in this room know—achievement is not only habit-forming, it's catching.

Toward these ends, we established a five-man integrated task force, of which Jim Plinton is a member. It is reviewing all promotions made within the company to assure minority group employees priority in these upgrading opportunities.

Not satisfied with waiting for these things to just happen, the task force is now busy reviewing the backgrounds and potential of every minority group employee at eastern to determine his or her eligibility for promotion, and it will then recommend who should be upgraded to what type of position.

Our task force is a competent team. They view the situation through experienced eyes. They are the keepers of our equal opportunities intentions. They apply constant pressure to assure our managers we do fulfill our commitments and obligations in these regards.

This task force has also spotlighted and labeled the sometimes obvious, more often subtle discriminatory tricks that had slithered into the hiring policies and blocked off qualified minority employes in some places—and under that continuing spotlight we are weeding out those roadblocks.

Beyond all of this, eastern's management is consciously encouraging preferential treatment both in hiring and promotion of people from minority groups.

As we continue to do this it does place an unusual obligation on the people so favored. Specifically, we can be successful in our efforts only for as long as the people so favored perform outstandingly well. This is a message that you achievers can help us carry not just to your associates in your company, but to your associates throughout society. You who are so aptly demonstrating that can be very effective in this effort.

We realize the importance of preparedness where employee performance is concerned. Control of technology does require knowledge and airline operations are increasingly dependent on technology—and increasingly seeking more technically trained people. Obviously, more technical training opportunities for minority groups commencing with youngsters in high school, are indicated.

Just a short distance from this hotel, in Jamaica, Queens, is one of the nation's first predominantly black, public technical high schools. It is called the Captain August Martin Technical High School, and was opened last September. That high school was named for Jim Plinton's friend and former Air Force wing mate, Captain August Martin, who was the first black scheduled airline captain in the United States. He was killed in Nigeria in 1968 while flying food and supplies to starving Biafrans.

Eastern is helping this school develop the technical potential of young black Americans, so that they may begin to qualify for a future as pilots, engineers, or highly qualified technicians.

We also have training programs within the company where we are helping ambitious employees upgrade their knowledge and skills, and we underwrite college extension education for our employees willing to devote their time to it. All helps participating employees expedite qualifying for bigger, better, jobs and responsibility.

Slowly but surely, then, the new frontiers of opportunity are opening. All of us, particularly those of you in this room who are, in the truest sense of the word, achievers, have parts to play. You are committed to guide, steer, push and inspire. All Americans need your help so we don't stray from the path upon which we have embarked. You have to plan and act, to watch with wisdom and courage, to keep us all honest.

On behalf of Eastern Airlines, I pledge we will do more than our fair share.

Thank you.

DEATH OF MRS. ABRAHAM A. RIBICOFF

Mr. ALLEN. Mr. President, news of the death of Mrs. Ruth Ribicoff, the beloved wife of our distinguished colleague, Senator ABRAHAM RIBICOFF, came as a great shock to me and to other Members of the Senate.

Mrs. Allen and I extend our deepest sympathy to Senator RIBICOFF and other members of the family. I asked my wife, Maryon, who knew her well and loved her and had enjoyed the warmth of her friendship, to express her feelings at the loss of her dear friend. I ask unanimous consent that her tribute be printed in the RECORD.

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

MRS. ABRAHAM RIBICOFF—A DEAR FRIEND

(By Maryon Allen)

A fine and wonderful lady passed away today, and fellow Senate wives will miss her immeasurably. Wherever Ruth Ribicoff walked, there also walked compassion and kindness. Her true goodness and her concern for all others were accepted and most appreciated facets of her being. She was greatly loved, particularly by the Senate wives who looked forward to being with her every Tuesday at the Ladies of the Senate Red Cross.

Ruth never failed to extend her friendship and know-how to new Senate wives, and I especially treasure the wisdom she shared with me. My respect and love for her deepened with each moment spent with her. Her wit was famous and quite devastating, prized all the more, since she was sparing with it.

There are no words adequate to describe her immense pride and love for her husband, indeed for all her family, but most especially for her Abe, with whom she had shared such a distinguished life. Ruth brought grace and dignity to her husband's public life, and love and warmth and beauty to their private life. She bore him children, who rounded out their personal existences, and she, as all mothers do, thrilled to these children's many accomplishments. And I do believe she was the most loving grandmother I have ever known. Each Tuesday brought at least one "Proud Grandma" story.

A pitiful void has been left in her family's life, but also in the hearts of her many, many friends. Ruth Ribicoff was a truly great woman . . . a giving, contributing, caring, and loving person. She will be missed sorely by those whose lives she touched with her singular beauty.

The Ladies of the Senate pay tribute to Ruth Ribicoff, a dearly beloved member. She was a very special person. Personally, I will forever be grateful that I had the honor of knowing her and calling her my friend. She left the world more beautiful where she had passed.

ADEQUATE PENSIONS FOR WORLD WAR I VETERANS

Mr. TOWER. Mr. President, I have joined the distinguished Senator from South Carolina (Mr. THURMOND) as a cosponsor of S. 3070, a most needed proposal to provide an adequate pension program for our World War I veterans and their dependents.

The World War I doughboys, some 4,700,000 strong, came sailing home from Europe to jubilant parades of tickertape. However, as a nation, we did not realize the problems that were created by a global war. World War I had disrupted our economy, displacing men and material. We did not have such programs as GI education benefits, vocational rehabilitation, GI home loans, and veterans' preferences that have since been instituted to assist our veterans in readjusting to civilian life.

In retrospect, Congress has provided a pension program for these deserving veterans of World War I and their dependents. Today, there are over 1,400,000 World War I veterans. Their average age is 77. As they advance in age, we must seek to provide an adequate pension plan so that they may live their lives with dignity and pride, without fear of want.

S. 3070 would provide $135 a month for a single eligible veteran and $150 for a veteran who is supporting a wife or dependent child. If he needs regular aid and attendance, his pension would be $275 a month. A permanently homebound single veteran would be entitled to $185.

A widow of a World War I veteran would receive $100 a month; $125 a month if she supports a child; and $20 a month for each additional dependent child.

Under the proposed legislation, the income limitations would be raised so that the veteran and the widow would be subject to a limitation of $3,000 for a single pensioner and $4,200 for a pensioner with dependents. Furthermore, future increases in monthly payments under the Social Security Act and the Railroad

Retirement Acts would not be included in the determination of income.

A final provision of S. 3070 would grant World War I veterans participating in this pension program a priority in admission to VA hospitals and health clinics.

I give my wholehearted endorsement to this proposal. We cannot do less for our older veteran population who have contributed so much to the greatness of this Nation.

ADMINISTRATION URGED TO RETURN TO PARIS PEACE TALKS

Mr. KENNEDY. Mr. President, tomorrow will mark the fourth straight week of President Nixon's unconscionable boycott of the Paris peace talks. I urge the President, in the strongest possible terms, to order Ambassador Porter back to the talks, and end the outrageous spectacle of the empty American seat at Paris.

Again and again, the administration has insisted that it is willing to go the extra mile for peace, and to seek a negotiated settlement to the war. Yet, when the chips are down, when there is a clear and present step to take, when the eyes of all nations and peoples of the world are on us, America holds back in Paris, and the seat at the peace table stays empty.

Whatever other policies we favor on the war and the means to end it, surely there can be no disagreement that at this time of profound new crisis in the fighting, the United States should be at the conference table. At this time of massive new escalation on the battlefield in Vietnam, both sides—but especially the United States—ought to be exploring every conceivable avenue for an immediate ceasefire to end the devastating new killing and destruction.

To be sure, our boycott of the Paris talks does not seem of long duration. It was on March 23 that President Nixon ordered Ambassador Porter to walk off the job in Paris. But that brief interval has been an eternity in the war, in terms of the vast new violence that has been unleashed in recent days. Worse, it has been a lifetime for countless innocent men and women and children, caught in what may well become the deadliest slaughter of this war.

How can any nation that genuinely desires peace be absent from the peace table at a time like this? Perhaps the new offensive must inevitably run its course. Perhaps no negotiations at this time could prosper. Perhaps no fruitful discussion could take place. But how can we refuse to make the effort?

It is precisely when the pursuit of peace is most difficult that those who desire peace the most should be making the greatest effort. How can we abandon even the most fragile chance for peace, when so much new killing is taking place?

Perhaps, even now, the administration is pursuing some secret peace initiative to stop the killing. I hope that this is so. But all the signs point otherwise. To hide the abject failure of the Vietnamization program, the administration is whipping the Nation into a new war frenzy. The daily headlines trumpet the movements of naval forces and the search for more B–52's to send to war. They tell of vast bombing raids over Indochina, and vast new casualties on the battlefields by soldiers and civilians.

And to what end? Does anyone seriously believe that the Government of South Vietnam could survive this new offensive on its own, without the support of massive American air power? If that is what Vietnamization really means, then the administration has misled the American people with its promise to end the war, and the policy of Vietnamization is revealed as just a cruel and murderous hoax on the people of Indochina, bringing them more of the same death and destruction that President Nixon promised years ago to end. The only promise we really see at all is not a promise to end the war, but a promise of war without an end.

I yield to no one in my condemnation of the new offensive by North Vietnam, but I do not believe that the administration can escape its very real share of the responsibility for the present crisis. In recent days, we have watched the killing mount. And as it mounts, the President stays silent, while a parade of spokesmen for the administration have cast about in an effort to escape responsibility.

"One last throw of the dice," they say, and then there will be peace. That is just the latest—and possibly the cruelest—metaphor in this long immoral war—as if somehow we had the right to gamble so casually with the lives of men and women and children.

Perhaps it is just a throw of dice to the planners in the Pentagon and in the White House, but it is not a game—and it is certainly not a game of dice—to the soldiers dead on the battlefield, to the civilians slaughtered by the bombs and bullets, and to the American fliers newly taken prisoner.

Hundreds of lives are lost each day, while the administration tries to fix the blame. They blame this, they blame that. They blame the weather for preventing American air strikes. They blame the Russians. They blame the Chinese. They blame everyone but themselves.

But I do not think these excuses will fool the American people. How can we seriously blame the Russians, when a month from now the President will be off to Moscow in search of peace? How can we blame the Chinese, when a month ago the President was elegantly toasting Chou En Lai in Peking to the strains of "America the Beautiful?" If we can talk to the Russians in Moscow and the Chinese in Peking, why not to the North Vietnamese in Paris?

No, there is blame enough for all sides in Vietnam. Indeed, history may well record that our boycott of the Paris talks last month was the final shock that drove North Vietnam to mount this new offensive. We know that this offensive has been rumored for many months. We engaged in massive bombing raids last Christmas, supposedly to forestall it. When the President traveled to Peking, we again resumed the bombing, so that no untoward offensive would embarrass that historic trip.

For months, the offensive failed to materialize. But, while we were bombing on the battlefield, we were slowly foreclosing any real hope of progress in the Paris talks. Earlier this year, for considerations based largely on domestic political advantage, President Nixon broke the veil of secrecy surrounding the private talks in Paris, and attempted to justify our public position at the conference table by resort to the secret talks.

And so the avenue of private talks was blocked. It is not difficult to believe, therefore, that when our boycott of the public talks began last month, the avenue to peace in Paris was now so clearly closed that the planners in Hanoi who favor war instead of peace gained the upper hand, and began the current offensive that is bringing such senseless daily slaughter to the people of North and South Vietnam.

When war has broken out like this in recent years, America has tried to stop it. In spite of our months of neglect while conditions deteriorated over Bangladesh, we reacted instantly when war broke out between India and Pakistan last December, and we tried at once to stop it.

The same is true of the Middle East. Some of the finest chapters in the history of America's concern for peace have been written in the tireless efforts of our recent leaders, including especially the leaders of this administration, to secure and preserve a ceasefire in the Middle East.

How, then, can we be so blind when the fighting suddenly rages in Vietnam?

Time out of mind, we have prayed for peace in Vietnam, but all we have found is war. The prayer we ask now is a simple one, in which I hope that all our people can join. We urge you, Mr. President, to go back to Paris, to go back to Paris tomorrow, and to try again to end the killing. Let all the world see clearly that America does want peace.

APPEALS PROCEDURE FOR FOREIGN SERVICE AND USIA PERSONNEL

Mr. MOSS. Mr. President, on October 6, 1971, I introduced on behalf of the Senator from Iowa (Mr. MILLER) and myself a bill, S. 2662, whose purpose was to promote the foreign policy of the United States by improving the Foreign Service personnel system of the Department of State and the U.S. Information Agency through the establishment of an equitable appeals procedure for officers and employees in the matters of adverse actions and grievances.

Last October, the Committee on Foreign Relations received testimony from the American Federation of Government Employees endorsing S. 2662.

On March 30, 1972, AFGE national president John F. Griner submitted supplemental testimony to the Foreign Relations Committee in support of my bill. Mr. Griner also adverted to several other matters of great concern to Foreign Service personnel of the Department of State, the U.S. Information Agency, and the Agency for International Development.

I should like most of all to call attention to Mr. Griner's expression of "hope" that the "external causes of crisis" af-

fecting the foreign affairs agencies "will not result in punitive cuts" in their budgets. Mr. Griner also requested that "sufficient additional funds be authorized and appropriated for salaries and expenses to staff the needed new appeals machinery," called for in my bill, "with competent professional personnel." He also observed that "funds will also be needed to reinstate officers who had been improperly selected out and to provide restitution to the victims of other past improper personnel practices."

With specific reference to S. 2662—and S. 2659, a similar bill introduced by the Senator from Indiana (Mr. BAYH)—Mr. Griner said the following to the Foreign Relations Committee:

We wish to reiterate our previous urgent appeal that your Committee report out this year a bill establishing by statute a grievance appeals procedure for the Foreign Service. We also hope that such a bill would not appear later on the floor of the Senate than the Authorization Bill which you are currently considering for the Department of State. In the event your Committee, in its wisdom, decided to combine the Moss-Miller or the Bayh Bill with the State Department Authorization Bill, perhaps as a "rider", we would consider that to be a most judicious solution in light of the lateness of the present legislative calendar.

I ask unanimous consent that Mr. Griner's statement be printed in the RECORD.

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

STATEMENT OF JOHN F. GRINER

The American Federation of Government Employees, AFL–CIO, appreciates the opportunity afforded it by the Senate Foreign Relations Committee to submit supplemental testimony directed to showing the interconnections between several matters before your own and other Committees of the Senate. Among these are the following:

1. Authorization and Appropriation Bills for the Department of State; for the United States Information Agency; and for the Agency for International Development

2. The Moss-Miller (S. 2662) and Bayh (S. 2659) Bills, providing a statutory grievance appeals mechanism for personnel

3. The Magnuson Bill (S. 2754), establishing an International Commerce Service separate from the Foreign Service

4. U.S.I.A. Director Shakespeare's new concepts for promotions to U.S.I. Officers Class–1

5. General Reform of the Foreign Service.

Common to all these matters is the climate of crisis and urgency affecting the three foreign affairs agencies. The central fact of this crisis is their loss of status consequent to a lack of confidence in them by the White House; by the Congress; and by the general public, especially the business and commercial community.

The internal symptoms of crisis are equally apparent in the demoralization of the officers and employees of these agencies, resulting from arbitrary and capricious personnel policies in the appointment, assignment, promotion and firing through selection out of officers and employees.

I shall direct my testimony primarily to the internal symptoms and causes of crisis. However, I should like first to state that I hope the external causes of crisis will not result in punitive cuts in the budgets of the foreign affairs agencies, rendering them even less capable of discharging their missions. Secondly, I should like to request that sufficient additional funds be authorized and appropriated for salaries and expenses to staff the needed new appeals machinery with competent professional personnel. Funds will also be needed to re-instate officers who had been improperly selected out and to provide restitution to the victims of other past improper personnel practices.

THE ABSENCE OF DUE PROCESS IN THE STATE DEPARTMENT

As you know, our organization has at its main reason for existence the protection of the rights and welfare of all Federal employees. For example, we have always been in the forefront to obtain equitable and just pay rates for Federal employees based on comparability with private enterprise. We have led in the development of proposals for due process in the appointment, promotion and assignment of all career employees based solely on merit without regard to outside political influence or to inside managerial race, creed, color, sex, age or other personal reasons. We have made it a cardinal principle to safeguard all Federal employees from capricious and arbitrary managerial decisions leading to firings by "selection out" without the protections of an appeals procedure.

We have appeared before your Committee on several occasions primarily to protest against the absence of "due process" in the personnel systems of the State Department and of other Foreign Affairs Agencies. We have submitted evidence showing that the so-called "merit" in the "Foreign Service Merit Promotion System" is in fact a myth. During the Hearings on Bayh Bill, S. 2659 (originally S. 2023), and the Moss-Miller Bill, S. 2662, we presented evidence as to how both the promotions and the selections-out of Foreign Service Officers are manipulated by the top personnel managers of the Department of State behind a facade of apparent competition on the basis of merit. We showed that the subjective ratings both in the so-called Efficiency Report and in the secret Development Appraisal Report revealed at best the inter-personal relations between the rating and the rated officer.

PAST SELECTION BOARD "RANKING ORDER" PRACTICES

As to the alleged independence of "selection boards" in ranking officers, firm evidence now exists that, in some instances, top managers of the State Department refused to accept the original "rank order" for promotions and selections-out but have sent these back to the selection panels for re-grouping. With very rare exceptions, these selection panels then submitted new "rank order" lists both for promotions and selections-out more acceptable to the State Department's personnel managers.

SELECTION OUT

Regarding "selection out," our organization is fundamentally opposed to this system as it is practiced by the Foreign Service of the State Department.

"Selection out" has been used as a special tool by the State Department to achieve a variety of different goals. First, it has been used to carry out "firings" in reductions-in-force programs. These "selections out" have usually taken the form of "reducing the time in grade" provisions of the precepts sent to the selections boards. Generally, these precepts then also provided that "experience" in grade was not to be considered a positive factor in favor of the rated officer.

"Selection out" has also been used to create new positions for political favorites. Since the number of positions are fixed in the authorization and appropriation bills, the easiest way to vacate "slots" is to fire the incumbents. Thus, career employees were "fired" by selection out to provide positions for non-career employees.

In neither of these uses of "selection out" was there any provision for a genuine appeals procedure.

Worst of all, "selection out" has been used by the State Department as a kind of subtle and covert diplomatic "witchhunting." Usually, this has taken the form of placing certain officers in the "lowest three, or lowest five, or lowest ten percent of class." Evidence is now available suggesting that some of the officers rated in these "lowest percentages" were previously "marked men." Sometimes they were in disfavor because they had sought to change policies; sometimes because they had refused to submit intelligence reports which would have substantiated or supported established policies. Sometimes, they were "marked" solely because they, or their wives, had incurred the personal enmity of some superior.

Others, it is true, were marked men because management officials, perhaps sometimes rightly and certainly sometimes wrongly, had concluded that they were "unsuitable" for the Foreign Service because of personal character traits. Our organization concedes that in some of these cases, the charge of "unsuitability" would have been sustained by the standards of the American community. However, we object to the use of "selection out" procedures in matters of "suitability" and insist that any person so charged should have the right to defend his career and his reputation under adverse action proceedings. In brief, these officers should be dismissed only for "cause."

The apologists for using "selection out" for the purpose of removing allegedly "unsuitable officers" claim that this procedure saves both management and the officers embarassment through confrontation. They invoke the image of the "McCarthy period" and state that their sole concern in "selecting out unsuitable officers" is the public reputation of the Foreign Service.

We consider this argument specious. We contend that such use of "selection out" deprives the officer of due process. Secondly, it tempts management to abuse and distort the Foreign Service merit system by resorting to surreptitious practices. Recent evidence shows that one of these questionable practices was an "arrangement" between personnel, inspection and security officers in Washington, D.C. with certain cooperating "rating" officers in the field. This "arrangement" involved the insertion by the rating officer of comments in the secret Development Appraisal Report which really originated in Washington but which took the form of an apparently independent judgment by the "rating" officer in the field.

DIRECTOR SHAKESPEARE'S NEW PRECEPTS FOR PROMOTIONS TO FSIO CLASS 1

This year the Director of the USIA, Mr. Frank Shakespeare, has reverted to a practice previously employed by Director Edward Murrow. This practice is to promote Foreign Service FSIO Class 2 officers to Class 1 on a basis not strictly in accord with the rank-order in which they were, or would have been, rated by the Selection Panel.

Director Shakespeare has explained that of the 156 FSIO–2 officers who were rated, thirty-one were listed in the "top quintal" or fifth of their class. Of these 31, fifteen were further designated as "highly promotable" and thus, in fact, they were in the top tenth of their class. Of these "highest 15" officers, Director Shakespeare argued, he should have the right to choose the actual 8 who would be promoted without regard to the specific or rigid rank order in which these top 15 officers would be designated by the selection panel.

In justifying his decision, Director Shakespeare has stressed that the selection panel for this class actually had only four members and that only two of these members were really knowledgeable. These two were FSIO Class 1 officers, with their own personal views about the rated officers. The third member was a Foreign Service Officer of the State

Department; the fourth was a so-called "public member."

Director Shakespeare has emphasized that the "public member" did not know anything at all about the rated officers, apart from the files before him. The State Department FSO knew some of the rated officers personally. And the two FSIO Class 1 officers personally knew most of the 156, at least superficially. Thus the last two members really held the key to the rank-order in which the topmost officers would appear.

Director Shakespeare said that he thought such a panel was not really constituted in such a way as to pass objective final and authoritative judgments so refined and so infallible that the panel could in fact really establish without any doubt as to which officer was genuinely number 1; which was genuinely number 2; etc. In short, his contention is that the best the panel could do was to establish a list of the top tenth of class. Any effort to refine the choice more than that was to ascribe to the panel a mystique of wisdom which it does not in fact possess.

I recommend that the Foreign Relations Committee take note of Director Shakespeare's reasoning because he has described a real limiting factor handicapping Selection Panels as they are now constituted. Their members are asked to make refined judgments beyond their actual capabilities, given the restrictions and the conditions set on them by management.

We are pleased that Director Shakespeare has chosen to make public his reasoning. We are most gratified that he has also publicly taken the responsibility of informing the President and the Congress that he has reserved to himself the choice of the final 8 officers to be nominated. We believe he should be commended for not taking the alternative course, often chosen by the State Department, of trying to return the original list to the panel with the suggestion that the panel submit a new rank-order list more in keeping with his own preferences.

Nevertheless, we regret that Director Shakespeare has not proceeded one step further and joined us in calling for a comprehensive and fundamental review of the other assumptions and other "myths" used in the Foreign Service "selection up or selection out" system.

We also regret that he did not publish the names of the top fifteen officers in the rank order in which the selection panel would have rated them.

We regret that he did not provide some supplemental merit assignment or award for all those officers who were listed higher by the selection panel than the ones he actually nominated.

Finally, we do see certain potential threats to the merit system if Director Shakespeare and his successors adopt his practice without explicit safeguards of the career rights of these officers. These dangers could certainly arise if some FSI Officers Class 2 appeared year after year in the top ten percent and were passed over time and time again. We fear that this situation would in fact arise if a USIA Director remained in office for many years. In this situation, without explicit safeguards for career officers, the merit system in the United States Information Agency would be diminished and compromised.

Thus, while we grant that there is some merit to Director Shakespeare's arguments, we also see those dangers to which he has not been attentive. For this reason, we would be grateful if your Committee held hearings specifically addressed to the question as to what are the genuine abilities of Selection panels to rank officers in strict numerical order. During these hearings, we would submit proposals forbidding any agency official from influencing the selection panels in any way and strictly limiting the right of the head of any agency repeatedly to disregard the rank order selection by panels rating FSO–2 and FSIO–2 grade officers.

In brief, we believe that a new formula can be devised which preserves the essential elements of a career system; which realistically appraises the actual abilities of selection panels to rate officers; and which still accords management some latitude of its choice of top officers without its having to resort to such covert manipulations of the promotion and selection-out system as now exist in the State Department.

A GRIEVANCE APPEALS MACHINERY—THE MOSS-MILLER AND BAYH BILLS

We have appeared before you previously requesting the enactment preferably of the Moss-Miller (S. 2662) and alternatively of the Bayh Bill (S. 2659). The main substantive difference between these two Bills is that the Moss-Miller Bill provides explicitly for an appeal outside the State Department in the event that the Secretary of State refuses to carry out the findings and recommendations of the Grievance Panels. Otherwise, the Bills are variants of each other.

During the Hearings on S. 2662 and S. 2659, Senator Cooper indicated he had some reservations regarding the composition of the grievance panel which would hear the petitions of the grievants. Several alternative formulae have been suggested since that time, which would appear to satisfy the conditions of "objectivity" which Senator Cooper wished to guarantee. Thus, there doesn't appear to be at this time any major substantive obstacle to the passage of the Moss-Miller or the Bayh Bill.

We wish to reiterate our previous urgent appeal that your Committee report out this year a Bill establishing by statute a grievance appeals procedure for the Foreign Service. We also hope that such a Bill would not appear later on the floor of the Senate than the authorization Bill which you are currently considering for the Department of State. In the event your Committee, in its wisdom, decided to combine the Moss-Miller or the Bayh Bill with the State Department Authorization Bill, perhaps as a "rider", we would consider that to be a most judicious solution in light of the lateness of the present legislative calendar.

GRIEVANCE BOARDS ARE PART OF ANY PROPER MERIT SYSTEM

Most recently, two separate grievance appeals boards, one under the jurisdiction of the civil service and the other under the old grievance procedures of the Foreign Service, have recommended immediate promotions for two Foreign Service Class-4 officers, Alison Palmer and John Harter. According to press reports, the Board of the Foreign Service has accepted these recommendations and their names will be submitted shortly to the Senate for confirmation as Class-3 officers.

Certain groups, most prominently the American Foreign Service Association, have argued that the Department of State does not have statutory authority to grant these promotions. We reject this contention as legally unfounded.

These groups have also sought to establish a "straw-man" issue, asserting that promotions granted on the basis of the findings of grievance panels are somehow not "merit promotions". They have invented the term "compensatory" promotions, to seek to draw a distinction between allegedly "merit" promotions and allegedly "non-merit" promotions.

We should like to recall for the record that every comprehensive personnel "merit" promotion system has an appeals mechanism which is designed to assure that due process in promotions is maintained. The "appeals mechanism" is one of the guarantees, and sometimes it is the only effective guarantee, that promotions shall be made only on the basis of "merit". The findings of the appeals panels in matters of promotions therefore are findings that the merit system itself had been vitiated in some way by improper or illegal actions of the promoting authority. The use of these grievance panels is to keep the "merit" system meritorious.

To argue that appeals systems deal primarily with other issues than "merit" is to suggest that the real purpose of the appeals mechanism has nothing to do with the "merit personnel system" for which it has been established. This argument can be made only if one postulates the "myth" that the real merit system resides exclusively in such bodies as "selection boards", which are presumably infallible in their judgments of "merit".

We are pleased that the Board of the Foreign Service has recognized the need to grant these two promotions; we consider them to have been granted on the basis of "merit"; and we insist that no "merit" system can exist unless it has within it a self-enforcing mechanism to review and to correct denials of equity and justice and due process in any "merit" system.

THE MAGNUSON BILL, S. 2754

The so-called Magnuson Bill, S. 2754, would create a new "International Commerce Service," independent from the Department of State. Under this Bill, responsibility for, and the staffing of, economic and commercial representation abroad would be transferred from the Department of State to the Department of Commerce.

The Bill would also vest in the Secretary of Commerce controls over appointments and promotions and selections out similar to those now vested in the Secretary of State.

We understand that the principal reason for the introduction of this Bill was to respond to the many criticisms from American businessmen about the service provided them abroad by commercial officers of the Department of State. The Bill's principal goal therefore is to strengthen American commercial facilities outside our borders.

As this Bill is now drafted, however, we feel this principal goal is not likely to be achieved. It is true that the personnel system of the State Department has discriminated against commercial officers, as it has against consular officers, labor attachés, and many other groups who are not members of the "elite." It is true that far too many commercial officers of distinction have left the service because promotions were not available to them; others were fired by arbitrary "selection out."

Nevertheless, we believe that the solution is not to fragment the Foreign Service even further. We believe that the best way to strengthen the commercial facilities abroad of the Foreign Service is to improve personnel practices affecting *all* Foreign Service officers and employees, including commercial officers, consular officers, diplomatic officers, technical and staff officers and employees.

Improvement is not likely to come piecemeal. The United States is unlikely to be able to salvage and upgrade part of its international representation abroad by severing it from the rest which is allowed to stagnate at its present level.

For this reason we oppose enactment of S. 2754. We feel, however, that the record should also show that the Foreign Service is in dire need of major reform and reorganization. We suggest that some of the purposes sought by Senator Magnuson *might be* achieved on the model of the relationship now in existence between the United States Information Agency and the Department of State. If the Congress of the United States is convinced that the Secretary of Commerce must have a greater role in our commercial

representation abroad, we suggest that it might be useful to ascertain whether the model established for United States Information Officers might be relevant for accommodating also the needs of a more efficient, more specialized career service for commercial Foreign Service officers.

In any event, at this time we are opposed to enactment of the Magnuson Bill as harmful to the best interests both of the United States and of Federal employees.

Fictitious Foreign Service Reserve Officer and the Illegal F.A.S. Corps

One of the most prevalent questionable personnel actions of the Department of State is the appointment of "Reserve" Foreign Service Officers solely for duty in the United States. This is in clear violation of the Foreign Service Act of 1946, which requires that these appointments be for positions abroad.

The Department of State recently sought even to go further in its illegal actions by seeking to convert these illegally appointed officers to a new permanent category, entitled Foreign Service Reserve Officer Unlimited, established under P.L. 90–494 which provided a statutory basis for a career Foreign Service Information Officer Corps at the United States Information Agency.

Simultaneously, the State Department announced that it was creating a new Foreign Affairs Specialist Corps to which it would assign all classified civil service employees in officer positions (GS–7 and higher); all Foreign Service Reserve Officers; and all Foreign Service Staff Officers.

Under this program, the Foreign Service Staff Officer Corps would die out. All its current staff officer members would be eligible for conversion to Foreign Service Officer; Foreign Service Reserve Officer Unlimited; or Foreign Affairs Specialist Officer. No new appointments would be made to the Foreign Service Staff Officer Corps.

Significantly, Foreign Service Staff Officer Corps personnel are *not* subject under the Foreign Service Act to "selection out". All FSO, FSIO and FSRU officers are now subject to "selection out"; and all members of the illegal FAS would also have been subject eventually to "selection-out".

Thus, without any statutory basis for its actions, the State Department proceeded to act as a law to itself.

These illegal actions were stopped only by the suit brought by our organization, the American Federation of Government Employees, on behalf of our two locals at the State Department (Local 1534) and at the United States Information Agency (Local 1812).

For the moment, our union has obtained only a temporary injunction and we are in the process of having it made permanent. Despite the fact that we have made it clear that we are *not* opposed to the conversion of the traditional limited Foreign Service Reserve Officers to career status, as FSRU Officers, the State Department has misled its personnel by pretending that our suit was directed also against them. We wish the record to clearly show that we consider the State Department in further violation of the law by refusing to convert at this time genuine Limited Foreign Service Reserve Officers to permanent status as career Foreign Service Reserve Officers of Unlimited Tenure.

EMERGENCY DISPUTES IN TRANSPORTATION INDUSTRY

Mr. PACKWOOD. Mr. President, for many long months the Committee on Labor and Public Welfare has been wrestling with the thorny problem of emergency disputes in the transportation industry, their impact on regional and national economies, and the role of Congress in protecting the public when crippling transportation strikes occur.

Our distinguished chairman, the Senator from New Jersey (Mr. WILLIAMS), has been proceeding with hearings on the numerous bills which are now pending before the Labor Subcommittee. Testimony has so far been received from a variety of groups and individuals who are directly or indirectly affected by the proposed legislation and from several objective and experienced observers.

I am sure that all Senators share my deep appreciation for Chairman WILLIAMS' recognition of the devastating impact of transportation tie-ups, as witnessed by his expeditious handling last February of legislation to deal with the west coast dock strike, and now as witnessed by the committee's agreement today either to report some form of permanent strike legislation by May 19—just a brief 12 days before our next potential transportation crisis erupts—or to release members of the committee to bring transportation strike legislation to the floor for consideration by the full Senate.

Naturally, I am profoundly hopeful that the committee, following what will surely be long and intense executive sessions, will be able to reach some consensus and report out a workable, equitable, and effective bill. Nevertheless, should this not be possible, the distinguished chairman should be commended for agreeing to permit the subject to be brought to the floor of the Senate for debate and discussion, without prejudice, and without regarding such action as a circumvention of due committee consideration or a subversion of the committee process in any way.

The distinguished Senator from New Jersey (Mr. WILLIAMS) deserves the highest praise for agreeing to move ahead with the proposed legislation, accommodating both his own busy schedule and the Labor Committee's crowded agenda, to give transportation emergency legislation the careful and considered attention it deserves.

Again, I wish to express my deep gratitude to our most capable and dedicated chairman for his fine cooperation in bringing this vital legislation before the Senate for consideration, hopefully before another transportation crisis precipitates yet one more instance of ad hoc congressional intervention.

MORAL IMPERATIVES IN THE INDOCHINA WAR

Mr. CRANSTON. Mr. President, a profound and provocative statement concerning the moral imperatives confronting the American people in the Indochina war appeared in the March issue of "Klai-Rat"—Thai Citizens—a newspaper published in Los Angeles by Thai Citizen News, Inc.

The article was written by Dell Scott, a prominent Los Angeles attorney.

Knowing that it will be of interest to Senators and to American citizens generally, 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 MORAL IMPERATIVE TO END THE INDOCHINA WAR

(By Dell Scott)

In the bitter and continuing debate over bringing the war in Indochina to an end, those of us who favor an immediate end to that war are almost invariably met with the question of why do we always criticize our side and not raise criticisms with respect to the North Vietnamese. The answer is that many of us have criticized the North Vietnamese, but as citizens in a democracy, each of us has some control over our own government. When the course of action which our government is taking is wrong, by voicing our opposition we can hopefully, change that course.

As the truth about our involvement in the war came out into the open and as protest against that involvement broadened, there has at last been some response on the part of our government looking toward our getting out of Indochina.

But we are still not out. And death and destruction continue every day. The toll in human life has been appalling. Over fifty thousand American soldiers have died, aside from the thousands and thousands of wounded and injured, not to speak of the countless hundreds of thousands of civilians wounded and dead.

The toll in human values has been tragic. Oppression, assassinations, defoliation, napalm, tiger cages, torture and massacres have become everyday occurrances and indeed, have become methods and instruments of our national policy in Vietnam.

Over five million acres have been denuded and demolished by defoliants so that the surface of the earth looks like the barren surface of the moon.

On Con Son Island people have been caged like animals—five to a five-foot by nine-foot cage—and have had lime poured on them. Is not Con Son the counterpart of Auschwitz and Dachau?

The tragic story of My Lai has been spread before the American public. Is not My Lai the counterpart of the Katyn Forest massacre?

Vietnam has had a corrosive effect on our country, on our society, on our national morale. Nothing has so divided our people.

In the aftermath of the holocaust, the phrase, "the crime of silence", has become a crushing indictment of those who could have spoken out, but didn't. In the aftermath of the "Nuremberg trials, many of the German citizens, when confronted with the horrible detail which came out of those trials, said "we didn't know." This is an evasion in which we cannot indudge. We do know! The shadow of Nuremberg falls darkly over each of us.

In his testimony before the Senate Foreign Relations Committee on April 15, 1970, Mr. Louis B. Lundborg, then Chairman of the Board of Bank of America, said "I see no profit to the country in trying to fix the blame for what is past; no matter who initiated the first involvement and the subsequent expansions, the rest of us have gone along pretty supinely. If anyone is to blame, it is people like me who are not speaking up and have not spoken up sooner and for not asking "what goes on here."

There are no excuses for any of us. Each of us knows "what goes on here." We must get out from under the shadow of Nuremberg. We must bring the war in Indochina to an immediate end.

POLITICAL PROFIT FROM ITT HEARINGS

Mr. BELLMON. Mr. President, the junior Senator from Oklahoma is no newcomer to the political scene and he

thoroughly understands the need for and respects the methods used by political adversaries in gaining attention and support for their cause. However, the effort of the opposition party to squeeze political profit out of the ITT hearings has gone beyond all bounds of common sense. I recognize their difficulty. They are without a genuine issue in this presidential election year. I fully recognize their need to try to create such an issue. But in the ITT matter they are trying to make the horse carry more than he can bear.

What we are seeing now is more than an effort to create a campaign issue out of whole cloth. At its roots this is an effort to slay the President with the jawbone of a lobbyist.

The hearings have now become an effort to destroy the precedents upon which executive privilege is based, and thus to effectively eliminate the President's essential right to privacy within his official family.

If matters of state cannot be discussed in confidence among the men who advise the President and with the President himself, then it becomes virtually impossible for any President, Republican or Democrat, to govern at all. So the choice which the Democrats are trying to force upon the President is "give up executive privilege" or "give up Richard Kleindienst."

This is an irresponsible use of congressional leverage to hamper and restrict the executive branch of the Government for doubtful temporary political gain.

I would hope that those who are inclined to engage in such an effort would carefully consider not simply the dubious short-range political advantages they seek, but rather the long-range effect, which will be to destroy privileged communications within the executive branch, and therefore to seriously damage the ability of any President to govern effectively.

This is dangerous in its own right. It is particularly objectionable in view of the fact that the vehicle is a phony attack on the integrity of a man whose nomination as Attorney General should have been confirmed weeks ago.

GENERAL ACCOUNTING OFFICE EMBARKS ON IMPORTANT STUDY OF HEALTH FACILITY CONSTRUCTION COSTS

Mr. RANDOLPH. Mr. President, on November 18, 1971, the Comprehensive Health Manpower Training Act of 1971 became law—Public Law 92-157. This measure will be vital to the health of America. It means more doctors and other health professionals. It means improved curricula and teaching facilities. And it means innovation and improvement in medical technology, along with the distribution of urgently needed health care throughout our Nation.

I call to the attention of my colleagues an important provision of this law, section 204, which requires the Comptroller General to conduct a study of health facilities construction costs. It requires that the study consider the feasibility of reducing the cost of health facilities constructed with assistance provided under the Public Health Service Act, particularly with respect to innovative techniques, new materials, and the possible waiver of unnecessarily costly Federal standards. The study is required to be completed and a report submitted to the Congress within 1 year after the date of enactment of the act.

It was my privilege in the Committee on Labor and Public Welfare to add to the health manpower bill the amendment requiring this study. The House-Senate Conference Committee accepted the amendment, and it was in the legislation signed into law by the President.

The purpose of adding this provision was to determine whether the funds available for health facilities construction can be stretched. During hearings conducted by the Committee on Public Works in 1969 on the Appalachian Regional Development Act legislation, the chairman of the Southern West Virginia Regional Health Council stated that significant savings could be obtained in the construction of hospitals under the Hill-Burton program through the use of innovations, design improvements, and less restrictive standards. If this proves to be feasible, the demand for increasing appropriations, which has been a strain on the Federal budget, may in turn be reduced. In addition, today's high hospital daily rates, insofar as they relate to construction costs, may be stabilized or possibly even reduced.

Reducing or stabilizing the cost of constructing health facilities will become increasingly important as the Congress considers national health insurance legislation in the coming years. The cost of constructing health facilities is currently running about $3 billion a year, and is expected to be about $5 billion a year by 1980. HEW studies show that the average cost per bed of constructing a hospital has increased from approximately $25,000 in 1963 to about $48,000 per bed in 1971. In the same period, the average cost per square foot of constructing a hospital has doubled—from about $25 in 1963 to about $50 today.

Mr. President, these are some of the reasons why I sponsored the amendment in committee and why I believe the study being made by the Comptroller General is extremely significant.

Members of my staff and the staff of the Committee on Labor and Public Welfare recently met with representatives of the General Accounting Office to discuss the study. I am encouraged by the enthusiasm shown toward this study by the GAO, and I assure my colleagues that the General Accounting Office has initiated a broad-scale study which will include not only the factors having a direct bearing on the "bricks and mortar" aspects of construction but will also include consideration of many other factors which have a bearing on health facility costs.

The General Accounting Office has identified through an intensive state of the art review, significant innovations which should be considered whenever construction of a new hospital facility or an extensive renovation or addition to an existing facility is proposed. The innovations to be considered pertain to planning, design, construction, and operation of health care facilities. The review will assess the advantages and disadvantages in construction giving consideration to the impact the innovations will have on initial construction costs and on operating costs over the life of the facility. Such concepts as prefabricated construction, interstitial space, modular construction, accelerated construction scheduling, automated materials handling systems, and improved dietetic services will be carefully studied. GAO sent questionnaires to over 300 leading authorities in the health and construction field asking them to identify significant innovations, and to comment on their experience with the innovations and have visited over 60 hospitals to obtain cost and operating data.

GAO will also use computerized life-cycle cost models to quantify the benefits or disadvantages of each of the significant innovations identified. The life-cycle cost models will be used to determine the savings, in terms of initial construction costs and operating costs, if health facilities were constructed incorporating the innovations. They plan to demonstrate the effect on initial construction and operating costs that certain significant innovations would have if incorporated into a recently built hospital. This demonstration will require the redesign of certain parts of the preselected prototype hospital in order to incorporate the innovative features being considered and to give recognition to the impact such items have on costs. Using sensitivity analysis techniques the parameters of the prototye model will be expanded to consider various size ranges of hospitals.

GAO plans to examine the process the sponsor of a hospital has to go through in order to obtain approval and adequate funding of a project. Proper planning is very important and here, as in contracting, time means money and this factor will be probed in depth. What is very important is that the study will also include a review of Federal standards to determine whether there are any unnecessarily restrictive standards which contribute to increasing the construction cost of hospitals. In this regard, a variety of standards is being used by Federal, State, and local jurisdictions.

In addition to the factors directly affecting construction costs, there are many significant factors which have an indirect impact. These in the final analysis may turn out to be the more significant. The GAO study will include an evaluation of the various means by which institutional requirements for space could be met without constructing new facilities, expanding facilities, or renovating facilities. This can be done in essentially two ways; first by reducing the demand by the user or patient and second by optimizing the utilization of existing facilities.

During the study, consideration will be given to whether health care is being provided in the appropriate type of facility, whether health insurance incentives should be changed, and whether preventive maintenance programs will result in less inpatient care.

The answers to these questions are

most critical to the determination of the kind of health care that will be furnished to the people of the United States in the years ahead. Ways in which provider demand can be reduced may include the sharing of facilities, providing specialied care on a regional basis, upgrading of facilities rather than constructing new facilities, utilizing area-wide planning, and requiring certificates of need prior to constructing a facility.

Mr. President, these are some of the considerations included in the broad-scale, highly important, and very exciting study now underway in the General Accounting Office. It is my hope that the study is the first of many steps to be taken which will improve the delivery of health care to every citizen at lower cost.

SENATE COMMENDED FOR POSITIVE ACTION ON DISEASES THAT KILL AND CRIPPLE MOST AMERICANS

Mr. RANDOLPH. Mr. President, the passage of S. 3323 by a unanimous vote of the Senate last Friday signals the declaration of a new all-out effort to combat the stark health statistics involving heart disease, pulmonary and respiratory ailments, and other diseases of the circulatory system. I am privileged to be a cosponsor of this measure.

The National Heart, Blood Vessel, Lung, and Blood Act of 1972, if approved by the House of Representatives, will represent a new war on these diseases that kill or cripple most Americans.

The bill will enlarge the authority of the National Heart and Lung Institute in order to advance the national attack against diseases of the heart and blood vessels, the lungs, and blood.

These diseases collectively cause more than half of the deaths each year in the United States, and the combined effect of the disabilities and deaths from such diseases is having a major social and economic impact on the United States. Elimination of such cardiovascular diseases as significant causes of disability and death could increase the average American's life expectancy by about 11 years. Moreover, the significant conquest of these diseases could provide for annual savings to the economy in lost wages, productivity and costs of medical care of more than $30 billion each year.

Chronic respiratory diseases affect an estimated 10 million Americans. Just one aspect of this national problem is spotlighted in the current deliberations on amendments to the Federal Coal Mine Health and Safety Act of 1969, and our efforts to provide benefits to the many thousands of coal miners who suffer from pneumoconiosis, or black lung, and the attendant diseases of emphysema, bronchitis, and asthma.

Mr. President, we are told that someday medical technology will advance to the point where the aging process may be arrested or even reversed, that someday vital parts of the body might be interchanged on a routine basis, and that the average lifespan of human beings could conceivably be doubled.

These developments are, admittedly, far in the future. Today we are dealing with one giant step in the continuing battle against diseases that threaten mankind. The 10-point program plan contained in this bill constitute a rational approach to the problem of organizing a national attack against cardiovascular and pulmonary diseases, as well as diseases of the blood.

It represents a recognition and acceptance of responsibility by both Congress and our leading medical authorities that the incalculable human suffering and avoidable economic loss resulting from these major killers must be diminished.

I congratulate the distinguished chairman of our Subcommittee on Health (Mr. KENNEDY). Those of us who serve on the Committee on Labor and Public Welfare know of his constant work to accomplish this important advance in safeguarding the health of our citizens. Members of the Health Subcommittee and our parent committee were helpful in the consideration and commitment to this positive effort.

EMPLOYMENT OF THE HANDICAPPED—ESSAY BY HARRY L. GILBERT, RENO, NEV.

Mr. BIBLE. Mr. President, recently the President's Committee on Employment of the Handicapped sponsored a national essay contest which attempted to focus public attention on the capabilities, potential, and accomplishments of the 32 million handicapped citizens in our country. Junior high and high school students from 44 States took part in the contest.

I am pleased to report that Harry L. Gilbert of Reno, Nev., has been named the first place winner. His thoughtful essay points out that for too long we have simply viewed the handicapped as faceless statistics while ignoring them as individuals.

I know that others will find his award-winning essay well worth reading, and I ask unanimous consent that it be printed in the RECORD.

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

EMPLOYMENT OF THE HANDICAPPED: HOW WELL IS MY COMMUNITY INFORMED

(By Harry L. Gilbert)

I have often heard it said that man fears what he does not understand. This idea is a broad one and can apply to a wide range of situations, but it seems to relate particularly well to the employment problems of the handicapped. Perhaps more than any other group in today's society, these people have had to struggle against public ignorance to dispel the instinctive fear they have encountered.

Mrs. Billy Qualey is one person who has been winning her struggle. Ever since she was stricken with polio at the age of eight, she has had to fight to overcome people's reactions to her handicap. Now, as a credit department employee at Montgomery Ward, she can speak from experience and is able to pinpoint the cause of the public's misunderstandings and fears. "People don't know enough," she says, "and this is because the information services just don't tell enough." [1] This remark sums up the situation neatly, for although a survey of local businessmen showed that most were familiar with the "Hire the Handicapped" advertisements that appear from time to time on radio and television and in print, only a few could recognize any of the details of those ads.[2] They knew that "It's good business to hire the handicapped," but that's about all they knew. And, of course, few of them had ever had much contact with a handicapped person. In view of this lack of knowledge, it cannot be very surprising that when many employers actually come face to face with a person who is handicapped, their reaction is one of subdued terror. They are unprepared for the strange experience, and they tend to withdraw in fear. Mrs. Qualey adds, "Everyone likes to say 'hire the handicapped,' but when it gets right down to doing something, people are leery of the whole thing."

Recently, however, this attitude has begun to change. Agencies helping the handicapped have expanded and formalized their public-relations departments and have increased their efforts to bridge the gap between employers and trained handicapped job-seekers.[3] Counselors from the agencies give programs to service clubs and other organizations, since members of these groups are often potential employers. Counselors also visit new industries in town to explain their programs and to survey the types of jobs that will be available for their clientele. Later they return to the employer with a specific client's records to set up an interview. As with any employment situation, though, the interview is still the most important step, because it allows the handicapped person to prove himself in front of the employer, thus placing the final responsibility for success or failure on the applicant himself.[4] The agencies report that the response to this program has been excellent. In the fiscal years 1969 and 1970 alone, the State Rehabilitation Division helped 933 disabled people to become productive members of our society.[5]

The methods of the rehabilitation agencies have brought impressive results, but to date their impact has been restricted because of the limited number of industries that the agencies work with. If these methods—dealing intensely with specifics rather than with generalities—were applied to the whole of society, the effects could be staggering. The way to help the community really know and understand its handicapped is to throw out the vague and ineffective advertising campaigns now in force and replace them with greatly expanded programs that would present the disabled in a new light. They need to be shown neither as an anonymous group of people who need help nor as statistics on a chart, but rather as real individuals—each with his own needs, troubles, desires, and fears—who just happen to be disabled. They need to be presented as actual people in personal interviews, in editorials, and in picture stories in publications all over the country, from the smallest local newspaper to the largest national magazine. If everyone had the chance to meet Mrs. Qualey and see her at work, moving confidently about in spite of her crutches, no one would wonder why "it's good business to hire the handicapped."

I cannot say that such a comprehensive national advertising campaign would solve all the problems of the disabled, nor even that it would lead to their being fully employed. Nothing is ever that simple. But I can say that what people know and understand they can accept; for as Emerson has written: "Knowledge is the antidote of fear." [6]

Footnotes at end of article.

FOOTNOTES

[1] Mrs. Billy Qualey, employee at Montgomery Ward, in an interview January, 1972.

[2] Surveys of 17 businesses, conducted at the Village Shopping Center and in downtown Reno, January, 1970.

[3] Mr. William Kelly of the State of Nevada Rehabilitation and Adjustment Center, and

Mr. Virgil Wedge of the Washoe County Association for Retarded Children, in interviews, January, 1972.

[4] Mrs. Mary Morrison of the Reno Junior College of Business, interview January, 1972.

[5] Ibid., Mr. Kelly, Footnote 3.

[6] Ralph Waldo Emerson, "Courage," *Society and Solitude* (Oxford, 1927), page 255.

CHARLESTON WETLANDS RESEARCH LABORATORY

Mr. HOLLINGS. Mr. President, in early March, I called to the attention of the Subcommittee on Appropriations for the Department of Interior and Related Agencies, the need for the initiation of construction of a Wetlands Research Laboratory in South Carolina. This center was proposed by the Forest Service as a part of the fiscal year 1972 appropriation bill but had to be deleted as exact cost figures were not then available. The service has now determined that the cost of constructing the center will be $1,370,000, which includes the $125,000 for planning.

The need for this center becomes apparent upon looking at the present situation. The demand in this country for wood and wood products is tremendous. The five Southeastern States now supply one-third of the Nation's pulpwood, one-eight of the lumber and one-twentieth of the plywood. The demand for southern pine timber is expected to triple and the demand for southern hardwood is expected to double in the next 50 years. Because of topography, soils, land-use patterns and population trends, a large portion of the Nation's timber and paper will be produced in the loblolly pine and wetland forests of the Atlantic Coastal Plain and the Piedmont.

However, unless forest productivity is increased, timber prices will not be able to remain competitive. Both the loblolly pine ecosystem and the wetland hardwood ecosystem have the potential for significantly increased productivity, provided adequate research and action programs can be undertaken. The Forest Service would propose to undertake this type of extensive and intensive research at the Charleston Wetlands Research Center.

At the present time, the Southeastern Forest Experiment Station in Charleston is housed in quarters rented from General Services Administration. What research which they have undertaken to date has been severely limited by the fact that these rental quarters provide office space only. The type of research program described cannot be undertaken without adequate laboratory facilities, including control growth chambers and special greenhouses. A federally owned 15-acre tract near Charleston has already been transferred to the Forest Service for this laboratory. It is time to act on this project now.

In further support of this center, on April 5 the South Carolina Legislature adopted a concurred resolution memorializing the Members of Congress to support funding of a planned U.S. Forest Service Forestry Sciences Laboratory in Charleston, S.C.

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

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

A CONCURRENT RESOLUTION MEMORIALIZING THE MEMBERS OF CONGRESS TO SUPPORT FUNDING OF A PLANNED U.S. FOREST SERVICE FORESTRY SCIENCES LABORATORY IN CHARLESTON, S.C.

Whereas, the Southeastern Forest Experiment Station of the U.S. Forest Service proposes to expand its forest research program in Charleston, South Carolina, by the construction of a Forestry Sciences Laboratory; and

Whereas, accelerated research efforts are needed to stimulate the productivity and environmental quality of the coastal loblolly pine and hardwood forest ecosystems, which are dominant components of the forest resources of South Carolina. Now, therefore,

Be it resolved by the Senate, the House of Representatives concurring:

That the members of Congress are respectfully requested to support plans of the U.S. Forest Service to construct a Forestry Sciences Laboratory in Charleston by seeking the inclusion of planning funds for the laboratory in the fiscal 1973 budget of the United States.

Be it further resolved that copies of this resolution be forwarded to the United States Senators and members of the House of Representatives from South Carolina.

UTAH'S SKI SLOPES

Mr. MOSS. Mr. President, skiers the world over know—or have heard—about the quality of the ski slopes in Utah, and particularly those at the Park City Resort east of Salt Lake City. But few of them know that one reason the heavy mantle of snow is so thick and firm is that there is a thick grass cover underneath.

And even fewer realize that this thick grass cover results in the main from good soil conservation practices worked out by the Kamas Valley, Utah, in cooperation with the Soil Conservation Service of the U.S. Department of Agriculture.

Soil Conservation, the magazine published by the SCS, carries a story in its February 1972 issue on the work which has been done to put the Park City ski runs in such excellent condition, and discusses other ways in which both Federal and Utah State agencies are working to make the Park City a desirable recreation area both in the winter and the summer.

I ask unanimous consent hat the article, entitled "Grass, A Friendly Base for Ski Fun," and written by Ralph H. Felker, Areas Conservationist, SCS, at Provo, Utah, be printed in the RECORD.

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

GRASS—A FRIENDLY BASE FOR SKI FUN

(By Ralph H. Felker)

Skiers on the slopes at Utah's Park City Resort, east of Salt Lake City, know little of the preparation and work that went into getting the course into its present splendid condition.

They glide and swoop over the heavy white mantle of snow made more firm and lasting by the insulating effect of the thick grass cover underneath.

A. W. (Woody) Anderson, manager of the resort, says that a snow course is in some ways like a house. "It must have a good foundation," he explains. An avowed conservationist, Anderson is aware of the need for plant cover for protection of the land in most of its uses.

Park City has nearly 35 miles of skiing slopes between the 7,000- and 9,400-foot elevations. Seven lifts accommodate skiers at the rate of 7,000 an hour.

The planning of Park City began in 1962. Professional ski-run designers helped with the overall layout.

For help in developing a long-range plan for the entire 12,000 acres of range and forest land, Anderson went to the Kamas Valley Soil Conservation District. He explained to the district supervisors that he had in mind sheep grazing, improved wildlife management, watershed conservation, and an 18-hole golf course in addition to the ski enterprise.

SCS people assigned to the district were ready to help with the conservation work. DeWitt Grandy, a range conservationist, proposed trail field plantings of six varieties of grass. Seed for four varieties—Tegmar intermediate wheatgrass, Pomar orchardgrass, Durar hard fescue, and Sodar wheatgrass—was provided by the SCS Plant Materials Center at Aberdeen, Idaho, because it was not available at the time from commercial sources. Smooth brome and the intermediate wheatgrass seemed to fit the need best.

In 1963 clearing began.

"That was when I got scared," Anderson admitted. "I could see a heavy rainstorm turning the runs into rough, rugged gullies."

By the time the course was ready for use, the grass was doing its job.

In mid-August each year the grass and aspen sprouts are clipped about 8 inches from the ground. The clippings are left on the ground, thus helping to reduce soil loss and to improve water percolation into the soil. They also add to the insulating effect.

"Where the clippings have accumulated, we have an earlier snowpack and earlier skiing," Anderson explained.

Fire is a continuing threat, especially in August and early in September. The Utah Department of Forestry has worked with Park City Resort on a fire control plan.

The skiing season lasts about 150 days, from mid-November to late April. But there is activity before and after. Deer habitat has improved; visitors riding the gondola lift frequently see deer on the slopes below. Sheep graze certain areas in summer. The entire watershed is protected by improving the vegetation, which keeps water pollution by sediment at a minimum. The 18-hole golf course will be playable next summer.

In winter Anderson and his staff keep a watchful eye on the places where accidents occur. These locations are studied, and the terrain is changed sometimes to reduce the hazard. Disturbed areas are seeded promptly to prevent erosion and to provide the grass base for snow.

There is still work to be done to make the course more efficient, claims Anderson. One objective is to install an electronic snow measuring device to get prompt and accurate information on snow conditions. The Kamas Valley Soil Conservation District is helping with this. The U.S. Weather Bureau has installed a station on the upper part of the complex. With the measuring device to report snow conditions on a moment's notice and the Weather Bureau station to provide forecast information, the Park City staff will be able to keep skiers fully informed.

About 21 percent of the winter days in the area are overcast and snowy, but 55 percent are sunny with day temperatures averaging 20 to 30 degrees. With plenty of snow on the slopes, skiers couldn't ask for anything more.

RATINGS ON OREGON CONGRESSIONAL DELEGATION

Mr. HATFIELD. Mr. President, a new book, "The Almanac of American Poli-

tics," has just been published which contains ratings on each Member of the Senate and House. These voting profiles represent the observations of several national organizations. Because of the interest that has been expressed concerning voting records, I ask unanimous consent that Clarence Zaitz' UPI article on the Oregon delegation be printed in the RECORD.

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

AN ALMANAC GIVES A RUNDOWN ON SOLONS' RATINGS, RECORDS

(By Clarence Zaitz)

SALEM.—Labor likes Sen. Mark Hatfield the best and business likes Congressman Wendell Wyatt the best among Oregon's congressional delegation.

A new book, "The Almanac of American Politics" gives a rundown on every member of the Senate and Congress and details the "ratings" given them by several different national organizations.

It shows, for example, that Hatfield voted "right" as far as the Committee on Political Education (COPE) of the AFL–CIO was concerned, 92 per cent of the time, while Wyatt and Rep. John Dellenback voted properly 50 per cent of the time. It shows the National Association of Businessmen (NAB) as rating Wyatt right 85 per cent of the time.

The almanac, published by gambit, is put together by three young men, Michael Barone, Grant Ujifusa, and Douglas Matthews.

It contains a masterful political profile of every state and every district in every state, backed up by statistical tables on a myriad of details, including how much money each district gets from various federal appropriations.

A key feature of the almanac is a table showing how senators voted on 21 key issues during the past three years and how representatives voted on 15 key issues.

The authors say they have purposely chosen issues which provide the "best single objective indicator of his position on a specific issue and of his general ideological persuasion."

They say they have "tried to choose hotly contested, revealing 'key votes' on important and illustrative issues of 1969, 1970, and 1971 that have demonstrated what decision a legislator made when the chips were down."

HATFIELD RECORD

It is interesting to note that Hatfield, who is often criticized for missing votes while he is on the lecture circuit has a "perfect" voting record on the 21 key issues.

Only Al Ullman also had a perfect score. Sen. Bob Packwood missed 4 of the 21 votes, and Wyatt, Edith Green, and Dellenback each missed two.

Some of the votes which were analyed for this purpose include the ABM, the SST, racial busing, confirmation of Harold Carswell, military spending, and legalization of marijuana.

Packwood and Dellenback were rated as voting right 82 per cent of the time as far as the NAB was concerned, while Ullman did so only 8 per cent of the time and Hatfield, 18.

The Consumer Federation of America (CFU) rated the representatives and gave Ullman and Green the highest rating—83 per cent. Wyatt was given a 61 and Dellenback, 44.

The Americans for Democratic Action (ADA) gave Hatfield the highest rating, with an 84 per cent score, and Dellenback had the lowest, 32 per cent. ADA ranked Packwood at 50, Ullman at 41, and Wyatt and Green at 40.

A conservative group, the Americans for Constitutional Action (ACA) gave the best ranking to Wyatt, a 69. Hatfield received only a 17 from ACA; Packwood had 50, Dellenback, 47, and Ullman and Green, 41 each.

Hatfield was favored by the National Farmers Union (NFU) also, getting a 94 per cent score from them; Packwood got a 71. In the House, Ullman had 69, Green, 64, Dellenback, 61, and Wyatt, 45.

Hatfield and Packwood voted together more often than not. The main issues where they split included: Reduction of Pentagon public relations funds, with Hatfield against the funds and Packwood for; to cut oil and gas depletion allowances—Hatfield for and Packwood against; and to provide greater warranties to consumer, Hatfield voting for, and Packwood against.

WELFARE REFORM

Mr. STEVENSON. Mr. President, legislation to reform the welfare system will soon be before the Senate. I have been deeply concerned with the inequities, inadequacies, and abuses of our present welfare system, and I believe welfare reform is both necessary and long overdue.

I strongly feel that our primary goal must be to assure that as many people as possible receive their income from employment rather than welfare. Those who are unable to receive an adequate income through employment must have access to a just and humane welfare system. In that regard, the provision in H.R. 1 establishing a $2,400 allowance for a family of four with no other income, a level which is inadequate to provide that family with the basic necessities of life, is in need of amendment. It does not provide the basic necessities of life. It does not sufficiently help those States which do. One of many ways to help the helpless—and the States—is to continue the eligibility of welfare recipients for food stamps. Other ways are needed.

Welfare reform is far-reaching legislation, which, if amended and enacted, will benefit not only the recipients and our hard-pressed cities and States but, indeed, all elements of our society.

The Chicago Daily News has recently published a series of articles by Lois Wille which explain and analyze our welfare problem. Mr. President, because I found Mrs. Wille's series to be exceptionally well researched, perceptive, and balanced, I ask unanimous consent that they be printed in the RECORD, and I highly commend them to the Senate.

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

[From the Chicago Daily News, Mar. 25, 1972]

WELFARE IN ILLINOIS: $1 BILLION HEADACHE

(By Lois Wille)

One in every four children in Chicago is on relief. By almost any standard, that means they are poor.

They get about 87 cents a day for food.

They get about $25 a year for pants and shirts or skirts and dresses, $5 a year for underwear and $9 for a coat.

These children—338,000 of them aged 18 and under—are the biggest single block in the swelling Illinois relief rolls.

Two years ago 20 per cent of Chicago's 1,150,000 children aged 18 and under were supported by public aid. Today 29 per cent get public aid.

About a million people in Illinois received some form of aid. Paying the bill—well over a billion dollars a year—takes every bit of ingenuity the state's budget experts can muster.

Early in April Gov. Richard B. Ogilvie will ask the Legislature for a $166 million deficiency appropriation for the Public Aid Department. If the Legislature refuses, the relief coffers will be empty by mid-May.

Where the money will come from is not yet certain. But, according to a number of studies, there isn't much doubt about where the poor are coming from.

There are two major reasons behind skyrocketing relief rolls:

A slow, steady increase began in the late 1960s, spurred by antipoverty workers who spread the word to millions of poor that they were eligible for welfare benefits.

A rapid increase in welfare rolls began in mid-1970, when the economy faltered.

Public aid rolls in Illinois climbed 25 per cent from 1965 through 1969, when jobs were plentiful. They soared 60 per cent from 1970 through 1971, when the recession hit.

87,000 JOBS LOST

Since 1969, about 87,000 jobs were lost in the Chicago area, most of them in factories, steel mills and construction.

All the eligible poor still have not been absorbed by welfare rolls, according to a new study by the New York City Rand Institute commissioned by the state.

After analyzing census reports and other population studies, Rand estimated that in 1967 only 37 per cent of all eligible persons in Cook County received aid. In 1971, about 62 per cent received it.

The biggest uncovered group, Rand said, are the aged, blind and disabled. Nearly all those eligible for Aid to Families with Dependent Children (ADC) receive help.

Other heavily populated states are even worse off than Illinois. Relief rolls doubled here in the last 10 years, but they tripled in California and New York and quadrupled in New Jersey.

Chicago taxpayers, in particular, have been lucky. The city pays only a tiny portion of the public aid bill—about $10 million a year.

If Illinois followed the New York system, Chicago would have to pay about $190 million a year.

In New York and a number of other states, the federal government pays half the bill, the state pays 25 per cent and cities or counties pay the other 25 percent.

In California, the federal government pays half, the state pays 20 per cent and counties pay 20 per cent.

STATE GETS THE TAB

But in Illinois social services traditionally have been the state's responsibility. Here, the federal government pays half, and the state picks up nearly all of the remainder.

Chicago contributes only to general assistance, a catchall category for poor persons who don't fit into the federally subsidized categories: ADC and aid to the aged, blind and disabled.

The increase in public aid rolls probably would be much more readily accepted by taxpayer if it were not for these three frustrating facets of the system:

1. PUBLIC AID MAKES IT EASIER FOR FATHERS TO DESERT THEIR FAMILIES

In Illinois and in most Northern states, an unemployed father is eligible for ADC. He doesn't have to disappear to get help for his family. Also, if he works at a job that pays less than public aid grants, he can get subsidized up to the welfare standard of about $3,200 a year for a family of four.

Despite these aids designed to keep families together, the father is not living in the home in 83 per cent of all ADC cases.

Only about 7 per cent of these absent fathers contribute to their children's support. About 45 per cent are not married to the mothers.

Technically, the Public Aid Department tries to find missing fathers and sues them for support. But, as one caseworker says:

"If a man doesn't want to be found, it's almost impossible to find him."

2. Public aid families move to Illinois from states with smaller welfare benefits.

In a recent 12-month period, an average of 580 families a month were added to Illinois welfare rolls after living here less than a year.

The biggest contributors were Mississippi, Missouri, Indiana, Tennessee and Puerto Rico, which pay considerably less than Illinois. In Puerto Rico, a family of four gets $480 a year. In Mississippi, it gets $672 a year.

But other big contributors were California and Michigan, states that pay about as much as Illinois does. Both were hit much more heavily by unemployment than we were.

3. Large sums of welfare money go to people who, according to the rules, should not get it.

Last year Illinois lost an estimated $47.3 million in payments to ineligible persons and overpayments to eligible persons.

This is less than 4 per cent of the state's welfare budget, but it would have gone a long way toward making up the deficit the budget now faces.

Random samplings by investigators working for the state Public Aid Department reveal that:

Of the 171,700 ADC cases in Illinois, about 3.8 per cent are not eligible. They get about $18.5 million a year in cash grants and $4.2 million in medical care.

Of the 106,290 aged, blind and disabled cases, 3.7 per cent are not eligible. They get about $4.3 million a year in cash and $3.4 million in medical care.

Of the 95,600 persons not on public aid who receive free medical care, about 12 per cent are not eligible. Their incomes are above the cutoff of $200 a month for a family of two and $300 for a family of four.

These ineligible persons get about $4.8 million a year in medical care.

About 22 per cent of all ADC cases get more money than they should—an average of $442 a year for each family. About 17 per cent get an average of $216 a year less than they should. The net loss to the state is $10.4 million.

About 13 per cent of aged, blind and disabled persons are overpaid and about 10 per cent are underpaid. The net loss is $1.7 million.

MISTAKES ABOUND

Not all of this money goes to "cheaters," by any means. The state investigators report that about half the errors are due to faulty calculations by public aid personnel.

The mistakes are easy to understand. A public aid family in Illinois does not get a flat grant based on its size, as in some states. Instead, budgets are based on about 100 variables—whether the family needs a telephone, how it does its laundry, whether anyone needs a special diet, how old the children are, how many school books they need, and on and on.

The procedure is extremely complex, and caseworkers often are inexperienced. About 35 per cent of the 1,230 workers in Cook County quit every year.

It is certainly possible, though, for a family to lie about its financial status and be accepted for public aid.

To be eligible, a family of four must have less than $300 in savings and an income less than it would get on public aid.

Verification is difficult. Usually, public aid workers accept a family's word—and that is that.

Unless the state hires thousands of investigators to shadow welfare recipients, it is virtually impossible to determine if a mother gets undeclared support from an absent father, or if a family member works under a fake Social Security card.

A recent column in Wright College's newspaper gave this intriguing advice to coeds considering abortions:

"An alternative could be ADC," the columnist wrote. "You will be asked who the father is. It is advantageous for the father and for yourself to answer that you do not know. . . . If you claim the father, the welfare department will try and receive money from him.

"As your baby grows, you can work part time under a fake name and social security number."

Many caseworkers would not report small-time cheating, even if they did know about it. "The grants are so low that people have got to have some other means to live decently," said one woman. "I don't consider that fraud. I consider it trying to stay above water."

WHERE THEY COME FROM

States contributing the most new residents (here under a year) to Illinois welfare rolls in fiscal 1972 are:

Mississippi—770 families.
Missouri—682 families.
California—507 families.
Puerto Rico—474 families.
Foreign countries—374 families.
Indiana—370 families.
Tennessee—361 families.
Michigan—306 families.
Arkansas—302 families.
Texas—299 families.

[From the Chicago Daily News, Mar. 27, 1972]

OUR $1 BILLION HEARTACHE: WHY MOTHERS TURN TO ADC

(By Lois Wille)

Lucy's hand trembled and she bit her lip when she got to the key question.

Why, asked the long white form, are you requesting public aid?

"My husband left me," she wrote. "I don't have any support."

Later, she turned her head away from the caseworker who sat beside her in the cubbyhole office and spat out: "Three weeks before Christmas he walked out on me. With another baby on the way. That isn't a man. That's a rat."

Those words, or something similar, can be heard a thousand times a month in public aid offices throughout the state.

Although it's easy to lump all "welfare mothers" together into one gigantic, tax-consuming statistic, each has a bitter, tragic story to tell.

About 10,000 children whose fathers are dead are supported by Aid to Families with Dependent Children (ADC) in Illinois.

Another 85,000 children whose fathers are unemployed or disabled are supported by ADC.

And 410,000—about 81 per cent of the total—have fathers living somewhere, but not with them. Only 30,000, or 7 per cent, get some financial help from their absent fathers.

To people who blame welfare mothers for high taxes, welfare mother Johnnie Tillmon says:

"That's a special version of the notion that Eve, and Eve only, brought sin into the world."

Mrs. Tillmon, a New Yorker who is a founder of the National Welfare Rights Organization, wrote in the new magazine "Ms":

"Stop for a minute and think what would happen to you and your kids if you suddenly had no husband and no savings . . . If you don't have a man to pay for everything, then everything changes. You've failed as a woman, because you've failed to attract and keep a man."

Lucy Moore, 22, mother of a 3-year-old boy and six months pregnant, wife of a sporadically employed dishwasher, housekeeper of a shabby three-room flat in a West Side ghetto, says she should have known she couldn't count on Eddie.

She was 18, working in a dime store, when she got pregnant. "Eddie was mad and blamed me," she says. "I cried a lot until he said he'd marry me.

"It wasn't what I had dreamed about. But what else could I do?"

Eddie, expelled from Marshall High School for truancy and fighting when he was 16, had a lot of jobs in the next three years. He was a gas station attendant, a stockroom clerk, a dishwasher. The most he ever earned was about $80 a week.

"Sometimes he'd act crazy because he couldn't find a better job," she says. "He'd drink and throw things and bust out crying. I was scared for myself and the baby."

He was furious when he found out she was pregnant again. "I didn't want another baby either," she says. "But I had heard birth control pills would give me cancer."

Eddie walked out last December, in a rage because Lucy was too frightened to go to a neighborhood abortionist he had contacted.

"All he left me with," Lucy says, "is a pile of bills."

Her public aid application was easy to complete:

"Address of spouse: Not known.

"Spouse's present employment: Not known.

"Spouse's Social Security number: Not known."

Lucy and her child will get about $180 a month on ADC and, when her baby is born, she'll get another $24 a month.

If her husband is found, and successfully sued for support by the Public Aid Department, the money he pays will be deducted from her monthly checks. But, judging from past experience, he won't be found.

About 60 per cent of all Illinois ADC mothers are black, like Lucy. But she is younger, better educated and has fewer children than the typical ADC mother.

She graduated from high school; 75 per cent did not. She is 22, about 10 years younger than the median.

Illinois ADC families have been getting smaller in recent years, probably a result of the state's 8-year-old program of free birth control services for the poor. In 1960 the typical ADC family had five children. In 1966 it had four children. Today it has three.

It is the number of fathers unable or unwilling to support their children that is swelling public aid rolls, not the birth of babies to ADC mothers.

In 1967 state public aid roles increased by 3,200 cases as a result of fathers who deserted or stopped support payments. In 1971 the rolls increased by 16,800 cases because of those two reasons.

In 1967 nearly 18 per cent of absent fathers helped the Public Aid Department support their children. In 1971, only 7 per cent helped.

The stereotyped ADC mother is unwed, her children illegitimate. But in Illinois and throughout the country, most ADC mothers are, or were, married to the fathers. In this state about 37 per cent of ADC children were born to unwed parents—a figure that has remained constant for at least six years, throughout the period of enormous growth in welfare rolls.

The "unwed" themselves don't fit into easy stereotypes. In a mid-North Side public aid office, a woman in a well-cut pantsuit, her auburn hair streaked with gray, explained why she needed help.

"After 10 years my husband found out he isn't my son's father," she said. "He kicked us out—me, my boy and my mother. She's crippled with arthritis, in a wheelchair. He has his own insurance business, but he says he'll never give us another dime."

A young Oriental woman wept as she told a caseworker of the birth of her infant son. Her husband, paralyzed from multiple sclerosis, has been in a veteran's hospital for years. "He doesn't know me when I visit him," she said.

She worked as a waitress, earning about $400 a month to support her two daughters.

Last spring she began to date a man she met in a restaurant.

"I was so stupid," she says now. "I got pregnant. I tried calling him after that but he never called back.

"I called him when I went to the hospital, but he never came to see me. The other women, the nurses, they all asked, "Where is your husband?" I cried all the while I was in the hospital.

"I thought I would go crazy."

The man told her he drove a truck for a food store chain, but the company says it never heard of him. She wonders now whether he gave her his real name.

"What will become of my little boy?" she asked, tears streaming down her face.

For the next several years, she probably will support him on welfare checks of about $260 a month. The Public Aid Department will keep the $72 a month she gets in Social Security benefits for her invalid husband. That means she will have about $200 a month less in cash than when she worked as a waitress. But she will get free medical care and food stamps worth about $40 a month.

She talks about going back to work in three years, when her baby boy is old enough for a child-care center—providing she can find one that she can afford. When she worked, she paid $80 a month for child-care for her 4-year-old daughter. The state Public Aid Department pays only $65 a month.

Until she can work again, she represents one of the toughest problems facing welfare authorities and the taxpaying public: How shall we provide for women and children left with no resources?

"Our attitude now," says Johnnie Tillmon, "is to keep them as poor as possible, punishing them because they don't have a man."

Mrs. Tillmon and her National Welfare Rights Organization want a federally funded grant of $6,500 a year for a family of four. President Nixon's proposed welfare package has a federal minimum of $2,400 a year, with states supplementing the minimum as they see fit. Illinois now gives about $3,200, half of it in federal funds.

"Of course that's not enough," one caseworker in the Uptown area said of the public aid budget. "But the other day one of my clients told me she hopes her husband, who went back South, never comes home.

"She told me, 'Welfare is a lot more dependable than he is.'"

CHILDREN ON AID ROLLS

Growth in number of children on Illinois welfare rolls:

June, 1960, 115,300.
June, 1961, 146,000.
June, 1962, 206,100.
June, 1963, 199,700.
June, 1964, 200,400.
June, 1965, 201,900.
June, 1966, 194,800.
June, 1967, 200,300.
June, 1968, 229,500.
June, 1969, 258,600.
June, 1970, 309,500.
June, 1971, 446,000.
Dec., 1971, 494,700.

[From the Chicago Daily News, Mar. 28, 1972]

A $1 BILLION HEARTACHE: ONE FAMILY'S WELFARE LIFE

(By Lois Wille)

When the Singletons and their nine children lived in West Virginia, they got about $165 a month in public aid and life was terrible.

Today they live in Chicago. Four of their children are grown, and the rest of the family gets $418 a month plus free medical care and $70 in food stamps.

Life isn't exactly sweet, but it certainly is better than it was in West Virginia.

"It was a good move, coming up here," says Dora Singleton.

Not many Illinois taxpayers would agree with her.

Every month about 580 families who have lived in Illinois less than a year are added to welfare rolls. And, while this is only a small percentage of all new cases, it does mean that every month the billion-dollar-a-year welfare budget grows by about $140,000 in cash grants and $35,000 in medical aid—for a cumulative total of nearly $14 million a year.

The 1969 Supreme Court order banning residency requirements for public aid recipients often is blamed for heavy migrations into states like Illinois. But it isn't that simple.

Before the one-year residency requirement was dropped, the majority of public aid recipients—about 70 per cent—had lived in Illinois less than 10 years. About 20 per cent lived here less than three years.

Today the percentages are about the same.

This means the poor have been migrating to Illinois for years, long before the residency requirement was banned.

The difference is that today they can get welfare benefits as soon as they run out of money. Years ago, they somehow struggled along for 12 months, living on handouts from friends and relatives, picking up occasional part-time work.

Even the Singletons, who never had much hope of being self-supporting, managed to exist for several months on gifts of food and cash from their married children before they sought public aid.

"We had to leave West Virginia," says Dora Singleton, a round, blond, motherly woman of 45 who is so glad to have visitors she begs them to stay for dinner. And on her food budget—87 cents a day for each person—that is a generous offer indeed.

"The children were growing up and there's nothing back there for them, just nothing," she says of her small hometown in the hills. "It's a lot of work there just plain living—hunting for wood for the stove, no plumbing. We didn't have buses, and there was no doctor in the town."

The Singletons are, in many ways, typical of a chronic welfare family: Plagued by bad health, crippled by lack of schooling, squeezed into a shabby flat much too small for them, rearing children who seem destined for serious troubles of their own.

One daughter, mother of two, is married to an alcoholic. She goes off and on welfare rolls, depending on whether or not he works.

Two of the younger Singleton children have severe asthma attacks. Several have learning problems which the mother attributes to "that backward one-room school back home."

("The children, the children," cries out one young public aid caseworker. "If I only knew of some way to give them a better break. Sometimes I get so despondent over their futures, I can hardly stand this job.")

Tom Singleton, 60 and looking 85, caught tuberculosis in the lung-searing mines of West Virginia. That was 26 years ago, and the family has been on welfare ever since.

The father has been in and out of hospitals for years, and today is a gaunt, bent, skeletal figure of a man, groaning to a visitor that he is a failure, forced to leave all family responsibilities to his wife.

("Of course, his sickness didn't keep him from having nine children, did it?" says a woman who lives in the same Mid-North Side building. "That's the trouble with these people."

(Mrs. Singleton protests that she loves children deeply, "and what else have we got in our lives but our babies." Besides, she adds, her two grown daughters know all about birth control—something she never heard about when she was young.)

Dora Singleton, too, has medical problems. She had ovarian tumors and a hysterectomy, and now she has a slipped spinal disc.

She's overweight and always short of breath, and she hopes that's not a sign her heart is going bad.

("I'm continually amazed at the serious health problems my families have, and at such young ages," says a caseworker in the Singleton's neighborhood. "Women not much older than me with cysts and tumors, and so much TB and heart trouble."

(Medical costs of welfare are so high—40 percent of the state public aid budget—that Illinois welfare officials wonder whether they are being cheated. They recently stationed observers in major city hospitals, checking to see whether welfare cases actually need the treatment they get.)

Ever since her youngest child started school, Dora Singleton has tried to get a job. Now she has her heart set on being a cook at a public school, working from 10 a.m. to 2:30 p.m. for about $140 a month.

Under welfare rules, she could keep $67 of that $140—the first $30 plus one-third of the rest. The remainder would be deducted from her public aid check.

"But I don't think the job will come through," she says. "I've been waiting for months to hear. I've about given up hope."

More than 10 percent of all welfare mothers in Illinois—about 16,000—earn small small amounts of money under this "work incentive" plan set up several years ago by federal officials.

Some welfare administrators complain that it is badly designed, encouraging families to stay on the rolls when they could be self-sufficient.

Here is how it works:

A woman recipient with three young children and no job gets about $210 in cash, food stamps worth $32 and medical care worth about $73 a month—a total of $313.

If she has a job paying $200 a month, she can keep $87 of it for a total of $400 a month. If her job pays $300 a month, she can keep $120 for a total of $433 a month.

But if she finds a job paying $350 a month, her earnings would exceed public aid levels. She would be on her own, without welfare aid, food stamps or free medical care. So she would be better off sticking with the lower paying job.

A system that always makes it more profitable to work than to receive public aid would be preferable. But that would mean adding even more complexities to the incredibly complex welfare rules. Current state public aid regulations comprise a file 16 inches thick. In the ADC program, 18 cents is spent on administration for every dollar given in aid.

There is another glaring inconsistency in the work incentive plan: Federal rules restrict it to women. If any of the 20,000 unemployed fathers on ADC rolls in Illinois find work that gives them a small income but is not enough to make them self-supporting, they must deduct the entire amount from their welfare checks. They can't keep a dollar.

It was another cruel inconsistency that brought the Singletons to Illinois: The difference between the quality of life in West Virginia and in Chicago. President Nixon's welfare reform package would set a federal minimum of $2,400 a year for a family of four, more than a number of Southern states now pay. But that alone would not keep the poor back home.

As long as there is widespread unemployment, people will migrate from country town to city, and from city to city, looking for a better break.

California, for example, pays about the same in welfare benefits as Illinois. But California now is the third biggest contributor to Illinois welfare rolls, right after Mississippi and Missouri.

A 21-year-old Cuban-born father, his 18-year-old wife and their infant son sat in the jammed waiting room of a public aid office at 4238 N. Lincoln one recent morning, apply-

ing for ADC. "We came here in February from Los Angeles," he said. "There was no work back there. I thought there would be something here. I was wrong."

GROWTH OF AID IN ILLINOIS

GROWTH OF WELFARE ROLLS IN ILLINOIS (NUMBER OF PERSONS)

Aid to families with dependents	1960	1965	1970	December 1971
Children (ADC)	146,600	261,000	366,700	679,600
Aged	75,000	56,500	37,800	33,625
Blind	3,100	2,500	1,700	1,700
Disabled	18,100	29,000	39,300	[1] 71,000
General assistance	132,300	70,400	79,800	[1] 52,900
Medical only	([2])	15,800	61,700	95,610

[1] The shift in these categories is largely due to the transfer of handicapped persons from State-funded general assistance rolls to federally aided disabled rolls.
[2] No program.

[From the Chicago Daily News, Mar. 29, 1972]

OUR $1 BILLION HEARTACHE: "ADC FATHER" WANTS WORK—NOT WELFARE

(By Lois Wille)

In January Bertrand Bennewate ran an air hammer for eight hours a day, made $1,200 a month and thought welfare was something that ought to be stopped, the way taxes were eating up his paycheck.

In March Bertrand Bennewate stares at his tropical fish, watches daytime television and waits for his first relief check.

Bennewate, 38, wiry son of old Chicago Anglo-Saxon stock, Bridgeport homeowner, member of Mayor Richard J. Daley's parish, has become an "ADC father."

It happened about 3 p.m. one Friday afternoon. He was working with his construction crew in the Grant Park underground garage.

"The foreman called some names out and said we were being laid off," Bennewate says.

"That was it. No warning, nothing. It hits like a hard punch in the stomach. Six of us got it—three with big families, 16 kids total."

His employer, the Chicago Park District, does not contribute to an unemployment compensation fund, so Bennewate was not eligible for unemployment benefits.

There he was with a mortgage on his small gray frame house a few blocks from the mayor's bungalow, with a wife and five children to support, with tuition bills from Nativity of Our Lord School.

He made the rounds looking for work, but his timing wasn't very good. In February, when Bennewate lost his job, unemployment in Illinois hit 5 per cent, the highest in 10 years. About 153,000 men and women were looking for work in the Chicago area.

As unemployment rises, so do welfare rolls. In March, 1967, when unemployment was only 2.7 per cent in Illinois, there were only 3,100 out-of-work fathers receiving Aid to Families with Dependent Children (ADC). In March, 1970, unemployment crept up to 3.1 per cent, and the number of ADC fathers rose to 4,700.

Today, after two rocky years which saw 87,000 jobs disappear in the Chicago area, there are nearly 20,000 out-of-work dads, on the ADC rolls. About 55 per cent are white.

In recent months one of every five new ADC cases has been a father who lost his job. Women have been hit even harder by the job crisis. About 25 per cent of new ADC cases are breadwinning women—the sole support of their children—who lost their jobs or who are paid so little that they are eligible for subsidies to bring them up to the welfare level.

Most of the other new ADC cases sought help because the father deserted or stopped support payments. These, too, often can be traced to lack of a decent job.

"You think a man wants to sit there, listening to his baby crying, with not enough food in the house," says Addie Garel, president of The Woodlawn Organization's Welfare Union.

"His wife tells him, 'Get out. I can do better without you.'"

Most of the ADC fathers, like Bennewate, did not finish high school. In today's tight job market, that is a severe handicap.

"The other day I left home at 4:30 in the morning to drive to Joliet and look for work at the big refinery Mobil Oil is building there," he says.

"They gave me an application, but they said they only wanted people with a high school education.

"Why should that matter if you know the work, if you know what the score is?"

His little girl Faith, 2, played at his knees in the small living room, holding up a doll for him to admire. His collie, Nellie, rubbed against the sofa, waiting to be petted.

Suddenly Bennewate's eyes filled with tears.

"Why am I here, in the middle of the day? I want to be out working. I've worked hard since I was 16. I didn't want to quit high school. I did it to help support my grandparents. They raised me.

"Now, after 22 years of solid work, the union office says, 'There's nothing. Sorry.' You make the rounds of construction work, like at Standard Oil building, and there's a big sign out, 'No hiring today.'"

When asked if his food stamp card had arrived yet, he cried out:

"I don't even want it. I don't want food stamps, I don't want welfare. I just want a steady job."

On Sunday he often sees the mayor and his family in church. He doesn't want to ask them for a job.

"His sons know I'm out of work," Bennewate says. "But there's not much they can do. They have so many asking for help. They can't take care of them all."

The tragedy is that no one can take care of all the unemployed today.

Private industry can't make room for them, and government hasn't put up enough money to create sufficient public service jobs.

In all, there are about 28,000 able-bodied men on welfare rolls in Illinois and about 52,000 women whose children are in school. If all of these 80,000 got jobs that could support their families, welfare rolls would be cut by about 35 per cent.

But most of them have very limited skills and work backgrounds. In today's job market, where could they find work?

The federal Emergency Employment Act has made small amounts of money available to states and cities for public service jobs. In Illinois 4,000 welfare recipients soon will go to work under this program—but that is only a small percentage of able-bodied adults on welfare rolls, and the jobs will average only $5,000 a year.

With the economy foundering and with no big federal commitment to a job creation program, welfare experts don't see much logic in the recent passage by Congress of a compulsory work plan initiated by Sen. Herman E. Talmadge (D-Ga.). The Talmadge bill is almost identical to the work plan in President Nixon's proposed welfare package. It requires all able-bodied male relief recipients and all women recipients with no children under age 6 to go to work or enroll in a job training program.

But in Illinois and in most states there aren't enough openings in public aid training programs to handle all the volunteers, let alone those forced to enroll.

About 660 of the 22,000 enrolled in Cook County's welfare Rehabilitation Service, found jobs last month—but another 4,000 applied for the program. Their jobs average only $2.28 an hour.

Employers who place job orders are becoming increasingly harder to please, according to Wellington Howard, director of the service. He pulled one job order card from his file:

"Laboratory technician for chemical company, $2.50 an hour, male, work 9 or 10 hours a day; must be high school graduate and have two years of college or heavy chemical background; will also have to do errands; good work record a must."

The waiting room outside Howard's office at 125 E. 21st St. was jammed with nearly 100 men and women. More were crowded into the halls. The small rooms where applicants take entrance tests were so full there wasn't room to sit down.

"Some days we have to fight through the crowds to get to our desk," Howard says. "It's enough to make you scream."

"You come out here and look at them—men and women and young kids here because they want work—and there's nothing you can do about it, except hope it doesn't explode."

UNEMPLOYED DADS ON ADC SOARING

Unemployed fathers receiving ADC in Illinois:

March, 1967—3,143.
March, 1968—4,179.
March, 1969—3,801.
March, 1970—4,737.
March, 1971—13,336.
March, 1972—19,500 (estimated).

[From the Chicago Daily News, Mar. 30, 1972]

WELFARE WORKERS AIR GRIPES

(By Lois Wille)

When public aid caseworkers talk about their jobs, sooner or later they get to the painful core: They're torn between sympathy and plain old-fashioned exasperation.

They don't come right out and say, "Why can't they be more like us?"

But, with many, that's close to what they mean.

"My families are just so unrealistic about life," said a young woman in her early 20s, two years out of college.

"They'll get married and buy several thousand dollars of furniture and a new car and all kinds of appliances. And then the husband can't stand the pressure of the bills and he'll leave."

Her friend, who works in a nearby area on the Mid-North Side, added: "I have several very young women, 19 or 20 or 21, with no thoughts of working, no thoughts of the future.

"They never did think of the future. There was this guy, and they thought he'd take care of them, and he didn't, so the state will.

"That's what really irritates me—this father thing. They know the state will support their children if they don't.

"A lot of my ADC mothers just say their husbands were no good, and sometimes I say, 'Why did you get married? Did you love this man?'

"They look at me as if those were the strangest words."

A young man, an English major in college, described the people on his caseload:

"I have 20 families, five old people and 295 drunks."

His alcoholics live in a few residential hotels. Each gets about $150 a month in Aid to the Disabled. This includes $75 a month for food, nearly three times the food allowance of a mother receiving Aid to Families with Dependent Children (ADC).

The alcoholics get more because they live in hotel rooms without kitchen facilities, and must eat in restaurants.

Some of his clients, he says, tell him they sell the cards that entitle them to free medical care.

"They rent it to someone for a few hours in exchange for a bottle of wine."

The green medical card bears the recipient's name, address and birth date, but no photograph.

The caseworkers' words may sound harsh at times, even tough. But they didn't start

out that way, and the toughness doesn't go very deep.

Typically, they began fresh from college, thinking they were going to help the poor.

And, typically, they soon discovered there was little they could do except provide some of the bare necessities of life.

Whenever there is time, they visit a family and listen to troubles foreign to their own backgrounds, sometimes difficult for them to accept—and impossible for them to cure.

A woman who joined the Public Aid Department five years ago says bluntly:

"I must admit that every so often my middle-class values rebel.

"It's difficult for me not to think, 'But couldn't you have tried harder to make it?'

"But I know that, except for an accident of birth, there I would be."

An inordinate amount of red tape, most of it required by federal regulations, compounds the frustrations of the job.

"I have to fill out 15 forms to get someone into a job training program," one worker said. "Sometimes when they ask for training I simply don't have time, so I drop it."

All of this red tape means that 18 cents is spent for welfare administration for every dollar given to an ADC family.

Every day about 200 public aid checks are lost in Cook County, at least 40 of them stolen. That sounds absurdly high until you consider that 400,000 checks are mailed each month, and thousands of families are moving each month.

Whenever a check is lost or stolen, a complicated investigative mechanism creaks into operation. It may take a year before the family gets its missing check—if it ever does.

Every family crisis may take several working days to solve, and public aid families constantly are going through crises.

Mary Winter, caseworker in the Lawndale area, recently visited a 45-year-old woman, crippled by a stroke, with two teen-age children.

She learned the woman had no washing machine and couldn't walk to a laundromat. Miss Winter will try to get a washer, but public aid allows only $45 for one.

She learned the woman's husband, a state employe who deserted her about a year ago, used his key to get into her flat several times and took his children's camera and their phonograph records.

Miss Winter promised to try to get money to change the lock. She promised to get the woman a telephone. All of this, Miss Winter said "could take a couple of months."

Why isn't the father, who has a home on the far South Side, contributing to his family's support?

"He's being sued for support," Miss Winter said. "The last time he was in court he got the case postponed so he could get a lawyer."

Visits like this often uncover a host of problems, but caseworkers don't have time for many visits. In the past two years the number of welfare cases in Cook County jumped 68 per cent, but the number of caseworkers is about the same.

Today there are about 1,200 caseworkers in Cook County to serve 250,000 cases. Some say they see their families only about once a year.

"Well, we don't have resources to help them anyway," says one worker. "If I have a woman who is just not able to give her children much—no incentive, no encouragement, not even enough to eat—what can I do?

"Get her some expert counseling service? Find a great nursery school? A new apartment in Barrington so her kids will have good schools? What a laugh. This is an awful job."

[From the Chicago Daily News, Mar. 30, 1972]

OUR $1 BILLION HEARTACHE: THREE BIG AREAS FOR SLASHING ENORMOUS WELFARE OUTLAY

(By Lois Wille)

The enormous Illinois welfare bill could be slashed drastically if some superperson could figure out how to:

Find jobs for about 80,000 men and women, most of them with little education and no marketable skills.

Locate, and collect money from, about 130,000 absent fathers who don't help support their children.

Vastly improve the health of the state's 933,000 welfare recipients—or persuade hospitals, physicians, nursing homes and pharmaceutical houses to slash their prices.

Medical bills account for nearly 40 per cent of the state's $1.2 billion-a-year public aid budget. This seems so inordinately high that state welfare and public health officials have begun investigations of medical claims.

But, as one state physician says, the explanation may be that "poor people are just a lot sicker than other people."

The foundering economy and the increasingly high level of skills demanded by employers have stymied job placement efforts for welfare recipients.

And the missing fathers? "There's a point at which you spend more money trying to track them down than you will get from them in contributions," says one state welfare authority.

The Cook County state's attorney's office sues about 1,500 men a year for nonsupport, most of them fathers of welfare recipients. But it doesn't have the staff to hunt for the missing men.

The likelihood of solving all of these three problems, welfare authorities agree, is about as great as the likelihood that all Americans will compute and pay their taxes in total honesty.

And if that happened, the welfare bill—and a number of other government bills—no longer would be such a problem.

Sen. William Proxmire (D-Wis.), after hearing weeks of testimony on the federal tax structure, identified $60 billion in revenue lost to government through hundreds of loopholes drilled into tax laws over the decades.

In 1970 the Internal Revenue Service examined 1.6 million income tax returns flagged by computers as "irregular." They found shortages totaling $3.4 billion.

"We are indignant when a chiseler is found on relief rolls," says Helen Harris Perlman, associate professor at the University of Chicago's School of Social Service Administration.

"Is it not naive to expect that the poor should be more honest than the other income brackets?"

Edward T. Weaver, director of the state Public Aid Department and the man charged with unraveling these messy problems, says:

"I wish the critics of the welfare system could sit in my chair for 30 days. They would find out how complex the issues are, how overstated the cases of abuse, and how little authority the director, or the state, has to change the system."

He sees his job as an uneasy blend of "two conflicting missions."

"We have to get money to people who have no money," Weaver says. "That's the objective of the welfare system, and we haven't yet provided for them all."

(The New York City Rand Institute, in a study for the state, analyzed 1970 census data and concluded that only 62 per cent of all those eligible for public aid in Cook County are receiving it. In another study, state welfare review teams found that about 3.7 per cent of all those receiving aid are ineligible.)

His second "mission," Weaver says, is to decrease welfare rolls. "That's the job assigned to us by policy makers and by much of the public."

He thinks that may be an impossible task. "After all," he says, "it wasn't the public aid recipients who made the decisions that turned the economy down, and it isn't public aid recipients who are responsible for the quality of education in this country."

Gov. Richard B. Ogilvie is equally frustrated by the welfare problem. He would like to charge public aid recipients a "token payment," maybe 50 cents for each physician's visit and $1 for each day in a hospital, in an effort to stop possible abuse of medical care privileges.

But he knows that as soon as he tries this, legal aid attorneys will sue him and probably obtain an injunction stopping the plan—unless Washington welfare officials stop it first.

Ogilvie says he is aware of the hardship imposed on welfare families because the state has refused to give cost-of-living increases for 18 months.

But Illinois recipients are "fortunate," he says, that they don't live in one of the many populous states that cut public aid grants in the wake of the welfare explosion.

"I keep getting kicked in the fanny for what I'm not doing," Ogilvie says. "Everyone shakes a fist at me, saying we need more money for schools, more money for mental health, more money for welfare."

Ogilvie and other governors caught in the welfare crisis are pinning their hopes on increased federal aid.

Currently, Washington pays about half of the $3,200 Illinois gives to a welfare family of four. President Nixon's welfare package would increase the federal contribution to $2,400.

This new federal share would reduce the inequities between state welfare budgets, but it would not wipe them out. States could decide whether or not to supplement the $2,400. Some would, some would not.

It has been nearly three years since the welfare bill was introduced. The House has passed it, but for many months it has been bottled up in the Senate Finance Committee. Sen. Russell B. Long (D-La.), committee chairman, says he won't approve it unless there is accompanying legislation "to remove from the welfare rolls the vast number of recipients who have no business being there."

NUCLEAR ERRORS: A THREAT TO AMERICAN INDUSTRY?

Mr. GRAVEL. Mr. President, a table which summarizes the state of knowledge about nuclear core cooling capability was prepared in August 1971, by the AEC's principal private contractor for nuclear safety, Aerojet Nuclear Corp.

That table is still another warning to anyone who feels complacent about nuclear safety. It was introduced by the National Intervenors as exhibit No. 1038 at the AEC's hearing in Bethesda on emergency core cooling systems.

The table, which lists 30 items, states the current status of information, importance to emergency core cooling performance, and urgency of work needed on each item.

EXISTING TECHNIQUES DESCRIBED AS "INACCURATE, INADEQUATE, UNCERTAIN"

Out of 30 items, eight were listed as very high urgency, one as medium high

urgency, 15 as high urgency, four as medium urgency, and two as low urgency. All the items, except those in the last two categories, are classified as of prime importance to ECCS performance.

The status of the eight "very high urgency" problems is presented below:

"VERY HIGH URGENCY" PROBLEMS IN EMERGENCY CORE COOLING PERFORMANCE

Number given in Aerojet table IV	Information or capability need	Existing techniques: current status
8	Choke flow rate	Inaccurate.
9	Low and oscillatory core flow	Uncertain.
16	Transition from choke to friction ΔP at break.	Inaccurate.
19	Entertainment of ECC in piping.	
20	Thermodynamic mixing of ECC and blowdown.	Inadequate.
21	Penetration of ECC down annulus	Do.
24	Core ECC entrainment versus containment pressure.	Incomplete.
25	Steam binding overall system	Uncertain.

WHY ARE 23 PLANTS OPERATING?

Overwhelming evidence is on public record in Bethesda that the AEC's experts do not know whether the most serious nuclear accident of all can be controlled or not by the very system assigned to the task. Without effective emergency core cooling, there is no so-called "defense in depth" against nuclear calamities.

Under such circumstances, reasonable people have been wondering how the AEC Regulatory Staff could justify its permission for current nuclear power plants to operate.

Suddenly a new question has arisen from the hearing: Has information been withheld from the AEC Licensing Division by the AEC division which is in charge of safety research?

THE PROBLEM OF CENSORSHIP

I would like to quote the statement issued April 11th by Myron Cherry, who is attorney for the National Intervenors:

Aerojet Nuclear Corporation, the AEC's prime private contractor on nuclear safety, prepared a review of the state of the art in reactor emergency cooling systems.

The review was prepared in August 1971 for the AEC's Division of Reactor Development and Technology, which withheld all but an appendix of the document from the AEC Regulatory Staff.

Included in the suppressed part of the document was the Table [IV], which summarizes the problems in this area quite succinctly: it identifies basic information needs and the quality of the data presently available. See the "Current Status" column. This table was introduced by the National Intervenors as Exhibit No. 1038 at the ECCS hearing.

Mr. Cherry states in addition:

At the ECCS hearings last week, the AEC's Director of Reactor Development and Technology (RDT), Mr. Milton Shaw, admitted that his division "censors" monthly and other reports from Aerojet Nuclear. . . .

One day later, Mr. Curt Haire, the head of Aerojet Nuclear's nuclear safety program, was asked whether in fact censoring of Aerojet Nuclear has anything to do with technical judgment.

Mr. Haire answered that the censoring did not have to do with technical judgment, but rather was a deliberate inhibition of free and open discussion about nuclear safety by Aerojet Nuclear.

Mr. Haire added, "I believe that (the Division of) Reactor Development and Technology is trying to avoid the problem or burden, if you will, of having to spend a lot of time answering public inquiries that are addressed to Congress and referred to them . . . on general questions of nuclear safety." That statement is from the hearing transcript, page 7593, April 6, 1972.

INDUSTRY UNPROTECTED FROM NUCLEAR CALAMITIES

This is an extremely inappropriate time for the Joint Committee on Atomic Energy to present H.R. 14065, or any other bill, which would permit the operation of nuclear powerplants prior to public license hearings. It is thanks only to license "intervenors," that information is surfacing about serious safety problems.

It would be far more appropriate for the joint committee to produce some overdue information for Congress about nuclear hazards, and for Congress to consider a temporary moratorium on nuclear licensing, as proposed in S. 3223.

It is strange that nuclear dangers are under discussion from coast to coast in the mass media, but not in the "watchdog" committee of Congress, or any other committee.

Protection of the nuclear industry is leaving all other industries without protection from nuclear calamities. I wonder how long this situation will be tolerated.

JAMES FRANCIS BYRNES

Mr. HOLLINGS. Mr. President, I have just returned from the funeral services for South Carolina's most distinguished son, James Francis Byrnes. It was an impressive and moving experience.

It was our privilege to journey to Columbia with the First Lady of the land, Mrs. Nixon. Senator THURMOND and I, along with members of the South Carolina delegation to the House of Representatives, are grateful for the kindness of the President and Mrs. Nixon during this time of sadness for all South Carolinians.

The memorial services were held in the Statehouse in Columbia, and at the Trinity Episcopal Church of that capital city. The late Governor Byrnes' good friend, the Reverend Billy Graham, offered the opening prayer. Bishop Grey Temple of the Episcopal Diocese of South Carolina officiated at the church service in the fitting and appropriate manner that always marks his appearances. The chaplains of the South Carolina Legislature also were in attendance, Rev. George E. Meetze from the senate and Rev. Alton C. Clark of the house.

The eulogy was delivered at the Statehouse by Governor Byrnes' close friend and comrade, Gen. Lucius Clay. The general and the Governor had served together to mold a realistic foreign policy toward the growing Soviet menace in those difficult days following the Second World War. Lucius Clay is another of the giants of our time, and his name will earn him the gratitude of all future generations when the history of these troubled years is written.

The eulogy was one of the most eloquent tributes I have ever had the opportunity to hear. It deserves to be widely read.

For that reason, Mr. President, I ask unanimous consent that the text of General Clay's remarks be printed in the RECORD.

Mr. President, I was impressed, too, with the people who gathered to pay homage to James Byrnes today. They came from every section and all walks of our national life. From the councils of government came representatives of every branch. The Chief Justice of the United States, Hon. Warren Burger, was present, recalling that time when James Byrnes served on the Highest Tribunal in the land. There were many legislative friends. And from the State Department came men such as Charles Bohlen, who worked with Secretary of State Byrnes during the Truman administration. The list of distinguished guests could be extended many pages. Suffice it to say that this outpouring of sentiment from his coworkers and close associates testifies to the impact of James Francis Byrnes. His was one of the most wide-ranging and influential careers in the history of this Republic.

But it was not only the presence of so many men of power at the service which made it so memorable. Even more moving was the outpouring of genuine affection and sympathy on the part of citizens from throughout the State and Nation. The farmers, the factory workers, the mechanics, the teachers, the civil servants—these were the people who knew and admired and trusted James Byrnes. These were the people who called upon him to do a job. And these were the people among whom he preferred to live.

I also noted the presence of over 300 Byrnes scholars—young men and women from disadvantaged pasts who had been given the opportunity of education by the James F. Byrnes Foundation.

Mr. President, it was an honor to know James F. Byrnes. We knew one another both within and outside the councils of government. I knew him as a man of sterling character, great intelligence, and much wisdom. I shall miss him, as I know many Members of this body, the U.S. Senate, will miss him.

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

EULOGY BY GENERAL CLAY

Dear Friends, all of us are here today to pay our last respects to Justice Byrnes. Many of us were privileged to have known him and to have enjoyed his friendship beyond measure. It is not a day to be sad. He and Mrs. Byrnes had a full and wonderful life, and in their long years together they won the love and friendship of all who really knew them. Rather, it is a day in which we, his friends, remember how great and enduring was his capacity for friendship, and how much he contributed to our own lives.

His lifetime of service to the state of South Carolina needs no elaboration here. He held every major political office which his state had to offer, and how he fulfilled the responsibilities of these offices is best evidenced by the love and affection in which he was held by the people of his state and by the respect shown to him as he lay in state in the State Capitol.

Far beyond his contributions to the state of South Carolina, as many and valuable as

they were, were his contributions to his country and to the world. He was recognized as an outstanding member of the House of Representatives and again of the United States Senate before he became a Justice of the Supreme Court. When the problems of war confronted our country and the President asked him to accept the responsibility for establishing the Economic Stabilization Administration, he did not believe that he should do this as a Justice on leave, and he resigned from the Supreme Court because he felt that he could contribute more to the nation in war by taking an active role in government. Soon thereafter he became the Director of War Mobilization, and it was in this capacity that President Roosevelt delegated to him full responsibility for the domestic front. It was while he was the Director of War Mobilization that I became his deputy in December, 1944, and so quietly had he performed his offices that it was only then that I realized the many problems which came to him each day for final solution, and the calm and objective decisions which he made to maintain our economic stability and our productive power while we were forced to wage war on two fronts. It was during this period that he first became deeply involved in our foreign affairs, almost by accident. President Roosevelt asked him to come with him because he wanted his company during the Yalta Conference. There, both President Roosevelt and Mr. Hopkins became ill and, although he was not even a delegate, he found himself an active participant in the Conference, and indeed when the President's party returned, it was Mr. Byrnes who was designated by the President to meet the press and tell them of the results of the Yalta Conference.

Shortly thereafter President Roosevelt died, to be succeeded by President Truman, who asked Mr. Byrnes to return to Washington as Secretary of State. It was a crucial period for American foreign policy, for we were still at war with Japan, our troops were being rapidly withdrawn from Europe, and even with victory over Japan the demand at home for the return of our soldiers was overwhelming. Underlying this demand was a more fundamental question: Did it mean that America was returning to isolationism? And, indeed, for a while this appeared to be the trend. Fortunately, Secretary Byrnes—with the support of President Truman—saw immediately that it was no longer possible for America to live alone and that even a partial return to isolationism would be a serious threat to world stability and to lasting peace.

Recognizing the fact that most of eastern Europe was either in Russian hands or dominated by the threat of Russian force, Mr. Byrnes believed that only the immediate conclusion of peace treaties with the countries of eastern Europe would make it possible for democratic regimes to be established with any hope of success. Although the interim coalition governments formed under these peace treaties were not to survive, there was no other way short of willingness to use force to have any chance of obtaining democratic governments in these countries. However, his determination prevented a Communist dominated government in Italy, which was not under the influence of Russian arms, and in Austria, where both our own and Russian troops were in occupation.

The extent of his effort to conclude these peace treaties can best be measured by the extent of his travel during this period. 1945 found him in Yalta and Potsdam for Big Three meetings, in London for the Foreign Ministers Council, and in Moscow for a Big Three meeting. In 1946, he was in London for the United Nations General Assembly, in Paris for a Big Four meeting, and again in Paris for the Peace Conference.

It was at the latter conference that he became convinced of Soviet intransigence and determined that they would make no further gains in Europe. It was there, with the consent of the then President Truman, he agreed to accept an invitation to address an audience of Americans and Germans in Stuttgart to include the four Ministers appointed by Military Government as chief administrators of the four German states in the American Zone of Occupation. In an impressive setting, Justice Byrnes made a major-policy speech of tremendous import to Europe, as it meant to them—as it did to me—that the United States, in pledging that its troops would continue in Europe as long as the troops of any other government remained, had definitely abandoned and renounced isolationism. I think it was his finest hour, and the policy which he announced then is still our basic policy. We had taken a major step to accepting the leadership of the free world, later to result in the Marshall Plan, the North Atlantic Treaty Organization, and the ultimate establishment of the West German Government.

Following this speech, Justice Byrnes met for lunch with our own military and State Department personnel and with German officials holding office under Military Government. It was the first such meeting with Germans and marked the beginning of our realization that the rehabilitation and restoration of Western Germany was essential to prevent a vacuum in central Europe which could lead only to economic and political disaster throughout Europe. Following this luncheon, accompanied by Mrs. Byrnes, Senators Vandenberg and Connally, who were members of our delegation in Paris, and their wives, we left Stuttgart by train for a quiet weekend in Bavaria. This was still a land of occupation and the scars of war were evident everywhere, and you may be sure that we had taken every measure we know how to take to insure the safety of this train and its passengers. Our distinguished guests had gone to their staterooms for a brief rest when, suddenly, I realized the train had made an unscheduled stop, and in looking out the window the absence of American troops on guard quickly told me this was not a scheduled stop. With some concern I rushed from my stateroom, there to find Justice Byrnes standing on the back platform signing autographs as best he could, where several hundred German commuters had already gathered and were pushing and shoving each other aside in their eagerness to obtain his autograph. I could not help but reflect how quickly a defeated enemy had recognized the magnanimity and good will of this American statesman.

In all the conferences which I attended with him, and in which he headed the American delegation, I was always impressed with the respect which he had gained from the statesmen of other countries—with Mr. Churchill and Mr. Eden, and on their departure with Mr. Attlee and Mr. Bevin, with Mr. Bidault, and indeed with Mr. Molotov and Mr. Vyshinsky. I was astounded at his ability to meet the challenges and even the insults from the Soviet representatives effectively and yet to avoid rancor and bitterness, even at a time when it was most difficult not to be angry. Yes, he was a respected world leader among world leaders, recognized as a man of good will representing a powerful country and intent that its power be used only in the interests of peace and freedom. Yet, even during these trying days, he found time to improve the Foreign Service as a career service by personally securing the enactment of legislation which had been pending before the Congress for some time.

Of course, there are too many highlights in his career for but one or two to be mentioned. However, I am sure that one of the happiest occasions that I ever remember being with him was following his inauguration as Governor of South Carolina, and the great joy he took in this opportunity to serve his friends and neighbors. Nevertheless, his impressive record of public service does not do full justice to the measure of this man to whom Senators, Representatives, Cabinet Members and Heads of State came with their problems to seek his advice and counsel. Never sparing of himself, he was always available, and above all they knew that whatever they talked about with him would forever remain confidential as far as he was concerned.

Serving as his deputy in War Mobilization, and as Deputy Military Governor of Germany during the period in which he was Secretary of State, I learned far more than I ever learned elsewhere. Someone once asked me, when I was Military Governor, if I had had any real experience in government, and my reply was: "A post graduate course in four months under Justice Byrnes."

During the period in which I was his deputy it was his practice to hold a small staff conference every evening at 6 o'clock, at which time we would discuss the efforts of the day. Usually, there were present besides myself Don, now Judge Russell; Walter Brown; Fred Searls, now gone; and sometimes our counsel, Ben Cohen. In the outer room, Miss Cassie Connor, protected the privacy of our meetings. We were his family and the warmth of his affection still binds us together. When I speak of him, I know I speak for them too. It was in these conferences that his experience and wisdom were at their best. Justice Byrnes enjoyed these conferences just, indeed, as he enjoyed life. Prodigious worker as he was, he did not believe that life consisted only in work, but that it also had to include some time to meet and be with friends. To spend an evening with him and Mrs. Byrnes was ever an experience to be remembered and to be enjoyed to the full. Their home, wherever it was, was filled with song and music and reminiscences and above all with their love for each other, which overflowed to embrace their friends.

With a quick and ready wit, he loved good company, good conversation, song, laughter and fun. Although, as all men in public life must be, he had to disagree at times with the policies and views of others. I have never heard him utter a cruel or vindictive word about anyone. Once he said to me: "I am often called a compromiser and, indeed, I must be, for politics is the art of compromise. However, if you will examine the record, I always compromise in the right direction and sometimes it takes two or three compromises to reach my original goals. There are more ways than one to gain a final victory, and a politician who does not recognize this can never become a statesman."

Once, when I was Military Governor, there was a movement made to replace me shortly after Justice Byrnes had resigned as Secretary of State. Not wanting his ill will, the proposal was conveyed to him, and his immediate reply was: "Attempt it and I will fight you all the way." The attempt was not made. It was years later when I heard of this, and you may be sure it was not from Justice Byrnes.

How can we express our feelings for a man like this, other than to say we loved him. Above and beyond his many accomplishments was the one thing which none of us will ever forget—his capacity for true friendship, for love of his fellow man. Of course, the Byrnes Scholars are one evidence of his concern for others. He met with the great and with the humble, and was at home with both. His warm compassion, his deep and abiding loyalty, and his faith in America and its people were very inspiring.

There are only a few—a very few—in a world of many people who can by virtue of both character and achievement be called great. Justice Byrnes was such a man. But of the few who are recognized as great, there are an even smaller number who are both

great and good. Justice Byrnes was also a good man.

South Carolina can be proud of the contribution made by this great and good man to the state and to the nation, and the nation can be proud of the contribution which he made to preserve the free world and in working for peace among nations. We, as friends share this pride while we are ever grateful for the additional privilege that we have of having known and loved Mrs. Byrnes and Justice Byrnes. May God be with us all.

QUORUM CALL

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will please call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is concluded.

WAR POWERS ACT

The PRESIDING OFFICER (Mr. ALLEN). In accordance with the previous order, the Chair lays before the Senate the unfinished business, S. 2956, which the clerk will state.

The assistant legislative clerk read as follows:

A bill (S. 2956) to make rules governing the use of the Armed Forces of the United States in the absence of a declaration of war by the Congress.

The Senate resumed the consideration of the bill.

The PRESIDING OFFICER. The pending question is on agreeing to the amendment (No. 1099) of the Senator from Maryland (Mr. BEALL).

Mr. ROBERT C. BYRD. 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. ROBERT C. BYRD. 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. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the vote occur on the pending amendment at 12 noon today.

Mr. BEALL. Mr. President, reserving the right to object, and I will not object, I want it understood that I will ask for the yeas and nays.

Mr. ROBERT C. BYRD. Of course; yes.

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia? The Chair hears none, and it is so ordered.

Mr. ROBERT C. BYRD. I ask unanimous consent that the time between now and 12 noon be equally divided between the distinguished manager of the bill, the Senator from Virginia (Mr. SPONG), and the distinguished Senator from Maryland (Mr. BEALL).

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

Mr. ROBERT C. BYRD. Mr. President, the cloak rooms should advise Senators that this will be a yea-and-nay vote and that the order for the yeas and nays will be sought prior to the vote.

The PRESIDING OFFICER. Who yields time?

Mr. BEALL. Mr. President, yesterday afternoon, I offered my amendment, which is the pending business before the Senate at this time. I had some rather lengthy remarks to make on the amendment at that time which I am not going to repeat today, but I would like to point out that yesterday afternoon I introduced an amendment in the form of a substitute for the pending legislation, the so-called war powers legislation. My amendment would create a commission in order to give this matter further study because I think we do not want to act precipitately.

Mr. President, there are many questions which have gone unanswered. I noted in my remarks that there were some well-known legal scholars around the country opposing this legislation who had not been asked to testify before the Foreign Relations Committee.

I believe that many of us are desirous that Congress should get about the business of codifying the procedures under which the President may commit troops in foreign lands in various kinds of emergencies, and I would like to see the air cleared on the matter.

But, as I pointed out in my introductory remarks, even though the votes may be here in the Senate to pass the pending legislation after the amendments are disposed of, frankly, I do not believe that the House of Representatives will consider legislation of this kind. As a matter of fact, the chairman of the subcommittee in the House of Representatives indicated that he did not think the House would get about the business of considering this Senate legislation.

Additionally, as I pointed out, and I have no information on this from those who know, but it seems to me that it would be highly unlikely that the President of the United States would sign legislation of this sort, should it get through both Houses of Congress and be sent to him in final form.

Under these circumstances, therefore, it seems to me also likely that, since final disposition of the matter will not be made this year and as we get farther away from the conflict in Southeast Asia the emotional fires will die down, and it is probable that the whole issue might dry up and blow away before Congress considers it again.

I do not think that this should happen because, as I said at the outset, we would do the country and ourselves a favor if some way could be devised in which we could find procedures under which Congress may reassert itself and act in conjunction with the executive branch when we get into foreign entanglements.

So for that reason I suggested we establish a commission to be appointed jointly by the President, the President of the Senate, and the Speaker of the House of Representatives. I also suggested that such a commission would see to it that those people who have not been heard from on this subject, such as former Presidents of the United States, former Secretaries of State, as well as calling in other people from other departments of the Government who have great experience in these matters, whether with the State Department, the Department of Defense, or in the executive branch generally and, perhaps, very importantly, they could call in those distinguished historians and legal scholars from around the country who were not heard from when the Committee on Foreign Relations considered this matter.

A report by the commission will be made to the next Congress within a year after formation of the commission and Congress would then be able to consider this matter again. It would not die. Perhaps it would be considered in a less emotional light and perhaps, and I think likely, a greater opportunity will be afforded to pass the legislation and place it on the books, more so than seems likely today.

Therefore, Mr. President, I have introduced the substitute for the pending measure and I would hope that the Senate would consider it favorably.

Mr. President, I raised certain questions during the course of this discussion on this matter and would like to raise another question that troubles me. As I explained to the distinguished Senator from Virginia (Mr. SPONG), the manager of the bill, yesterday afternoon, I am not a lawyer. Therefore, I am not really competent to talk about the constitutional questions involved, although I have read with great interest the discussions which have taken place as to the constitutionality of the pending legislation. But there are some serious practical questions regarding legislation of this kind. I enumerated some of them in my remarks yesterday.

I have another one: We are all concerned at this point in history about what is going to be the relationship of the United States with the other countries of the world. Our country has been the greatest free country in the world in recent years. We have been the protector of liberty throughout the world. We have given great encouragement and comfort to other countries who have or want to have a democratic form of government so that they can be free from encroachment by other foreign powers. Our military forces have been a deterrent to war.

I would hope that we would want to participate as a full fledged member of the world community as the greatest free country on the face of the earth and that we would not go into a period of isolationism. We have responsibilities to ourselves as well as to other countries in the world to maintain our position as an active participant in the world community.

Now, Mr. President, I should like to speculate for a moment or two as to what might happen. I do not know how the thought processes work of the other leaders who profess ideologies different

from ours, but it would seem to me that in the past, as certain countries around the world would look to possible encroachment upon the territorial rights of another country, they would have serious questions to take into consideration before they did so. One of those considerations would be the presence of the United States. We have used our Navy, for instance, as an extension of our foreign policy. When we have seen trouble brewing in different parts of the world, seeing one country trying to encroach upon another's territory, we have been able to move our Navy into that part of the world and its mere presence has caused them to stop, look, and listen for a little bit.

They have said, "Maybe we had better not go into that country, because the U.S. Navy is there and maybe if we encroached upon that country we would get the United States involved. We do not want to do so, because we do not know what the United States would do, we will not be as aggressive as we might like to be because of the presence of the U.S. Navy."

It seems to me, under the pending legislation, that we would cause a different kind of thinking on the part of people elsewhere who might have some acquisitive desires. For instance, it is conceivable now that, if a country somewhere in the world wanted to encroach upon the territory of another country, they would look around and consider all the things that must be considered, including the possibility that the United States could deploy its Navy, as we have done in the past. I am wondering, if the Navy would be a deterrent to such a country, if this bill becomes law. The leaders doing the thinking would look at the situation, and they might well say, "There is the U.S. Navy but we will be able to go into this country and take it over. The Navy does not worry us any longer, because Congress recently enacted a law laying out the conditions under which the American President may commit American troops and Congress has said to the President that if he does commit American troops he must come to Congress within 30 days to receive some sort of affirmation of what he wants to do before he can continue to deploy American Forces.

It seems to me that a foreign power, in that case would be able to say, "We do not have to worry about the United States any more because there is no muscle behind its Navy." They would say that the Congress has recently had its fingers burned in Southeast Asia. And even if the President of the United States wanted to protect a country whose territory was about to be encroached upon the enemy will not have to worry, because Congress is not about to give the President of the United States the kind of affirmative support he needs to fulfill our commitments. It seems to me that under those circumstances American military power can no longer be used for peace, as military power should be used.

I think that we might be weakening our position in relation to the rest of the world. I wonder if the Senator from Virginia would like to comment on that particular point.

Mr. SPONG. Mr. President, I would be pleased to comment upon the two questions posed by the Senator from Maryland. The first question concerns the effect of passage of this legislation upon our relations with other nations of the world.

The proponents of the bill believe that over the long run this legislation would give assurances to other nations of the world that the Government of the United States was united in its foreign policy. The events that have transpired in the last 25 years, when limited wars have created divisiveness and unhappiness here at home, have often given this Nation the image abroad of a nation bitterly divided, with the President and the Secretary of Defense and the Secretary of State saying one thing, and the Members of the Congress, who do not consider themselves in any way fully committed to an involvement, because they have not participated in it, saying something else.

This has resulted in a very confused picture of what the policy of the United States is.

So this legislation is designed to help bring about, particularly in situations where hostilities result, an allied effort between the Congress and the executive branch of the Government. Then we could have pronouncement of policy which resulted from both congressional and Presidential actions. In that way, Congress would have participated to some degree in the use of force decisions. The American people believe that consultation, that participation, has taken place all along, but it has not. There have been no incidents in our history in the last quarter of a century where there was a genuine consultation and approval regarding the use of forces for hostilities abroad between Congress and the President.

I believe the second question posed by the Senator from Maryland has already been covered in the debate. It had to do with the use of the U.S. Navy.

Let me preface what I am about to say by noting that few Senators would be more reluctant to predict the demise of the U.S. Navy in the future than the Senator from Virginia who comes from the Norfolk-Portsmouth area of Virginia, which has extensive naval facilities. I do not for one minute contemplate that is going to happen at all. It is well established that this legislation has no effect whatsoever upon the right of the President of the United States as Commander in Chief to send our Navy into international waters anywhere in the world that he chooses.

The Congress under this legislation is not asking to consult with the President about where the 7th Fleet goes or where the 6th Fleet goes. It is only when there are hostilities and only when there are use of force decisions that the President, under the legislation, reports and then Congress has this period in which to concur, to disapprove or to do nothing.

An example that has been used extensively on the floor by those who join the Senator from Maryland in opposing this legislation is the Cuban missile crisis. I think it is a good one. But the President had, up to a point, the authority to send our surface vessels into an area. He has that right as Commander in Chief.

I quoted 4 or 5 days ago in this debate the testimony of Mr. McGeorge Bundy who, in his appearance before the Foreign Relations Committee, said that there was nothing that took place during the Cuban missile crisis that this legislation, had it been in effect, would have impeded at all.

I want to make it clear to the Senator from Maryland that if we send the fleet somewhere where it has not been and hostilities against some nation are initiated, if we are attacked, then certainly this legislation, should it be enacted, would apply. But there is nothing in the bill to interfere with the operation of the Navy throughout the world.

Mr. BEALL. I am aware of that. I am aware that the President still has the authority to send the Navy wherever he wants to send it. My point is that I am wondering if, under those conditions, the Navy would be the same deterrent, the same positive force for peace as it is today.

As I pointed out in our little excursion into hypotheses, a foreign power knows today that there is no restriction on the President's use of the Navy. However, if this law were to go into effect, there would be a 30-day restriction. A foreign country would look at the Navy and say, "If we start to encroach upon a neighboring power and the President wants to use the Navy, he could do so for only 30 days." They do not have to worry about it, because he has to come back to the Congress and get some affirmative action.

It seems to me that the use of the Navy is a deterrent which the President can use, along with our other Armed Forces, as a visible force for peace around the world.

Mr. SPONG. I see nothing in the legislation, assuming that the Navy stays at its present strength, that would deter a show of strength or a show of force demonstration. I think that the Senator from Maryland has to understand the 30-day limitation. I do not envision 30 days of foot-shuffling by the Congress while the Navy waits to see what it will do in the future. That would just not happen. The President, as Commander in Chief would be directing the Navy. If the Navy is attacked or if there is imminent danger of American nationals or American troops being attacked, the President of the United States has authority under the Constitution and under this legislation to employ the U.S. Navy. I do not think for 1 minute that those commanders are going to be impeded by any 30-day limitation. The 30 days is there for Congress to have an opportunity to weigh the extent of the emergency and to pass a judgment on what type of emergency it is.

I think it is clear that the President has this authority to deploy the Navy and that the Navy can go wherever it has been going.

Mr. BEALL. I understand that, as the

Senator from Virginia has explained it, there would be no restriction on the President's ability to send the Navy into foreign waters and there would be no restriction on his ability to use the Marines if he feels American nationals are in danger.

But I feel that the United States, being the greatest free country on the face of the earth, wants to be in a position so that it can be the promoter of peace, and effectively use its Armed Forces, as those Armed Forces should be used, as a deterrent to war. Therefore, if a 30-day restriction is placed on the President, in effect we are saying the United States does not have the muscle behind its troop deployments that it formerly had; and it seems to me that, if I were in a decision-making position in a foreign country, and I had the desire to encroach upon the territory of another nation and I saw the U.S. fleet off shore, I would realize, should this legislation pass, that the President of the United States no longer had the freedom to move the U.S. Navy or to make a show of force, and it might not be the same deterrent to war it is today, because of the 30-day limitation.

Mr. SPONG. Implicit in that position is complete confidence in the President and a lack of confidence in Congress. Let us consider why we want the legislation. We want to be sure the Executive does consult and is careful before committing the Navy or any troops to hostilities. I want to underline the words "to hostilities."

The Senator talks about preserving peace. Of course, that is what this legislation is about. We want our forces to continue to be a deterrent throughout the world, but we also want to be very careful that these forces are not committed to hostilities by the decision of one man alone. The latter situation could create and achieve just the opposite of what the Senator from Maryland is seeking, that is, a peaceful solution.

We have had a history of 25 years where there have been use of force decisions by Presidents alone and where troops have been sent into situations which could have resulted in much broader wars.

There has, however, been no instance—with the possible exception of the Cuban missile crisis, and I believe Mr. Bundy's testimony covered that—where 1 or 2 days would have changed the result. What would have been changed is that the American people, through their representatives, would have participated in the decisions that could have gravely affected their lives.

Mr. President, if the Senator will allow me, I want to use a little of my time to speak against the amendment offered by the Senator from Maryland. The Senate will vote on the amendment at 12 o'clock noon and I have to leave the floor momentarily. I will delegate my authority as floor manager to the Senator from Missouri (Mr. EAGLETON) at the conclusion of these remarks, but I do wish to speak against the amendment which is before us.

Mr. President, I hope the Senate will reject the amendment of the Senator from Maryland. In my opinion it goes much further than the measure on which we voted on yesterday. The Senator from Nebraska (Mr. HRUSKA) amended his amendment to refer this legislation to the Committee on the Judiciary to assure its return to this floor in 45 days. If that amendment had been adopted this legislation could have again been considered in 45 days. Under the amendment offered by the Senator from Maryland, however, this legislation would be delayed for at least a year, and undoubtedly longer.

I am persuaded in part by some of the arguments the Senator from Maryland made yesterday. But, his suggestion for a 1-year study would have been much more appropriate 2 years ago when we began thinking about war powers legislation. It would have been more appropriate at the time the Senator from Mississippi (Mr. STENNIS) asked for a year's delay in the course of this matter. But, the Senator is offering his amendment after more than a year's consideration of war powers legislation by the Senate Foreign Relations Committee.

I would say there are some historians and some legal scholars who have not been heard from. But I stated yesterday that if one anlayzes the literature that is in the RECORD, he will find that everyone has had his point of view expressed. Specific individuals may not have testified, but their points of view have been expressed. Furthermore, those who did not testify have had no hesitancy in expressing their views in other forums.

I think what Mr. Rostow had to say has been placed in this RECORD eight times. Everybody who speaks against the bill puts it in the RECORD. It has been published in the New York Times. All of us are aware of his views on this matter.

We had good testimony before the committee. The substantive issues on which this legislation is based has been debated for years, going to back to the Korean treaty and picking up the debate of Senator TAFT's father, called the great debate, over sending divisions to Europe. There has been much debate over the principles involved in this legislation. So I hope the Senate, which yesterday declined to send this measure to the Committee on the Judiciary, will today certainly decline to study it more and send it to a study commission.

I say again that I think the suggestion would have been appropriate a year ago or 2 years ago, but it is not appropriate now. The hearings and this floor debate provide quite a record. I have been in this body almost 6 years and I find few records on legislation comparable to the testimony received. Therefore, I hope it will be the pleasure of the Senate to defeat the amendment when the vote takes place.

The PRESIDING OFFICER. Who yields time?

Mr. BEALL. 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. ALLEN. 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. ALLEN. Mr. President, will the Senator from Maryland yield me 6 minutes?

Mr. BEALL. If I have 6 minutes remaining, I am glad to yield to the Senator from Alabama.

The PRESIDING OFFICER. The Senator from Maryland has 16 minutes remaining.

Mr. BEALL. Very well. I am happy to yield to the Senator from Alabama.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. ALLEN. Mr. President, I wish to commend the distinguished Senator from Maryland (Mr. BEALL) for offering this amendment to set up a commission on the proper roles of Congress and the President in the use of the Armed Forces of this Nation abroad and in undeclared wars. This approach is a much better approach than that of sending the measure to the Committee on the Judiciary for a limited study of 45 days, especially in view of the fact that the Committee on the Judiciary seems weighted down with matters that have been before it for weeks and that will probably continue to occupy the time, thought, and study of that committee for some days yet to come.

I feel that the commission approach provides for a wider, broader, deeper spectrum of the available political and philosophical constitutional thought of the great minds of this country. I feel it would be wise to bring in Members from the House, six to be appointed by the Speaker of the House, not more than four Members of the House, two from private life; six to be appointed by the President of the Senate, not more than four to be Senators and two from private life; and 12 to be appointed by the President, not more than four to be actually in the executive department.

This is a question that requires additional study, and I do not feel that anything would be lost by additional study.

It is understood that the measure does not apply to the present conflict in Southeast Asia, and I do not believe that public opinion would support the start of another conflict similar to the Vietnam conflict.

The significance of this bill can hardly be overestimated, because it is a bill which will affect the most momentous decisions of this Republic, and which will touch the lives of every present and every future citizen. It is a matter of the first importance, and its implications are so far-reaching that perhaps none of us have adequately foreseen them.

Because of this, it seems to me neither proper nor fitting that the debate on this bill be confined to this Chamber. The great strength of this country is its intelligent, articulate citizenry—let us hear from them. Before we take action on a bill involving the most fundamental relationships in our governmental system, let us be sure that our people understand and approve our position.

Some of the finest legal minds in this country have discussed S. 2956—let us be sure to hear from them. Some of these experts have raised questions, and their questions deserve to be heard and explored. In these days of general skepticism toward this Government and of in-

creasing public distrust of all our institutions; can we afford to ignore the experts on such an essential question?

Within the last decade we have witnessed revolt and turmoil in our cities and on our campuses; we have heard the shouts, and often the insults, of those who felt that they could not make themselves heard without shouting. And I do not need to remind any here of the recent, rapid proliferation of groups formed to demand a greater voice in the making of decisions that are vital to their lives.

In effect, S. 2956 charges the Executive with ignoring the wishes of Congress. But will not we be susceptible to the charge of ignoring the wishes of the people if we pass this bill hastily, without encouraging a comprehensive debate by the public? Would not the purposes of all be served by a thorough discussion of S. 2956 in our journals, on our campuses, in the media?

The PRESIDING OFFICER. The Senator's 6 minutes have expired.

Mr. BEALL. I yield 2 minutes to the Senator.

Mr. ALLEN. We have nothing to lose from such a debate, but we have much to gain. This Republic has gotten along for almost 200 years without this bill; it will undoubtedly survive for a few months longer.

I can think of no better way to actively promote debate on this issue than to establish a National Advisory Commission, as the amendment by the Senator from Maryland does, and I can think of few actions that would reflect more credit on this Congress.

I yield back the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. BEALL. Mr. President, I want to thank the Senator from Alabama for his comments on this amendment. The matter needs additional study. During the course of my colloquy with the Senator from Virginia, he suggested he would have been amenable to this proposal 2 years ago. Well, I would have been happy to have offered it 2 years ago, but I was not here at that time. I would have been happy to offer it, because this is a matter that deserves further consideration.

During our discussion we were talking about the deployment of the U.S. Navy. I agreed at that time, that this measure does not restrict the President's power to deploy the Armed Forces of the United States as occasion arises, but I am not so sure I should have agreed, because I read from page 787 of the hearings on this matter, when Mr. Arthur Goldberg was in discussion with the Senator from New York (Mr. JAVITS) on the matter of deployment of the Armed Forces, and Mr. Goldberg said:

> Widespread deployments of troops without explicit congressional authority raises to me constitutional questions because of the danger of it leading to war, and that is covered by the resolution Senator Javits has been working out with Senator Eagleton.

Senator JAVITS said: "Right."

Then there is some doubt as to the extent of the President's authority. But that is not the point of this discussion. The point of the discussion remains, as far as I am concerned, that there are very serious practical questions raised by the proposal. The most important practical question in my mind is that I am afraid that under the proposal as it stands, the Armed Forces of the United States, which have been effectively used as an instrument for maintaining peace around the world, would not be able to be used in this capacity any longer because of the 30-day restriction being placed on the President. It seems to me that if a foreign power looked at the United States and the U.S. Navy, whereas today it views the U.S. Navy as possibly being used against it if it should take aggressive action, in the future, should this measure become law, it might look at the U.S. Navy and say to itself, "Congress has imposed a 30-day restriction on the President. Therefore, we do not have to take that Navy into consideration any more, because the muscle is no longer behind it."

That is what concerns me. I would hope the Armed Forces of the United States could be used to deter war around the world. I would hope that we could live in a world of peace. I would hope the United States would be the leader of all countries in promoting peaceful coexistence throughout the world. But I am afraid we would be tying our hands in this matter if we passed the proposal which is before us now. For that reason, I think the matter deserves further study.

I believe the Senator from Virginia pointed out that there is a very voluminous publication containing the testimony taken before the committee. I would suggest that in that testimony there was a lot more evidence from proponents of the legislation than from people who oppose it or who raise questions about it. For that reason, I think the public interest would be better served if we were able to have the kind of commission I have proposed, with the commission required to come back in a year, letting everybody who wanted to be heard on the matter have an opportunity to do so.

Mr. President, I suggest the absence of a quorum, and ask unanimous consent that the time be taken from the time of the Senator from Missouri, because I do not have enough time.

Mr. EAGLETON. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. EAGLETON. Mr. President, how much time remains to the advocates of the amendment?

The PRESIDING OFFICER. The proponents now have 5 minutes. The opponents have 15 minutes.

Mr. EAGLETON. Mr. President, I yield myself 3 minutes to speak in opposition to the amendment offered by the distinguished Senator from Maryland.

Like the Senator from Maryland, I have been here only a relatively short period of time, just a shade longer than he has been. I have been here a little over 3 years, but even in that rather short period of time I have noted what seems to be the most popular governmental trend—to wit, to appoint a study commission, whether it be in the realm of education, nutrition, housing, crime, dirty books, marihuana, and now the warmaking powers.

There seems to be a tendency to want to push the problem aside, to pretend, like Don Quixote, that it will go away if we appoint a study commission.

I would like to see a study made of study commissions. I would bet, in sheer weight of numbers, that there are several hundred commissions, committees, and groups appointed by Presidents, both past and present, that are studying things now.

That is the easy way out. It is the simple way out. It is the simple way not to face up to the stark reality of a problem. It is a design to postpone.

Once again, I think the amendment of the Senator from Maryland is just another in the ever-continuing litany of proposed study commissions, too many of which have already been authorized.

What are the results of study commissions, Mr. President, whether the famous Kerner Commission report, or the one filed just last week by former Governor Shafer of Pennsylvania relating to marihuana? Each and every one of those reports becomes a collector's item on a sociologist's bookshelf, and there it sits, after the considerable time, effort, and expense it took to get the information that went into the report, gathering dust. There it sits, regardless of the admirable effort to focus attention on the subject of the report.

The hearings on this measure began on March 8, 1971, over a year ago, and continued throughout calendar year 1971. It is an immense record, Mr. President, consisting of close to 900 pages of testimony from legal scholars, former State Department personnel, current State Department personnel, Senators, and Representatives. It has an enormous appendix containing much of the current literature, including law review articles and the like, relating to this subject.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. EAGLETON. I yield myself 2 additional minutes.

We are not flying blind on this matter. This is not some hasty conclusion, dictated hurriedly, transcribed by a stenographer and thrust upon the Senate in the darkness of night, in secrecy. This issue has been before the Senate, directly and indirectly, for years, because implicit in this bill are the failures of our decision-making process in the instance of Vietnam and the hope for prevention of future Vietnams.

There is nothing new, novel, or hidden about this proposal. It has been studied in great detail and great depth, not only by its sponsors, Senator JAVITS, Senator SPONG, and myself, but before the full Committee on Foreign Relations, which is not considered to be a group of neophyte amateurs, but some of the finest minds in the Senate. Some of the most astute legal and diplomatic scholars in the Senate serve on that committee with distinction.

We do not have to designate yet another group to study this situation to its ultimate demise. Time for study has been given, and the results are contained in

the record of these hearings and the debate we have heard on this floor.

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

Mr. EAGLETON. I yield.

Mr. JAVITS. First I would like to commend the Senator for his tremendous cooperation in the evolution of this bill. His mark is very much on this bill.

Mr. EAGLETON. I thank the Senator from New York.

The PRESIDING OFFICER. The additional 2 minutes have expired.

Mr. EAGLETON. I yield such time as the Senator from New York may require from the time set aside for the opponents of the pending amendment to the Senator from New York.

Mr. JAVITS. Mr. President, the Senator from Maryland (Mr. BEALL) has properly indicated that his amendment is an alternative. The question, is his alternative necessary, was really decided by the Senate yesterday. The issue was put to the Senate on that vote: Does this proposal need more study?

The Senate decided the question in the negative. In my judgment, the Senate expressed itself as feeling that it had a very adequate record upon which to act. And, Mr. President, I think that really is decisive upon this question.

I appreciate the good faith of the Senator from Maryland, and his desire to give the Senate another way in which to look into the matter further, if it chose to; but I believe that the Senate has really made its decision that the record is entirely adequate, and I deeply believe that it is.

Mr. President, this is the time to act. I must recall a speech made by the Senator from Connecticut (Mr. WEICKER), in which he said:

> There is a time when the Senate will devote itself to this question.

The calendar is readily available for debate at this time. The debate has itself been a liberal education. I hope this debate will be separately printed. I shall do my best to see if we can work that out. I think it is really a magnificent development of the American constitutional system.

So, with the greatest respect for the good faith and the deep interest of the Senator from Maryland, really feel that this is the time—and the place—to deal with the war power question. It is for that reason, rather than as any challenge to the idea of going into any gravely important matter as deeply as we humanly can, that I hope that the Senate will reject this alternative amendment.

Mr. DOMINICK. Mr. President, will the Senator from Maryland yield briefly to me?

Mr. BEALL. Mr. President, before I yield, to respond briefly to the Senator from Missouri, I do not want him to think I am reflecting in any way on the fine work done by the committee in this matter. I think the committee has gone into the matter and has listened to some people, and I think this debate has been a splendid debate, in the best interests of the people of this country.

My point is that I do not want to see the debate ended here, and the matter dropped. I do not think this matter will be enacted into law this year, and I think a study group which would have to report back by law next year could take this very debate and build a further record upon which Congress, next year, could enact some legislation which I think would not face the practical difficulties that this legislation now poses for me.

I yield to the Senator from Colorado.

Mr. DOMINICK. Mr. President, I thank the Senator from Maryland. He has just quoted some of the thoughts with which I rise in support of his amendment.

I think, Mr. President, it is worthwhile to point out that although the Committee on Foreign Relations did have a number of hearings, and heard quite a number of people testifying both for and against this particular bill, when it came to the floor and the Senator from Arizona (Mr. GOLDWATER) and I and a few others pointed out some of the practical problems the bill would create. After those conversations the distinguished proponent of the bill, the Senator from New York (Mr. JAVITS), put in three amendments of his own to clarify the particular points I had raised to begin with. This would indicate, as it usually does in the process of a debate, that no bill is perfect when it comes from the committee.

In addition to those points, I have offered six amendments which I think would further clarify the meaning of this measure and the particular circumstances which we may face during the next 4 or 5 years. And over and beyond those amendments, whether they be accepted, rejected, or whatever the action may be, we have had expressions of contrary views by a great number of extremely prominent persons, despite what the Washington Post said. These people have been active in the constitutional field and the foreign relations field, not the least of whom, as I have mentioned before, is Gene Rostow, the dean of the Yale Law School, who worked for the State Department during the Johnson administration. He has written a 75-page article pointing out the problems this measure would create in terms of foreign policy, and also commenting rather liberally that he does not think it is constitutional. In fact, he refers to it as a disaster, and far worse, in his opinion, than the Bricker amendment would have been in 1954.

Under the circumstances, I intend to put in the RECORD later the names of a number of distinguished lawyers and authorities who are prominent experts in this field, who all contend the bill is loaded with problems. It would, therefore, seem to me much more sensible to take the Beall approach, to say that we are going to have a commission which can take evidence from all these people and then determine next year what we should or should not do.

No other Member of the Senate would like more than I would to get more information from the State Department, from the Defense Department, and from the White House on what the international scenes may be in various sections of the world which could create problems for our country. I have been talking about that particular need for some 6 years, trying to figure out a format of my own that I thought would be of help to the Senate and to the country as a whole, in order to have a judgment input from them to us and from us back to the executive department.

But what I did not want to do—and what this bill does, unfortunately—is to confuse the judgment input and output with the decisionmaking. Someone has to make the decision; and the question is, Is the decision going to be made downtown, as the final place where the buck no longer passes, or is it going to be made by 535 Members of Congress?

If it is to be made by the 535 Members of Congress, we are going to have an interminable debate. Nobody agrees in this group—and I hope they never will—on all issues, certainly not on foreign policy. I can see an interminable debate in almost every circumstance if we keep the decisionmaking here, as this bill would do.

This is why I think a commission should study the constitutional problems, the practical problems, and the need for finding some method by which we can get input and judgment both ways between Congress and the executive department. This format for a commission could give us some guidance on that type of recommendation. It does not necessarily mean that we are going to accept whatever the Commission is going to recommend, but we will have a big input in terms of prominent people engaging in what I think will be a nationwide debate before that Commission, in terms of giving evidence and trying to give their own decisions to two members of the Commission who will make recommendations for Congress to act on next year.

I cannot see why it is necessary to take this bill and ram it through in this session of Congress, when we know that almost undoubtedly—I am not speaking with any inside information—it is going to be vetoed, anyhow, if it is passed, so we are not going to get it this year. Why not go at it peacefully and quietly and with more time, with the process of this commission that the distinguished Senator from Maryland has suggested, and get something with which we can live and work next year?

The PRESIDING OFFICER. The time of the Senator from Maryland has expired.

Mr. EAGLETON. I yield such time to the Senator from Colorado as he may desire, from our time, not to exceed 6 minutes.

Mr. DOMINICK. I thank the Senator from Missouri.

I think I have covered most of the points I want to make, except for one or two.

I looked at this editorial from the Washington Post yesterday. I read it three times, because all I could see in the first two readings was that they were, in effect, saying, "Why talk about this? Just go ahead and pass it. It does not make any difference, anyhow. Let us pass it and get it out of the way." That is all right, but it is not a very strong editorial position. They say:

Suffice it here to note that it has been unable to win audible support for its claims

This is the alleged unconstitutionality—

from any senator recognized for expertise in either the constitutional or foreign-policy field.

I find that quite entertaining. I have always thought that Senator ERVIN was rather widely acknowledged around here in connection with constitutional issues of our Government, and he certainly supported the vote for referral to the Committee on the Judiciary the other day.

Over and beyond that, one Senator after another yesterday quoted law professors who are recognized authorities on the Constitution who have said that the constitutionality of this bill is in grave doubt.

It would seem to me that, with that kind of background, if the Post wants to come out in favor of this bill and be different from its position in the 1950's, I am sure, in connection with the Bricker amendment, it should just come out in favor of it and say, "This is a good idea. You ought to clip the wings of the President." I do not remember anybody saying it until after President Johnson had made the big escalation in Vietnam, which this bill would not have touched. If they are against the bill, I wish they would come out and say that.

It does seem a little exasperating to have this kind of approach, acting like a group that really does not know what it is doing, but trying to be courteous to someone, and I do not know who that is.

The other thing that I think needs to be said is that in the format of this Commission is a great representation. Twelve are appointed by the President, and no more than four of those 12 can come from the executive branch. Six are appointed by tne President of the Senate—four from the Senate and two from private life. That will let both sides of this issue get in before the Senate. Six are appointed by the Speaker of the House—four from the House and two from private life. So there will be a big input: Eight from the President, two from the President of the Senate, and two from the Speaker of the House—all from private life. Twelve of the 24 members, or 50 percent of this Commission, would be made up of private personnel who have had a chance to study these issues, who have expertise in it, and who will be able to give their input very decidedly to the Commission format.

Then, the Commission, as I understand it, would give recommendations not only to the President but to us as well, not later than 1 year after the date of the enactment of the act, so that we are not holding it up.

It seems to me that all these points make great sense, and I congratulate the Senator from Maryland for having done what I think is a great service. I hope his amendment will be adopted.

Mr. JAVITS. Mr. President, will the Senator yield me 1 minute?

Mr. EAGLETON. I yield 1 minute to the Senator from New York, and then I will yield 1 minute to the Senator from Maryland.

Mr. JAVITS. Mr. President, one thing the Senator from Colorado said immediately has an impact on me. He outlined how the commission is to be appointed. Obviously, this is heavily weighted as the President's commission. We all know how the President feels about this. But this is uniquely a matter for initiative by Congress, and that is exactly the line we have taken. No matter what is said, the RECORD is very complete and the experts are numerous. I have debated with Mr. Rostow on national television, and the vote was approximately 4 to 1 against him on the poll which was taken on this matter.

The PRESIDING OFFICER. The Senator's time has expired.

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

Mr. EAGLETON. I yield my remaining time to the Senator from Maryland.

Mr. BEALL. I point out to the Senator from New York that the Commission would be equally divided, 12 and 12, between the President and Congress. I do not know how we can be more fair about this.

I am very anxious that Congress reassert itself and make certain that at all times it is treated as a coequal branch of Government. I do not know how else it could be done, other than to divide the membership equally.

Mr. President, I ask for the yeas and nays on the amendment.

The yeas and nays were ordered.

Mr. BENNETT. Mr. President, S. 2956, the war-powers bill, deals with the historic and sensitive balance between the executive and legislative branches on the subject of national defense. Tampering with this balance not only risks distortion of our Founding Fathers design, but even more important it risks disaster in face of a military emergency.

Shakespeare once had Ulysses in "Troilus and Cressida" denounce those who would tamper with a great instrument.

Take but degree away, untune that string
And hark what discord follows!

Mr. President, I am concerned that this bill could play havoc with our Constitution—that it could bring harm to our country. I, therefore, want to join my good friend, the junior Senator from Maryland, in his support of a National Commission on the Proper Roles of the Congress and the President in the use of the Armed Forces abroad and in undeclared wars.

This Commission of leading lawyers, scholars, statesmen—of men who are constitutional authorities—could spell out what these proposed changes would mean to our Constitution.

For example, the Commission could clarify what is meant by the phrase "initiation of hostilities." The Commission would say whether such language could preclude the President from sending military advisers to foreign countries where there is not actual fighting by our Armed Forces.

The Commission could also clarify what is meant by allowing the President to respond to "the imminent threat of attacks" yet advising him to seek congressional approval. The Commission could say whether such language affords the President the right to vote according to his own perception of what is imminent danger.

Finally the Commission could also clarify what is meant by allowing the President to rescue endangered citizens under proper circumstances. The Commission could say just how dangerously restrictive the words are.

Mr. President, I think all the Members of this body desire a classification of the roles of the executive and legislative branches in the face of confrontation. And I think all the Members of this body would not want any constitutional change that jeopardized our national capacity for survival.

Therefore, let us have the benefit of the detached judgment of constitutional authorities on what are the implications of such changes. If we do not, we may run the risk of what Alexis de Tocqueville once said of his French compatriots on the enactment of revolutionary legislation.

Halfway down the stairs, we threw ourselves out of the window to reach the ground the more quickly.

The PRESIDING OFFICER. All time on the amendment has now expired, under the previous order.

The question is on agreeing to the amendment of the Senator from Maryland. 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. ROBERT C. BYRD. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Alaska (Mr. GRAVEL), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Washington (Mr. JACKSON), the Senator from North Carolina (Mr. JORDAN), the Senator from Montana (Mr. MANSFIELD), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from South Dakota (Mr. MCGOVERN), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Minnesota (Mr. MONDALE), the Senator from Maine (Mr. MUSKIE), the Senator from Rhode Island (Mr. PASTORE), the Senator from Alabama (Mr. SPARKMAN), the Senator from Louisiana (Mr. ELLENDER), and the Senator from Hawaii (Mr. INOUYE) are necessarily absent.

I also announce that the Senator from Connecticut (Mr. RIBICOFF) is absent because of a death in the family.

I further announce that, if present and voting, the Senator from Alaska (Mr. GRAVEL), the Senator from Washington (Mr. JACKSON), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Rhode Island (Mr. PASTORE), the Senator from Connecticut (Mr. RIBICOFF), the Senator from Louisiana (Mr. ELLENDER), the Senator from Hawaii (Mr. INOUYE), and the Senator from North Carolina (Mr. JORDAN) would each vote "nay."

Mr. GRIFFIN. I announce that the Senator from Arizona (Mr. GOLDWATER) is necessarily absent.

The Senator from South Carolina (Mr. THURMOND) is absent to attend the funeral of the Honorable James F. Byrnes

and, if present and voting, would vote "yea."

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Wyoming (Mr. HANSEN) is detained on official business.

The result was announced—yeas 23, nays 56, as follows:

[No. 141 Leg.]

YEAS—23

Allen	Cotton	Gurney
Allott	Curtis	Hruska
Baker	Dole	Mathias
Beall	Dominick	McGee
Bellmon	Ervin	Smith
Bennett	Fannin	Tower
Brock	Fong	Young
Buckley	Griffin	

NAYS—56

Aiken	Fulbright	Pell
Anderson	Gambrell	Percy
Bentsen	Harris	Proxmire
Bible	Hart	Randolph
Boggs	Hartke	Roth
Brooke	Hatfield	Saxbe
Burdick	Hughes	Schweiker
Byrd, Harry F., Jr.	Javits	Scott
	Jordan, Idaho	Spong
Byrd, Robert C.	Kennedy	Stafford
Cannon	Long	Stennis
Case	Magnuson	Stevens
Chiles	Metcalf	Stevenson
Church	Miller	Symington
Cook	Montoya	Taft
Cooper	Moss	Talmadge
Cranston	Nelson	Tunney
Eagleton	Packwood	Weicker
Eastland	Pearson	Williams

NOT VOTING—21

Bayh	Inouye	Mondale
Ellender	Jackson	Mundt
Goldwater	Jordan, N.C.	Muskie
Gravel	Mansfield	Pastore
Hansen	McClellan	Ribicoff
Hollings	McGovern	Sparkman
Humphrey	McIntyre	Thurmond

So Mr. BEALL's amendment (No. 1099) was rejected.

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. COOK. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

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

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

The PRESIDING OFFICER. Without objection, it is so ordered. The Senate will receive a message from the House of Representatives.

ENROLLED JOINT RESOLUTIONS ENROLLED BILL SIGNED

A message from the House of Representatives by Mr. Berry, one of its reading clerks, announced that the Speaker had affixed his signature to the enrolled bill (S. 3054) an act to amend the Manpower Development and Training Act of 1962.

The enrolled bill was subsequently signed by the President pro tempore.

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

The PRESIDING OFFICER. Without objection, it is so ordered. The Senate will receive messages from the President of the United States.

MESSAGES FROM THE PRESIDENT—APPROVAL OF BILL

Messages in writing from the President of the United States were communicated to the Senate by Mr. Leonard, one of his secretaries, and he announced that on April 11, 1972 the President had approved and signed the act (S. 2601) to provide for increases in appropriation ceilings and boundary changes in certain units of the national park system, and for other purposes.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer (Mr. STEVENSON) laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(The nominations received today are printed at the end of Senate proceedings.)

QUORUM CALL

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

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

RECESS UNTIL 2 P.M.

Mr. ROBERT C. BYRD. Mr. President, I move that the Senate stand in recess until 2 p.m. today.

The motion was agreed to, and at 12:55 p.m. the Senate took a recess until 2 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. STEVENS).

CALL OF THE ROLL

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum, and the call will go the route.

The PRESIDING OFFICER (Mr. STEVENS). The clerk will call the roll.

The second assistant legislative clerk called the roll and the following Senators answered to their names:

[No. 142 Leg.]

Bennett	Griffin	Roth
Bentsen	Inouye	Scott
Buckley	Montoya	Spong
Byrd, Robert C.	Pell	Stevens
Fannin	Proxmire	Weicker

The PRESIDING OFFICER (Mr. STEVENS). A quorum is not present.

Mr. ROBERT C. BYRD. Mr. President, I move that the Sergeant at Arms be directed to request the attendance of absent Senators.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from West Virginia.

The motion was agreed to.

The PRESIDING OFFICER. The Sergeant at Arms will execute the order of the Senate.

After some delay, the following Senators entered the Chamber and answered to their names:

Aiken	Curtis	McGee
Allen	Dole	Metcalf
Allott	Dominick	Miller
Anderson	Eagleton	Moss
Baker	Eastland	Nelson
Beall	Ellender	Packwood
Bellmon	Fong	Pearson
Bible	Fulbright	Percy
Boggs	Gambrell	Randolph
Brock	Gurney	Saxbe
Brooke	Hansen	Schweiker
Burdick	Harris	Smith
Byrd, Harry F., Jr.	Hart	Stafford
	Hartke	Stennis
Cannon	Hatfield	Stevenson
Case	Hruska	Symington
Chiles	Javits	Taft
Church	Jordan, Idaho	Talmadge
Cook	Kennedy	Tower
Cooper	Long	Tunney
Cotton	Magnuson	Williams
Cranston	Mathias	Young

The PRESIDING OFFICER (Mr. PEARSON). A quorum is present.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Berry, one of its reading clerks, announced that the House had passed the following bills, in which it requested the concurrence of the Senate:

H.R. 9552. An act to amend the cruise legislation of the Merchant Marine Act, 1936;

H.R. 13188. An act to authorize appropriations for the procurement of vessels and aircraft and construction of shore and offshore establishments, and to authorize the average annual active duty personnel strength for the Coast Guard; and

H.R. 13324. An act to authorize appropriations for the fiscal year 1973 for certain maritime programs of the Department of Commerce.

ENROLLED JOINT RESOLUTIONS SIGNED

The message also announced that the Speaker had affixed his signature to the following enrolled joint resolutions:

H.J. Res. 563. Joint resolution to authorize the President to proclaim the last Friday of April 1972, as "National Arbor Day";

H.J. Res. 687. Joint resolution to authorize the President to designate the third Sunday in June of each year as Father's Day; and

H.J. Res. 1095. Joint resolution authorizing and requesting the President to proclaim April 1972 as "National Check Your Vehicle Emissions Month".

HOUSE BILLS REFERRED

The following bills were severally read twice by their titles and referred to the Committee on Commerce:

H.R. 9552. An act to amend the cruise legislation of the Merchant Marine Act, 1936;

H.R. 13188. An act to authorize appropriations for the procurement of vessels and aircraft and construction of shore and offshore establishments, and to authorize the average annual active duty personnel strength for the Coast Guard; and

H.R. 13324. An act to authorize appropriations for the fiscal year 1973 for certain maritime programs of the Department of Commerce.

RECESS FOR 10 MINUTES

Mr. ROBERT C. BYRD. Mr. President, I move that the Senate stand in recess for 10 minutes.

The motion was agreed to; and at 2:32 p.m. the Senate took a recess until 2:42 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. PEARSON).

UNANIMOUS-CONSENT AGREEMENT

Mr. ROBERT C. BYRD. Mr. President, having conferred at considerable length with various Senators, including the distinguished manager of the bill (Mr. SPONG), the distinguished assistant Republican leader (Mr. GRIFFIN), the distinguished Senator from New York (Mr. JAVITS), the distinguished Senator from Colorado (Mr. DOMINICK), the distinguished Senator from Arkansas (Mr. FULBRIGHT), the other distinguished Senator from Colorado (Mr. ALLOTT), the distinguished Senator from Wyoming (Mr. MCGEE), and the distinguished Senator from Virginia (Mr. HARRY F. BYRD, JR.), I propose the following unanimous-consent request:

I ask unanimous consent that time on any amendment to the pending bill, motion, or appeal, with the exception of nondebatable motions, be limited to 10 minutes to be equally divided between the mover of such and the manager of the bill;

Provided further, that there be exceptions as follows:

That time on an amendment by the Senator from Arkansas (Mr. FULBRIGHT) be limited to 2 hours;

That time on an amendment by the Senator from Wyoming (Mr. MCGEE) be limited to 1 hour;

That time on four of the five amendments by the Senator from Colorado (Mr. DOMINICK) be limited to 1 hour each, and that time on the fifth amendment to be offered by Mr. DOMINICK be limited to 2 hours.

Mr. DOMINICK. Mr. President, will the Senator yield at that point?

Mr. ROBERT C. BYRD. I yield.

Mr. DOMINICK. Two hours on amendment No. 1114.

Mr. ROBERT C. BYRD. Provided further, that time on an amendment by the Senator from New York (Mr. BUCKLEY) be limited to 2 hours;

Provided further, that the time in each case be equally divided between the mover of the amendment, motion or appeal and the manager of the bill;

Provided further, that no non-germane amendments shall be in order;

Provided further, that a vote on the final disposition of the bill occur tomorrow at 2 o'clock p.m.

The PRESIDING OFFICER. Does the Senator request a waiver of rule XII?

Mr. ROBERT C. BYRD. And I ask unanimous consent that the mandatory quorum call under rule XII be waived.

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia?

Mr. PERCY. Mr. President, reserving the right to object, I should like to ask this question of the distinguished acting majority leader: I have kept both the majority and minority leaders advised of an unusual request. I have been requested to give a speech tomorrow as a replacement for Hon. Lester Pearson of Canada at a banquet honoring the Hon. Paul Hoffman. I have accepted that invitation on an emergency basis. I am informed that the last plane I can get tomorrow is at 2 p.m. at National Airport. Is it possible to set the final vote at 1:30, and come in a half-hour earlier, or stay even later tonight. I commend the acting majority leader on being able to arrive at an agreement for a vote, and I want to cooperate in every way I can, but I feel this is an appointment that I cannot get out of.

Mr. ROBERT C. BYRD. Mr. President, the Senator's request is a reasonable one, and I modify my request to provide that the vote on the disposition of the bill occur at 1:30 p.m. tomorrow, with the further proviso, in accordance with a request I shall shortly make that when the Senate completes its business today, it stand in adjournment until 11 o'clock tomorrow morning, rather than 12 o'clock noon as earlier ordered.

The PRESIDING OFFICER. Is there objection?

Mr. DOMINICK. Mr. President, reserving the right to object—and I shall not object—I wonder, though this is not usually done, whether we could have an agreement for unanimous consent that if we have to have a quorum call in order to get enough Senators on the floor so that we can get the yeas and nays, time for that purpose shall not be taken out of the time of the Senator proposing or defending an amendment.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent, in connection with this order, that it be in order to order the yeas and nays on any amendment and on final disposition of the bill at any time. I think this will accomplish what the Senator desires.

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia?

Mr. JAVITS. Mr. President, is it understood that amendments to amendments shall be in order, notwithstanding the limited time?

Mr. ROBERT C. BYRD. It is so understood.

Mr. HARRY F. BYRD, JR. Mr. President, reserving the right to object, as I add up the number of hours involved, it seems to me that they add up to 10 or 12 hours on only the amendments which the Senator from West Virginia has enumerated. I just wonder whether all of that business can be accomplished by 1:30 tomorrow, or even by 2 o'clock tomorrow.

Mr. ROBERT C. BYRD. Mr. President, the able Senator has calculated precisely on a mathematical basis. But in our discussions, it was indicated by various Senators that they felt that sufficient time could be yielded back on each amendment to accommodate the final vote at no later than 1:30 p.m. tomorrow.

Mr. HARRY F. BYRD, JR. I thank the Senator.

Mr. ROBERT C. BYRD. May I add this: Considering the present state of the calendar, I think I can say with the approval of the distinguished majority leader that if this bill is disposed of by 1:30 o'clock tomorrow afternoon, there will be no session on Friday, or at least there will be no business transacted on Friday if any Senators wish to come in and make speeches.

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia? The Chair hears none, and it is so ordered.

Mr. ROBERT C. BYRD. I thank all the Senators.

The unanimous-consent agreement reads as follows:

Ordered, That during the further consideration of S. 2956, a bill to make rules governing the use of the Armed Forces of the United States in the absence of a declaration of war by the Congress, debate on any amendment, motion or appeal, except non-debatable motions shall be limited to 10 minutes (except as specified below:

An amendment to be offered by the Senator from New York (Mr. Buckley)—2 hours

An amendment to be offered by the Senator from Arkansas (Mr. Fulbright)—2 hours

Amendment #1114 by the Senator from Colorado (Mr. Dominick)—2 hours

An amendment to be offered by the Senator from Wyoming (Mr. McGee)—1 hour

Four amendments to be offered by the Senator from Colorado (Mr. Dominick)—1 hour each). In each case the time on the amendment shall be equally divided and controlled by the mover thereof and the manager of the bill.

Ordered further, That amendments not germane shall not be received and that it shall be in order to order the yeas and nays on any amendment at any time.

Ordered further, That the vote on final passage of the bill shall come at 1:30 p.m. on Thursday, April 13, 1972.

ORDER FOR ADJOURNMENT UNTIL 11 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 11 a.m. tomorrow.

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

WAR POWERS ACT

The Senate continued with the consideration of the bill (S. 2956) to make rules governing the use of the Armed Forces of the United States in the absence of a declaration of war by the Congress.

AMENDMENT NO. 1114

Mr. DOMINICK. Mr. President, I call up my amendment No. 1114, and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

That the Congress reaffirms its powers under the Constitution to declare war. The Congress recognizes that the President has the authority and the duty to defend the United States and its citizens, and in certain extraordinary and emergency circumstances has the authority to commit the United States military forces in hostilities, or to situations where imminent involvement in hostilities is clearly indicated by the circumstances, without specific prior authorization by the Congress.

SEC. 2. It is the sense of Congress that the President should seek appropriate consultation with the Congress before involving the Armed Forces of the United States in armed conflict, and should continue such consultation periodically during such armed conflict.

SEC. 3. In any case in which the President without specific prior authorization by the Congress—

(1) commits United States military forces to hostilities, or to situations where imminent involvement in hostilities is clearly indicated by the circumstances;

(2) commits military forces equipped for combat to the territory, airspace, or waters of a foreign nation, except for deployments which relate solely to supply, repair, or training of United States forces, or for humanitarian or other peaceful purposes; or

(3) substantially enlarges military forces already located in a foreign nation;

the President shall submit promptly to the Speaker of the House of Representatives and to the President of the Senate a report, in writing, setting forth—

(A) the circumstances leading to such action;

(B) the authority under which he took such action, together with his reasons for not seeking specific prior congressional authorization;

(C) the estimated scope of activities; and

(4) such other information as the President may deem useful to the Congress in the fulfillment of its constitutional responsibilities with respect to committing the Nation to war and to the use of United States Armed Forces abroad.

SEC. 4. Nothing in this Act is intended to alter the constitutional authority of the Congress or of the President, or the provisions of existing treaties.

Mr. DOMINICK. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield briefly?

Mr. DOMINICK. I yield myself 15 minutes, and yield 1 minute to the Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, does the Senator wish to ask for the yeas and nays on his remaining amendments at this time?

Mr. DOMINICK. No.

Mr. ROBERT C. BYRD. Very Well.

Mr. DOMINICK. Mr. President, the amendment I am calling up has been reported by number by the clerk, but I think it would be worth while, in connection with the explanation I am going to make, for me to read it.

It is an amendment in the nature of a substitute which strikes the language of the present act we have before us.

We would also amend the title of the bill.

Mr. President, this is close to, but not identical with, House Joint Resolution 1, which was introduced by Representative ZABLOCKI, for himself and a number of other Members of the House, which was originally passed by that body in 1970.

Mr. JAVITS. Mr. President, will the Senator yield for two questions?

Mr. DOMINICK. I yield.

Mr. JAVITS. First, is it correct that this resolution was passed by the House on a voice vote, without debate?

Mr. DOMINICK. So far as I know, that is correct.

Mr. JAVITS. Second, could the Senator, as a service to us all, point out how his amendment differs from the Zablocki resolution?

Mr. DOMINICK. I will be happy to do so. That is the next thing I intended to do.

In the Zablocki resolution, in the first resolution paragraph, before coming to section 2, I have deleted the words "in certain extraordinary and emergency circumstances," in line 5, and inserted the words "and duty" in line 6, after the word "authority."

After the word "citizens," I have inserted "and in certain extraordinary and emergency circumstances has the authority to commit the U.S. military forces in hostilities, or to situations where imminent involvement in hostilities is clearly indicated by the circumstances, without specific prior authorization by the Congress."

In section 3 of the Zablocki resolution, under section 1, I have deleted the words "armed conflict," which I did not think referred to any specific words of art, and inserted "into hostilities or the imminent threat of hostilities."

In section 3(A), line 17, page 2, of House Joint Resolution 1, I deleted the words "necessitating his" and inserted the words "leading to such action."

In subsection (B), I deleted the words "the constitutional, legislative and treaty provisions under" and simply left in as being better grammatically, "the authority under which he took such action," so that we are not saying that he has to specify whether it was a constitutional, legislative, or treaty provision. What we are trying to do is to get information.

Those are the changes that were made. In part, they are substantive; in part, they are grammatical.

I suppose the next question is, Why do I propose this? I think that is an issue that we ought to deal with immediately.

I have been maintaining from the very beginning that a distinction should be made between the right of Congress to give input into the executive department in cases of deployment of troops, or the question of injecting them where there might be hostilities, and the need for Congress, in turn, to receive information from the executive department in greater detail than we have been receiving up to date, and to distinguish between those items which we call informational or judgment input in the decisionmaking process.

The bill which the Senator from New York has been defending very valiantly and capable, and which he is proposing for our action, gives Congress the decisionmaking power.

I do not think that can be done consistent with the interests of the United States, and I say that in all deference to Congress, because I do not think that is the role that Congress is supposed to play, within our constitutional separation of powers, and with regard to international affairs and the deployment of troops.

We are asked in most cases, if the Constitution is interpreted the way it seems to me it should be interpreted, to advise. We are asked to advise and consent. We are not asked to take the role of a tactical military commander in chief. As a matter of fact, that role is given to the President specifically in the bill.

Consequently, what I have been trying to do in this amendment is to get the judgment input back and forth wherever a decisionmaking process has been put into effect by the President, so that we will have the information coming to us—hopefully, before as well as after—and to enable us to get our input to him, but not to make the decisions. Therefore, I have inserted a sense of Congress in the effective portion of this amendment, under subsection (2), with regard to the appropriate consultation before involving the Armed Forces, and then showing that there are certain instances in which we know he will have to move or might have to move without having to consult Congress first. Then we ask the President to let us know, under those circumstances, what he is doing and how long the action will go on, so that we may have, among other things, some estimate of what the cost might be in terms of lives, first, and in terms of money, second, which we have to authorize and appropriate for the defense requirements of this country.

Frankly, I think that this is a better way to approach the problem. I think so because I have grave doubts as to the constitutionality of the bill we are now considering. Yet, I do not think there is a problem of any kind with the constitutionality of the substitute I have proposed.

Now, I made a brief reference this morning, in support of the amendment of the Senator from Maryland (Mr. BEALL) on the study commission, to the editorial in the Washington Post of yesterday, which I categorize as being pretty sad, on the ground that it does not really say anything other than the fact that they wish we would all shut up.

The article reads in part:

The administration has made any number of claims about the alleged unconstitutionality and unwisdom of the war powers bill. Suffice it here to note that it has been unable to win audible support for its claims from any senator recognized for expertise in either the constitutional or foreign-policy field.

It goes on:

Still, the caliber of argument is embarrassing:

Mr. President, I do not know who this embarrasses, the editor of the Washington Post or whether it is supposed to be another one of those intellectual knockdowns on what we are trying to do, and on those of us who oppose this.

But it is worthwhile to say that here is a list of distinguished people who are opposed to the bill and I think it should be noted in the RECORD and by my colleagues that the list includes:

Herbert Brownell, former Attorney General.
Cecil Olmstead, President, American Section, International Law Association.
David F. Maxwell, former ABA President.
Monroe Leigh, former Assistant General Counsel, Department of Defense.
Edward J. Lawler, former President, American Bar Foundation.
Prof. Gordon Baldwin, University of Wisconsin Law School, Madison, Wisconsin.
Prof. John N. Moore, University of Virginia Law School, Charlottesville, Virginia.

Incidentally, he was the only one who testified before the Foreign Relations Committee, so it seems apparent that the rest have not been able to get their words in, so far as I know.

Prof. Carl Christol, University of Southern California Law School, Los Angeles, California.
Herman Phleger, former legal adviser, Department of State.
Bernard G. Segal, former ABA President.
George Ball, former Undersecretary of State.
Prof. Arthur Schlesinger, State University of New York on Long Island.
Prof. Louis Sohn, Harvard Law School, Cambridge, Massachusetts.
Arthur H. Dean, former president, American Society for International Law.
Eberhard P. Deutsch, leading attorney in New Orleans, Louisiana.
Benjamin V. Cohen, distinguished attorney.
Professor Eugene Rostow, Yale Law School.
Professor Myers McDougal, Yale Law School, primary authority on international law.
Dean Rusk, former Secretary of State.
Dr. James McGregor Burns, Pulitzer Prize winner 1971, Woodrow Wilson Professor of Government, Williams College, Massachusetts.
Professor Abram Chayes, Harvard Law School.
Professor Henry Monaghan, Professor of Law, Boston University.

Mr. President, that is a list of some 22 distinguished lawyers and authorities, right off the bat, who are opposed to the bill, who have grave doubts about its constitutionality and even greater doubts about its wisdom in the event it should ever be determined to be constitutional—which I personally doubt.

So it seems to me, with all deference to the Washington Post, that these are eminent authorities who think on the same basis that we have been discussing; namely, that it is unwise and probably unconstitutional. Some people say it would be a total catastrophe.

Let me, for the purposes of the RECORD, in the process of defending my own amendment, quote from a 75-page article written by Eugene V. Rostow for a Law Journal article, which I believe will be published later this year, with respect to this particular bill. He says:

My thesis here is that the Javits Bill rests on a premise of constitutional law and constitutional history which is in error, and that its passage would be a constitutional disaster, depriving the government of the powers it needs most to safeguard the nation in a dangerous and unstable world. Even if a President were to ignore such a statute, assuming that it passed over his veto, on the ground that it is unconstitutional, the passage of the Bill would create uncertainties, and envenom politics, in ways which would themselves be dangerous, both at home and abroad. It would tend to convert every crisis of foreign policy into a crisis of will, of pride, and of precedence between Congress and the President, making the policy process even more athletic than it is today.

The Javits Bill is a more serious attack on the Constitution, and the security of the nation, than one or another of the Bricker Amendments which were nearly recommended by the Congress in the middle fifties. Those Amendments dealt only with the legal effect of treaties as internal law. They would have required affirmative action by Congress before treaties became operative as the supreme law of the land.

The Javits Bill is more ambitious. . . .

The PRESIDING OFFICER (Mr. PEARSON). The time of the Senator from Colorado has expired.

Mr. DOMINICK. Mr. President, I yield myself 10 additional minutes.

The PRESIDING OFFICER. The Senator from Colorado is recognized for 10 additional minutes.

Mr. DOMINICK. Mr. President, I think this gives some indication of the concern which very distinguished scholars and very distinguished and knowledgeable people in the international relations field have for the act as it now stands. This, however, does not derogate from the very distinguished efforts which have been made by the Senators from New York and Virginia in an effort to assert the right of Congress to have more say so on the question of whether our troops should be deployed which might lead to or imminently lead to hostilities.

I think we need more input. I have been saying so for some 6 years. I know that the distinguished Senator from New York has been saying so and has done a great deal of work on it, too.

My point is, what we need is either a study group—which has already been defeated by the Senate this morning—or something which will indicate the sense of Congress without binding us, until such time as we can get from this distinguished group of scholars their ideas about what kind of law we should put into effect.

I can say, without any fear of being overly critical, that there were not only extensive hearings in the Committee on Foreign Relations but rather extensive debate on the bill. As I pointed out on a prior occasion after the bill came to the floor and after I had pointed out a few of the interpretations that could be made under the bill, the Senator from New York made amendments to the bill itself to take care of at least some of the problems which I had indicated in my initial talk. We still do not have, for example, any indication as to whether, under the bill, we have to have an act of Congress before we can have patrols going through the DMZ in Korea.

Obviously, every time we do that kind of thing, what we are doing is putting our troops in the position of being exposed to an imminent threat of hostilities. Some of them have been killed. We have no peace in Korea—nothing but an armistice. Our troops happen to be there without any specific congressional authorization of any kind. All we have to back up our action there have been authorizations and appropriations over the course of the years. There are other things which I will get to at a later time. But in this substitute, what I have done is specifically to point out that we reaffirm our own power under the Constitution to declare war—exactly what Representative ZABLOCKI did.

We also recognize that the President has the authority and the duty to defend the United States and its citizens. I do not think that anyone would disagree with that. I added the word "duty" because I think it is implicit in the whole oath of office that the President takes and in his concern for the interests of the United States.

I have also pointed out, as does the bill, that there are certain situations where he can deploy troops into hostilities or into the imminent involvement in those hostilities without prior authorization from Congress. The bill itself recognizes that, and this is all in section 1.

Then it says Congress should receive consultation from the President before he takes any of these actions, if he possibly can. Where he does not, then it requires that he come up and let Congress know why and let Congress know the extent and the scope and such other information as might be useful in the fulfillment of its constitutional obligations.

For the life of me, I can see nothing wrong with the substitute. As a matter of fact, I think it is good, because among other things it will give us something that we can get through this year.

If my guess is right, we are not going to get anything as the bill is written now, because it will fare badly if it ever gets to conference, or it will be changed around in the House according to the information I have. And if it does get through, I repeat that I strongly suspect the President will veto it.

This type of approach would give us the time to do some further work on this matter. I feel that we have an excellent chance of reinforcing a better exchange of informational resources between the executive department and the Congress of the United States.

Mr. President, I reserve the remainder of my time.

Mr. SPONG. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER (Mr. STEVENS). The Senator from Virginia is recognized for 5 minutes.

Mr. SPONG. Mr. President, I would like to ask the Senator from Colorado a question or two on my time. If I understand it correctly, the Senator from Colorado has offered his amendment as a complete substitute for the bill reported by the Foreign Relations Committee.

Mr. DOMINICK. The Senator is correct.

Mr. SPONG. And the substitute that he is offering is, with a few minor changes, the Zablocki resolution which passed the House by a voice vote.

Mr. DOMINICK. The Senator is correct. I think the changes are largely minor, although I believe that some are substantive.

Mr. SPONG. Mr. President, I thank the Senator from Colorado.

Mr. President, I hope that the Senate will reject the amendment. On yesterday, by a substantial margin, the Senate rejected an effort to refer the bill to the

Judiciary Committee. This morning, by a very substantial margin, the Senate declined to have this subject matter referred to a Presidential commission for a study period of 1 year.

I think that the Senate itself would be derelict in its responsibility and in its regard for the work thus far done over the period of 2 years were it to, at this point and at this time in the debate, adopt a House resolution that is a substitute for its own work.

Regardless of what the Senate may do with the legislation or what the House may do with legislation of this type in the future, and regardless of how the conference may act, the Senate has its own responsibility to shape up to the legislation that it believes fulfills the prerogative of Congress under the Constitution.

I want to say that I think that as far as it goes, the Zablocki resolution is good legislation. I think it would be desirable as a substitute for the present situation that we have, if we can do no more. But I think that we have a responsibility to the American people and that Senators have a responsibility to the Senate as a body to endeavor to do more and to see that our prerogatives under the Constitution to participate in decisions involving the initiation of hostilities continue and that there be participation.

The Zablocki resolution, while requiring reporting, which I think is indeed desirable, fails to recognize the power of Congress to declare war, to participate in those decisions which involve U.S. servicemen in hostilities abroad and to conduct no process or no procedure which would enable Congress to carry out its constitutional prerogatives.

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

Mr. SPONG. I am pleased to yield to the Senator from Colorado.

Mr. DOMINICK. Mr. President, I just want to point out that in the very first sentence of the proposed amendment, which is also in the Zablocki resolution, it says that the Congress reaffirms its power under the Constitution to declare war.

Mr. SPONG. I would point out that this debate has established firmly that Congress has only declared war five times in its history. Thus, if we are to interpret "declare war" to mean more than a formal declaration of war, the resolution does not suffice. It does not provide Congress with any means of participating in the warmaking process up to the point where the President as Commander in Chief takes over. It does not provide for participation in the decisionmaking process, which results in the committing of troops to hostilities.

Mr. President, I reserve the remainder of my time. I yield to the Senator from New York such time as he may require.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. JAVITS. Mr. President, I think we are getting into some version of the numbers game. As has been mentioned on a few occasions by my distinguished friend, the Senator from Colorado, 22 distinguished Americans think this measure should not be passed.

I might point out to the Senator that on our vote this morning 23 Senators did not think this bill should be passed. The vote was 56 to 23. Fixty-six Senators thought it should be passed.

This is pretty much the situation which we face in any major historic debate. There is nothing new about this.

I debated Eugene Rostow on this question publicly. It is interesting, though again not a decisive point, to know that on the national television show called "The Advocate," a vote is taken after the debate. It is a mail vote. I had no involvement in it any more than Dean Rostow did.

The results of the vote following my war powers debate with Dean Rostow is interesting. Out of the total number polled, 1,987, or 68.2 percent, sided with me, and 913, or 31.3 percent, sided with Dean Rostow.

These are rank and file American citizens who obviously are very much concerned about their own security incorporated within the security of our country. Again, I say that this is not decisive in any way. There are opponents, but there are more proponents. We cannot expect unanimity.

With the President on the other side, I am surprised that the figures are what they are. I think that is important. The President says that he does not want this. Two-thirds of all the people who voted say they think that he needs it in terms of the security of this country.

Mr. President, the Zablocki resolution is really an effort to incorporate, as mildly as possible, what the President says he desires.

I agree with the Senator from Virginia. He does not do it, though he says he does.

Mr. President, that is all the Zablocki resolution does. We feel that that is not adequate in terms of Congress reasserting its constitutional war powers. The fundamental difference between those who are for this measure and those who are against this measure is that those against it cannot get over the proposition that somehow or other we are seeking to change the Constitution and that we are seeking to take some power away from the President which the Constitution gives him and which we are trying to deprive him of. Mr. President, this could not and is not being done. We can, and do, delineate the powers under the "necessary and proper" clause.

The Senator from Colorado (Mr. DOMINICK) said, and I know he has spent a great deal of time and work preparing himself very well for this debate, and I think I noted his words correctly, "This bill gives to Congress the decisionmaking power." He said, "We are asked to advise and consent."

Mr. President, under the specific provisions of article I, section 8 of the Constitution, we are not at all asked to advise and consent. We are enjoined to make judgments on the question of war which means the lives and property of the people of America and the survival of this country. We are not asked to advise and consent. This is not the appointment of an ambassador, a minister, or a Cabinet officer. We are enjoined to make judgments. That is why we are the representatives of the people. On the other hand, we do not have the decisionmaking power alone; the President must join us. He touches off the procedure under the bill by telling us he is committing or proposes to commit troops in hostilities or where there is danger of hostilities. Then, our power becomes operative under the bill.

The Zablocki resolution is inadequate to reclaim for Congress the powers under the Constitution in this area.

We have an infinitely more effective way to come abreast of the situation. It is very interesting to read the Zablocki measure, and the way in which the Dominick amendment has sought to revise that resolution. I wish to give one example to the Senate.

Section 3(D) is carried over from the Zablocki resolution. I wish to read the language in the amendment and comment on it because it is so telltale as to the difference between the amendment and our bill. It reads that the President is to give us a report where the President without specific prior authorization by Congress commits U.S. troops to hostilities or to situations where imminent danger of hostilities is indicated, and—

such other information as the President may deem useful to the Congress in the fulfillment of its constitutional responsibilities with respect to committing the Nation to war and to the use of United States armed forces abroad.

It is we who are taking this responsibility under our bill. We are not waiting for a handout from the President. This is not arrogance; it is what the American people—and the Constitution—expect of us. We have had such bitter experiences as we have with undeclared wars in the last 7 or 8 years. We have come up with what we believe to be a formula which appeals to a great number of Senators as a way to get at this highly subtle equation of how to get in a war. We have fixed the time, and we believe it is a reasonable time, in which we believe that an incident or response to an attack, to repel an attack, and so forth, becomes a war. When that happens a President should not be able to proceed without us. That is our responsibility under the Constitution. We know that no President, and I refer to any President, not just this President, apparently likes the present wide open arrangement very much. But hard experience dictates what we have to do; adopt S. 2956.

The Zablocki measure in the other body does not do what needs to be done. It not only falls short of what the situation requires but it does not carry out what should be the purpose of Congress in respect of a methodology by which it can get abreast of this problem.

So this will not do what it seems to me a great majority of the Senate wants to see done and which the great majority of the Senate believes the security of our Nation, the tranquillity of our Nation, and the security of its people so urgently requires.

As the Senator from Virginia said this matter should not now be laid aside in

order to adopt a weak and inadequate restatement of what the President claims he is doing now with respect to his relations with Congress in the matter of undeclared war.

For all those reasons I hope the Senate will reject this amendment.

The PRESIDING OFFICER. Who yields time?

Mr. SPONG. Mr. President, I yield myself such time as I may need, I only wish to comment on one matter the Senator from New York touched on in his remarks in response to the Senator from Colorado.

I think the record should show that of those the Senator from Colorado said should be heard on legislation of this type, some have testified. For instance, he referred to George Ball. Mr. Ball testified on this bill. He appeared before the committee and we had the opportunity to cross-examine him. Professor Chayes testified in the House on the war powers legislation. Mr. James McGregor Burns testified in the House on war powers legislation. During the course of the House hearings, Senator JAVITS had introduced his first bill. It was sent over there during their hearings. One of the interesting developments was that Professor Bickle, in testifying in the House, said his inclinations were against any effort to codify the war powers. In the year that ensued he studied the matter. Then, he came before the Senate committee and testified in favor of a proposal essentially akin to what Senator JAVITS had initially introduced. I think many of the people who have written or said they disagree with the bill or some feature of the bill have been heard from directly or indirectly.

The argument over who has or has not testified relates more to the debate over referring this matter to the Committee on the Judiciary or placing it in a study commission, than to the pending amendment. Thus, I simply restate what I said before: The Zablocki measure is an improvement on the present situation, but it does not go far enough to assure the participation of Congress in the war declaring and making process.

Mr. President, I yield the floor.

Mr. DOMINICK. Mr. President, how much time do I have left?

The PRESIDING OFFICER. The Senator from Colorado has 35 minutes.

Mr. DOMINICK. I yield myself 15 minutes.

First of all, I think it is important to note again for the purpose of the RECORD that House Joint Resolution 1, Mr. ZABLOCKI's resolution—which is substantially what I am putting in—was originally passed in the House by a rollcall vote of 288 to 39 in 1970, and it was again passed by the House, under a suspension of the rules, by a voice vote, on August 2, 1971. So when we originally said it was passed by a voice vote, that was technically correct, but I think it is more important to note that, on a previous vote, it was passed by a rollcall vote of 7 to 1, in round figures.

Why am I introducing this type of substitute for the existing bill? First of all, it has been passed by the House. I do not think the pending measure is going to get through the House, and I see a need to take a step forward, as the Senator from Virginia said. This is one way of getting it accomplished.

Second, I think the existing bill—and when I say this I wish the managers of the bill were on the floor, which they will be in a minute—even as amended by the Senator from New York, creates very, very grave problems for our interests and our alliances in the free world.

Let me go over some of the things that I talked about originally when I was talking in general on the bill. On page 9, at line 14, there is the following wording:

> Specific statutory authorization is required for the assignment of members of the Armed Forces of the United States to command, coordinate, participate in the movement of, or accompany the regular or irregular military forces of any foreign country or government when such Armed Forces are engaged, or there exists an imminent threat that such forces will become engaged, in hostilities.

I point out that that alone would destroy the capability of NATO and would probably destroy the capability of the North American Defense Command, because it would eliminate our ability to do anything with respect to the Canadian Air Forces and other forces which are a part of NORAD, and it would put in danger the command and deployment of our troops and defenses which we have in Korea under the United Nations Armed Forces.

In reply to that, the Senator from New York introduced—and it was accepted—an amendment which reads as follows:

> Nothing in section 3, subsection (4)—

Which I just read—

> Of this act shall be construed to require any further specific statutory authorization to permit members of the Armed Forces of the United States to participate jointly with members of the Armed Forces of one or more foreign countries in the headquarters operations of high level military commands which were established prior to the date of enactment of this act and pursuant to the United Nations Charter or any treaty ratified by the United States prior to such date.

In the process of the discussion on this matter, the Senator from New York said:

> I want to point out, Mr. President, that this provision is very narrowly drafted. It does not except any use of actual combat forces. It does not except any command arrangements which are included only in contingency plans, and it refers solely to the use of members of the Armed Forces in "headquarters operations of high-level military commands which were established prior to the date of enactment of this Act. . . ."

For the life of me, I cannot understand how this Nation can be involved in mutual security defenses and forces and now have Congress say, "Well, you can be involved in that, but if anything happens so that it triggers it, you cannot act; all you can do is be a part of the command system which would order somebody else's troops to get into it, even though our troops are already stationed there and even though our troops may be considered to be the bulwark of that particular effort."

Under this particular provision, unless we had a specific act of Congress, we could not go to the aid of Germany, France, Greece, Italy, or any other one of the NATO countries; all we could do would be to participate in the command of the other troops to get into the action.

Under this particular act, we could not do anything in Korea except participate in the command structure, and we could not use any American forces that have been established there as a defense force as a part of the United Nations participation group, unless we had an act of Congress. How long is that going to take?

Under NORAD, which happens to have its headquarters in my State, there is an agreement with the Canadians for the joint mutual defense of the continental United States and Canada, among other things—the North American Defense Command. We could participate in the command structure, but we could not use any of our forces if Canada should be attacked. So we could not implement any agreements that have been made unless we went to Congress and got an act passed.

What would happen in the meanwhile to our allies and our allied forces or anybody else? How credible are our agreements or our mutual defense pacts going to be? Maybe we do not want any. Maybe we should not have had them in the first place. Maybe we should have knocked them out in the first place. Does anyone think we can live alone these days with the possibility of fractional orbiting bombs over our heads, with the certainty that within 30 minutes with the threat of submarines we could be under nuclear attack. Can anyone say we are going to live alone, without allies, simply because we do not want to get involved in nuclear war? That is going far afield.

I think we would hamstring ourselves. I think we would hamstring the freedom of our country and its citizens. In my opinion, we would not be acting in the way we should, even though we want to regain some of the authority which some Members here think they have lost.

That is just one point. It is a massive one. It involves perhaps some of the most important, sensitive areas that we have in the world—Korea, the European Continent, and the North American Continent. What in the world are we going to say to our allies?

Here is another provision, on page 9 of the proposed act, section 3, subsection (4), which again refers to treaties hereafter ratified. It says that any treaty hereafter ratified must be implemented by legislation specifically authorizing the introduction of the Armed Forces of the United States in hostilities or in such situation.

The point of this, I gather, is to change the words "constitutional processes" which are a part of every treaty into a specific definition of what a constitutional process is. So the Senate is going to arrogate unto itself the determination of what a constitutional process is, and it does this by the passage of this law.

What about a joint resolution of Congress? Is that enough? Apparently not.

You have got to have an act. You have got to debate it, pass it, put it through both committees, and do all this before any treaty can become effective.

Maybe that is desirable. But meanwhile, where is the credibility of our defense? Where is the credibility of any alliance, if, every time we are going to do this, we are going to have to say, "We think it is a good idea, but we have got to wait for 535 Members of Congress to make up their minds before we can act, even though we have already ratified the treaty"?

I would say if we are going to do this, what we ought to do is put it in the treaty, not in separate legislation. I would say if this is only going to be effective after Congress has passed a law, let us put it in the treaty provisions, rather than leave it to any other committee to determine what the constitutional processes are.

We point out the situation of U.S. citizens in foreign vessels on the high seas, and that we could not take any action there, because it could not be done without prior specific authorization. The Senator from New York changed that, and added an amendment. He also added the provision that the 30-day clause would not apply if the President certifies to Congress in writing that unavoidable military necessity respecting the safety of the Armed Forces of the United States engaged pursuant to one of the other sections that permit them to be engaged requires the continued use of the Armed Forces in bringing about a prompt disengagement from such hostilities.

What do we do in a case like Korea? We have moved in, we do not have authority from Congress ahead of time, but we have moved in and we get involved with the Chinese, who come pouring down after the 30-day period of engagement, and yet the only way that we can continue is if we are going to disengage: not to counterattack, not to try to stop it, but only if we are going to try to disengage.

What kind of a military tactic would that require? After 30 days, we would have to say, "Sorry, gentlemen, we are only shooting, because we want to get out."

Is this going to help us in the European theater, if we should unfortunately get caught up there? Is it going to help us in Korea? Is it going to help us anywhere, for that matter? Or will it simply give incentives to the military forces who might be killing our own men to continue their drive, because they would know that until Congress acted, the only thing the President could do was get out?

I say with deep feeling that this is a terrible position to put a commander in, be he the President of the United States, the general of the forces, or the private carrying a rifle in the snows of Korea.

Mr. President, I ask unanimous consent to have printed in the RECORD an article entitled "Current Foreign Policy: Congress, the President, and the War Powers," which consists of a statement by Secretary of State Rogers made to the Senate Committee on Foreign Relations on May 14, 1971.

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

CURRENT FOREIGN POLICY: CONGRESS, THE PRESIDENT, AND THE WAR POWERS

I. INTRODUCTION

It is, as always, my privilege to appear before this committee. I am grateful to you, Mr. Chairman [Senator J. W. Fulbright], and to members of the Committee for the opportunity to testify on the serious questions under consideration.

The Committee has helped stimulate an important examination of the war powers of the President and Congress under our Constitution. This administration, of course, fully respects Congress' right to exercise its constitutional role in decisions involving the use of military force and in the formulation of our Nation's foreign policy. We realize that under our constitutional system decisions in this vital area should reflect a common perspective among the legislature, the Executive, and the electorate so that each may play its proper role. We also recognize that this common perspective can only be built through cooperation and consultation between the legislative and executive branches. Generally speaking, the constitutional process so wisely conceived by the Founding Fathers has worked well throughout our history. Any attempt to change it should be approached carefully and should be subjected to long and full consideration of all aspects of the problem.

The issue before us involves the constitutional authority to commit forces to armed combat, and related questions. These questions have been the subject of considerable debate and scholarly attention.[1] Unfortunately, they are often approached polemically, with one side arguing the President's constitutional authority as Commander in Chief and the other side asserting Congress' constitutional power to declare war—the implication being that these powers are somehow incompatible. The contrary is true. The framers of the Constitution intended that there be a proper balance between the roles of the President and Congress in decisions to use force in the conduct of foreign policy.

In discussing these issues with you today, I wish first to review the historical background of the war powers question, beginning with the Constitution itself and tracing the practice of the Nation throughout our history. I would then like to place the war powers issue in the modern context and discuss with you the factors which I see bearing on the issue of the exercise of presidential and congressional powers now and in the foreseeable future. Finally, from this perspective, I will describe what I believe the national interest requires in terms of a proper balance between the President and the Congress.

First, let me stress that cooperation between the executive and legislative branches is the heart of the political process as conceived by the framers of the Constitution. In the absence of such cooperation, no legislation which seeks to define constitutional powers more rigidly can be effective. Conversely, given such cooperation, such legislation is unnecessary. Obviously there is need for—and great value in—congressional participation in the formulation of foreign policy and in decisions regarding the use of force. But at the same time there is a clear need in terms of national survival for preserving the constitutional power of the President to act in emergency situations.

Footnotes at end of article.

II. HISTORICAL BACKGROUND

A. Textual authority and the intention of the framers

Let me turn, then, first to the historical background, beginning with the Constitution, Article I, section 8, of the Constitution grants Congress a number of specific powers relevant to our discussion, including the power "to . . . provide for the common Defence . . .; To declare War . . .; To raise and support Armies . . .; To provide and maintain a Navy; To make Rules for the Government and Regulation of the land and naval Forces. . . ." The Senate, in particular, is given certain foreign relations powers, to advise and consent to treaties and to the appointment of ambassadors and other officials.[2] Congress has the power to make all laws which are necessary and proper for carrying out powers vested by the Constitution in the Federal Government.[3] In addition, Congress has the sole authority to appropriate funds[4]—a vital power in the war powers and foreign relations area.

The powers of the President which are relevant to this inquiry are found in article II. The President is vested with the executive power of the Government, he is named Commander in Chief of the Army and Navy and is required to "take Care that the Laws be faithfully executed."[5] From these powers and the power to make treaties and to appoint and receive ambassadors is derived the President's constitutional authority to conduct the foreign relations of the United States.

The framers of the Constitution were not writing in a historical or political vacuum. Experience during the colonial period and under the Articles of Confederation had shown the need to strengthen the Central Government. The problem was to create a strong Federal system and yet prevent tyranny.[6] Accordingly, the framers established three powerful Federal branches of government and depended upon the independence of each branch and their coequal powers to provide the checks and balances necessary to preserve the democracy.

The division of the war powers between the legislative and executive branches is illustrative of the general constitutional framework of shared powers and checks and balances. By this division, the framers changed prior United States practice under the Articles of Confederation, where the "sole and exclusive right and power of determining on peace and war" had been vested in the Legislature.[7] They wished to take advantage of executive speed, efficiency, secrecy, and relative isolation from "public passions."[8] At the same time, they wished to avoid the dangers to democratic government exemplified by the unchecked British monarch who, as Hamilton noted, had supreme authority not only to command the military and naval forces but also to declare war and to raise and regulate fleets and armies.[9] Mindful of the hardships which war can impose on the citizens of a country and fearful of vesting too much power in any individual, the framers intended that decisions regarding the initiation of hostilities be made not by the President alone nor by the House or Senate alone, but by the entire Congress and the President together.[10] Yet it is also clear that the framers intended to leave the President certain indispensable emergency powers.[11]

The grant to Congress of the power to declare war was debated briefly at the Constitutional Convention, and that well-known debate reveals the essential intention of the framers. The Committee of Detail submitted to the general Convention a draft article which gave the Congress the power "to make war." Pursuant to a motion by Madison and Gerry, this was amended to the power "to declare war." This change in wording was

not intended to detract from Congress' role in decisions to engage the country in war. Rather, it was a recognition of the need to preserve in the President an emergency power—as Madison explained it—"to repel sudden attacks," and also to avoid the confusion of "making" war with "conducting" war, which is the prerogative of the President.[12]

The necessity to repel sudden attacks was the case cited by the framers in which the President clearly had power to act immediately on his own authority. That was the one situation, in 1787, in which it was evident that emergency action was required. But I submit that the rationale behind the concept is broader; that is, that in emergency situations the President has power and a responsibility to use the Armed Forces to protect the Nation's security.[13] This conclusion is borne out by subsequent practice and judicial precedents, as I will show later. In fact, much of the debate at the time centered on the need to curb the European monarch's tradition of precipitating offensive wars and to transfer to the Federal Government the war powers previously exercised by the States; little attention was given to the scope of the President's power to use the Armed Forces for defensive purposes to protect the Nation or its security interests.[14]

The constitutional division of authority in the war powers area, as I see it, parallels the constitutional balance between the Executive and Legislature in other fields. By dividing these powers between the two branches, the Constitution established a system that, except in emergency situations, would function most effectively if decisions to involve the Nation in armed conflict were arrived at jointly by the President and Congress.

B. Selected historical examples

In addition to the textural authority and the framers' intentions regarding the war powers of Congress and the President, we should consider the practical exercise of those powers since the Constitution was adopted. Many scholars have reviewed the historical records,[15] and I do not intend to cover all of this ground again. I think it is important, however, to identify the trend which developed.

From the earliest years of the Republic we find examples of presidential use of the Armed Forces without congressional approval. These were, at first, very limited in character. For example, in 1801 President Jefferson sent on his own authority a squadron of ships to protect American vessels from the Barbary pirates, but he authorized them to take only defensive actions.[16] The scope of presidential initiative expanded during the 19th and early 20th centuries. President Polk sent American forces into the disputed territory near the Rio Grande in January 1846, where they engaged in battle with the Mexicans purely on the presidential authority.[17] In 1900 President McKinley sent 5,000 troops to China without congressional authorization, to protect Americans and help put down the Boxer Rebellion.[18] President Theodore Roosevelt on his own authority dispatched gunboats to the Canal Zone area.[19] Later, President Roosevelt, Taft, Wilson, and Coolidge intervened and temporarily occupied other Latin American and Caribbean countries without prior congressional approval.[20] Nicaragua, for example, was occupied and, in effect, administered by U.S. Marines for nearly 7 years, from 1926 to 1933. Congressional approval was never requested.[21]

This history shows an increasing exercise by the President of his consttitutional powers to use American armed forces abroad without the prior authorization of the Congress. And yet there was remarkably little complaint from the Congress. It is interesting to speculate why this was so. It seems to me there may have been several possible factors. In the first place, I suppose that Presidents were acting in the context of a generally popular consensus in the country that the United States should assume a posture consistent with its emerging power, particularly in the Western Hemisphere. Second, a large majority of the 19th and early 20th century presidential actions occurred in the Caribbean, where this country's power was so predominant that there was little or no chance of forcible response to our actions. Therefore, the risks to the Nation which article I, section 8, was designed to reduce, never arose. In short, there being no risk of major war one could argue there was no violation of Congress' power to declare war.[22]

It has been suggested that even Franklin Roosevelt's executive agreements in 1940–41 with Britain effecting an exchange of destroyers for bases in the Western Atlantic, and agreements with Denmark and Iceland for bases in Greenland and Iceland, can be considered a legitimate exercise of hemispheric defense.[23] However, the factor distinguishing these agreements from prior presidential actions in the Western Hemisphere was that in 1940–41 there was most unmistakably a great risk that the United States would become involved in a major war.

I cite these historical precedents not because I believe they are dispositive of the constitutional issues your committee is considering—far from it—but to illustrate how the constitutional system adapts itself to historical circumstances. Whatever the reasons for presidential initiatives during this period, they seem to have been responsive to the times and to have reflected the mood of the Nation.

You are, of course, equally familiar with the post-World War II history surrounding the exercise of war powers by the President and the Congress.

At the invitation of the Government of the Republic of Korea and pursuant to resolutions of the United Nations Security Council, President Truman committed over a quarter million air, naval, and land forces to a war in Korea without congressional authorization.

The Truman administration based its authority to commit these troops squarely on the President's constitutional authority. It asserted that "the President, as Commander in Chief of the Armed Forces of the United States, has full control over the use thereof." [24] Citing past instances of presidential use of armed force in the broad interests of American foreign policy, the administration asserted that there was a "traditional power of the President to use the Armed Forces of the United States without consulting Congress." [25] Reliance was also placed on the fact that the action was taken under the United Nations Charter, a part of both the treaty and international law which the President is constitutionally empowered to execute. [26]

President Eisenhower sought congressional authorization of possible engagement of American forces in the Middle East [27] and in the area around Formosa.[28] In his request for a resolution on Formosa he stated his view that: [29]

"Authority for some of the actions which might be required would be inherent in the authority of the Commander in Chief. Until Congress can act I would not hesitate, so far as my constitutional powers extend, to take whatever emergency action might be forced upon us in order to protect the rights and security of the United States.

"However, a suitable congressional resolution would clearly and publicly establish the authority of the President as Commander in Chief to employ the Armed Forces of this Nation promptly and effectively for the purposes indicated if in his judgment it became necessary."

When President Eisenhower sent 14,000 troops into Lebanon in 1958, he did so without seeking specific congressional approval and without specifically basing his authority on the 1957 Middle East resolution. He said that the troops were sent "to protect American lives—there are about 2,500 Americans in Lebanon—and by their presence to assist the Government of Lebanon to preserve its territorial integrity and political independence." "I have, however," he said, "come to the sober and clear conclusion that the action taken was essential to the welfare of the United States. It was required to support the principles of justice and international law upon which peace and a stable international order depend." [30]

In 1962 President Kenndey ordered the quarantine of Cuba, "acting under and by virtue of the authority conferred upon me by the Constitution and statutes of the United States, in accordance with the aforementioned resolutions of the United States Congress and the Organ of Consultation of the American Republics, and to defend the security of the United States. . . ." [31] The resolution of Congress referred to by the President was passed one month before the Cuban missile crisis and the quarantine proclamation. The Cuban resolution, unlike the other area resolutions, contained no grant of authority to the President; it simply declared that the United States was determined to use any means necessary to prevent Cuba from extending its subversive activities through the hemisphere and from creating or using an externally supported military capacity which would endanger United States security.[32]

In April 1965, President Johnson sent United States Marines into the Dominican Republic without congressional authorization and stated initially that he was exercising the President's power to protect the safety of American citizens.[33] A few days later when the peacekeeping objectives of the action became predominant, he explained his action as an exercise of the President's power to preserve the security of the hemisphere in accordance with the principles enunciated in the OAS Charter.[34] At no time during the Dominican action did the President seek congressional authorization.

When President Johnson began sending American combat troops to South Viet-Nam in 1965, he relied as authority for his action on a combination of his own constitutional authority as Chief Executive and Commander in Chief, the Senate's advice and consent to the SEATO treaty, and the authority granted by the Congress in the Tonkin Gulf resolution.[35]

Looking back, then, over the last 20 years, one can see that Presidents have given varying rationales for executive action and varying interpretations of the necessity of congressional authorization. I think there are two points to be made regarding this period of our history. First, certainly the area resolutions were some evidence of congressional approval. Usually, however, they arose in an atmosphere of crisis or else in a different factual context than that in which they were eventually relied upon. The question is not whether these resolutions are useful to Presidents—of course they are—but instead whether such open-ended delegations are an effective means for Congress to exercise its constitutional authority.

Second, it serves no useful purpose to argue today whether or to what extent past presidential decisions regarding the use of military force have served the national interest. The very concept of that which best serves the national interest of the United States has undergone significant change since the uses of force of the 1950's and 1960's. The Nixon doctrine represents a recognition that protection of our national interest does not require an automatic United States military response to every threat. The

Footnotes at end of article.

aim of the Nixon doctrine is to increase the participation of other nations in individual and collective defense efforts. While reaffirming our treaty commitments and offering a shield against threats from nuclear powers aimed at our allies or other nations vital to our security, we now look to the nation directly threatened to assume the primary responsibility for providing the manpower necessary for its defense. I am sure this new approach will be of great help in achieving balanced executive-legislative participation in decisions regarding the use of military force.

C. Judicial precedents

Let me turn now briefly to an examination of judicial precedents in the war powers area. There are relatively few judicial decisions concerning the relationship between the Congress and the President in the exercise of their respective war powers under the Constitution. The courts have usually regarded the subject as a political question [36] and refused to take jurisdiction. For example, in *Luftig* v. *McNamara,* the D.C. Court of Appeals upheld the dismissal of a suit by an Army private to enjoin the Secretary of Defense from sending him to Viet-Nam on the ground that the war was unconstitutional. The court stated: [37]

"It is difficult to think of an area less suited for judicial action than that into which Appellant would have us intrude. 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. . . ."

Accordingly, to the extent issues regarding the war powers are resolved, their resolution is likely to come, as has been the case in the past, through political interaction of the President, Congress, and the electorate. And, in the final analysis, that is the most appropriate means for the settlement of fundamental constitutional questions of this character.

There are, however, a few court decisions which contain expressions of judicial opinion relevant to the war powers issue. These cases suggest some rough guidelines. First, the decisions indicate that courts recognize and accept the President's authority to employ the Armed Forces in hostilities without express congressional authorization.

For example, in *Durand* v. *Hollins,* [38] the second circuit held in 1860 that in the absence of congressional authorization, the Executive had broad discretion in determining when to use military force abroad in order to respond quickly to threats against American citizens and their property. In the *Prize* cases [39] during the Civil War, the Supreme Court upheld President Lincoln's Southern blockade despite the absence of a declaration of war or other specific congressional authorization. The Court held that when war is initiated by the other party, the President is not only authorized but obliged to resist force by force and has broad discretion in deciding what measures are demanded by the crisis. The decision was also based on the Court's finding of a general congressional sanction of the war from ancillary legislation and subsequent congressional ratification.

The *Steel Seizure* case, *Youngstown Sheet & Tube Co.* v. *Sawyer,* [40] in which the Supreme Court held invalid President Truman's seizure of the steel mills during the Korean war, is sometimes cited as indicating the limits of the President's independent constitutional authority. However, it is important to note that the precise issue in that case was not the President's authority to conduct hostilities but the scope of his power over a clearly domestic matter—labor-management relations. Moreover, the Court noted and several Justices based their concurring opinions [41] on the fact that Congress had enacted a number of laws concerning domestic labor disputes and in so doing explicitly withheld the power of seizure from the President.

This aspect of the *Steel Seizure* case leads to a second observation: that throughout our history a head-on collision between legislation and Presidential action has rarely, if ever, occurred in the field of foreign policy.[42] This is a testament to the strength and flexibility of our system and to the statesmanship of the Nation's leaders.

There are few judicial pronouncements on what would happen in the event of a clear collision in the area of the war powers. In *Ex parte Milligan,* [43] the concurring opinion of four Justices indicated there were limits to what Congress might do by legislation: [44]

"Congress has the power not only to raise and support and govern armies but to declare war. It has, therefore, the power to provide by law for carrying on war. 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."

But perhaps Mr. Justice Jackson stated the wisest rule when he said that in the event of a clear collision between legislation and presidential action, ". . . any actual test of power is likely to depend on the imperatives of events and contemporary imponderables rather than on abstract theories of law." [45]

A third guideline that emerges is that when acts of Congress authorize presidential action, the President's power is at its zenith; it encompasses both the authority delegated to him by Congress and whatever independent constitutional authority he may have with respect to the subject matter. It is in this third situation that we find the much-quoted case of *United States* v. *Curtiss-Wright Export Corp.,* [46] in which the Supreme Court held that the normal legal restrictions upon congressional delegations of power to the President in domestic affairs do not apply with respect to delegations in external affairs because of the Executive's extensive independent authority in that realm and the desirability of allowing him maximum flexibility in exercising that authority.[47] There are numerous other examples of wide definition of presidential powers when acting under and in accordance with an act of Congress.[48]

III. THE MODERN CONTEXT

As we turn from an examination of history to an analysis of the modern context in which the President and Congress operate, I am impressed by the fundamental changes in the factual setting in which the war powers must be exercised. And indeed, it is this very change in setting which has raised difficult constitutional issues that cannot be answered by reference to history alone.

The primary factors underlying this transformation are rather evident and need only be summarized. They include, first, the emergence of the United States as a world power. Since World War II we have found it necessary to maintain a large standing military capacity which is sufficiently well equipped and mobile to enable the United States to play a major peacekeeping role almost anywhere in the world, and often with little delay. This development has generated a reliance upon the United States by other nations to help protect them—which has been translated into a series of defense treaties—and a sense of responsibility on the part of the country to fulfill our commitments in good faith.

Let me say again, because I think it is important to the issue before us, that this Administration has begun to reverse the trend of expanding U.S. military involvement abroad. The Nixon doctrine means that while the United States must continue to honor its commitments and to play a large and active role in world affairs, we should not seek in all cases to have the preponderant role. We seek a new partnership with nations of the world in which they become increasingly self-reliant and assume greater responsibilities for their own welfare and security and that of the international community.[49]

The second factor which characterizes the modern context is the development of technology, especially in the field of nuclear weaponry. The fear of nuclear war and the importance of deterrence have engendered a sense of need to be able to take prompt, decisive Executive action. On the other hand, the fact that even a minor skirmish could lead to a confrontation of the major powers and raise the specter of nuclear war serves to emphasize the desirability of appropriate congressional participation in decisions which risk involving the United States in hostilities.

Third, the institutional capacities of the Presidency have facilitated the broad use of presidential powers. The heightened pace, complexity, and hazards of contemporary events often require rapid and clear decisions. The Nation must be able to act flexibly and, in certain cases, without prior publicity. The institutional advantages of the Presidency, which are especially important in the area of foreign affairs, were pointed out in *The Federalist:* the unity of office, its capacity for secrecy and dispatch, and its superior sources of information.[50]

Unlike the Presidency, the institutional characteristics of Congress have not lent themselves as well to the requirements of speed and secrecy in times of recurrent crises and rapid change. The composition of Congress with its numerous members and their diverse constituencies, the resultant complexity of the decisionmaking process, and Congress' constitutional tasks of debate, discussion, and authorization inevitably make it a more deliberative, public, and diffuse body.[51]

Yet, in order to balance this picture, we must also note the inherent limitations of the Presidency. There are few significant matters which can be accomplished by presidential order alone. The essence of presidential power is the ability to enlist public support for national policy,[52] and in this the President needs the cooperation of Congress. Virtually every presidential program requires implementing legislation and funding. Through their powers of investigation and supervision, congressional committees have amply demonstrated their ability to inspire national debate, focus public opinion, and thereby influence presidential policy. The Senate's power to advise and consent to treaties and appointments serves as a constant reminder of the Senate's indispensable role in foreign policy.

Of course, the electorate is the ultimate restraint upon the President and Congress in the exercise of the war powers. As President Nixon said in his "State of the World'" message: "Our experience in the 1960's has underlined the fact that we should not do more abroad than domestic opinion can sustain." [53] The President and Congress must be sensitive to the people's willingness to suffer the potential physical, economic, and political costs of military actions. The Nation's ability to sustain long-term military action depends on the ability of the President and Congress to convince the people of the wisdom of their policies.

IV. THE PROPER BALANCE BETWEEN CONGRESS AND THE PRESIDENT

Thus far I have discussed what has happened to the war powers over the course of our history and described the modern context in which those powers must be exercised. The most difficult question is still before us: What should we seek for the future—what is the proper balance between the Congress and the President?

Footnotes at end of article.

It seems to me that we must start from the recognition that the exercise of the war powers under the Constitution is essentially a political process. It requires cooperation and mutual trust between the President and Congress and wise judgment on the part of both if the Nation's interests are to be well served.

Your committee now has before it several bills [54] which attempt to define and codify the war powers of the President and Congress in a way that I believe would not serve the Nation's long-term interests. I believe that the objectives of the sponsors of these bills, including Senator Javits, Senator Taft, and Senator Eagleton, and most recently Senator Stennis, are the same as the objectives of this Administration. We both want to avoid involving the Nation in wars, but if hostilities are forced upon us we want to make certain that United States involvement is quickly and effectively undertaken and is fully in accordance with our constitutional processes. So the difference is not in our objectives but in how to achieve those objectives.

I am opposed to the legislation before you as a way to achieve these objectives because (1) it attempts to fix in detail, and to freeze, the allocation of the war power between the President and Congress—a step which the framers in their wisdom quite deliberately decided against—and (2) it attempts in a number of respects to narrow the power given the President by the Constitution.

Regarding the first point, these bills reflect an approach which is not consistent with our constitutional tradition. The framers of the Constitution invested the executive and legislative branches with war powers appropriate to their respective roles and capabilities, without attempting to specify precisely who would do what in what circumstances and in what time period, or how far one branch could go without the other. This was left to the political process, which is characteristic of the constitutional system of separation of powers. Our constitutional system is founded on an assumption of cooperation rather than conflict, and this is vitally necessary in matters of war and peace. The effective operation of that system requires that both branches work together from a common perspective rather than seeking to forge shackles based on the assumption of divergent perspectives.

As for the second aspect, although the bills recognize to a significant extent the President's full range of constitutional authority, they do tend to limit the President in some questionable ways. It appears, for example, that two of the bills [55] do not cover situations like that of the Cuban missile crisis. In failing to recognize the need for immediate action and the propriety of a presidential response to such situations, the bills are unduly restrictive, it is inconceivable for example, that the President could have carried out the delicate diplomatic negotiations with the Soviets which led to the removal of the missiles from Cuba if there had been a full-scale congressional debate prior to his deciding on a course of military and diplomatic action.

Some of the bills would also seek to restrict the President's authority to deploy forces abroad short of hostilities. This raises a serious constitutional issue of interference with the President's authority under the Constitution as Commander in Chief. Moreover, requiring prior congressional authorization for deployment of forces can deprive the President of a valuable instrument of diplomacy which is used most often to calm a crisis rather than inflame it. For example, such a restriction could seriously limit the ability of the President to make a demonstration of force to back up the exercise of our rights and responsibilities in Berlin or to deploy elements of the 6th Fleet in the Mediterranean in connection with the Middle East situation.

At least two of the bills would require that action initiated by the President within his specified authority be terminated after 30 days unless Congress enacts sustaining legislation,[56] and three of the bills would permit Congress to terminate presidential action in less than 30 days.[57] The bills would provide for expedited action on such legislation but would not and could not insure definitive congressional action within the 30-day period. This raises another constitutional issue; that is, whether the President's authority under the Constitution—for example, to protect the Nation against sudden attack—could be limited or terminated by congressional action or inaction. The 30-day limitation also raises practical problems regarding the conduct of our forces. Once our forces are committed to hostilities, it might prove impossible to terminate those hostilities and provide for the safety of our forces within an arbitrary time period. To the extent the legislation would impinge in these ways upon the President's authority as Commander in Chief and Chief Executive, it is of doubtful constitutionality.

There is another consideration. To circumscribe presidential ability to act in emergency situations—or even to appear to weaken it—would run the grave risk of miscalculation by a potential enemy regarding the ability of the United States to act in a crisis. This might embolden such a nation to provoke crises or take other actions which undermine international peace and security.

I do not believe we have sufficient foresight to provide wisely for all contingencies that may arise in the future. I am sure the Founding Fathers acted on that premise, and we should be most reluctant to reverse that judgment. Moreover, I firmly believe that Congress' ability to exercise its constitutional powers does not depend on restricting in advance the necessary flexibility which the Constitution has given the President.

At the same time, I want to make clear that I do not interpret "flexibility" as a euphemism for unchecked executive power. Some have argued that Congress' power to declare war should be interpreted as a purely symbolic act with little real substance in a world in which declared wars have become infrequent despite the existence of real hostilities.[58] In my judgment, it would be improper to do so. Congress' power to declare war retains real meaning in the modern context. While the form in which the power is exercised may change, nevertheless the constitutional imperative remains: If the Nation is to be taken into war or to embark on actions which run serious risk of war, the critical decisions must be made only after the most searching examination and on the basis of a national consensus, and they must be truly representative of the will of the people. For this reason, we must insure that such decisions reflect the effective exercise by the Congress and the President of their respective constitutional responsibilities.

V. CONCLUSION

What needs to be done to insure that the constitutional framework of shared responsibility for the exercise of the war powers works in the Nation's best interests?

First, we are prepared to explore with you ways of helping Congress reinforce its own information capability on issues involving war and peace. For example, I would be prepared to instruct each of our geographic Assistant Secretaries to provide your committee on a regular basis with a full briefing on developments in his respective area, if you believed this would be helpful. Regular and continuing briefings would enable the committee to keep abreast of developing crisis situations. This would be in addition to the numerous official and informal contacts which regularly take place between members of the two branches.

Second, there needs to be effective consultation between Congress and the President, and we have tried to follow this policy. It is not only Congress that is weakened by a lack of consultation. Our Nation's foreign policy is itself weakened when it does not reflect continuing interaction and consultation between the two branches.

Third, the Congress must effectively exercise the powers which it has under the Constitution in the war powers area. In its 1969 report on the National Commitments Resolution, your committee recognized that "no constitutional amendment or legislative enactment is required" for Congress to assert its constitutional authority. "If Congress makes clear that it intends to exercise these powers," the report states in referring to Congress' war powers, "it is most unlikely that the executive will fail to respect that intention." [59] I agree with that conclusion.

Fourth, there is the need to act speedily, and sometimes without prior publicity, in crisis situations. We should try to find better institutional methods to keep these requirements from becoming an obstacle to Congress' exercising its full and proper role. Suggestions have come from a number of quarters for the establishment of a joint congressional committee which could act as a consultative body with the President in times of emergencies. If, after study, you believe this idea has merit, we would be prepared to discuss it with the committee and determine how best we could cooperate.

Fifth, there is, in my view, the clear need to preserve the President's ability to act in emergencies in accordance with his constitutional responsibilities. This ability to act in emergencies, by its very nature, cannot be defined precisely in advance. Let me emphasize that I am not suggesting a presidential *carte blanche*. As I indicated at the beginning of my statement, I believe the framers of the Constitution intended decisions regarding the initiation of hostilities to be made jointly by the Congress and the President, except in emergency situations. I believe that constitutional design remains valid today.

In conclusion, I would like to refer to the suggestion which the distinguished Senator from Mississippi, Senator Stennis, made last Tuesday that the war powers question requires thorough consideration and full study. He said, "I think this matter should be pending for a year or more. It must be understood in every facet and the people must understand fully the question that is involved." [60] I believe that is wise advice. This is a basic question affecting our constitutional structure and the security of our Nation. It is most important that such a matter be considered deliberately and calmly, in an atmosphere free from the emotion and the passions that have been generated by the Viet-Nam conflict.

We in the executive branch are prepared to continue the discussion of the war powers question with you. Our sole objective is to insure that the Nation's interests are best served in this vital area.

My own view is that the constitutional framework of shared war powers is wise and serves the interests of the Nation well in the modern world. The recognition of the necessity for cooperation between the President and Congress in this area and for the participation of both in decisionmaking could not be clearer than it is today. What is required is the judicious and constructive exercise by each branch of its constitutional powers rather than seeking to draw arbitrary lines between them.

FOOTNOTES

[1] See generally: Background Information on the Use of United States Armed Forces in Foreign Countries, House Committee on Foreign Affairs, 91st Cong., 2d sess. (Committee print 1970) (hereinafter cited as Background Info. 1970); Documents Relating to the War Power of Congress, the President's Author-

ity as Commander in Chief and the War in Indochina, Senate Committee on Foreign Relations, 91st Cong., 2d sess. (Committee print July 1970) (hereinafter cited as Docs on the War Power 1970); Hearings on Congress, the President, and the War Powers before the Subcommittee on National Security Policy and Scientific Developments, House Committee on Foreign Affairs, 91st Cong., 2d sess. (Committee print 1970).

[2] U.S. Constitution, art. II, sec. 2.

[3] *Ibid.*, art. I, sec. 8, clause 18.

[4] *Ibid.*, art. I, sec. 7; sec. 8, clauses 1, 2, 12; and sec. 9, clause 7.

[5] *Ibid.* art. II, secs. 1–3.

[6] W. Solberg, The Federal Convention and the Formation of the Union of the American States, p. xc (1958).

[7] Articles of Confederation of 1781, art. IX. This consolidation of power in the Legislature was principally intended to put the war powers in the hands of the Central Government rather than the States, except in certain specified emergencies. A division of the war powers between Congress and the President was not at issue for the fear and dislike of monarchy was so great among the colonists that the Articles did not provide for an independent executive branch. Had the framers intended to give Congress exclusive control of the war powers, they could have incorporated the same war powers provision into the Constitution.

[8] See The Federalist, Nos. 70–75 (J. Hamilton ed. 1864) (A. Hamilton); *ibid.*, No. 49, pp. 390–92 (A. Hamilton); *ibid.*, No. 63, pp. 476–77 (A. Hamilton).

[9] *Ibid.*, No. 69, p. 516.

[10] II M. Farrand, the Records of the Federal Convention of 1787, pp. 313, 318–19 (1911). See C. Berdahl, War Powers of the Executive in the United States, p. 95 (1921): "The power of the President with regard to a declaration of war does not end with the functions of communication or information, and of recommendation. A declaration of war, like any other bill, order, resolution, or vote requiring the concurrence of both house of Congress, must be submitted to the President for his approval or disapproval."

[11] Farrand, *supra*, pp. 313, 318–19. That the scope of these emergency powers was controversial from the beginning is evidenced by Hamilton's vigorous attack on President Jefferson's conservative interpretation of his defensive powers in his conduct of the limited war with the Barbary pirates in 1801. See note 16 *infra*.

[12] Ferrand, *supra*, pp. 313, 318–19.

[13] For example, the President's power to repel sudden attacks undoubtedly includes the power to provide against the imminent threat of attack. This concept was recognized early in connection with Congress' constitutional power to call forth the militia to repel invasions. In *Martin* v. *Mott*, 25 U.S. (12 Wheat.) 19 (1827), Mr. Justice Story found constitutional the act of Congress of 1795 which empowered the President to call forth the militia if the country were invaded or in imminent danger thereof. "[T]he power to provide for repelling invasions includes the power to provide against the attempt and danger of invasion, as the necessary and proper means to effectuate the object. One of the best means to repel invasions is to provide the requisite force for action, before the invader himself has reached the soil." *Ibid.*, at 28. See also *Durand* v. *Hollins*, 8 F. Cas. 111 (No. 4186) (CCSD NY 1860), recognizing the Executive's emergency power and duty to respond quickly to threats against the lives and property of American citizens abroad. The origin of the notion, set forth in the *Durand* case, that citizens have a right to protection abroad is unclear. It is listed as an unquestionable privilege of Federal citizenship in the *Slaughter-House* cases, 83 U.S. (16 Wall.) 36, at 79 (1873), with no authority given and mentioned also in *In re Neagle*, 135 U.S. 1, at 64 (1889). See also 22 U.S.C. secs. 1731–32. For authority that this is more properly a matter within the Executive's discretion, see E. M. Borchard, The Diplomatic Protection of Citizens Abroad, pp. 29–30 (1928).

[14] R. Russell, The United States Congress and the Power to Use Military Force Abroad, Apr. 15, 1967, pp. 25–63 (unpublished thesis in Fletcher School of Law and Diplomacy Library); see The Federalist, No. 4, at 65–70 (J. Hamilton ed. 1864) (J. Jay).

[15] See, e.g., R. Russell, *supra*, pp. 64–389.

[16] J. Rogers, World Policing and the Constitution, pp. 46–47 (1945); Background Info. 1970, supra, p. 40. In his first annual message to Congress on December 4, 1801, Jefferson explained his actions: "Unauthorized by the Constitution, without the sanction of Congress, to go beyond the line of defence, the vessel, being disabled from committing further hostilities, was liberated with its crew. The Legislature will doubtless consider whether, by authorizing measures of offence also, they will place our force on an equal footing with that of its adversaries. I communicate all material information on this subject, that, in the exercise of this important function confided by the Constitution to the Legislature exclusively, their judgment may form itself on a knowledge and consideration of every circumstance of weight." II *Annals of Congress* 12 (1801). Jefferson's conservative interpretation of his war powers, even against a declared adversary, was vigorously attacked by Hamilton. In his view, once the Nation is attacked, or war is declared by a foreign nation, the President is authorized to respond with whatever force he thinks necessary. "[I]t is the peculiar and exclusive province of Congress, *when the nation is at peace* to change that state into a state of war; whether from calculations of policy, or from provocations, or injuries received; in other words, it belongs to Congress only, *to go to War*. But when a foreign nation declares, or openly and avowedly makes war upon the United States, they are then by the very fact *already at war*, and any declaration on the part of Congress is nugatory; it is at least unnecessary." 7 Works of Alexander Hamilton, pp. 746–47 (J. Hamilton ed. 1851) (emphasis in original); see Wormuth, "The Vietnam War: The President versus the Constitution" in 2 The Vietnam War and International Law, pp. 723–25 (Falk ed. 1969). Hamilton's view received judicial approval in the *Prize cases*, 67 U.S. (2 Black) 635 (1863).

[17] Wormuth, *supra*, p. 726; Rogers, *supra*, pp. 48–49; Background Info. 1970, *supra*, p. 39. Although the Mexican War subsequently became a declared war (act of May 13, 1846, ch. 16, 9 Stat. 9), there was some initial congressional opposition. See 15 *Cong. Globe*, 29th Cong., 1st sess., 782–88 (1846). This opposition had so increased two years later that the House passed a rider to a resolution honoring General Taylor reading "that the war was unnecessarily and unconstitutionally begun by the President of the United States." A subsequent motion to strike the rider was defeated. See 17 *Cong. Globe*, 30th Cong., 1st sess., 95, 343–44 (1848).

[18] Rogers, *supra*, pp. 58–62; Background Info. 1970, *supra*, p. 40.

[19] Rogers, *supra*, pp. 73–74; Background Info. 1970, *supra*, p. 41; S. Bemis, A Diplomatic History of the United States, pp. 513–15 (4th ed., 1955).

[20] Rogers, *supra*, p. 74–78; Wormuth, *supra*, pp. 748–49; Bemis, *supra*, pp. 519–38.

[21] Rogers, *supra*, pp. 77–78; Background Info. 1970, *supra*, p. 43.

[22] "Congress, the President and the Power to Commit Forces to Combat," 81 *Harv. L. Rev.* 1771, at 1790 (1968).

[23] Henry Steele Commager, hearings on S. 731 before the Senate Committee on Foreign Relations, 92d Cong., 1st sess. (Mar. 8, 1971). The statement is based on the assumption that the President's emergency powers can, under certain circumstances, encompass hemispheric defense as a necessary correlative of his power to defend the United States.

[24] U.S. Department of State, "Authority of the President to Repel the Attack in Korea," 23 *Department of State Bulletin* 173 (1950).

[25] *Ibid.*, p. 174.

[26] Powers of the President To Send the Armed Forces Outside the United States, Senate Committees on Foreign Relations and Armed Services, 82d Cong., 1st sess., pp. 2–3, 20–22 (Committee print Feb. 28, 1957).

[27] Public Law 85–7, sec. 2, 71 Stat. 5 (Mar. 9, 1957), as amended by sec. 705 of the Foreign Assistance Act of 1961, 75 Stat. 424 (1961).

[28] Public Law 84–4, 69 Stat. 5 (Jan. 29, 1955).

[29] 101 *Cong. Rec.* 601 (Jan. 24, 1955).

[30] 104 *Cong. Rec.* 13, 903–04 (1958), for July 15, 1958, statement of the President.

[31] Presidential Proclamation No. 3504, 27 *Fed. Reg.* 10,401 (Oct. 23, 1962).

[32] Public Law 87–733, 76 Stat. 697 (Oct. 3, 1962).

[33] See New York Times, Apr. 29, 1965, p. 1, col. 8; *ibid.*, Apr. 30, 1965, p. 1, col. 8.

[34] See statement by the President, May 2, 1965, in New York Times, May 31, 1965, p. 10, col. 1. The OAS subsequently authorized a multination peace-keeping force.

[35] U.S. Department of State, "The Legality of United States Participation in the Defense of Viet-Nam," 54 *Department of State Bulletin* 474 (1966). The Tonkin Gulf resolution, Public Law 88–408, 78 Stat. 384 (Aug. 10, 1964), repealed by Public Law 91–672, sec. 12 (Jan. 12, 1971), provided that "the Congress approves and supports the determination of the President, as Commander-in-Chief, to take all measures necessary to repel any armed attack against the forces of the United States and to prevent further aggression," and that "the United States is . . . prepared, as the President determines, to take all necessary steps, including the use of armed force."

[36] *Massachusetts* v. *Laird, motion for leave to file complaint denied*, 400 U.S. 886 (1970); *Mora* v. *McNamara*, 387 F. 2d 862 (D.C. Cir.), *cert. denied*, 389 U.S. 934 (1967); *Luftig* v. *McNamara*, 373 F. 2d 664 (D.C. Cir.), *cert. denied*, 387 U.S. 945 (1967); *Mitchell* v. *United States*, 369 F. 2d 323 (2d Cir. 1966), *cert. denied*, 386 U.S. 972 (1967). A "political question" has been defined as a question which the Constitution requires to be determined by an agency of government other than the judiciary. See generally: A. Bickel, The Least Dangerous Branch (1962); H. Wechsler, Principles, Politics and Fundamental Law, pp. 3–48 (1961); Scharpf, "Judicial Review and the Political Question: A Fundamental Analysis," 75 *Yale L. J.* 517 (1966); Tigar, "Judicial Power, the 'Political Question Doctrine,' and Foreign Relations," 17 *U.C.L.A. L. Rev.* 1135 (1970); Brief for Defendant at 35–41, *Massachusetts* v. *Laird*, *supra*.

[37] *Luftig* v. *McNamara*, 373 F. 2d 664, at 665–66 (D.C. Cir. 1967).

[38] 8 F. Cas. 111 (No. 4186) (CCSD NY 1860), involving a suit for damages against a Navy commander who, on orders of the President and Secretary of the Navy, bombarded and burned the city of Greytown, Nicaragua, in retaliation against a revolutionary government which refused to make reparation for damage done there to U.S. citizens and their property. Mr. Justice Nelson (on assignment to the second circuit) decided in favor of the defendant; the case never reached the Supreme Court. Cf. *Perrin* v. *United States*, 4 Ct. Cl. 543 (1868).

[39] 67 U.S. (2 Black) 635, 665 (1862), involving suits by four shipowners alleging their ships had been illegally seized as prizes under President Lincoln's blockade against the Confederacy. The Court held the blockade legal. Mr. Justice Nelson and three others dissented, arguing that the President had no authortiy to impose a blockade and

seize the property of U.S. citizens without a congressional declaration of war.

[40] 343 U.S. 579 (1952).

[41] Concurring opinions of Mr. Justice Frankfurter, *ibid.*, at 604–09; Mr. Justice Burton, *ibid.*, at 655–60; Mr. Justice Clark, *ibid.*, at 662–65.

[42] See E. Corwin, The President: Office and Powers 1787–1957, p. 259 (1957): "Actually Congress has never adopted any legislation that would seriously cramp the style of a President who was attempting to break the resistance of an enemy or seeking to assure the safety of the national forces."

[43] 71 U.S. (4 Wall.) 2 (1866). The case arose as a *habeas corpus* proceeding contesting the legality of a conviction by a military tribunal of a Northern civilian in Indiana during the Civil War. The Court invalidated the conviction, holding that the military tribunal had no jurisdiction, since neither the Congress nor the President could constitutionally authorize the trial of a civilian before a military tribunal in a State which had been loyal to the Union during the Civil War. *Ibid.*, at 118–22.

[44] *Ibid.*, at 139.

[45] *Youngstown Sheet & Tube Co.* v. *Sawyer, supra,* at 637. In an early case involving seizure of vessels on the high seas, it was held that the President could not act inconsistently with a specific legislative prohibition. *Little* v. *Barreme* (*The Flying Fish*), 6 U.S. (2 Cranch) 170 (1804) involved the seizure of a ship sailing *from* a French port which was made in accordance with Presidential orders interpreting the act of 1799 (which only provided for seizure of ships bound *to* French ports). Chief Justice Marshall, for a unanimous Court, held the seizure unlawful but noted in passing that the Presidential order might well have been lawful in the absence of congressional authorization were it not for the express negation of authority contained in the act. See also the concurring opinion of Mr. Justice Clark in *Youngstown Sheet & Tube Co.* v. *Sawyer, supra,* at 660–61.

The Flying Fish involved an issue squarely within the specific grant of authority to Congress to "make Rules concerning Captures on Land and Water," (U.S. Const., art. I, sec. 8) and for this reason should not be considered authority for congressional predominance in an area of shared powers, such as the war powers. Moreover, *The Flying Fish* was decided before the doctrine of "political questions" was formulated by Chief Justice Marshall in *Foster* v. *Neilson,* 27 U.S. (2 Pet.) 253 (1829), and, therefore, although it has never been overruled, a similar case would probably never reach decision on the merits today.

[46] 299 U.S. 304 (1936). See also *Martin* v. *Mott, supra,* involving an act of Congress of 1795 which delegated authority to the President to call forth the militia in the event of an invasion or the imminent threat thereof.

[47] *Ibid.*, at 319–22. The *Curtiss-Wright* case is more often cited for the Court's dicta than its holding. The Court saw the foreign affairs powers as inherent attributes of national sovereignty and, consequently, vested exclusively in the Federal Government, to be exercised by the President as "the sole organ of the nation in its external relations." The Court suggested that this "very delicate, plenary and exclusive power of the President" with respect to foreign relations did not depend upon congressional authorization, although, like every other governmental power, it had to be exercised in subordination to the applicable provisions of the Constitution. *Ibid.*, at 320. The case holding has been interpreted as withdrawing "virtually all Constitutional limitation upon the scope of Congressional delegation of power to the President to act in the area of international relations." Jones, "The President, Congress and Foreign Relations," 29 *Calif. L. Rev.* 565, at 575 (1941). But see recent Supreme Court decisions which contain warnings that the *Curtiss-Wright* holding may not be followed should a similar set of facts arise in the future. *Afroyim* v. *Rusk,* 387 U.S. 253 (1967); *Zemel* v. *Rusk,* 381 U.S. 1 (1965); *Reid* v. *Covert,* 354 U.S. 1 (1957).

[48] See *Youngstown Sheet & Tube Co.* v. *Sawyer, supra,* at 635, n. 2.

[49] See, e.g., Richard M. Nixon, President of the United States, United States Foreign Policy for the 1970's—Building for Peace, Report to Congress, Feb. 25, 1971, pp. 10–21; United States Foreign Policy 1969–70, Report of the Secretary of State, Mar. 26, 1971, p. 11 and pp. 36–39.

[50] See the Federalist, No. 64, pp. 485–86 (J. Hamilton ed. 1864) (J. Jay); *ibid.*, No. 74, p. 552 (A. Hamilton); *ibid,* No. 75, p. 559 (A. Hamilton).

[51] Reveley, "Presidential War Making: Constitutional Prerogative or Usurpation?," 55 *Va. L. Rev.* 1243, at 1271 (1969).

[52] See R. Neustadt, Presidential Power: The Politics of Leadership, p. 23 (1960): "The President of the United States has an extraordinary range of formal powers, of authority in statute law and in the Constitution. Here is testimony that despite his 'powers' he does not obtain results by giving orders—or not, at any rate, merely by giving orders. He also has extraordinary status, *ex officio,* according to the customs of our government and politics. Here is testimony that despite his status he does not get action without argument. Presidential power is the power to persuade."

[53] Richard M. Nixon, Report to Congress, Feb. 25, 1971, *supra,* p. 16.

[54] See, e.g., S.J. Res. 18, 92d Cong., 1st sess. (introduced by Senator Taft Jan. 27, 1971); S. 731, 92d Cong., 1st sess. (introduced by Senator Javits Feb. 10, 1971); S.J. Res. 59, 92d Cong., 1st sess. (introduced by Senator Eagleton Mar. 1, 1971); S.J. Res. 95, 92d Cong., 1st sess. (introduced by Senator Stennis May 11, 1971).

[55] S. 731, *supra,* would only authorize the President to use the Armed Forces, in the absence of a declaration of war, in four specific situations: (1) to repel a sudden attack against the United States, its territories, and possessions; (2) to repel an attack against U.S. armed forces on the high seas or lawfully stationed abroad; (3) to protect the lives and property of U.S. nationals abroad; and (4) to comply with a "national commitment" as defined in S. Res. 85, 91st Cong., 1st sess. (1969). S.J. Res. 59, *supra,* would limit unauthorized Presidential military action to (1) repelling an attack on the United States; (2) repelling an attack on U.S. armed forces; and (3) withdrawing U.S. citizens from countries where their lives are subjected to an imminent threat.

[56] S. 731 and S.J. Res. 95, *supra.*

[57] S. 731, S.J. Res. 59, and S.J. Res. 95, *supra.*

[58] Formal declarations of war are often deliberately avoided because they tend to indicate both at home and abroad a commitment to total victory and may impede settlement possibilities. The issuance of a formal declaration can also have certain legal results: Some treaties may be canceled or suspended; trading, contracts, and debts with the enemy are suspended; vast emergency powers become operative domestically; and the legal relations between neutral states and belligerents can be altered. See Eagleton, "The Form and Function of the Declaration of War," 33 Am. J. Int'l L. 19–20, 32–35 (1938). On the other hand, Professor Moore argues that "probably the most compelling reason for not using a formal declaration . . . is that there is no reason to do so. As former Secretary of Defense McNamara has pointed out '[T]here has not been a formal declaration of war—anywhere in the world—since World War II.' " Moore, "The National Executive and the Use of the Armed Forces Abroad," *21 Nav. War. Col. Rev.* 28, at 33 (1969). See generally: J. Maurice, Hostilities Without Declaration of War (1883).

[59] Docs. on the War Power 1970, *supra,* p. 32.

[60] *Congressional Record,* Vol. 117, pt. 11, p. 14335.

The PRESIDING OFFICER. The Senator's 15 minutes have expired.

Mr. DOMINICK. Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

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

The PRESIDING OFFICER. On whose time?

Mr. SPONG. How much time do the proponents have?

The PRESIDING OFFICER. The proponents have 20 minutes remaining. The opponents have 43 minutes remaining.

Mr. SPONG. The proponents have 43 minutes?

The PRESIDING OFFICER. The proponents of the amendment have 20 minutes remaining. The Senator has 43.

Mr. SPONG. We have 43?

The PRESIDING OFFICER. Yes.

Mr. SPONG. I ask that it be taken out of our time.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. SPONG. Mr. President, I have nothing to add to my earlier remarks, except to say that I hope it will be the pleasure of the Senate, at this late stage in this debate, which has occupied so many days, to reject this effort to pass an alternative proposal. I hope that, consistent with its earlier actions in declining to send this bill to the Judiciary Committee and declining to place it before a study commission, the Senate will reject the amendment.

Mr. DOMINICK. I yield myself 2 minutes.

Mr. President, I am glad the Senator from New York is in the Chamber, because I should like to ask him a question, if I may have his attention for a moment.

Do I correctly understand that if we are in hostilities which have gone on for 30 days or more, the only way we can continue is that the President certifies that we are continuing our use of forces in order to disengage?

Mr. JAVITS. My answer to that question is that it is not the only way we can continue. I cannot accept that. But under this measure, in order to continue, the President has to have the concurrence of Congress, unless he certifies that he is in the process of disengagement and that he still has to protect our forces.

I cannot accept the word "only," because we make it clear that we cannot and do not abrogate the powers of the President under the Constitution, whatever they may be. I will not say now that this is the only way or that it cuts him off in a given set of circumstances on the 31st day.

I would not wish to foreclose that question, and I do not think it would be

good, in the interest of the country or in the interest of those who are for this bill, to do that.

We cannot change the President's powers—we do not seek to do so—whatever they may be. But we are offering a methodology to deal with what seems clearly to be an anomolus situation—the question of undeclared war.

Mr. DOMINICK. I thank the Senator from New York.

Under those circumstances, for the life of me, I cannot understand what section 5 and perhaps section 6 are all about.

Section 5 reads:

> The use of the Armed Forces of the United States in hostilities, or in any situation where imminent involvement in hostilities is clearly indicated . . . shall not be sustained beyond 30 days from the date of the introduction of the Armed Forces—

Into those situations, unless the President certifies to Congress, as I understand it, that the continued use of our forces is necessary in order to disengage.

I would presume that these circumstances would arise because Congress, over a period of 30 days, has said that it would not pass any authorization bill in order to ratify what the President was doing, for one reason or another, either because it did not want to declare war and thereby implement all the emergency powers that are given the President under that, or for some other reason unknown at this point.

I say to the distinguished Senator from New York that this could make it mighty uncomfortable, indeed, for commanders in the field, if they are ordered by their President to do one thing and Congress says they only have to do the other, and in the meantime they are told to disengage, thereby inciting the enemy to go on even further, when what might be needed would be a counterattack in order to be successful or to protect our men.

It is difficult for me to accept this. I regret this, and I brought up this substitute so that we can preclude problems of this kind.

Mr. President, at this point, unless the Senator wants me to yield on his own time——

Mr. JAVITS. I did not want to take the Senator's time. I will reply to the Senator on my own time. Would the Senator let me reply now?

Mr. DOMINICK. Yes—on the Senator's time.

Mr. JAVITS. Mr. President, will the Senator yield me 5 minutes?

Mr. SPONG. I yield 5 minutes to the distinguished Senator from New York.

Mr. JAVITS. Mr. President, this raises the exact point we have been trying to make all the time, because the opponents of this measure insist that we are trying to amend the Constitution. We have established a methodology which will obtain in the situation, where the President has reacted and the President persists in that reaction through a period which transforms the reaction into war.

We do not know what other situation the President might wish to invoke at a given time. Given the situations which normally face a President and which historic experience demonstrates have faced a President, he is bound by this provision. That is what we say.

We establish a methodology which we believe will work in terms of the historic experience we have encountered and the eventualities which the human mind can foresee. We trust the fact that the President of the United States will not defy Congress when Congress has spelled out the law and he has concurred in it—or he has been overridden, if he vetoes—in the specifics in which we have explained it.

Mr. DOMINICK. Mr. President, I yield 10 minutes to the Senator from Alabama.

Mr. ALLEN. Mr. President, I thank the distinguished Senator from Colorado for yielding to me.

I rise to support the pending Dominick amendment. On Monday, in colloquy with the Senator from Colorado, I pointed out that I felt the best approach to the problem was to substitute the provisions of House Joint Resolution 1 for the language of S. 2956. The pending amendment would do that.

The increasingly vocal and emotional debate over the proposed war powers bill, S. 2956, draws our attention more and more to the basic principle involved in this piece of legislation. This is the relationship between the President and Congress over the use or the threat of the use of force in U.S. foreign relations. The form and substance of this relationship, we know, is not a matter of recent discussion. It has a long history, going all the way back to the Constitutional Convention, nearly two centuries ago, if not indeed to earlier debates over the power of king and parliament. It is clearly not a question to be treated lightly, or in the heat of emotion, as I fear possibly we are doing in this body.

We are all aware of the arguments and frustrations of the Founding Fathers over this question. And we are equally aware that the solution they finally reached—after many hours of debate, deliberation, and study—was that the problem was basically unsolvable and, indeed, best left unsolved. They recognized that any attempt to define in specific terms the precise authorities of and restrictions on the President and Congress in this vital area would very likely upset the delicate balance so carefully structured between the coequal branches of the Federal Government. They understood, also, that narrow restraints spelled out in precise detail would either be too impractical to enforce, or could not be effectively maintained without tearing down the broad and powerful new organs of government they were creating to replace the weak and ineffective system that had preceded it.

The result, as has been pointed out so many times before, was that the Founding Fathers determined to lay out a relationship between President and Congress that was neither narrowly strictured nor overly balanced on one side or the other. A few important and obvious provisions were stipulated, but beyond that the relationship was implied rather than specified, and was left a part of the broad, general division of powers within the area of the country's foreign relations.

The use or the threat of force is an extremely important part of the implementation of foreign policy. Because of—rather than despite—this, it was left to develop within a political rather than a narrowly constitutional framework. Instead of attempting to tie the hands of either the President or Congress, the authors of the Constitution created a relationship of shared rather than divided powers. It was a relationship neither fixed nor exact which the interplay of political forces, practical necessity, and dynamic leadership in Congress as well as the White House has permitted to develop and shift back and forth over the years. It has allowed a flexibility and resilience in foreign affairs that otherwise would have been impossible. And it has resulted in a historical pattern that has, generally speaking, been one of cooperation between Congress and the President rather than of rivalry and opposition, as the proposed war powers bill would imply.

The spirit of cooperation between Congress and the President is the only feasible way of conducting foreign relations. This is especially so in the important area of the use or threat of force. In a practical sense, neither Chief Executive nor Congress can make extensive use of force without the support or consent of the other. They both rely heavily on each other for the effective use of this ultimate national power. Neither can exercise it alone, and both have the capability of crippling undesired utilization. Congress especially, as we know, can withhold the means of executive action: by refusing to provide funds, men, and equipment; by specifically ending Presidential authority to employ the Armed Forces in particular places and at certain times; and by developing and publicizing the important facts about any aspect of Presidential military activity.

The important point here is that the broad, normal forms of congressional authority are sufficient to halt or prevent Presidential actions that Congress opposes. Properly focused and exercised, these congressional powers may be much more effective in blocking careless or unwise Executive military initiatives than any precise statutory limitations—which in themselves may be unconstitutional—that we may enact at this time. Any such legislation will either be too broad and sweeping to take into account the many specific contingencies that may arise; or else it will be so specific and detailed that it ties the President's hands unnecessarily, crippling his powers in an emergency and, as I suggest, raising basic constitutional questions too important to be decided in the heat and emotion of floor debate.

The constitutional questions are basic. The war powers bill attempts to legislate what the authors of the Constitution specifically avoided including in that document: Precise, rigid restrictions on the President's war powers. It seeks to delimit and divide between President and Congress what the Constitution establishes as shared, cooperative powers. It seeks, furthermore, in effect to amend the Constitution, restricting to 30 days—where in the world does that figure come

from?—the President's clear, unlimited power and responsibility to use force to repel attacks so long as he thinks necessary.

If the President has authority to act in the specific fields that S. 2956 will allow him to act in, then by what stretch of the imagination can his powers to act be limited to 30 days?

If the doubtful constitutionality of this legislation is not enough to underline the undesirability of the bill, one may also seriously question its wisdom. Not only does it tie the President's hands in unforeseen emergency situations, but it also seriously affects his ability to meet our present needs. It badly cripples his freedom to deploy our military forces in support of a national expression of will and determination—such as in another Middle East crisis, Berlin blockade, or Cuban missile situation. It affects our participation in NATO and weakens the credibility of our deterrent power. In so doing, incidentally, it encourages the development of just those types of situations which might conceivably lead to hasty military actions—by our potential enemies as well as by ourselves.

What, then, should be done about the war powers bill? For all of the reasons I have just listed, it is clear to me that its passage would be wrong, either as an honest effort to correct what may appear to some as an imbalance between Congress and the President, or as a means for expressing congressional sentiments about Presidential actions. I would suggest, instead, that we turn to a much more modest proposal. By this I refer to the Dominick amendment which would reassert congressional war powers while at the same time recognizing that the President, too, has important powers in this area, and that both Congress and the President must work together to ensure the proper implementation and coordination of the Government's war powers as a whole for the greater good of the Nation.

The Dominick amendment emphasizes the President's responsibility to consult with Congress before and after involving U.S. military forces in combat, committing them to the territories of foreign nations, or making major increases in their size after such commitment. It calls for specific reports on the circumstances, authority for, and scope of such action. Above all, it avoids any implication that it seeks to alter the existing constitutional authority of either Congress or the President.

It is a far better means of expressing the sentiments that many of my colleagues are hoping to voice through the proposed war powers bill. And it puts them in a context far more sensible and responsive to their needs. It is a more meaningful and responsible approach.

Mr. President, I urge support of the pending amendment.

Mr. DOMINICK. Mr. President, I yield myself 1 minute to express my thanks to the distinguished Senator from Alabama (Mr. ALLEN) for bringing up an extremely important point, points which he and I discussed on the floor before and which are in support of my substitute and in opposition to the bill. I will be pinpointing these later. However, I want to express my appreciation to the Senator from Alabama.

Mr. ALLEN. Mr. President, I thank the Senator.

Mr. SPONG. Mr. President, I yield myself 3 minutes.

The PRESIDING OFFICER. The Senator from Virginia is recognized for 3 minutes.

Mr. SPONG. Mr. President, the Senator from Alabama has consistently from the early moments of consideration of this bill made contributions to the debate. He has propounded certain questions and made certain comments, almost since the debate began, which were very helpful in making a record.

I differ with him however on one point in the remarks he just made. The Senator from Alabama on at least three occasions referred to this as an emotional debate. I do not think it has been a very emotional debate. It has been rather dull at times. It has certainly been repetitive.

I think that this measure and the amendments have been considered in a rather calm manner, and that those who have been working on this legislation for a long time have tried to present their views detached from any emotionalism. Furthermore, they have succeeded. The Senator from Alabama whenever he has expressed his thoughts on the floor, has contributed to that atmosphere. But I could not let his remarks go by without saying that we have been going at this matter for two weeks now, and if this is an emotional debate, then I have been somewhere else.

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

Mr. SPONG. Mr. President, I yield 2 minutes to the Senator from Alabama to reply.

Mr. ALLEN. The emotionalism arises not so much from the emotion displayed by the phlegmatic Senators, as the distinguished Senator from Virginia has pointed out. It refers to the emotionalism arising from the Vietnam war and the fact that it is designed, supposedly, to prevent the occurrence of another Vietnam.

I think it does not reach the Vietnam situation. Obviously it does not apply to Vietnam. However, I think it would allow the emotionalism regarding the Vietnam conflict. That is where the emotionalism comes in rather than in the demeanor of the Senators.

The emotionalism arises from the Vietnam conflict and the desire to see, I assume, that that situation does not occur again.

Mr. SPONG. Then the Senator's reference is to an emotional debate beyond the confines of this Chamber.

Mr. ALLEN. Yes. There does not seem to be too much emotion over this measure from the standpoint of the advocates certainly, as well as the opponents.

Mr. SPONG. Mr. President, I thank the Senator.

Mr. President, unless the Senator from New York has some further comments to make, I am prepared to yield back the remainder of my time, if the Senator from Colorado is prepared to yield back the remainder of his time.

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

The PRESIDING OFFICER. The Senator from Colorado has 5 minutes remaining.

Mr. DOMINICK. Mr. President, I yield myself 3 minutes.

The PRESIDING OFFICER. The Senator from Colorado is recognized for 3 minutes.

Mr. DOMINICK. Mr. President, I am not trying to prolong the debate, but I think the Record needs to be made clear.

In the debate on the pending bill, for which I have proposed a substitute, the Senator from New York says that we cannot by statute change the constitutional authority of the President. I would agree with the Senator. Nevertheless, I would say that the proponents of this measure are trying. But even if it is not a question of constitutional authority, it would strike me that what we want to do legislatively is most unwise. Whenever we have Armed Forces of the United States engaged in hostilities or where they are subject to attack or where they have to defend themselves, the fact of the matter is that under the pending bill, if Congress passes it, they will have to stop and there is nothing they can do about it.

They are told to stop by the Congress of the United States. And they are told to fight by the President of the United States.

We say they must stop not necessarily because of the 30 days, but because we have passed an act. We say, "You can't fight any more. You have to stand there and be shot."

This is not very sound. I do not want my boy—and he has been involved for 2 years in the Army—and I do not want anyone else's son to be in that position. If we are going to engage in hostilities, the least we can do is to give some kind of reassurance instead of these constant attacks on the military. They must have the support and backing of the people. They are asked to put their lives on the line; not the Members of the Senate of the United States.

I think, and I say again with all due deference, that the amendments to this bill by the Senator from New York have not clarified that problem. I do not think it is a sufficient answer to say that they can keep on even though we have passed an act providing the President says that he will disengage. Suppose that he does not want to disengage. Suppose that the only way to get out of the situation and bring about peace is to reinforce the attack. Maybe that is the only way we can go from a military standpoint.

Will Congress take the responsibility for many of these tactical decisions? That is what I have been saying. We cannot make 535 generals out of the Congress.

That is what it does. It totally destroys our responsibility to use our forces as an instrument in determining wherever necessary how we will maintain peace in an uneasy world.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. DOMINICK. I will not take up any more time. I have covered my concern with the bill. I think that we do reaffirm our position and our right to have an input and an output insofar as

advice and judgment is concerned and still leave the President of the United States in a position where he is the one who has to make the decision in terms of the national policy and the Armed Forces.

It strikes me that this is a clear indication under the Constitution. I hope that we maintain it.

The PRESIDING OFFICER. The time of the Senator has expired. Who yields time?

Mr. SPONG. Mr. President, I yield back our time.

The PRESIDING OFFICER. All time has expired. The question is on agreeing to the amendment of the Senator from Colorado. 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. ROBERT C. BYRD. I announce that the Senator from Indiana (Mr. BAYH), the Senator from North Carolina (Mr. ERVIN), the Senator from Alaska (Mr. GRAVEL), the Senator from Iowa (Mr. HUGHES), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Washington (Mr. JACKSON), the Senator from North Carolina (Mr. JORDAN), the Senator from Montana (Mr. MANSFIELD), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from South Dakota (Mr. MCGOVERN), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Maine (Mr. MUSKIE), the Senator from Rhode Island (Mr. PASTORE), the Senator from Alabama (Mr. SPARKMAN), the Senator from Oklahoma (Mr. HARRIS), the Senator from Montana (Mr. METCALF), and the Senator from Illinois (Mr. STEVENSON) are necessarily absent.

I further announce that the Senator from Connecticut (Mr. RIBICOFF) is absent because of a death in the family.

I further announce that, if present and voting, the Senator from Rhode Island (Mr. PASTORE), the Senator from Washington (Mr. JACKSON), the Senator from Alaska (Mr. GRAVEL), the Senator from Illinois (Mr. STEVENSON), the Senator from North Carolina (Mr. JORDAN), and the Senator from Iowa (Mr. HUGHES) would each vote "nay."

Mr. GRIFFIN. I announce that the Senator from Arizona (Mr. GOLDWATER) is necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Vermont (Mr. AIKEN) and the Senator from Tennessee (Mr. BAKER) are detained on official business.

The result was announced—yeas 22, nays 56, as follows:

[No. 143 Leg.]

YEAS—22

Allen	Curtis	Hruska
Allott	Dole	McGee
Beall	Dominick	Scott
Bellmon	Fannin	Thurmond
Bennett	Fong	Tower
Brock	Griffin	Young
Buckley	Gurney	
Cotton	Hansen	

NAYS—56

Anderson	Burdick	Case
Bentsen	Byrd,	Chiles
Bible	Harry F., Jr.	Church
Boggs	Byrd, Robert C.	Cook
Brooke	Cannon	Cooper
Cranston	Long	Roth
Eagleton	Magnuson	Saxbe
Eastland	Mathias	Schweiker
Ellender	Miller	Smith
Fulbright	Mondale	Spong
Gambrell	Montoya	Stafford
Hart	Moss	Stennis
Hartke	Nelson	Stevens
Hatfield	Packwood	Symington
Hollings	Pearson	Taft
Inouye	Pell	Talmadge
Javits	Percy	Tunney
Jordan, Idaho	Proxmire	Weicker
Kennedy	Randolph	Williams

NOT VOTING—22

Aiken	Humphrey	Mundt
Baker	Jackson	Muskie
Bayh	Jordan, N.C.	Pastore
Ervin	Mansfield	Ribicoff
Goldwater	McClellan	Sparkman
Gravel	McGovern	Stevenson
Harris	McIntyre	
Hughes	Metcalf	

So Mr. DOMINICK's amendment (No. 1114) was rejected.

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. SPONG. Mr. President, I move to lay that motion on the table.

The PRESIDING OFFICER (Mr. TAFT). The question is on the motion to lay on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1113

Mr. DOMINICK. Mr. President, I call up my amendment No. 1113.

The PRESIDING OFFICER. The clerk will read the amendment.

The assistant legislative clerk read the amendment, as follows:

On page 13, at the end of section 9 of the bill, add the following: "And nothing in this Act shall be constructed to limit the authority of the President to carry out intelligence activities determined by him to be necessary to the interests of the United States.".

The PRESIDING OFFICER. Who yields time?

Mr. DOMINICK. Mr. President, I yield myself 5 minutes.

Mr. President, the word "constructed" on line 2 of the amendment should be "construed," and I ask consent that it be modified to that extent.

The PRESIDING OFFICER. The amendment is so modified.

Mr. DOMINICK. Mr. President, I do not know whether the distinguished managers of the bill are willing to accept this kind of amendment or not. It certainly is innocuous, and apparent fits in with what they thought was already included; but it most certainly does not appear to be included in many interpretations of the bill.

Before I take a lot of time to say why this amendment is needed, I wonder if the Senator from Virginia or the Senator from New York might give me some reaction to this amendment.

If they decide not to accept it, I can, of course, call for a rollcall vote. I am not sure that it would improve anything, but, for the sake of the record, it would be worth it. I would hope that they would accept it and show once again that this was part of what was intended within the wording of the bill.

The PRESIDING OFFICER. The Chair will inquire whether the amendment the Senator has called up is one of the amendments pursuant to the agreement.

Mr. DOMINICK. Yes; it is No. 1113. There is a half hour a side. I yielded myself 5 minutes, which I have used, so I will take my seat.

Mr. JAVITS. Mr. President, I wish to enlighten the Senator as to the attitude of the managers of the bill on amendments Nos. 1113, 1110, and 1112.

Will the Senator yield me 5 minutes for that purpose?

Mr. SPONG. Mr. President, I yield 5 minutes to the Senator from New York.

Mr. JAVITS. These amendments are all designed to do the same thing. They are designed to state something which the act shall not be considered to inhibit. They are not positive; they are negative—to rebut some alleged presumption which arises out of the act.

I call to the attention of the Senator from Colorado that we dealt precisely with this sort of question yesterday, when the Senator from Arkansas (Mr. FULBRIGHT) offered an amendment which, if anything, was far more innocuous. We opposed that amendment because we knew these amendments were going to be offered, and we used these amendments in our opposition, and we said when one tries to negate something that the act may mean, he introduces problems both of surplusage and counterintention, counterpurpose, which we simply cannot accept.

The instance amendment reads:

Nothing in this Act shall be construed to limit the authority of the President to carry out intelligence activities determined by him to be necessary . . .

Mr. President, intelligence activities could be an expeditionary force to Cuba or East Germany. Intelligence activities could be anything that the President says they shall be.

There is nothing in the bill that inhibits intelligence activities per se, except when, under the cover of intelligence activities, we are committing our forces to the imminent danger of hostilities or to hostilities.

I could get up and say there is no limitation whatever on intelligence activities because intelligence activities do not include any hostilities or the imminent threat of hostilities, but that would be neither here nor there as far as the Senator from Colorado was concerned, and perhaps other Senators who have his point of view.

There is no inhibition in the bill respecting intelligence operations per se. There is no inhibition respecting the constitutional authority of the President under the North Atlantic Treaty. We have adopted a perfecting amendment, adopting command arrangements, et cetera—that is under No. 1110. Under No. 1112, there is the show of force argument. Yes, if a show of force is going to put us in war, we want to be in on it; and if it does not, the President is free to go ahead.

We have the same problem before us as we had in Senator FULBRIGHT's amendment. We must in all conscience oppose them.

The PRESIDING OFFICER. Who yields time?

Mr. DOMINICK. Mr. President, I yield myself 5 minutes.

I am somewhat distressed that the Senator from New York has apparently taken the position that he is not going to accept even reasonable amendments, apparently doing it on the basis that we do not need such amendments because the bill is clear on each of these points. However, I disagree.

Therefore, I call for the yeas and nays on this amendment.

The yeas and nays were ordered.

Mr. DOMINICK. Mr. President, the Senator from New York may think that intelligence activities do not involve sending troops into areas where there is an imminent threat of hostility. I do not think he remembers history very well. What happened to the *Pueblo?* I would say the crew of the *Pueblo* thought they were in hostilities, whether they were on board the ship, when they got taken over, or whether they were in the Korean jail. I would say that the crew members of the EC–121, which was shot down and destroyed and the men killed, also thought they were rather sharply under attack.

There is nothing in this bill which says anywhere, as far as I can see, that we can conduct any kind of activity of that kind without prior specific authorization from Congress; and if you get prior specific authorization from Congress, then you do not have an intelligence activity. What we are doing is something which is designed to find out whether or not a potential enemy is going to do harm to us or our allies, and for the life of me I cannot understand why the manager of this bill would not accept an amendment which says that the President can go forward with intelligence activities even though he does not have prior authorization from Congress, and such activity would be in the best interests of the United States.

We can say, if we want to, that a whole expeditionary force is an intelligence activity, but my recollection of history does not bear out such an assertion. Intelligence activities that we know of, that have been talked about openly, include the U–2 over the Soviet Union, which was shot down. Was that an illegal act that the President conducted? Possibly it could be under this bill, it would seem to me.

What would happen in the case, as I say, of the EC–121 and the *Pueblo,* and their crews? What happens to other people who are deployed in intelligence activities which do not involve a large number of men and a large amount of materiel, but do involve, obviously, sending people who may be in the defense forces or the Armed Forces into very dangerous areas? The degree of the danger has already been shown. Hopefully we will not be doing very much of that but, that is not to say that we are necessarily wise in ruling it out.

Surely, we have a satellite capability, as I am sure we will be told, which can get information for us by a variety of other methods. But we can also be blinded, as has been said publicly on this floor and in the newspapers, by the antisatellites which have already been dedeveloped and tested by the Soviet Union, in which case we would not have anything unless we went back to one of the methods which have created problems for us before.

Why not put a simple thing in to say that the President is permitted to use the Armed Forces for the purpose of gathering intelligence? What in the world is the matter with that?

I yield back the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. SPONG. Mr. President, I yield myself 1 minute.

I join the Senator from New York in asking that this amendment be defeated. As the Senator from New York pointed out yesterday, the floor manager opposed an amendment of the same nature offered by the Senator from Arkansas, which said nothing should be construed to give the President of the United States more power than he had under the Constitution.

There is nothing in this bill preventing intelligence activity. The judgment and decision of the President will come into play if intelligence activities lead to hostilities in which the Armed Forces need to be employed. Then the bill comes into play. But nothing in this measure prohibits intelligence activity.

Mr. DOMINICK. Mr. President, will the Senator yield to me, since I have yielded back my time?

Mr. SPONG. I am happy to yield.

Mr. DOMINICK. Why does the Senator say what he just said? The bill before us says that only under certain circumstances could the President put certain forces in. If we say this is not an imminent threat of hostilities, he is not entitled to do it; and if it is an imminent threat of hostilities, he can only do it for 30 days.

Mr. SPONG. What I said was that there is nothing in the bill to prevent intelligence activities. That is all. If something happens—and the Senator brought up the *Pueblo;* I think that is an unhappy chapter in our history, but I may as well use it as an example—there is nothing in this bill that would prevent the continued use of that type of activity. It is hostilities and not the intelligence activity that concerns us.

Thus, if that ship is attacked, the President makes a judgment as to what he wishes to do. If he wishes to respond with force, he does so and reports under this bill as the Zablocki bill we have just talked about would have required him to do. But under this bill there is a 30-day provision which would become operative and which would encourage the President to weigh carefully his actions.

Mr. DOMINICK. Will the Senator yield for a further question?

Mr. SPONG. I am pleased to yield.

Mr. DOMINICK. This is what I do not understand: There is a specific provision in the act which says you cannot use the Armed Forces of the United States without prior authorization from Congress except in limited circumstances. Is the Senator saying that intelligence activities do not come within those circumstances, do I gather?

Mr. SPONG. I said that twice.

Mr. DOMINICK. If you say that, you have to have prior authorization from Congress; do you not?

Mr. SPONG. No, I did not say that. I said, first, intelligence activities do not come within the purview of the bill. I said, second, if the intelligence activities result in an attack upon those conducting them, then the President has the authority to respond as he sees fit. He is, however, required to report to Congress. That is all. Then there is a 30-day period, and Congress then positively condones or authorizes what the President has done, or they say that continued response, which might lead into a wider war, is not necessary.

In the case of the *Pueblo,* which was the Senator's example, there is nothing in this legislation to prevent such activities as were being conducted. In the event of a repeated incident of that type, the President would make a judgment as to how to respond. The President is not restricted. But, he comes under the language of this bill, because there is an emergency, there is an attack upon American forces. Therefore, the bill comes into play, and the President must report to Congress.

I do not wish to be repetitive. We have tried to make that point on this floor for 5 or 6 days, but I repeat it again.

Mr. DOMINICK. Well, let me just ask—will the Senator yield for one further question?

Mr. SPONG. I am pleased to yield.

Mr. DOMINICK. The bill says, under section 3:

> In the absence of a declaration of war by the Congress, the Armed Forces of the United States may be introduced in hostilities . . .

Only under certain circumstances. What I am saying is, we are using members of the Armed Forces in intelligence activities.

Mr. SPONG. That is right.

Mr. DOMINICK. Well, now, as I understand the bill, as I read it—and maybe I am wrong—in sections 2 and 3 it says that he cannot introduce them in situations where there is an imminent danger of hostilities unless he has consent from Congress.

Mr. SPONG. The Senator from Colorado is a victim of a strained interpretation. It is very clear what it says. It says:

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

And, the situations are specified. There is nothing to prohibit it. It goes back to a point we previously debated.

Mr. DOMINICK. But the word is "only," and then it is listed. It does not say anything about intelligence activities.

Mr. SPONG. Under this bill, the President can do everything that he is doing presently as Commander in Chief. He cannot introduce troops into hostilities for the purposes of offensive warfare under the Constitution or under this bill without authorization.

Mr. DOMINICK. Will the Senator yield for one more question?

Mr. SPONG. I yield.

Mr. DOMINICK. If we are not doing anything in this bill except for sections 5 and 6, why do we try to outline under

section 3 the only places where the President can use Armed Forces? The Senator knows as well as I do, because he is a very distinguished lawyer, that when you start itemizing what you can do, everything that is not itemized is left out, and one of them is the intelligence activities.

Mr. SPONG. We have outlined herein the circumstances, under the Constitution, in which we interpret the President, as Commander in Chief, to have the prerogative to act in emergency situations. This not only is based upon early interpretations of the Constitution which includes Madison's notes on the repelling of an attack, but also is backed up by case law which has subsequently been decided, although that has been sparse.

We have outlined these to make it very clear that the President has these powers. In specifying these powers, it is the position of the sponsors of the bill that we are giving the President no powers that he does not have under the Constitution, nor are we taking any powers away from the President.

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

Mr. SPONG. I have no objection to yielding to the Senator except that it is on our time.

Mr. GURNEY. For a question.

Mr. SPONG. I yield.

Mr. GURNEY. It has to do with the *Pueblo* incident, which the Senator from Virginia and the Senator from Florida have been discussing.

Suppose we have this situation. Suppose the *Pueblo*—as it was—was cruising off the North Korean coast; but instead of an abrupt sneak attack, as occurred in the *Pueblo* incident, the Government of North Korea advised the United States openly that if the *Pueblo* continued cruising off the coast of North Korea, North Korea was going to blast it out of the water. What about a case such as that?

Mr. SPONG. We have that information, and then the President has alternative choices.

I will tell the Senator what I would do if I were President. I would call the leadership of Congress and tell them that that was the situation, and I would seek their concurrence in the degree of response I took. I would weigh its effect upon our policy.

Mr. GURNEY. I think the Senator misunderstands my question.

Mr. SPONG. I do not think I misunderstand it.

Mr. GURNEY. I was not talking about a degree of responsibility. I was talking about whether the President would have the authority, under this bill, to continue the intelligence activity, not whether he had to send another fleet or a great many airplanes, but just continued to have the *Pueblo* going up and down the coast.

Mr. SPONG. The President would have the authority to continue the intelligence activity. The reason why the Senator from Virginia mentioned the degree of response was that that is what we who support this legislation are concerned about.

Mr. GURNEY. What does this language mean, then: "or in any situation where imminent involvement in hostilities is clearly indicated by the circumstances?" It seems to me that any reasonable man might assume that "imminent hostilities" might be included in that sort of situation.

Mr. SPONG. As the Senator from Virginia has said to the Senator from Florida, the President has alternatives there. He can respond on his own. But, then he comes under the bill.

Mr. GURNEY. How can he? Under the bill, he is prevented from using the Armed Forces then.

Mr. SPONG. No, he is not. If the Senator says there is an imminent threat, the President has the right, under the bill, to forestall. That is clearly spelled out, and he can move. All he has to do is come back to Congress. What I said to the Senator from Florida, in response to his question, was that the President has alternatives. He can move, under this bill. He can forestall. He clearly has that right. And he comes to us later or, as I suggested, which I wish had been done in several instances, he can consult; because under the circumstances given by the Senator from Florida, the hostilities had not begun.

Mr. GURNEY. That is true.

Mr. SPONG. And there is time for consultation. We all agree that there has been too little consultation.

But, to answer the Senator from Florida: First, intelligence activities would not be impeded; second, the judgment as to the response would be up to the President of the United States, who, under this bill, is not precluded from responding, but has the authority to do so if the threat is imminent.

Mr. GURNEY. I would not quarrel with the Senator's analysis of what the bill could or could not permit the President to do. But I would make this observation: As I see it, the President would, indeed, have the authority, under the bill, to continue the patrolling of the *Pueblo* for another 30 days.

Mr. SPONG. In that instance, that is correct.

Mr. GURNEY. Then he would have to come back to Congress and say, "May I continue it further?"

That is the most ridiculous situation I have ever heard of. Every time the President is going to be faced, on the high seas or somewhere else, with intelligence activities by another nation, he is going to have to come back and ask the Committee on Foreign Relations or someone else, "May I continue to do this act?" I think this is what Senator DOMINICK was getting at—that it places the President in a ridiculous situation.

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

Mr. SPONG. I yield.

Mr. JAVITS. I do not think the Senator's analysis is correct.

Mr. GURNEY. I was using the Senator's analysis, not mine.

Mr. JAVITS. The Senator was not using the analysis of the Senator from Virginia.

Mr. GURNEY. This Senator says that he was using the analysis of the Senator from Virginia.

Mr. JAVITS. I am not quarreling with the Senator.

Mr. GURNEY. The Senator sounds as though he is.

Mr. JAVITS. The Senator has said that his example was that the *Pueblo* was cruising near North Korea, in international waters, and that the North Koreans said they would blow us out of the water. Is that not what the Senator said?

Mr. GURNEY. That is correct.

Mr. JAVITS. If the North Koreans said they would blow us out of the water, then there is an imminent threat of attack on our forces, and the President can respond to such an attack or threat of an attack by the North Koreans. He can forestall it by sending aircraft over North Korea or anything——

Mr. GURNEY. The Senator does not understand what I was talking about, because that is not what I was talking about.

Mr. JAVITS. Will the Senator allow me to finish?

Mr. GURNEY. Why can we not get our facts straight?

Mr. JAVITS. If the Senator will allow me to finish, I will allow the Senator to finish.

As I understand the Senator's question, the President could have the right to forestall that attack in any way he deemed advisable, including letting the vessel continue to cruise. That is his judgment. But if, at the end of 30 days, Congress does not back him, and he has certified to Congress that he had this threat, it is not just a question of the cruising of the ship. There is imminent danger of hostilities, and then Congress has a right to say, "No, we do not want to get into war over this one." That is what the bill says.

Mr. GURNEY. That is exactly what I thought it said.

My point is that if I were an enemy, reading this kind of language, I would make sure you had all kinds of incidents such as that, and then the President and Congress will be conferring regularly, year after year, at the end of 30 days, on whether we will send a submarine here or a ship there or an airplane somewhere else. That is how ridiculous this language is.

I thank the Senator for his time.

Mr. SPONG. Mr. President, how much time do the opponents have remaining?

The PRESIDING OFFICER. The Senator has 13 minutes remaining.

Mr. SPONG. I understand that the Senator from Colorado has yielded back the remainder of his time.

The PRESIDING OFFICER. The Senator from Colorado has done so.

Mr. SPONG. I yield back the remainder of our time.

The PRESIDING OFFICER. All time on the amendment has been yielded back.

The question is on agreeing to the amendment of the Senator from Colorado. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Indiana (Mr. BAYH), the Senator from North Carolina

(Mr. ERVIN), the Senator from Alaska (Mr. GRAVEL), the Senator from Oklahoma (Mr. HARRIS), the Senator from Iowa (Mr. HUGHES), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Washington (Mr. JACKSON), the Senator from North Carolina (Mr. JORDAN), the Senator from Montana (Mr. MANSFIELD), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from South Dakota (Mr. MCGOVERN), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Montana (Mr. METCALF), the Senator from Maine (Mr. MUSKIE), the Senator from Rhode Island (Mr. PASTORE), the Senator from Alabama (Mr. SPARKMAN), and the Senator from New Jersey (Mr. WILLIAMS) are necessarily absent.

I further announce that the Senator from Connecticut (Mr. RIBICOFF) is absent because of death in the family.

I further announce that, if present and voting, the Senator from Rhode Island (Mr. PASTORE), the Senator from Connecticut (Mr. RIBICOFF), the Senator from Iowa (Mr. HUGHES), and the Senator from Alaska (Mr. GRAVEL) would each vote "nay."

On this vote, the Senator from North Carolina (Mr. JORDAN) is paired with the Senator from Washington (Mr. JACKSON). If present and voting, the Senator from North Carolina would vote "nay" and the Senator from Washington would vote "yea."

Mr. GRIFFIN. I announce that the Senator from Arizona (Mr. GOLDWATER) and the Senator from Utah (Mr. BENNETT) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Vermont (Mr. AIKEN) is detained on official business.

If present and voting, the Senator from Utah (Mr. BENNETT) would vote "yea."

The result was announced—yeas 29, nays 49, as follows:

[No. 144 Leg.]

YEAS—29

Allen	Dominick	Miller
Allott	Fannin	Saxbe
Baker	Fong	Scott
Beall	Griffin	Smith
Bellmon	Gurney	Stevens
Brock	Hansen	Taft
Buckley	Hruska	Thurmond
Cotton	Jordan, Idaho	Tower
Curtis	Long	Young
Dole	McGee	

NAYS—49

Anderson	Eastland	Packwood
Bentsen	Ellender	Pearson
Bible	Fulbright	Pell
Boggs	Gambrell	Percy
Brooke	Hart	Proxmire
Burdick	Hartke	Randolph
Byrd, Harry F., Jr.	Hatfield	Roth
	Hollings	Schweiker
Byrd, Robert C.	Inouye	Spong
Cannon	Javits	Stafford
Case	Kennedy	Stennis
Chiles	Magnuson	Stevenson
Church	Mathias	Symington
Cook	Mondale	Talmadge
Cooper	Montoya	Tunney
Cranston	Moss	Weicker
Eagleton	Nelson	

NOT VOTING—22

Aiken	Humphrey	Mundt
Bayh	Jackson	Muskie
Bennett	Jordan, N.C.	Pastore
Ervin	Mansfield	Ribicoff
Goldwater	McClellan	Sparkman
Gravel	McGovern	Williams
Harris	McIntyre	
Hughes	Metcalf	

So Mr. DOMINICK's amendment (No. 1113) was rejected.

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. SPONG. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

Mr. FULBRIGHT. Mr. President, I yield to the distinguished Senators from West Virginia.

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, for the information of Senators, it is anticipated that there will be four more votes today. The pending amendment by the Senator from Arkansas (Mr. FULBRIGHT) has a time limitation of 2 hours. However, it is not expected that the full time will be utilized. Upon the disposition of that amendment, the Senator from Colorado (Mr. DOMINICK) has 3 amendments which will be taken up in succession, 1 hour on each amendment. Again it is the hope that the full time will not be consumed.

Senators are alerted, therefore, to the fact that there will be four more rollcall votes today, and that it will be a reasonably late session.

FEDERAL WATER POLLUTION CONTROL ACT AMENDMENTS OF 1972

Mr. RANDOLPH. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 2770.

The PRESIDING OFFICER (Mr. BENTSEN) laid before the Senate the amendment of the House of Representatives to the bill (S. 2770) to amend the Federal Water Pollution Control Act, which was to strike out all after the enacting clause, and insert:

That this Act may be cited as the "Federal Water Pollution Control Act Amendments of 1972".

SEC. 2. The Federal Water Pollution Control Act is amended to read as follows:

"TITLE I—RESEARCH AND RELATED PROGRAMS

"DECLARATION OF GOALS AND POLICY

"SEC. 101. (a) The objective of this Act is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. In order to achieve this objective it is hereby declared that, consistent with the provisions of this Act—

"(1) it is the national goal that the discharge of pollutants into the navigable waters be eliminated by 1985;

"(2) it is the national goal that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by 1981;

"(3) it is the national policy that the discharge of toxic pollutants in toxic amounts be prohibited;

"(4) it is the national policy that Federal financial assistance be provided to construct publicly owned waste treatment works;

"(5) it is the national policy that area-wide waste treatment management planning processes be developed and implemented to assure adequate control of sources of pollutants in each State; and

"(6) it is the national policy that a major research and demonstration effort be made to develop technology necessary to eliminate the discharge of pollutants into the navigable waters, waters of the contiguous zone, and the oceans.

"(b) It is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent and abate pollution, to play the development and use (including restoration, preservation, and enhancement) of land and water resources, and to consult with the Administrator in the exercise of his authority under this Act. It is further the policy of the Congress to support and aid research relating to the prevention and abatement of pollution, and to provide Federal technical services and financial aid to State and interstate agencies and municipalities in connection with the prevention and abatement of pollution.

"(c) It is further the policy of Congress that the President, acting through the Secretary of State and such national and international organizations as he determines appropriate, shall take such action as may be necessary to insure that to the fullest extent possible all foreign countries shall take meaningful action for the prevention, control, and abatement of pollution in their waters and in international waters and for the achievement of goals regarding the elimination of discharge of pollutants and the improvement of water quality to at least the same extent as the United States does under its laws.

"(d) Except as otherwise expressly provided in this Act, the Administrator of the Environmental Protection Agency (hereinafter in this Act called 'Administrator') shall administer this Act.

"(e) Public participation in the development, revision, and enforcement of any regulation, standard, or effluent limitation established by the Administrator or any State under this Act shall be provided for, encouraged, and assisted by the Administrator and the States. The Administrator, in cooperation with the States, shall develop and publish regulations specifying minimum guidelines for public participation in such processes.

"(f) It is the national policy that to the maximum extent possible the procedures utilized for implementing this Act shall encourage the drastic minimization of paperwork and inter-agency decision procedures, and the best use of available manpower and funds, so as to prevent needless duplication and unnecessary delays at all levels of government.

"(g) In the implementation of this Act, agencies responsible therefor shall consider all potential impacts relating to the water, land, and air to insure that other significant environmental degradation and damage to the health and welfare of man does not result.

"COMPREHENSIVE PROGRAMS FOR WATER POLLUTION CONTROL

"SEC. 102. (a) The Administrator shall, after careful investigation, and in cooperation with other Federal agencies, State water pollution control agencies, interstate agencies, and the municipalities and industries involved, prepare or develop comprehensive programs for abating or reducing the pollution of the navigable waters and ground waters and improving the sanitary condition of surface and underground waters. In the development of such comprehensive programs due regard shall be given to the improvements which are necessary to conserve such waters for public water supplies, propagation of fish and aquatic life and wildlife, recreational purposes, and agricultural, industrial, and other legitimate uses. For the purpose of this section, the Administrator is authorized to make joint investigations with any such agencies of the condition

of any waters in any State or States, and of the discharges of any sewage, industrial wastes, or substance which may adversely affect such waters.

"(b)(1) In the survey or planning of any reservoir by the Corps of Engineers, Bureau of Reclamation, or other Federal agency, consideration shall be given to inclusion of storage for regulation of streamflow for the purpose of water quality control, except that any such storage and water releases shall not be provided as a substitute for adequate treatment or other methods of controlling waste at the source.

"(2) The need for and the value of storage for this purpose shall be determined by these agencies, with the advice of the Administrator, and his views on these matters shall be set forth in any report or presentation to the Congress proposing authorization or construction of any reservoir including such storage.

"(3) The value of such storage shall be taken into account in determining the economic value of the entire project of which it is a part, and costs shall be allocated to the purpose of water quality control in a manner which will insure that all project purposes share equitably in the benefits of multiple-purpose construction.

"(4) Costs of water quality control features incorporated in any Federal reservoir or other impoundment under the provisions of this Act shall be determined and the beneficiaries identified and if the benefits are widespread or national in scope, the costs of such features shall be nonreimbursable.

"(5) No license granted by the Federal Power Commission for a hydroelectric power project shall include storage for regulation of streamflow for the purpose of water quality control unless the Administrator shall recommend its inclusion and such reservoir storage capacity shall not exceed such proportion of the total storage required for the water quality control plan as the drainage area of such reservoir bears to the drainage area of the river basin or basins involved in such water quality control plan.

"(c)(1) The Administrator shall, at the request of the Governor of a State, or a majority of the Governors when more than one State is involved, make a grant to pay not to exceed 50 per centum of the administrative expenses of a planning agency for a period not to exceed three years, which period shall begin after the date of enactment of the Federal Water Pollution Control Act Amendments of 1972, if such agency provides for adequate representation of appropriate State, interstate, local, or (when appropriate) international interests in the basin or portion thereof involved and is capable of developing an effective, comprehensive water quality control and abatement plan for a basin or portion thereof.

"(2) Each planning agency receiving a grant under this subsection shall develop a comprehensive pollution control and abatement plan for the basin or portion thereof which—

"(A) is consistent with any applicable water quality standards, effluent and other limitations, and thermal discharge regulations established pursuant to current law within the basin;

"(B) recommends such treatment works as will provide the most effective and economical means of collection, storage, treatment, and elimination of pollutants and recommends means to encourage both municipal and industrial use of such works;

"(C) recommends maintenance and improvement of water quality within the basin or portion thereof and recommends methods of adequately financing those facilities as may be necessary to implement the plan; and

"(D) as appropriate, is developed in cooperation with, and is consistent with any comprehensive plan prepared by the Water Resources Council any areawide waste management plans developed pursuant to section 208 of this Act, and any State plan developed pursuant to section 303(e) of this Act.

"(3) For the purposes of this subsection the term 'basin' includes, but is not limited to, rivers and their tributaries, streams, coastal waters, sounds, estuaries, bays, lakes, and portions thereof, as well as the lands drained thereby.

"INTERSTATE COOPERATION AND UNIFORM LAWS

"SEC. 103. (a) The Administrator shall encourage cooperative activities by the States for the prevention and abatement of pollution, encourage the enactment of improved and, so far as practicable, uniform State laws relating to the prevention and abatement of pollution; and encourage compacts between States for the prevention and control of pollution.

"(b) The consent of the Congress is hereby given to two or more States to negotiate and enter into agreements or compacts, not in conflict with any law or treaty of the United States, for (1) cooperative effort and mutual assistance for the prevention and control of pollution and the enforcement of their respective laws relating thereto, and (2) the establishment of such agencies, joint or otherwise, as they may deem desirable for making effective such agreements and compacts. No such agreement or compact shall be binding or obligatory upon any State a party thereto unless and until it has been approved by the Congress.

"RESEARCH, INVESTIGATIONS, TRAINING, AND INFORMATION

"SEC. 104. (a) The Administrator shall establish national programs for the prevention and abatement of pollution and as part of such programs shall—

"(1) in cooperation with other Federal, State, and local agencies, conduct, and promote the coordination and acceleration of, research, investigations, experiments, training, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, and abatement of pollution;

"(2) encourage, cooperate with, and render technical services to pollution control agencies and other appropriate public or private agencies, institutions, and organizations, and individuals, including the general public, in the conduct of activities referred to in paragraph (1) of this subsection;

"(3) conduct, in cooperation with State water pollution control agencies and other interested agencies, organizations and persons, public investigations concerning the pollution of any navigable waters, and report on the results of such investigations;

"(4) establish advisory committees composed of recognized experts in various aspects of pollution and representatives of the public to assist in the examination and evaluation of research progress and proposals and to avoid duplication of research;

"(5) in cooperation with the States, and their political subdivisions, and other Federal agencies establish, equip, and maintain a water quality surveillance system for the purpose of monitoring the quality of the navigable waters and ground waters and the contiguous zone and the oceans and the Administrator shall, to the extent practicable, conduct such surveillance by utilizing the resources of the National Aeronautics and Space Administration, the National Oceanic and Atmospheric Administration, and the Coast Guard, and shall report on such quality in the report required under subsection (a) of section 516; and

"(6) initiate, and promote the coordination and acceleration of research designed to develop the most effective practicable tools and techniques for measuring the social and economic costs and benefits of activities which are subject to regulation under this Act; and shall transmit a report on the results of such research to the Congress not later than July 1, 1973.

"(b) In carrying out the provisions of subsection (a) of this section the Administrator is authorized to—

"(1) collect and make available, through publications and other appropriate means, the results of and other information, including appropriate recommendations by him in connection therewith, pertaining to such research and other activities referred to in paragraph (1) of subsection (a);

"(2) cooperate with other Federal departments and agencies, State water pollution control agencies, interstate agencies, other public and private agencies, institutions, organizations, industries involved, and individuals, in the preparation and conduct of such research and other activities referred to in paragraph (1) of subsection (a);

"(3) make grants to State water pollution control agencies, interstate agencies, other public or nonprofit private agencies, institutions, organizations, and individuals, for purposes stated in paragraph (1) of subsection (a) of this section;

"(4) contract with public or private agencies, institutions, organizations, and individuals, without regard to sections 3648 and 3709 of the Revised statutes (31 U.S.C. 529; 41 U.S.C. 5), referred to in paragraph (1) of subsection (a);

"(5) establish and maintain research fellowships at public or nonprofit private educational institutions or research organizations;

"(6) collect and disseminate, in cooperation with other Federal departments and agencies, and with other public or private agencies, institutions, and organizations having related responsibilities, basic data on chemical, physical, and biological effects of varying water quality and other information pertaining to pollution and the prevention and abatement thereof; and

"(7) develop effective and practical processes, methods, and prototype devices for the prevention or abatement of pollution.

"(c) In carrying out the provisions of subsection (a) of this section the Administrator shall conduct research on, and survey the results of other scientific studies on, the harmful effects on the health or welfare of persons caused by pollutants. In order to avoid duplication of effort, the Administrator shall, to the extent practicable, conduct such research in cooperation with and through the facilities of the Secretary of Health, Education, and Welfare.

"(d) In carrying out the provisions of this section the Administrator shall develop and demonstrate under varied conditions (including conducting such basic and applied research, studies, and experiments as may be necessary):

"(1) Practicable means of treating municipal sewage and other waterborne wastes to remove the maximum possible amounts of pollutants in order to restore and maintain the maximum amount of the Nation's water at a quality suitable for repeated reuse;

"(2) Improved methods and procedures to identify and measure the effects of pollutants on water uses, including those pollutants created by new technological developments; and

"(3) Methods and procedures for evaluating the effects on water quality and water uses of augmented streamflows to control pollution not susceptible to other means of abatement.

"(e) The Administrator shall establish, equip, and maintain field laboratory and research facilities, including, but not limited to, one to be located in the northeastern area of the United States, one in the Middle Atlantic area, one in the southeastern area, one in the midwestern area, one in the southwestern area, one in the Pacific Northwest, and one in the State of Alaska, for the con-

duct of research, investigations, experiments, field demonstrations and studies, and training relating to the prevention and control of pollution. Insofar as practicable, each such facility shall be located near institutions of higher learning in which graduate training in such research might be carried out.

"(f) The Administrator shall conduct research and technical development work, and make studies, with respect to the quality of the waters of the Great Lakes, including an analysis of the present and projected future water quality of the Great Lakes under varying conditions of waste treatment and disposal, an evaluation of the water quality needs of those to be served by such waters, an evaluation of municipal, industrial, and vessel waste treatment and disposal practices with respect to such waters, and a study of alternate means of solving pollution problems (including additional waste treatment measures) with respect to such waters.

"(g) (1) For the purpose of providing an adequate supply of trained personnel to operate and maintain existing and future treatment works and related activities, and for the purpose of enhancing substantially the proficiency of those engaged in such activities, the Administrator shall finance pilot programs, in cooperation with State and interstate agencies, municipalities, educational institutions, and other organizations and individuals, of manpower development and training and retraining of persons in, or entering into, the field of operation and maintenance of treatment works and related activities. Such program and any funds expended for such a program shall supplement, not supplant, other manpower and training programs and funds available for the purposes of this paragraph. The Administrator is authorized, under such terms and conditions as he deems appropriate, to enter into agreements with one or more States, acting jointly or severally, or with other public or private agencies or institutions for the development and implementation of such a program.

"(2) The Administrator is authorized to enter into agreements with public and private agencies and institutions, and individuals to develop and maintain an effective system for forecasting the supply of, and demand for, various professional and other occupational categories needed for the prevention, control, and abatement of pollution in each region, State, or area of the United States and, from time to time, to publish the results of such forecasts.

"(3) In furtherance of the purposes of this Act, the Administrator is authorized to—

"(A) make grants to public or private agencies and institutions and to individuals for training projects, and provide for the conduct of training by contract with public or private agencies and institutions and with individuals without regard to sections 3648 and 3709 of the Revised Statutes;

"(B) establish and maintain research fellowships in the Environmental Protection Agency with such stipends and allowances, including traveling and subsistence expenses, as he may deem necessary to procure the assistance of the most promising research fellowships; and

"(C) provide, in addition to the program established under paragraph (1) of this subsection, training in technical matters relating to the causes, prevention, and control of pollution for personnel of public agencies and other persons with suitable qualifications.

"(4) The Administrator shall submit, through the President, a report to the Congress not later than December 31, 1973, summarizing the actions taken under this subsection and the effectiveness of such actions, and setting forth the number of persons trained, the occupational categories for which training was provided, the effectiveness of other Federal, State, and local training programs in this field, together with estimates of future needs, recommendations on improving training programs, and such other information and recommendations, including legislative recommendations, as he deems appropriate.

"(h) The Administrator is authorized to enter into contracts with, or make grants to, public or private agencies and organizations and individuals for (A) the purpose of developing and demonstrating new or improved methods for the prevention, removal, and abatement of pollution in lakes, including the undesirable effects of nutrients and vegetation, and (B) the construction of publicly owned research facilities for such purposes.

"(i) The Administrator, in cooperation with the Secretary of the department in which the Coast Guard is operating, shall—

"(1) engage in such research, studies, experiments, and demonstrations as he deems appropriate, relative to the removal of oil from any waters and to the prevention, control, and elimination of oil and hazardous substances pollution;

"(2) publish from time to time the results of such activities; and

"(3) from time to time, develop and publish in the Federal Register specifications and other technical information on the various chemical compounds used in the control of oil and hazardous substances spills.

In carrying out this subsection, the Administrator may enter into contracts with, or make grants to, public or private agencies and organizations and individuals.

"(j) The Secretary of the department in which the Coast Guard is operating shall engage in such research, studies, experiments, and demonstrations as he deems appropriate relative to equipment which is to be installed on board a vessel and is designed to receive, retain, treat, or discharge human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes with particular emphasis on equipment to be installed on small recreational vessels. The Secretary of the department in which the Coast Guard is operating shall report to Congress the results of such research, studies, experiments, and demonstrations prior to the effective date of any regulations established under section 312 of this Act. In carrying out this subsection the Secretary of the department in which the Coast Guard is operating may enter into contracts with, or make grants to, public or private organizations and individuals.

"(k) In carrying out the provisions of this section relating to the conduct by the Administrator of demonstration projects and the development of field laboratories and research facilities, the Administrator may acquire land and interests therein by purchase, with appropriated or donated funds, by donation, or by exchange for acquired or public lands under his jurisdiction which he classifies as suitable for disposition. The values of the properties so exchanged either shall be approximately equal, or if they are not approximately equal, the values shall be equalized by the payment of cash to the grantor or to the Administrator as the circumstances require.

"(l) (1) The Administrator shall, after consultation with appropriate local, State, and Federal agencies, public and private organizations, and interested individuals, as soon as practicable but not later than October 3, 1972, develop and issue to the States for the purpose of carrying out this Act the latest scientific knowledge available in indicating the kind and extent of effects on health and welfare which may be expected from the presence of pesticides in the water in varying quantities. He shall revise and add to such information whenever necessary to reflect developing scientific knowledge.

"(2) The President shall, in consultation with appropriate local, State, and Federal agencies, public and private organizations, and interested individuals, conduct studies and investigations of methods to control the release of pesticides into the environment which study shall include examination of the persistency of pesticides in the water environment and alternatives thereto. The President shall submit reports, from time to time, on such investigations to Congress together with his recommendations for any necessary legislation.

"(m) (1) The Administrator shall, in an effort to prevent degradation of the environment from the disposal of waste oil, conduct a study of (A) the generation of used engine, machine, cooling, and similar waste oil, including quantities generated, the nature and quality of such oil, present collecting methods and disposal practices, and alternate uses of such oil; (B) the long-term, chronic biological effects of the disposal of such waste oil; and (C) the potential market for such oils, including the economic and legal factors relating to the sale of products made from such oils, the level of subsidy, if any, needed to encourage the purchase by public and private nonprofit agencies of products from such oil, and the practicability of Federal procurement, on a priority basis, of products made from such oil. In conducting such study, the Administrator shall consult with affected industries and other persons.

"(2) The Administrator shall report the results of such study to the Congress within 18 months after the date of enactment of the Federal Water Pollution Control Act Amendments of 1972.

"(n) (1) The Administrator shall, in cooperation with the Secretary of the Army, the Secretary of Agriculture, the Water Resources Council, and with other appropriate Federal, State, interstate, or local public bodies and private organizations, institutions, and individuals, conduct and promote, and encourage contributions to, continuing comprehensive studies of the effects of pollution, including sedimentation, in the estuaries and estuarine zones of the United States on fish and wildlife, on sport and commercial fishing, on recreation, on water supply and water power, and on other beneficial purposes. Such studies shall also consider the effect of demographic trends, the exploitation of mineral resources and fossil fuels, land and industrial development, navigation, flood and erosion control, and other uses of estuaries and estuarine zones upon the pollution of the waters therein.

"(2) In conducting such studies, the Administrator shall assemble, coordinate, and organize all existing pertinent information on the Nation's estuaries and estuarine zones; carry out a program of investigations and surveys to supplement existing information in representative estuaries and estuarine zones; and identify the problems and areas where further research and study are required.

"(3) The Administrator shall submit to Congress, from time to time, reports of the studies authorized by this subsection but at least one such report during any three year period. Copies of each such report shall be made available to all interested parties, public and private.

"(4) For the purpose of this subsection, the term 'estuarine zones' means an environmental system consisting of an estuary and those transitional areas which are consistently influenced or affected by water from an estuary such as, but not limited to, salt marshes, coastal and intertidal areas, bays, harbors, lagoons, inshore waters, and channels, and the term 'estuary' means all or part of the mouth of a river or stream or other body of water having unimpaired natural connection with open sea and within which the sea water is measurably diluted with fresh water derived from land drainage.

"(o) (1) The Administrator shall conduct research and investigations on devices, systems, incentives, pricing policy, and other methods of reducing the total flow of sewage, including, but not limited to, unnecessary water consumption in order to reduce the requirements for, and the costs of, sewage and waste treatment services. Such research and investigations shall be directed to develop devices, systems, policies, and methods capable of achieving the maximum reduction of unnecessary water consumption.

"(2) The Administrator shall report the preliminary results of such studies and investigations to the Congress within one year after the date of enactment of the Federal Water Pollution Control Act Amendments of 1972, and annually thereafter in the report required under subsection (a) of section 516. Such report shall include recommendations for any legislation that may be required to provide for the adoption and use of devices, systems, policies, or other methods of reducing water consumption and reducing the total flow of sewage. Such report shall include an estimate of the benefits to be derived from adoption and use of such services, systems, policies, or other methods and also shall reflect estimates of any increase in private, public, or other cost that would be occasioned thereby.

"(p) In carrying out the provisions of subsection (a) of this section the Administrator shall, in cooperation with the Secretary of Agriculture, other Federal agencies, and the States, carry out a comprehensive study and research program to determine new and improved methods and the better application of existing methods of preventing and abating pollution from agriculture, including the legal, economic, and other implications of the use of such methods.

"(q) (1) The Administrator shall conduct a comprehensive program of research and investigation and pilot project implementation into new and improved methods of preventing, abating, reducing, storing, collecting, treating, or otherwise eliminating pollution from sewage in rural and other areas where collection of sewage in conventional, community-wide sewage collection systems is impractical, uneconomical, or otherwise infeasible, or where soil conditions or other factors preclude the use of septic tank and drainage field systems.

"(2) The Administrator shall conduct a comprehensive program of research and investigation and pilot project implementation into new and improved methods for the collection and treatment of sewage and other liquid wastes combined with the treatment and disposal of solid wastes.

"(r) The Administrator is authorized to make grants to colleges and universities to conduct basic research into the structure and function of fresh water aquatic ecosystems, and to improve understanding of the ecological characteristics necessary to the maintenance of the chemical, physical, and biological integrity of freshwater aquatic ecosystems.

"(s) The Administrator is authorized to make grants to one or more institutions of higher education (regionally located and to be designated as 'River Study Centers') for the purpose of conducting and reporting on interdisciplinary studies on the nature of river systems, including hydrology, biology, ecology, economics, the relationship between river uses and land uses, and the effects of development within river basins on river systems and on the value of water resources and water development activities. No such grant in any fiscal year shall exceed $1,000,000.

"(t) The Administrator shall, in cooperation with State and Federal agencies and public and private organizations, conduct continuing comprehensive studies of the effects and methods of control of thermal discharges. In evaluating alternative methods of control the studies shall consider (1) their relative engineering and technical feasibility, (2) their relative social and economic costs and benefits, and (3) their relative impact on the environment, considering not only water quality but also air quality, land use, and effective utilization and conservation of natural resources. Such studies shall consider methods of minimizing adverse effects and maximizing beneficial effects of thermal discharges. The results of these studies shall be reported by the Administrator as soon as practicable, but not later than one year after enactment of this subsection, and shall be made available to the public and the States, and utilized by the Administrator in proposing regulations with respect to thermal discharges under section 316 of this Act.

"(u) There is authorized to be appropriated (1) $100,000,000 per fiscal year for the fiscal year ending June 30, 1973, and the fiscal year ending June 30, 1974, for carrying out the provisions of this section other than subsections (g), (p), and (r); (2) not to exceed $7,500,000 for fiscal year 1973 for carrying out the provisions of subsection (g) (1); (3) not to exceed $2,500,000 for fiscal year 1973 for carrying out the provisions of subsection (g) (2); (4) not to exceed $10,000,000 for each of the fiscal years ending June 30, 1973, and June 30, 1974 for carrying out the provisions of subsection (p); and not to exceed $15,000,000 per fiscal year for the fiscal years ending June 30, 1973, and June 30, 1974, for carrying out the provisions of subsection (r).

"GRANTS FOR RESEARCH AND DEVELOPMENT

"SEC. 105. (a) The Administrator is authorized to conduct in the Environmental Protection Agency, and to make grants to any State, municipality, or intermunicipal or interstate agency for the purpose of assisting in the development of—

"(1) any project which will demonstrate a new or improved method of preventing and abating the discharge into any waters of pollutants from sewers which carry storm water or both storm water and pollutants; or

"(2) any project which will demonstrate advanced waste treatment and water purification methods (including the temporary use of new or improved chemical additives which provide substantial immediate improvement to existing treatment processes), or new or improved methods of joint treatment systems for municipal and industrial wastes;

and to include in such grants such amounts as are necessary for the purpose of reports, plans, and specifications in connection therewith.

"(b) The Administrator is authorized to make grants to any State or States or interstate agency to demonstrate, in river basins or portions thereof, advanced pollution treatment and environmental enhancement techniques to control pollution from all sources, within such basins or portions thereof, including nonpoint sources, together with in-stream water quality improvement techniques.

"(c) The Administrator is authorized to conduct in the Environmental Protection Agency, to make grants to, and to enter into contracts with, persons for research and demonstration projects for prevention of pollution by industry including, but not limited to, treatment of industrial waste. No grant shall be made for any project under this subsection unless the Administrator determines that such project will develop or demonstrate a new or improved method of treating industrial wastes or otherwise prevent pollution by industry, which method shall have industrywide application.

"(d) In carrying out the provisions of this section, the Administrator shall conduct, on a priority basis, an accelerated effort to develop, refine, and achieve practical application of:

"(1) waste management methods applicable to point and nonpoint sources of pollutants to eliminate the discharge of pollutants, including, but not limited to, elimination of runoff of pollutants and the effects of polluants from inplace or accumulated sources;

"(2) advanced waste treatment methods applicable to point and nonpoint sources, including inplace or accumulated sources of pollutants, and methods for reclaiming and recycling water and confining and containing pollutants so they will not migrate to cause water or other environmental pollution; and

"(3) improved methods and procedures to identify and measure the effects of pollutants on the chemical, physical, and biological integrity of water, including those pollutants created by new technological developments.

"(e) (1) The Administrator is authorized to (A) make, in consultation with the Secretary of Agriculture, grants to persons for research and demonstration projects with respect to new and improved methods of preventing and abating pollution from agriculture, and (B) disseminate, in cooperation with the Secretary of Agriculture, such information obtained under this subsection, section 104(p), and section 304 as will encourage and enable the adoption of such methods in the agricultural industry.

"(2) The Administrator is authorized, (A) in consultation with other interested Federal agencies, to make grants for demonstration projects with respect to new and improved methods of preventing, abating, reducing, storing, collecting, treating, or otherwise eliminating pollution from sewage in rural and other areas where collection of sewage in conventional, community-wide sewage collection systems is impractical, uneconomical, or otherwise infeasible, or where soil conditions or other factors preclude the use of septic tank and drainage field systems, and (B) in cooperation with other interested Federal and State agencies, to disseminate such information obtained under this subsection as will encourage and enable the adoption of new and improved methods developed pursuant to this subsection.

"(f) Federal grants under subsection (a) of this section shall be subject to the following limitations:

"(1) No grant shall be made for any project unless such project shall have been approved by the appropriate State water pollution control agency or agencies and by the Administrator;

"(2) No grant shall be made for any project in an amount exceeding 75 per centum of the cost thereof as determined by the Administrator; and

"(3) No grant shall be made for any project unless the Administrator determines that such project will serve as a useful demonstration for the purpose set forth in clause (1) or (2) of subsection (a).

"(g) Federal grants under subsections (c) and (d) of this section shall not exceed 75 per centum of the cost of the project.

"(h) For the purpose of this section there is authorized to be appropriated $70,000,000 per fiscal year for the fiscal year ending June 30, 1973, and the fiscal year ending June 30, 1974, and from such appropriations at least 10 per centum of the funds actually appropriated in each fiscal year shall be available only for the purposes of subsection (e).

"GRANTS FOR POLLUTION CONTROL PROGRAMS

"SEC. 106. (a) There are hereby authorized to be appropriated the following sums, to remain available until expended, to carry out the purposes of this section—

"(1) $60,000,000 for the fiscal year ending June 30, 1973; and

"(2) $75,000,000 for the fiscal year ending June 30, 1974;

for grants to States and to interstate agencies to assist them in carrying out programs

for the prevention and abatement of pollution.

"(b) From the sums appropriated in any fiscal year, the Administrator shall make allotments to the several States and interstate agencies in accordance with regulations promulgated by him on the basis of the extent of the pollution problem in the respective States.

"(c) The Administrator is authorized to pay to each State and interstate agency each fiscal year either—

"(1) the allotment of such State or agency for such fiscal year under subsection (b), or

"(2) the reasonable costs as determined by the Administrator of developing and carrying out a pollution program by such State or agency during such fiscal year,

whichever amount is the lesser.

"(d) No grant shall be made under this section to any State or interstate agency for any fiscal year when the expenditure of non-Federal funds by such State or interstate agency during such fiscal year for the recurrent expenses of carrying out its pollution control program are less than the expenditure by such State or interstate agency of non-Federal funds for such recurrent program expenses during the fiscal year ending June 30, 1971.

"(e) Grants shall be made under this section on condition that—

"(1) Such State (or interstate agency) files with the Administrator within one hundred and twenty days after the date of enactment of this section:

"(A) a summary report of the current status of the State pollution control program, including the criteria used by the State in determining priority of treatment works; and

"(B) such additional information, data, and reports as the Administrator may require.

"(2) No federally assumed enforcement as defined in section 309(a)(2) is in effect with respect to such State or interstate agency.

"(3) Such State (or interstate agency) submits within one hundred and twenty days after the date of enactment of this section and before July 1 of each year thereafter for the Administrator's approval its program for the prevention and abatement of pollution in accordance with purposes and provisions of this Act in such form and content as the Administrator may prescribe.

"(f) Any sums allotted under subsection (b) in any fiscal year which are not paid shall be reallotted by the Administrator in accordance with regulations promulgated by him.

"AREA ACID AND OTHER MINE WATER POLLUTION CONTROL DEMONSTRATIONS

"SEC. 107. (a) The Administrator in cooperation with other Federal departments, agencies, and instrumentalities is authorized to enter into agreements with any State or interstate agency to carry out one or more projects to demonstrate methods for the elimination or control, within all or part of a watershed, of acid or other mine water pollution resulting from active or abandoned mines. Such projects shall demonstrate the engineering and economic feasibility and practicality of various abatement techniques which will contribute substantially to effective and practical methods of acid or other mine water pollution elimination or control, including techniques that demonstrate the engineering and economic feasibility and practicality of using sewage sludge materials and other municipal wastes to diminish or prevent pollution from acid, sedimentation, or other water pollutants and to restore the lands on which such projects are located to usefulness for forestry, agriculture, recreation, or other beneficial uses.

"(b) The Administrator, in selecting watersheds for the purposes of this section, shall (1) require such feasibility studies as he deems appropriate, (2) give preference to areas which have the greatest present or potential value for public use for recreation, fish and wildlife, water supply, and other public uses, and (3) be satisfied that the project area will not be affected adversely by the influx of acid or other mine water pollution from nearby sources.

"(c) Federal participation in such projects shall be subject to the conditions—

"(1) that the State or interstate agency shall pay not less than 25 per centum of the actual project costs which payment may be in any form, including, but not limited to, land or interests therein that is needed for the project, or personal property or services, the value of which shall be determined by the Administrator; and

"(2) that the State or interstate agency shall provide legal and practical protection to the project area to insure against any activities which will cause future acid or other mine water pollution.

"(d) There is authorized to be appropriated $15,000,000 to carry out the provisions of this section, which sum shall be available until expended. No more than 25 per centum of the total funds available under this section in any one year shall be granted to any one State.

"POLLUTION CONTROL ON GREAT LAKES

"SEC. 108. (a) The Administrator, in cooperation with other Federal departments, agencies, and instrumentalities is authorized to enter into agreements with any State, political subdivision, interstate agency, or other public agency, or combination thereof, to carry out one or more projects to demonstrate new methods and techniques and to develop preliminary plans for the elimination or control of pollution, within all or any part of the watersheds of the Great Lakes. Such projects shall demonstrate the engineering and economic feasibility and practicability of removal of pollutants and prevention of any polluting matter from entering into the Great Lakes in the future and other abatement and remedial techniques which will contribute substantially to effective and practical methods of pollution elimination or control.

"(b) Federal participation in such projects shall be subject to the condition that the State, political subdivision, interstate agency, or other public agency, or combination thereof, shall pay not less than 25 per centum of the actual project costs, which payment may be in any form, including, but not limited to, land or interests therein that is needed for the project, and personal property or services the value of which shall be determined by the Administrator.

"(c) There is authorized to be appropriated $20,000,000 to carry out the provisions of subsections (a) and (b) of this section, which sum shall be available until expended.

"(d)(1) In recognition of the serious conditions which exist in Lake Erie, the Secretary of the Army, acting through the Chief of Engineers, is directed to design and develop a demonstration waste water management program for the rehabilitation and environmental repair of Lake Erie. Prior to the initiation of detailed engineering and design, the program, along with the specific recommendations of the Chief of Engineers, and recommendations for its financing, shall be submitted to the Congress for statutory approval. This authority is in addition to, and not in lieu of, other waste water studies aimed at eliminating pollution emanating from select sources around Lake Erie.

"(2) This program is to be developed in cooperation with the Environmental Protection Agency, other interested departments, agencies, and instrumentalities of the Federal Government, and the States and their political subdivisions. This program shall set forth alternative systems for managing waste water on a regional basis and shall provide local and State governments with a range of choice as to the type of system to be used for the treatment of waste water. These alternative systems shall include both advanced waste treatment technology and land disposal systems including aerated treatment-spray irrigation technology and will also include provisions for the disposal of solid wastes, including sludge. Such program should include measures to control point sources of pollution, area sources of pollution, including acid-mine drainage, urban runoff and rural runoff, and sources of in-place pollutants, including bottom loads, sludge banks, and polluted harbor dredgings.

"(e) There is authorized to be appropriated $5,000,000 to carry out the provisions of subsection (d) of this section, which sum shall be available until expended.

"TRAINING GRANTS AND CONTRACTS

"SEC. 109. The Administrator is authorized to make grants to or contracts with institutions of higher education, or combinations of such institutions, to assist them in planning, developing, strengthening, improving, or carrying out programs or projects for the preparation of undergraduate students to enter an occupation which involves the design, operation, and maintenance of treatment works, and other facilities whose purpose is water quality control. Such grants or contracts may include payment of all or part of the cost of programs or projects such as—

"(A) planning for the development or expansion of programs or projects for training persons in the operation and maintenance of treatment works;

"(B) training and retraining of faculty members;

"(C) conduct of short-term or regular session institutes for study by persons engaged in, or preparing to engage in, the preparation of students preparing to enter an occupation involving the operation and maintenance of treatment works;

"(D) carrying out innovative and experimental programs of cooperative education involving alternate periods of full-time or part-time academic study at the institution and periods of full-time or part-time employment involving the operation and maintenance of treatment works; and

"(E) research into, and development of, methods of training students or faculty, including the preparation of teaching materials and the planning of curriculum.

"APPLICATION FOR TRAINING GRANT OR CONTRACT; ALLOCATION OF GRANTS OR CONTRACTS

"SEC. 110. (1) A grant or contract authorized by section 109 may be made only upon application to the Administrator at such time or times and containing such information as he may prescribe, except that no such application shall be approved unless it—

"(A) sets forth programs, activities, research, or development for which a grant is authorized under section 109 and describes the relation to any program set forth by the applicant in an application, if any, submitted pursuant to section 111;

"(B) provides such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and accounting for Federal funds paid to the applicant under this section; and

"(C) provides for making such reports, in such form and containing such information, as the Administrator may require to carry out his functions under this section, and for keeping such records and for affording such access thereto as the Administrator may find necessary to assure the correctness and verification of such reports.

"(2) The Administrator shall allocate grants or contracts under section 109 in such manner as will most nearly provide an equitable distribution of the grants or contracts throughout the United States among institutions of higher education which show

promise of being able to use funds effectively for the purpose of this section.

"(3)(A) Payment under this section may be used in accordance with regulations of the Administrator, and subject to the terms and conditions set forth in an application approved under subsection (a), to pay part of the compensation of students employed in connection with the operation and maintenance of treatment works, other than as an employee in connection with the operation and maintenance of treatment works or as an employee in any branch of the Government of the United States, as part of a program for which a grant has been approved pursuant to this section.

"(B) Departments and agencies of the United States are encouraged, to the extent consistent with efficient administration, to enter into arrangements with institutions of higher education for the full-time, part-time, or temporary employment, whether in the competitive or excepted service, of students enrolled in programs set forth in applications approved under subsection (a).

"AWARD OF SCHOLARSHIPS

"SEC. 111. (1) The Administrator is authorized to award scholarships in accordance with the provisions of this section for undergraduate study by persons who plan to enter an occupation involving the operation and maintenance of treatment works. Such scholarships shall be awarded for such periods as the Administrator may determine but not to exceed four academic years.

"(2) The Administrator shall allocate scholarships under this section among institutions of higher education with programs approved under the provisions of this section for the use of individuals accepted into such programs, in such manner and according to such plan as will insofar as practicable—

"(A) provide an equitable distribution of such scholarships throughout the United States; and

"(B) attract recent graduates of secondary schools to enter an occupation involving the operation and maintenance of treatment works.

"(3) The Administrator shall approve a program of any institution of higher education for the purposes of this section only upon application by the institution and only upon his finding—

"(A) that such program has a principal objective the education and training of persons in the operation and maintenance of treatment works;

"(B) that such program is in effect and of high quality, or can be readily put into effect and may reasonably be expected to be of high quality;

"(C) that the application describes the relation of such program to any program, activity, research, or development set forth by the applicant in an application, if any, submitted pursuant to section 110 of this Act; and

"(D) that the application contains satisfactory assurances that (i) the institution will recommend to the Administrator for the award of scholarships under this section, for study in such program, only persons who have demonstrated to the satisfaction of the institution a serious intent, upon completing the program, to enter an occupation involving the operation and maintenance of treatment works, and (ii) the institution will make reasonable continuing efforts to encourage recipients of scholarships under this section, enrolled in such program, to enter occupations involving the operation and maintenance of treatment works upon completing the program.

"(4)(A) The Administrator shall pay to persons awarded scholarships under this section such stipends (including such allowances for subsistence and other expenses for such persons and their dependents) as he may determine to be consistent with prevailing practices under comparable federally supported programs.

"(B) The Administrator shall (in addition to the stipends paid to persons under subsection (a)) pay to the institution of higher education at which such person is pursuing his course of study such amount as he may determine to be consistent with prevailing practices under comparable federally supported programs.

"(5) A person awarded a scholarship under the provisions of this section shall continue to receive the payments provided in this section only during such periods as the Administrator finds that he is maintaining satisfactory proficiency and devoting full time to study or research in the field in which such scholarship was awarded in an institution of higher education, and is not engaging in gainful employment other than employment approved by the Administrator by or pursuant to regulation.

"(6) The Administrator shall by regulation provide that any person awarded a scholarship under this section shall agree in writing to enter and remain in an occupation involving the design, operation, or maintenance of treatment works for such period after completion of his course of studies as the Administrator determines appropriate.

"DEFINITIONS AND AUTHORIZATIONS

"SEC. 112. (a) As used in sections 109 through 112 of this Act—

"(1) The term 'institution of higher education' means an educational institution described in the first sentence of section 1201 of the Higher Education Act of 1965 (other than an institution of any agency of the United States) which is accredited by a nationally recognized accrediting agency or association approved by the Administrator for this purpose. For purposes of this subsection, the Administrator shall publish a list of nationally recognized accrediting agencies or associations which he determines to be reliable authority as to the quality of training offered.

"(2) The term 'academic year' means an academic year or its equivalent, as determined by the Administrator.

"(b) The Administrator shall annually report his activities under sections 109 through 112 of this Act, including recommendations for needed revisions in the provisions thereof.

"(c) There are authorized to be appropriated $25,000,000 per fiscal year for the fiscal years ending June 30, 1973, and June 30, 1974, to carry out sections 109 through 112 of this Act.

ALASKA VILLAGE DEMONSTRATION PROJECTS

"SEC. 113. (a) The Administrator is authorized to enter into agreements with the State of Alaska to carry out one or more projects to demonstrate methods to provide for central community facilities for safe water and elimination or control of pollution in those native villages of Alaska without such facilities. Such project shall include provisions for community safe water supply systems, toilets, bathing and laundry facilities, sewage disposal facilities, and other similar facilities, and educational and informational facilities and programs relating to health and hygiene. Such demonstration projects shall be for the further purpose of developing preliminary plans for providing such safe water and such elimination or control of pollution for all native villages in such State.

"(b) In carrying out this section the Administrator shall cooperate with the Secretary of Health, Education, and Welfare for the purpose of utilizing such of the personnel and facilities of that Department as may be appropriate.

"(c) The Administrator shall report to Congress not later than January 31, 1974, the results of the demonstration projects authorized by this section together with his recommendations, including any necessary legislation, relating to the establishment of a statewide program.

"(d) There is authorized to be appropriated not to exceed $2,000,000 to carry out this section.

"ECONOMIC GROWTH CENTERS

"SEC. 114. In the case of any economic growth center designated under section 143 of title 23, United States Code, the Administrator is authorized to make a supplemental grant to such center in any case where such center receives a grant for construction of treatment works under this Act. Such supplemental grant shall be for such percentage of the costs of such works as the Administrator determines. There is authorized to be appropriated to carry out this section not to exceed $5,000,000.

"TITLE II—GRANTS FOR CONSTRUCTION OF TREATMENT WORKS

"PURPOSE

"SEC. 201. (a) It is the purpose of this title to require, and to assist the development and implementation of, waste treatment management plans and practices.

"(b) Waste treatment management plans and practices shall provide for the application of the best practicable waste treatment technology before any discharge into receiving waters, including reclaiming and recycling of water, and confined disposal of pollutants so they will not migrate to cause water or other environmental pollution and shall provide for consideration of advanced waste treatment technology and aerated treatment-spray-irrigation technology.

"(c) To the extent practicable, waste treatment management shall be on an areawide basis and provide control or treatment of all point and nonpoint sources of pollution, including in place or accumulated pollution sources.

"(d) The Administrator shall encourage waste treatment management which results in the construction of revenue producing facilities providing for—

"(1) the recycling of potential sewage pollutants through the production of agriculture, silviculture, or aquaculture products, or any combination thereof;

"(2) the confined and contained disposal of pollutants not recycled;

"(3) the reclamation of wastewater; and

"(4) the ultimate disposal of sludge in a manner that will not result in evironmental hazards.

"(e) The Administrator shall encourage waste treatment management which results in integrating facilities for sewage treatment and recycling with facilities to treat, dispose of or utilize other industrial and municipal wastes, including but not limited to solid waste and waste heat and thermal discharges. Such integrated facilities shall be designed and operated to produce revenues in excess of capital and operation and maintenance costs and such revenues shall be used by the designated regional management agency to aid in financing other environmental improvement programs.

"(f) The Administrator shall encourage waste treatment management which combines 'open space' and recreational considerations with such management.

"(g)(1) The Administrator is authorized to make grants to any State, municipality, or intermunicipal or interstate agency for the construction of publicly owned treatment works.

"(2) The Administrator shall not make grants from funds authorized for any fiscal year beginning after June 30, 1974, to any State, municipality, or intermunicipal or interstate agency for the erection, building, acquisition, alteration, remodeling, improvement, or extension of treatment works unless the grant applicant has satisfactorily demonstrated to the Administrator that—

"(A) alternative waste management techniques have been studied and evaluated and the works proposed for grant assistance will provide for the application of the best practicable waste treatment technology over the life of the works consistent with the purposes of this title; and

"(B) as appropriate, the works proposed for grant assistance will take into account and allow to the extent practicable the application of technology at a later date which will provide for the reclaiming or recycling of water or otherwise eliminate the discharge of pollutants.

"(3) The Administrator shall not approve any grant after July 1, 1973, for treatment works under this section unless the applicant shows to the satisfaction of the Administrator that each sewer collection system discharging into such treatment works is not subject to excessive infiltration.

"(4) The Administrator is authorized to make grants to applicants for treatment works grants under this section for such sewer system evaluation studies as may be necessary to carry out the requirements of paragraph (3) of this subsection. Such grants shall be made in accordance with rules and regulations promulgated by the Administrator. Initial rules and regulations shall be promulgated under this paragraph for later than 120 days after the date of enactment of the Federal Water Pollution Control Act Amendments of 1972.

"FEDERAL SHARE

"SEC. 202. (a) The amount of any grant for treatment works made under this Act from funds authorized for any fiscal year beginning after June 30, 1971, shall be 60 per centum of the cost of construction thereof (as approved by the Administrator); except that the amount of such grant shall be increased to 75 per centum of such cost if the State agrees to pay at least 15 per centum of the cost of construction of each treatment works for which Federal grants are to be made from funds allocated to such State for such fiscal year. Any grant (other than for reimbursement) made prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972 from any funds authorized for any fiscal year beginning after June 30, 1971, shall, upon the request of the applicant, be increased to the applicable percentage under this section.

"(b) The amount of the grant for any project approved by the Administrator after January 1, 1971, and before July 1, 1971, for the construction of treatment works, the actual erection, building or acquisition of which was not commenced prior to July 1, 1971, shall, upon the request of the applicant, be increased to the applicable percentage under subsection (a) of this section for grants for treatment works from funds for fiscal years beginning after June 30, 1971, with respect to the cost of such actual erection, building, or acquisition. Such increased amount shall be paid from any funds allocated to the State in which the treatment works is located without regard to the fiscal year for which such funds were authorized. Such increased amount shall be paid for such project only if—

"(1) a sewage collection system that is a part of the same total waste treatment system as the treatment works for which such grant was approved is under construction or is to be constructed for use in conjunction with such treatment works, and if the cost of such sewage collection system exceeds the cost of such treatment works, and

"(2) the State water pollution control agency certifies that the quantity of available ground water will be insufficient to meet the future requirements for public water supply, unless effluents from publicly owned treatment works, after adequate treatment are injected into the ground to replenish the supply of ground water.

"PLANS, SPECIFICATIONS, ESTIMATES, AND PAYMENTS

"SEC. 203. (a) Each applicant for a grant shall submit to the Administrator for his approval, plans, specifications, and estimates for each proposed project for the construction of treatment works for which a grant is applied for under section 201(d)(1) from funds allotted to the State under section 205 and which otherwise meets the requirements of this Act. The Administrator shall act upon such plans, specifications, and estimates as soon as practicable after the same have been submitted, and his approval of any such plans, specifications, and estimates shall be deemed a contractual obligation of the United States for the payment of its proportional contribution to such project.

"(b) The Administrator shall, from time to time as the work progresses, make payments to the recipient of a grant for costs of construction incurred on a project. These payments shall at no time exceed the Federal share of the cost of construction incurred to the date of the voucher covering such payment plus the Federal share of the value of the materials which have been stockpiled in the vicinity of such construction in conformity to plans and specifications for the project.

"(c) After completion of a project and approval of the final voucher by the Administrator, he shall pay out of the appropriate sums the unpaid balance of the Federal share payable on account of such project.

"LIMITATIONS AND CONDITIONS

"SEC. 204. (a) Before approving grants for any project for any treatment works under section 201(d)(1) the Administrator shall determine—

"(1) that such works are included in any applicable areawide waste treatment management plan developed under section 208 of this Act;

"(2) that such works are in conformity with any applicable State plan under section 303(e) of this Act;

"(3) that such works have been certified by the appropriate State water pollution control agency as entitled to priority over such other works in the State in accordance with any applicable State plan under section 303(e) of this Act;

"(4) that the applicant proposing to construct such works agrees to pay the non-Federal costs of such works and has made adequate provisions satisfactory to the Administrator for assuring proper and efficient operation, including the employment of trained management and operations personnel, and the maintenance of such works in accordance with a plan of operation approved by the State water pollution control agency or, as appropriate, the interstate agency, after construction thereof;

"(5) that the size and capacity of such works relate directly to the needs to be served by such works, including sufficient reserve capacity. The amount of reserve capacity provided shall be approved by the Administrator on the basis of a comparison of the cost of constructing such reserves as a part of the works to be funded and the anticipated cost of providing expanded capacity at a date when such capacity will be required;

"(6) that no specification for bids in connection with such works shall be written in such a manner as to contain proprietary, exclusionary, or discriminatory requirements other than those based upon performance, unless such requirements are necessary to test or demonstrate a specific thing or to provide for necessary interchangeability of parts and equipment, or at least two brand names or trade names of comparable quality or utility are listed and are followed by the words 'or equal'.

"(b)(1) Notwithstanding any other provision of this title, the Administrator shall not approve any grant for any treatment works under section 201(d)(1) after June 30, 1973, unless he shall first have determined that the applicant (A) has adopted or will adopt a system of charges to assure that each recipient of waste treatment services within the applicant's jurisdiction, as determined by the Administrator, will pay its proportionate share of the costs of operation, maintenance (including replacement), and expansion of any waste treatment services provided by the applicant; (B) has made provision for the payment to such applicant by the industrial users of the treatment works, of that portion of the cost of construction of such treatment works (as determined by the Administrator) which is allocable to the treatment of such industrial wastes to the extent attributable to the Federal share of the cost of construction; and (C) has legal, insitutional, managerial, and financial capability to insure adequate construction, operation, maintenance, and expansion of treatment works throughout the applicant's jurisdiction, as determined by the Administrator.

"(2) The Administrator shall, within one hundred and eighty days after the date of enactment of the Federal Water Pollution Control Act Amendments of 1972, and after consultation with appropriate State, interstate, municipal, and intermunicipal agencies, issue guidelines applicable to payment of waste treatment costs by industrial and nonindustrial recipients of waste treatment services which shall establish (A) classes of users of such services, including categories of industrial users; (B) criteria against which to determine the adequacy of charges imposed on classes and categories of users reflecting all factors that influence the cost of waste treatment, including strength, volume, and delivery flow rate characteristics of waste; and (C) model systems and rates of user charges typical of various treatment works serving municipal-industrial communities.

"(3) Revenues derived from the payment of costs by industrial users of waste treatment services, to the extent costs are attributable too the Federal share of eligible project costs provided pursuant to this title, as determined by the Administrator, shall be retained by the grantee for use solely for the operation, maintenance, expansion, and construction of treatment works which are publicly owned, in accordance with regulations promulgated by the Administrator.

"(4) Approval by the Administrator of a grant to an interstate agency established by interstate compact for any treatment works shall satisfy any other requirement that such works be authorized by Act of Congress.

"ALLOTMENT

"SEC. 205. (a) All sums authorized to be appropriated pursuant to section 207 for each fiscal year beginning after June 30, 1972, shall be allotted by the Administrator not later than the January 1st immediately preceding the beginning of the fiscal year for which authorized, except that the allotment for fiscal year 1973 shall be made not later than 30 days after the date of enactment of the Federal Water Pollution Control Act Amendments of 1972. Such sums shall be allotted among the States by the Administrator in accordance with regulations promulgated by him, in the ratio that the estimated cost of constructing all needed publicly owned treatment works in each State bears to the estimated cost of construction of all needed publicly owned treatment works in all of the States. For the fiscal years ending June 30, 1973, and June 30, 1974, such ratio shall be determined on the basis of the table on page 18 of volume I of Senate Document 92-23 entitled 'The Cost of Clean Water'. Allotments for fiscal years which beshall be made only in accordance with a gin after the fiscal year ending June 30, 1974, revised cost estimate made and submitted to Congress in accordance with section 516(b)

of this Act and only after such revised cost estimate shall have been approved by law specifically enacted hereafter.

"(b) (1) Any sums allotted to a State under subsection (a) shall be available for obligation under section 203 on and after the date of such allotment. Such sums shall continue available for obligation in such State for a period of one year after the close of the fiscal year for which such sums are authorized. Any amounts so allotted which are not obligated by the end of such one-year period shall be immediately reallotted by the Administrator, in accordance with regulations promulgated by him, generally on the basis of the ratio used in making the last allotment of sums under this section. Such reallotted sums shall be added to the last allotments made to the States. Any sum made available to a State by reallotment under this subsection shall be in addition to any funds otherwise allotted to such State for grants under this title during any fiscal year.

"(2) Any sums which have been obligated under section 203 and which are released by the payment of the final voucher for the project shall be immediately credited to the State to which such sums were last allotted. Such released sums shall be added to the amounts last allotted to such State and shall be immediately available for obligation in the same manner and to the same extent as such last allotment.

"REIMBURSEMENT AND ADVANCED CONSTRUCTION

"SEC. 206. (a) Any publicly owned treatment works in a State on which construction was initiated after June 30, 1966, but before July 1, 1972, which was approved by the appropriate State water pollution control agency and which the Administrator finds an application was made prior to initiation of construction for financial assistance under this Act and which the Administrator finds meets the requirements of section 8 of this Act in effect at the time of the initiation of construction but which was constructed (1) without financial assistance authorized by such section 8 solely because of the lack of authority or of Federal funds or (2) with financial assistance authorized by such section 8 but in a lesser percentage of the cost of construction than authorized by such section 8 shall qualify for payment and reimbursement of State or local funds used or committed (including retroactive use or commitment of State funds) for such project prior to July 1, 1974, from sums allocated to such State under this section for any fiscal year ending prior to July 1, 1974, to the maximum extent that assistance could have been provided under such section 8 and for which it would have qualified if such project had been approved thereunder and authority for and adequate funds had been available (including retroactive State participation).

"(b) Any publicly owned treatment works constructed with or eligible for Federal financial assistance under this Act in a State between June 30, 1956, and June 30, 1966, which was approved by the State water pollution control agency and which the Administrator finds meets the requirements of section 8 of this Act immediately prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972 but which was constructed without assistance under such section 8 or which received such assistance in an amount less than 30 per centum of the cost of such project shall qualify for payments and reimbursement of State or local funds used for such project from sums allocated to such State under this section in an amount which shall not exceed the difference between the amount of such assistance, if any, received for such project and 30 per centum of the cost of such project.

"(c) There is authorized to be appropriated to carry out subsection (a) of this section not to exceed $2,000,000,000 and, to carry out subsection (b) of this section, not to exceed $750,000,000. The authorizations contained in this subsection shall be the sole source of funds for reimbursements authorized by this section.

"(d) (1) In any case where all funds allotted to a State under this title have been obligated under section 203 of this Act, and there is construction of any treatment works project without the aid of Federal funds and in accordance with all procedures and all requirements applicable to treatment works projects, except those procedures and requirements which limit construction of projects to those constructed with the aid of previously allotted Federal funds, the Administrator, upon his approval of an application made under this subsection therefor, is authorized to pay the Federal share of the cost of construction of such project when additional funds are allotted to the State under this title if prior to the construction of the project the Administrator approves plans, specifications, and estimates therefor in the same manner as other treatment works projects. The Administrator may not approve an application under this subsection unless an authorization is in effect for the future fiscal year for which the application requests payments, which authorization will insure such payment without exceeding the State's expected allotment from such authorization.

"(2) In determining the allotment for any fiscal year under this title, any treatment works project constructed in accordance with this section and without the aid of Federal funds shall not be considered completed until an application under the provisions of this subsection with respect to such project has been approved by the Administrator, or the availability of funds from which this project is eligible for reimbursement has expired, whichever first occurs.

"AUTHORIZATION

"SEC. 207. There is authorized to be appropriated to carry out this title, other than sections 208 and 209, for the fiscal year ending June 30, 1973, $5,000,000,000, for the fiscal year ending June 30, 1974, $6,000,000,000, and for the fiscal year ending June 30, 1975, $7,000,000,000.

"AREAWIDE WASTE TREATMENT MANAGEMENT

"SEC. 208. (a) For the purpose of encouraging and facilitating the development and implementation of areawide waste treatment management plans—

"(1) The Administrator, within ninety days after the date of enactment of this Act and after consultation with appropriate Federal, State, and local authorities, shall by regulation publish guidelines for the identification of those areas which, as a result of urban-industrial concentrations or other factors, have substantial water quality control problems.

"(2) The Governor of each State, within sixty days after publication of the guidelines issued pursuant to paragraph (1) of this subsection, shall identify each area within the State which, as a result of urban-industrial concentrations or other factors, has substantial water quality control problems. Not later than one hundred and twenty days following such identification and after appropriate consultation with the officials of all local governments having jurisdiction in such areas, the Governor shall designate (A) the boundaries of each such area, and (B) a single representative organization capable of developing effective areawide waste treatment management plans for such area. The Governor may in the same manner at any later time identify any additional area (or modify an existing area) for which he determines areawide waste treatment managment to be appropriate, designate the boundaries of such area, and designate an organization capable of developing effective areawide waste treatment management plans for such area.

"(3) With respect to any area which, pursuant to the guidelines published under paragraph (1) of this subsection, is located in two or more States, the Governors of the respective States shall consult and cooperate in carrying out the provisions of paragraph (2), with a view toward designating the boundaries of the interstate area having common water quality control problems and for which areawide waste treatment management plans would be most effective, and toward designating, within one hundred and eighty days after publication of guidelines issued pursuant to paragraph (1) of this subsection, of a single representative organization capable of developing effective areawide waste treatment management plans for such area.

"(4) Existing regional agencies may be designated under paragraphs (2) and (3) of this subsection.

"(5) Designations under this subsection shall be subject to the approval of the Administrator.

"(b) (1) No later than two years after the date of designation of any organization under subsection (a) of this section such organization shall have in operation a continuing areawide waste treatment management planning process consistent with section 201 of this Act. Plans prepared in accordance with this process shall contain alternatives for waste treatment management, and be applicable to all wastes generated within the area involved.

"(2) Any plan prepared under such process shall include, but not be limited to—

"(A) the identification of treatment works necessary to meet the anticipated municipal and industrial waste treatment needs of the area over a twenty-year period, annually updated (including an analysis of alternative waste treatment systems), including any requirements for the acquisition of land for treatment purposes; the necessary waste water collection and urban storm water runoff systems; and a program to provide the necessary financial arrangements for the development of such treatment works;

"(B) the establishment of construction priorities for such treatment works and time schedules for the initiation and completion of all treatment works;

"(C) the establishment of a regulatory program to—

"(i) implement the waste treatment management requirements of section 201(c),

"(ii) regulate the location, modification, and construction of any facilities within such area which may result in any discharge in such area, and

"(iii) assure that any industrial or commercial wastes discharged into any treatment works in such area meet applicable pretreatment requirements;

"(D) the identification of those agencies necessary to construct, operate, and maintain all facilities required by the plan and otherwise to carry out the plan;

"(e) the identification of the measures necessary to carry out the plan (including financing), the period of time necessary to carry out the plan, the costs of carrying out the plan within such time, and the economic, social, and environmental impact of carrying out the plan within such time;

"(F) a process to (i) identify, if appropriate, agriculturally related nonpoint sources of pollution, including runoff from manure disposal areas, and from land used for livestock and crop production, and (ii) set forth procedures and methods (including land use requirements) to control to the extent feasible such sources;

"(G) a process to (i) identify, if appropriate, mine-related sources of pollution including new, current, and abandoned surface and underground mine runoff, and (ii) set

forth procedures and methods (including land use requirements) to control to the extent feasible such sources;

"(H) a process to (i) identify construction activity related sources of pollution, and (ii) set forth procedures and methods (including land use requirements) to control to the extent feasible such sources; and

"(I) a process to (i) identify, if appropriate, salt water intrusion into rivers, lakes, and estuaries resulting from reduction of fresh water flow from any cause, including irrigation, obstruction, ground water extraction, and diversion, and (ii) set forth procedures and methods to control such intrusion to the extent feasible where such procedures and methods are otherwise a part of the waste treatment management plan.

"(3) Areawide waste treatment management plans shall be certified annually by the Governor or his designee (or Governors or their designees, where more than one State is involved) as being consisted with applicable basin plans and such areawide waste treatment management plans shall be submitted to the Administrator for his approval.

"(c)(1) The Governor of each State, in consultation with the planning agency designated under subsection (a) of this section, at the time a plan is submitted to the Administrator, may designate one or more waste treatment management agencies for each area designated under subsection (a) of this section and submit a list of such designations to the Administrator.

"(2) The Administrator shall approve any such designation, within ninety days of designation, only if he finds that the designated management agency (or agencies) is authorized—

"(A) to carry out appropriate portions of an areawide waste treatment management plan developed under subsection (b) of this section;

"(B) to manage effectively waste treatment works and related facilities serving such area in conformance with any plan required by subsection (b) of this section;

"(C) directly or by contract, to design and construct new works, and to operate and maintain new and existing works as required by any plan developed pursuant to subsection (b) of this section;

"(D) to accept and utilize grants, or other funds from any source, for waste treatment management purposes;

"(E) to raise revenues, including the assessment of waste treatment charges;

"(F) to incur short- and long-term indebtedness;

"(G) to assure in implementation of an areawide waste treatment management plan that each participating community pays its proportionate share of treatment costs;

"(H) to refuse to receive any wastes from any municipality or subdivision thereof, which does not comply with any provisions of an approved plan under this section applicable to such area; and

"(I) to accept for treatment industrial wastes.

"(d) After a waste treatment management agency has been designated under this subsection for an area and a plan for such area has been approved under subsection (b) of this section, the Administrator shall not make any grant for construction of a publicly owned treatment works under section 201(d)(1) within such area except to such designated agency and for works in conformity with such plan.

"(e) No permit under section 402 of this Act shall be issued for any point sources which is in conflict with a plan approved pursuant to subsection (b) of this section.

"(f)(1) The Administrator shall make grants to any agency designated under subsection (a) of this section for payment of the reasonable costs of developing and operating a continuing areawide waste treatment management planning process under subsection (b) of this section.

"(2) The amount granted to any agency under paragraph (1) of this subsection shall be 100 per centum of the costs of developing and operating a continuing areawide waste treatment management planning process under subsection (b) of this section for each of the fiscal years ending on June 30, 1973, June 30, 1974, and June 30, 1975, and shall not exceed 75 per centum of such costs in each succeeding fiscal year.

"(3) There is authorized to be appropriated to the Administrator to carry out this subsection not to exceed $100,000,000 for the fiscal year ending June 30, 1973, and not to exceed $150,000,000 for the fiscal year ending June 30, 1974.

"(g) The Administrator is authorized, upon request of the Governor or the designated planning agency, and without reimbursement, to consult with, and provide technical assistance to, any agency designated under subsection (a) of this section in the development of areawide waste treatment management plans under subsection (b) of this section.

"(h)(1) The Secretary of the Army, acting through the Chief of Engineers, in cooperation with the Administrator is authorized and directed, upon request of the Governor or the designated planning organization, to consult with, and provide technical assistance to, any agency designated under subsection (a) of this section in developing and operating a continuing areawide waste treatment management planning process under subsection (b) of this section.

"(2) There is authorized to be appropriated to the Secretary of the Army, to carry out this subsection, not to exceed $50,000,000 per fiscal year for the fiscal years ending June 30, 1973, and June 30, 1974.

"BASIN PLANNING

"SEC. 209. (a) The President, acting through the Water Resources Council, shall, as soon as practicable, prepare a Level B plan under the Water Resources Planning Act for all basins in the United States. All such plans shall be completed not later than January 1, 1980, except that priority in the preparation of such plans shall be given to those basins and portions thereof which are within those areas designated by a Governor or Governors under paragraphs (2) and (3) of subsection (a) of section 208 of this Act

"(b) The President, acting through the Water Resources Council, shall report annually to Congress on progress being made in carrying out this section. The first such report shall be submitted not later than January 31, 1973.

"(c) There is authorized to be appropriated to carry out this section not to exceed $200,000,000.

"ANNUAL SURVEY

"SEC. 210. The Administrator shall annually make a survey to determine the efficiency of the operation and maintenance of treatment works constructed with grants made under this Act, as compared to the efficiency planned at the time the grant was made. The results of such annual survey shall be included in the report required under section 516(a) of this Act.

"SEWAGE COLLECTION SYSTEMS

"SEC. 211. No grant shall be made under this title for a sewage collection system unless such system is for an existing community and is necessary to the integrity of a total waste treatment works system.

"DEFINITIONS

"SEC. 212. As used in this title—

"(1) The term 'construction' means any one or more of the following: preliminary planning to determine the feasibility of treatment works, engineeering, architectural, legal, fiscal, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures, or other necessary actions, erection, building, acquisition, alteration, remodeling, improvement, or extension of treatment works, or the inspection or supervision of any of the foregoing items.

"(2)(A) The term 'treatment works' means any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature to implement section 201 of this Act, or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment, and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment.

"(B) In addition to the definition contained in subparagraph (A) of this paragraph, 'treatment works' means any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste, including storm water runoff, or industrial waste, including waste in combined storm water and sanitary sewer systems. Any application for construction grants which includes wholly or in part such methods or systems shall, in accordance with guidelines published by the Administrator pursuant to subparagraph (C) of this paragraph, contain adequate data and analysis demonstrating such proposal to be, over the life of such works, the most cost efficient alternative to comply with sections 301 or 302 of this Act, or the requirements of section 201 of this Act.

"(C) For the purposes of subparagraph (B) of this paragraph, the Administrator shall, within one hundred and eighty days after the date of enactment of this title, publish and thereafter revise no less often than annually, guidelines for the evaluation of methods, including cost-effective analysis, described in subparagraph (B) of this paragraph.

"(3) The term 'replacement' as used in this title means those expenditures for obtaining and installing equipment, accessories, or appurtenances during the useful life of the treatment works necessary to maintain the capacity and performance for which such works are designed and constructed.

"(4) The term 'industrial user' means those industries identified in the Standard Industrial Classification Manual, Bureau of the Budget, 1967, as amended and supplemented, under the category 'Division D—Manufacturing' and such other classes of significant waste producers as, by regulation the Administrator deems appropriate under this title.

"TITLE III—STANDARDS AND ENFORCEMENT

"EFFLUENT LIMITATIONS

"SEC. 301. (a) Except as in compliance with this section and sections 302, 306, 307, 318, 402, and 404 of this Act, the discharge of any pollutant by any person shall be unlawful.

"(b) In order to carry out the objective of this Act there shall be achieved—

"(1)(A) not later than January 1, 1976, effluent limitations for point sources, other than publicly owned treatment works, (i) which shall require the application of the best practicable control technology currently available as defined by the Administrator pursuant to section 304(b) of this Act, or (ii) in the case of a discharge into a publicly owned treatment works which meets the requirements of subparagraph (B) of this paragraph, which shall require compliance with any applicable pretreatment re-

quirements and any requirements under section 307 of this Act; and

"(B) for publicly owned treatment works in existence on January 1, 1976, or approved pursuant to section 203 of this Act prior to June 30, 1974 (for which construction must be completed within four years of approval), effluent limitations based upon secondary treatment as defined by the Administrator pursuant to section 304(d)(1) of this Act; or,

"(C) not later than January 1, 1976, any more stringent limitation, including those necessary to meet water quality standards, treatment standards, or schedules of compliance, establish pursuant to any other State or Federal law or regulation, or required to implement any applicable water quality standard established pursuant to this Act.

"(2)(A) except as provided in section 315, not later than January 1, 1981, effluent limitations for point sources, other than publicly owned treatment works, (i) which shall require the elimination of the discharge of pollutants, unless on the basis of facts presented by the owner or operator of any such sources, among other information, the State under a program approved pursuant to section 402 of this Act (or, where no such program is approved, the Administrator) finds, that compliance is not attainable at a reasonable cost, in which event there shall be applied an effluent limitation based on that degree of effluent control achievable through the application of the best available demonstrated technology, taking into account the cost of such controls, as determined in accordance with regulations issued by the Administrator pursuant to section 304(b) of this Act, and the environmental impact, or (ii) in the case of a discharge of a pollutant into a publicly owned treatment works which meets the requirement of subparagraph (B) of this paragraph, which shall require compliance with any applicable pretreatment requirements and any requirement under section 307 of this Act; and

"(B) not later than January 1, 1981, compliance by all publicly owned treatment works with the requirements set forth in section 201(d)(2)(A) of this Act.

"(3) The Administrator may extend for any point source the dates prescribed in subparagraphs (A) and (B) of paragraph (1) of this subsection. No extension or extensions of such date shall exceed a total of two years from the date prescribed in such subparagraph. Public hearings must be held by the Administrator in connection with any such extension prior to granting such extension. No extension shall be granted unless the Administrator determines (i) that it is not possible either physically or legally to complete the necessary construction within the statutory time limit, or (ii) that a longer time period is provided in the plan of implementation for the applicable water quality standard. An extension of dates under this authority may also include a waiver for the same period of any applicable water quality standard.

"(c) Any effluent limitation required by paragraph (2) of subsection (b) of this section shall be reviewed at least every five years and, if appropriate, revised pursuant to the procedure established under such paragraph.

"(d) Effluent limitations established pursuant to this section or section 302 of this Act shall be applied to all point sources of discharge of pollutants in accordance with the provisions of this Act.

"(e) Notwithstanding any other provisions of this Act it shall be unlawful to discharge any radiological, chemical, or biological warfare agent or high-level radioactive waste into the navigable waters.

"(f) Notwithstanding any other provision of this Act, any point source the construction or modification of which is commenced after the date of enactment of the Federal Water Pollution Control Act Amendments of 1972 and before the expiration of the one-year period which begins on the date of submission of the report required by section 315 of this Act, and which is so constructed or modified as to meet effluent limitations based upon the best available technology at the time of such construction or modification, shall not be subject to any more stringent effluent limitations with respect to such effluents during a 12-year period beginning on the date of completion of such construction or modification or during the period of depreciation or amortization of such facility for the purposes of section 167 or 169 (or both) of the Internal Revenue Code of 1954, whichever periods ends first.

"WATER QUALITY RELATED EFFLUENT LIMITATIONS

"SEC. 302. (a) Whenever, in the judgment of a State or the Administrator, discharges of pollutants from a point source or group of point sources, with the application of effluent limitations required under section 301(b)(2) of this Act, would interfere with the attainment or maintenance of that water quality in a specific portion of the navigable waters which shall assure protection of public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and allow recreational activities in and on the water, effluent limitations (including alternative effluent control strategies) for such point source or sources shall be established which can reasonably be expected to contribute to the attainment or maintenance of such water quality.

"(b)(1) Before establishing any effluent limitation under subsection (a) of this section, the Administrator shall issue a notice of intent to establish such limitation to the Chairman of the Council of Economic Advisers, the Chairman of the Council on Environmental Quality, and the Director of the Office of Science and Technology. Each person so notified shall have a ninety-day period to submit to the Administrator written comments and recommendations which shall be made part of the public record with respect to the establishment of such limitation. If any part of such written recommendations are not accepted by the Administrator, then the Administrator shall notify, in writing, the person submitting such recommendation, of his failure to so accept such recommendations together with his reasons for so doing. Thereafter, the Administrator shall issue notice of intent to establish such limitation and within ninety days of such notice hold a public hearing to determine the relationship of the economic, social, and environmental costs of achieving any such limitation or limitations, including any economic or social dislocation in the affected community or communities, to the economic, social, and environmental benefits to be obtained (including the attainment of the objective of this Act) and to determine whether or not such effluent limitations can be implemented with available technology or other alternative control strategies.

"(2) Prior to establishment of any effluent limitation pursuant to subsection (a) of this section, the State shall issue notice of intent to establish such limitation and within ninety days of such notice hold a public hearing to determine the relationship of the economic, social, and environmental costs of achieving any such limitation or limitations, including any economic or social dislocation in the affected community or communities, to the economic, social, and environmental benefits to be obtained (including the attainment of the objective of this Act) and to determine whether or not such effluent limitations can be implemented with available technology or other alternative control strategies.

"(3) If a person affected by such limitation demonstrates at such hearing that (whether or not such technology or other alternative control strategies are available) there is no reasonable relationship between the economic, social, and environmental costs and the benefits to be obtained (including attainment of the objective of this Act), such limitation shall not become effective and the State or the Administrator shall adjust such limitation as it applies to such person. Whenever the Administrator adjusts or refuses to adjust any limitation as it applies to any person under this paragraph he shall, prior to the time such limitation takes effect, set forth in writing his reasons for such action, and such reasons shall be part of the public record with respect to such limitation.

"(c) The establishment of effluent limitations under this section shall not operate to delay the application of any effluent limitation established under section 301 of this Act.

"WATER QUALITY STANDARDS AND IMPLEMENTATION PLANS

"SEC. 303. (a)(1) In order to carry out the purpose of this Act, any water quality standard applicable to interstate waters which was adopted by any State and submitted to, and approved by, or is awaiting approval by, the Administrator pursuant to this Act as in effect immediately prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972, shall remain in effect unless the Administrator determined that such standard is not consistent with the applicable requirements of this Act as in effect immediately prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972. If the Administrator makes such a determination he shall, within three months after the date of enactment of the Federal Water Pollution Control Act Amendments of 1972, notify the State and specify the changes needed to meet such requirements. If such changes are not adopted by the State within ninety days after the date of such notification, the Administrator shall promulgate such changes in accordance with subsection (b) of this section.

"(2) Any State which, before the date of enactment of the Federal Water Pollution Control Act Amendments of 1972, has adopted, pursuant to its own law, water quality standards applicable to intrastate waters shall submit such standards to the Administrator within thirty days after the date of enactment of the Federal Water Pollution Control Act Amendments of 1972. Each such standard shall remain in effect, in the same manner and to the same extent as any other water quality standard established under this Act unless the Administrator determines that such standard is inconsistent with the applicable requirements of this Act as in effect immediately prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972. If the Administrator makes such a determination he shall not later than the one hundred and twentieth day after the date of submission of such standards, notify the State and specify the changes needed to meet such requirements. If such changes are not adopted by the State within ninety days after such notification, the Administrator shall promulgate such changes in accordance with subsection (b) of this section.

"(3)(A) Any State which prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972 has not adopted pursuant to its own laws water quality standards applicable to intrastate waters shall, not later than one hundred and eighty days after the date of enactment of the Federal Water Pollution Control Act Amendments of 1972, adopt and submit such standards to the Administrator.

"(B) If the Administrator determines that any such standards are consistent with the

applicable requirements of this Act as in effect immediately prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972, he shall approve such standards.

"(C) If the Administrator determines that any such standards are not consistent with the applicable requirements of this Act as in effect immediately prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972, he shall, not later than the ninetieth day after the date of submission of such standards, notify the State and specify the changes to meet such requirements. If such changes are not adopted by the State within ninety days after the date of notification, the Administrator shall promulgate such standards pursuant to subsection (b) of this section.

"(b)(1) The Administrator shall promptly prepare and publish proposed regulations setting forth water quality standards for a State in accordance with the applicable requirements of this Act as in effect immediately prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972, if—

"(A) the State fails to submit water quality standards within the times prescribed in subsection (a) of this section,

"(B) a water quality standard submitted by such State under subsection (a) of this section is determined by the Administrator not to be consistent with the applicable requirements of subsection (a) of this section.

"(2) The Administrator shall promulgate any water quality standard published in a proposed regulation not later than one hundred and ninety days after the date he publishes any such proposed standard, unless prior to such promulgation, such State has adopted a water quality standard which the Administrator determines to be in accordance with subsection (a) of this section.

"(c)(1) The Governor of a State or the State water pollution control agency of such State shall from time to time (but at least once each three year period beginning with the date of enactment of the Federal Water Pollution Control Act Amendments of 1972) hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards. Results of such review shall be made available to the Administrator.

"(2) Whenever the State revises or adopts a new standard, such revised or new standard shall be submitted to the Administrator. Such revised or new water quality standard shall consist of the designated uses of the navigable waters involved and the water quality criteria for such waters based upon such uses. Such standards shall be such as to protect the public health or welfare, enhance the quality of water and serve the purposes of this Act. Such standards shall be established taking into consideration their use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial, and other legitimate uses, and also taking into consideration their use and value of navigation.

"(3) If the Administrator, within sixty days after the date of submission of the revised or new standard, determines that such standard meets the requirements of this Act, such standard shall thereafter be the water quality standard for the applicable waters of that State. If the Administrator determines that any such revised or new standard is not consistent with the applicable requirements of this Act, he shall not later than the ninetieth day after the date of submission of such standard notify the State and specify the changes to meet such requirements. If such changes are not adopted by the State within ninety days after the date of notification, the Administrator shall promulgate such standard pursuant to paragraph (4) of this subsection.

"(4) The Administrator shall promptly prepare and publish proposed regulations setting forth a revised or new water quality standard for the navigable waters involved—

"(A) if a revised or new water quality standard submitted by such State under paragraph (3) of this subsection for such waters is determined by the Administrator not to be consistent with the applicable requirements of this Act, or

"(B) in any case where the Administrator determines that a revised or new standard is necessary to meet the requirements of this Act.

The Administrator shall promulgate any revised or new standard under this paragraph not later than ninety days after he publishes such proposed standards, unless prior to such promulgation, such State has adopted a revised or new water quality standard which the Administrator determines to be in accordance with this Act.

"(5) No revised or new standard under this subsection shall have any application to thermal discharges in accordance with regulations issued pursuant to section 316 of this Act.

"(d)(1) Each State shall identify those waters within its boundaries for which the effluent limitations required by section 301(b)(1)(A) and section 301(b)(1)(B) are not stringent enough to implement any water quality standard applicable to such waters. The State shall establish a priority ranking for such waters, taking into account the severity of the pollution and the uses to be made of such waters. Each State shall establish for the waters so identified, and in accordance with the priority ranking, the total maximum daily load, with seasonal variations and margins of safety, for those pollutants which the Administrator identifies under section 304(a)(2) as suitable for such calculation. Such load shall be established at a level necessary to implement the applicable water quality standards with a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality.

"(2) Each State shall submit to the Administrator from time to time, with the first such submission not later than one hundred eighty days after the date of publication of the first identification of pollutants under section 304(a)(2)(D), for his approval the waters identified and the load established under paragraph (1) of this subsection. The Administrator shall either approve or disapprove such identification and load not later than thirty days after the date of submission. If the Administrator approves such identification and load such State shall incorporate them into its current plan under subsection (e) of this section. If the Administrator disapproves such identification and load, he shall not later than thirty days after the date of such disapproval identify such waters in such State and establish loads for such waters as he determines necessary to implement the water quality standards applicable to such waters and upon such identification and establishment the State shall incorporate them into its current plan under subsection (e) of this section.

"(3) For the purpose of developing information, each State shall identify all waters within its boundaries which it has not identified under paragraph (1) of this subsection and establish for such waters the total maximum daily load, with seasonal variations and margins of safety, for those pollutants which the Administrator identifies under section 304(a)(2) as suitable for such calculation, at a level that would implement the water quality standards.

"(e)(1) Each State shall have a continuing planning process approved under paragraph (2) of this subsection which is consistent with this Act.

"(2) Each State shall submit not later than 120 days after the date of the enactment of the Water Pollution Control Amendments of 1972 to the Administrator for his approval a proposed continuing planning process which is consistent with this Act. Not later than thirty days after the date of submission of such a process the Administrator shall either approve or disapprove such process. The Administrator shall from time to time review each State's approved planning process for the purpose of insuring that such planning process is at all times consistent with this Act. The Administrator shall not approve any State permit program under title IV of this Act for any State which does not have an approved continuing planning process under this section.

"(3) The Administrator shall approve any continuing planning process submitted to him under this section which will result in plans for all navigable waters within such State, which include, but are not limited to, the following:

"(A) effluent limitations and schedules of compliance at least as stringent as those required by section 301(b)(1), section 301(b)(2)(B), section 306, and section 307, and at least as stringent as any requirements contained in any applicable water quality standard in effect under authority of this section;

"(B) the incorporation of all elements of any applicable areawide waste management plans under section 208, and applicable basin plans under section 209 of this Act;

"(C) total maximum daily load for pollutants in accordance with subsection (d) of this section;

"(D) procedures for revision;

"(E) adequate authority for intergovernmental cooperation;

"(F) adequate implementation, including schedules of compliance, for revised or new water quality standards under subsection (c) of this section;

"(G) controls over the disposition of all residual waste from any water treatment processing;

"(H) an inventory and ranking, in order of priority, of needs for construction of waste treatment works required to meet the applicable requirements of sections 301 and 302.

"(f) Nothing in this section shall be construed to affect any effluent limitation, or schedule of compliance required by any State to be implemented prior to the dates set forth in sections 301(b)(1) and 301(b)(2) nor to preclude any State from requiring compliance with any effluent limitation or schedule of compliance at dates earlier than such dates.

"INFORMATION AND GUIDELINES

"SEC. 304. (a)(1) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall develop and publish, within one year after the date of enactment of this title (and from time to time thereafter revise) criteria for water quality accurately reflecting the latest scientific knoweldge (A) on the kind and extent of all identifiable effects on health and welfare including, but not limited to, plankton, fish, shellfish, wildlife, plant life, shorelines, beaches, esthetics, and recreation which may be expected from the presence of pollutants in any body of water, including ground water; (B) on the concentration and dispersal of pollutants, or their byproducts, through biological, physical, and chemical processes; and (C) on the effects of pollutants on biological community diversity, productivity, and stability, including information on the factors affecting rates of eutrophication and rates of organic and inorganic sedimentation for varying types of receiving waters.

"(2) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall develop and publish, within one year after the date of enactment of this title (and from time to time thereafter revise) information (A) on the factors necessary to restore and maintain the natural chemical, physical, and

biological integrity of all navigable waters, ground waters, waters of the contiguous zone, and the oceans; (B) on the factors necessary for the protection and propagation of shellfish, fish, and wildlife and to allow recreational activities in and on the water; and (C) on the measurement and classification of water quality; and (D) on and the identification of pollutants suitable for maximum daily load measurement correlated with the achievement of water quality objectives.

"(3) Such criteria and information and revisions thereof shall be issued to the States and shall be published in the Federal Register and otherwise made available to the public.

"(b) For the purpose of adopting or revising effluent limitations under this Act the Administrator shall, after consultation with appropriate Federal and State agencies and other interested persons, publish within one year of enactment of this title, regulations, providing guidelines for effluent limitations, and, at least annually thereafter, revise, if appropriate, such regulations. Such regulations shall—

"(1) (A) identify, in terms of amounts of constituents and chemical, physical, and biological characteristics of pollutants, the degree of effluent reduction attainable through the application of the best practicable control technology currently available for classes and categories of point sources (other than publicly owned treatment works); and

"(B) specify factors to be taken into account in determining the control measures and practices to be applicable to any point sources (other than publicly owned treatment works) within such categories or classes. Factors relating to the assessment of best practicable control technology currently available to comply with subsection (b) (1) of section 301 of this Act, shall take into account the age of equipment and facilities involved, the process employed (including whether batch or continuous), the engineering aspects of the application of various types of demonstrated control techniques, process changes, the cost and the economic, social, and environmental impact of achieving such effluent reduction, foreign competition, and such other factors as the Administrator deems appropriate;

"(2) (A) identify, in terms of amounts of constituents and chemical, physical, and biological characteristics of pollutants, the degree of effluent reduction attainable through the application of the best available demonstrated control measures and practices including treatment techniques, process and procedure innovations, operating methods, and other alternatives for classes and categories of point sources (other than publicly owned treatment works); and

"(B) specify factors to be taken into account in determining the best measures and practices available to comply with subsection (b) (2) of section 301 of this Act to be applicable to any point source (other than publicly owned treatment works) within such categories or classes. Factors relating to the assessment of best available demonstrated technology shall take into account the age of equipment and facilities involved, the process employed (including whether batch or continuous), the engineering aspects of the application of various types of demonstrated control techniques, process changes, the cost and the economic, social, and environmental impact of achieving such effluent reduction, foreign competition, and such other factors as the Administrator deems appropriate; and

"(3) identify control measures and practices available to eliminate the discharge of pollutants from categories and classes of point sources, taking into account the cost of achieving such elimination of the discharge of pollutants.

"(c) The Administrator, after consultation, with appropriate Federal and State agencies and other interested persons, shall issue to the States and appropriate water pollution control agencies within one year after enactment of this title (and from time to time thereafer) information on the processes, procedures, or operating methods which result in the elimination or reduction of the discharge of pollutants to implement standards of performance under section 306 of this Act. Such information shall include technical and other data, including costs, as are available on alternative methods of elimination or reduction of the discharge of pollutants. Such information, and revisions thereof, shall be published in the Federal Register and otherwise shall be made available to the public.

"(d) (1) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall publish within sixty days after enactment of this title (and from time to time thereafter) information, in terms of amounts of constituents and chemical, physical, and biological characteristics of pollutants, on the degree of effluent reduction attainable through the application of secondary treatment.

"(2) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall publish within nine months after the date of enactment of this life (and from time to time thereafter) information on alternative waste treatment management techniques and systems available to implement section 201 of this Act.

"(e) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall issue to appropriate Federal agencies, the States, water pollution control agencies, and agencies designated under section 208 of this Act, within one year after the effective date of this subsection (and from time to time thereafter) information including (1) guidelines for identifying and evaluating the nature and extent of nonpoint sources of pollutants, and (2) processes, procedures, and methods to control pollution resulting from—

"(A) agricultural and silvicultural activities, including runoff from fields and crop and forest lands;

"(B) mining activities, including runoff and siltation from new, currently operating, and abandoned surface and underground mines;

"(C) all construction activity, including runoff from the facilities resulting from such construction;

"(D) the disposal of pollutants in wells or in subsurface excavations;

"(E) salt water intrusion resulting from reductions of fresh water flow from any cause, including extraction of ground water, irrigation, obstruction, and diversion; and

"(F) changes in the movement, flow, or circulation of any navigable waters or ground waters, including changes caused by the construction of dams, levees, channels, causeways, or flow diversion facilities.

Such information and revisions thereof shall be published in the Federal Register and otherwise made available to the public.

"(f) (1) For the purpose of assisting States in carrying out programs under section 402 of this Act, the Administrator shall publish, within one hundred and twenty days after the date of enactment of this title, and review at least annually thereafter and, if appropriate, revise guidelines for pretreatment of pollutants which he determines are not susceptible to treatment by publicly owned treatment works. Guidelines under this subsection shall be established to control and prevent the discharge into the navigable waters, the contiguous zone, or the ocean (either directly or through publicly owned treatment works) of any pollutant which interferes with, passes through, or otherwise incompatible with such works.

"(2) When publishing guidelines under this subsection, the Administrator shall designate the category or categories of treatment works to which the guidelines shall apply.

"(g) The Administrator shall, within one hundred and eighty days from the date of enactment of this title, promulgate guidelines establishing test procedures for the analysis of pollutants that shall include the factors which must be provided in any certification pursuant to section 401 of this Act or permit application pursuant to section 402 of this Act.

"(h) The Administrator shall (1) within ninety days after the enactment of this title promulgate guidelines for the purpose of establishing uniform application forms and other minimum requirements for the acquisition of information from owners and operators of point sources of discharge subject to any State program under section 402 of this Act, and (2) within ninety days from the date of enactment of this title promulgate guidelines establishing the minimum procedural and other elements of any State program under section 402 of this Act which shall include:

"(A) monitoring requirements;

"(B) reporting requirements (including procedures to make information available to the public);

"(C) enforcement provisions; and

"(D) funding, personnel qualifications, and manpower requirements (including a requirement that no board or body which approves permit applications or portions thereof shall include, as a member, any person who receives, or has during the previous two years received, a significant portion of his income directly or indirectly from permit holders or applicants for a permit).

"(i) The Administrator shall, within one year after the effective date of this subsection (and from time to time thereafter), issue such information on methods, procedures, and processes as may be appropriate to restore and enhance the quality of the Nation's publicly owned fresh water lakes.

"(j) (1) The Administrator shall, within six months from the date of enactment of this title, enter into agreements with the Secretary of Agriculture, the Secretary of the Army, and the Secretary of the Interior to provide for the maximum utilization of the appropriate programs authorized under other Federal law to be carried out by such Secretaries for the purpose of achieving and maintaining water quality through appropriate implementation of plans approved under section 208 of this Act.

"(2) The Administrator, pursuant to any agreement under paragraph (1) of this subsection is authorized to transfer to the Secretary of Agriculture, the Secretary of the Army, or the Secretary of the Interior any funds appropriated under paragraph (3) of this subsection to supplement any funds otherwise appropriated to carry out appropriate programs authorized to be carried out by such Secretaries.

"(3) There is authorized to be appropriated to carry out the provisions of this subsection, $100,000,000 per fiscal year for the fiscal year ending June 30, 1973, and the fiscal year ending June 30, 1974. Sums so appropriated shall remain available until expended.

"WATER QUALITY INVENTORY

"SEC. 305. (a) The Administrator, in cooperation with the States and with the assistance of appropriate Federal agencies, shall prepare a report to be submitted to the Congress on or before July 1, 1973, which shall—

"(1) describe the specific quality, during 1972, with appropriate supplemental descriptions as shall be required to take into account seasonal, tidal, and other variations, of all navigable waters and the waters of the contiguous zone;

"(2) include an inventory of all point sources of discharge (based on a qualitative and quantitative analysis of discharges) of pollutants into all navigable waters and the waters of the contiguous zone; and

"(3) identify specifically those navigable waters, the quality of which

"(A) is adequate to provide for the protection and propagation of a balanced population of shellfish, fish, and wildlife and allow recreational activities in and on the water;

"(B) can reasonably be expected to attain such level by 1976 or 1981; and

"(C) can reasonably be expected to attain such level by any later date.

"(b)(1) Each State shall prepare and submit to the Administrator by July 1, 1974, and shall bring up to date each year thereafter, a report which shall include—

"(A) a description of the water quality of all navigable waters in such State during the preceding year, with appropriate supplemental descriptions as shall be required to take into account seasonal, tidal, and other variations, correlated with the quality of water required by the objective of this Act (as identified by the Administrator pursuant to criteria published under section 304(a) of this Act) and the water quality described in subparagraph (B) of this paragraph;

"(B) an analysis of the extent to which all navigable waters of such State provide for the protection and propagation of a balanced population of shellfish, fish, and wildlife, and allow recreational activities in and on the water;

"(C) an analysis of the extent to which the elimination of the discharge of pollutants and a level of water quality which provides for the protection and propagation of a balanced population of shellfish, fish, and wildlife and allows recreational activities in and on the water, have been or will be achieved by the requirements of this Act, together with recommendations as to additional action necessary to achieve such objectives and for what waters such additional action is necessary;

"(D) an estimate of (i) the economic, social, and environmental costs necessary to achieve the objectives of this Act in such State; (ii) the economic, social, and environmental benefits of such achievement; and (iii) an estimate of the date of such achievement; and

"(E) a description of the nature and extent of nonpoint sources of pollutants, and recommendations as to the programs which must be undertaken to control each category of such sources, including an estimate of the costs of implementing such programs.

"(2) The Administrator shall transmit such State reports, together with an analysis thereof, to Congress on or before April 1, 1975, and annually thereafter.

"NATIONAL STANDARDS OF PERFORMANCE

"SEC. 306. (a) For purposes of this section:

"(1) The term 'standard of performance' means a standard for the control of the discharge of pollutants which reflects the greatest degree of effluent reduction which the Administrator determines to be achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants.

"(2) The term 'new source' means any source, the construction or modification of which is commenced after the publication of proposed regulations prescribing a standard of performance under this section which will be applicable to such source, if such standard is thereafter promulgated in accordance with this section.

"(3) The term 'source' means any building, structure, facility, or installation from which there is or may be the discharge of pollutants.

"(4) The term 'owner or operator' means any person who owns, leases, operates, controls, or supervises a source.

"(5) The term 'modification' means any construction (other than construction of pollution abatement facilities as determined by the Administrator or appropriate State agency) which may alter the nature or may increase the amounts of pollutants, or combinations of such pollutants, discharged by a source.

"(6) The term 'construction' means any placement, assembly, or installation of facilities or equipment (including contractual obligations to purchase such facilities or equipment) at the premises where such equipment will be used, including preparation work at such premises.

"(b)(1)(A) The Administrator shall, within ninety days after the date of enactment of this title publish (and from time to time thereafter shall revise) a list of categories of sources, which shall, at the minimum, include:

"pulp and paper mills;
"paperboard, builders paper and board mills;
"meat product and rendering processing;
"dairy products processing;
"grain mills;
"canned and preserved fruits and vegetables processing;
"canned and preserved seafood processing;
"sugar processing;
"textile mills;
"cement manufacturing;
"feedlots;
"electroplating;
"organic chemicals manufacturing;
"inorganic chemicals manufacturing;
"plastic and synthetic materials manufacturing;
"soap and detergent manufacturing;
"fertilizer manufacturing;
"petroleum refining;
"iron and steel manufacturing;
"ironferrous metals manufacturing;
"phosphate manufacturing;
"steam electric powerplants;
"ferroalloy manufacturing;
"leather tanning and finishing;
"glass and asbestos manufacturing;
"rubber processing; and
"timber products processing.

"(B) As soon as practicable, but in no case more than one year, after a category of sources is included in a list under subparagraph (A) of this paragraph, the Administrator shall propose and publish regulations establishing Federal standards of performance for new sources within such category. The Administrator shall afford interested persons an opportunity for written comment on such proposed regulations. After considering such comments, he shall promulgate, within one hundred and twenty days after publication of such proposed regulations, such standards with such adjustments as he deems appropriate. The Administrator shall, from time to time, as technology and alternatives change, revise such standards following the procedure required by this subsection for promulgation of such standards. Standards of performance, or revisions thereof, shall become effective upon promulgation. In establishing or revising Federal standards of performance for new sources under this section, the Administrator shall take into consideration factors relating to the age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of demonstrated control techniques, process changes, the cost of and the economic, social, and environmental impact of achieving such effluent reduction, foreign competition, and such other factors as he determines appropriate.

"(C) Such standards of performance shall apply to all sources within such category, unless, upon application from an owner or operator of any source which as a result of modification is subject to this section, the Administrator determines, after public hearing, that the economic, social, and environmental costs of implementing such standard bear no reasonable relationship to the economic, social, and environmental benefits (including water quality objectives) to be obtained. Any such determination shall be accompanied by an appropriate adjustment of such standard for such source, which shall reflect the greatest degree of effluent reduction which the Administrator determines can reasonably be achieved by such source.

"(2) The Administrator may distinguish among classes, types, and sizes within categories of new sources for the purpose of establishing such standards and shall consider the type of process employed (including whether batch or continuous).

"(3) The provisions of this section shall apply to any new source owned or operated by the United States.

"(c) After the effective date of standards of performance promulgated under this section, it shall be unlawful for any owner or operator of any new source to operate such source in violation of any standard of performance applicable to such source.

"TOXIC AND PRETREATMENT EFFLUENT STANDARDS

"SEC. 307. (a)(1) The Administrator shall, within ninety days after the date of enactment of this title, publish (and from time to time thereafter revise) a list which includes any toxic pollutant or combination of such pollutants for which an effluent standard (which may include a prohibition of the discharge of such pollutants or combination of such pollutants) will be established under this section. The Administrator in publishing such list shall take into account the toxicity of the pollutant, its persistence, degradability, the usual or potential presence of the affected organisms in the receiving waters, the importance of the affected organisms and the nature and extent of the effect of the toxic pollutant on such organisms.

"(2) Within one hundred and eighty days after the date of publication of any list, or revision thereof, containing toxic pollutants or combination of pollutants under paragraph (1) of this subsection, the Administrator, in accordance with section 553 of title 5 of the United States Code, shall publish a proposed effluent standard (or a prohibition) for such pollutant or combination of pollutants which shall take into account the toxicity of the pollutant, its persistent, degradability, the usual or potential presence of the affected organisms in the receiving waters, the importance of the affected organisms and the nature and extent of the effect of the toxic pollutant on such organisms, and he shall publish a notice for a public hearing on such proposed standard to be held within thirty days. As soon as possible after such hearing, but not later than six months after publication of the proposed effluent standard (or prohibition), unless the Administrator finds, on the record, that a modification of such proposed standard (or prohibition) is justified based upon a preponderance of evidence adduced at such hearings, such standards (or prohibition) shall be promulgated.

"(3) If after a public hearing the Administrator finds that a modification of such proposed standard (or prohibition) is justified, a revised effluent standard (or prohibition) for such pollutant or combination of pollutants shall be promulgated immediately. Such standard (or prohibition) shall be reviewed and, if appropriate, revised at least every three years.

"(4) Any effluent standard promulgated under this section shall be at that level which the Administrator determines provides an ample margin of safety.

"(5) When proposing or promulgating any effluent standard (or prohibition) under

this section, the Administrator shall designate the category or categories of sources to which the effluent standard (or prohibition) shall apply.

"(6) Any effluent standard (or prohibition) established pursuant to this section shall take effect on such date or dates as specified in the order promulgating such standard, but in no case more than one year from the date of such promulgation.

"(7) Prior to publishing any regulations pursuant to this section the Administrator shall, to the maximum extent practicable within the time provided, consult with appropriate advisory committees, States, independent experts, and Federal departments and agencies.

"(8) After the effective date of any effluent standard or prohibition promulgated under this subsection, it shall be unlawful for any owner or operator of any source to operate any source in violation of any such effluent standard or prohibition.

"(b)(1) The Administrator shall, within one hundred and eighty days after the date of enactment of this title and from time to time thereafter, publish proposed regulations establishing pretreatment standards for introduction of pollutants into treatment works (as defined in section 212 of this Act) which are publicly owned for those pollutants which are determined not to be susceptible to treatment by such treatment works or which would interfere with the operation of such treatment works. Not later than ninety days after such publication, and after opportunity for public hearing, the Administrator shall promulgate such pretreatment standards. Pretreatment standards under this subsection shall specify a time for compliance not to exceed three years from the date of promulgation and shall be established to prevent the discharge of any pollutant through treatment works (as defined in section 212 of this Act) which are publicly owned, which pollutant interferes with, passes through, or otherwise is incompatible with such works.

"(2) The Administrator shall, from time to time, as control technology, processes, operating methods, or other alternatives change, revise such standards following the procedure established by this subsection for promulgation of such standards.

"(3) When proposing or promulgating any pretreatment standard under this section, the Administrator shall designate the category or categories of sources to which such standard shall apply.

"(4) Nothing in this subsection shall effect any pretreatment requirement established by any State or local law not in conflict with any pretreatment standard established under this subsection.

"INSPECTIONS, MONITORING, AND ENTRY

"SEC. 308. (a) Whenever required to carry out the objective of this Act, including but not limited to (1) developing or assisting in the development of any effluent limitation, or other limitation, prohibition, or effluent standard, pretreatment standard, or standard of performance under this Act; (2) determining whether any person is in violation of any such effluent limitation, or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance; (3) any requirement established under this section; or (4) carrying out sections 305, 311, 402, and 504 of this Act—

"(A) the Administrator shall require the owner or operator of any point source to (i) establish and maintain such records, (ii) make such reports, (iii) install, use, and maintain such monitoring equipment or methods (including where appropriate, biological monitoring methods), (iv) sample such effluents (in accordance with such methods, at such locations, at such intervals, and in such manner as the Administrator shall prescribe), and (v) provide such other information as he may reasonably require; and

"(B) the Administrator or his authorized representative, upon presentation of his credentials—

"(i) shall have a right of entry to, upon, or through any premises in which an effluent source is located or in which any records required to be maintained under clause (A) of this subsection are located, and

"(ii) may at reasonable times have access to and copy any records, inspect any monitoring equipment or method required under clause (A), and sample any effluents which the owner or operator of such source is required to sample under such clause.

"(b) Any records, reports, or information obtained under this section shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or particular part thereof (other than effluent data), to which the Administrator has access under this section, if made public would divulge methods or processes entitled to protection as trade secrets of such person, the Administrator shall consider such record, report, or information, or particular portion thereof confidential in accordance with the purposes of section 1905 of title 18 of the United States Code, except that such record, report, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this Act or when relevant in any proceeding under this Act.

"FEDERAL ENFORCEMENT

"SEC. 309. (a)(1) Whenever, on the basis of any information available to him, the Administrator finds that any person is in violation of any condition or limitation which implements sections 301, 302, 306, 307, 308, or 316 of this Act in a permit issued by a State under an approved permit program under section 402 of this Act, he shall proceed under his authority in paragraph (3) of this subsection or he shall notify the person in alleged violation and such State of such finding. If beyond the thirtieth day after the Administrator's notification the State has not commenced appropriate enforcement action, the Administrator shall issue an order requiring such person to comply with such condition or limitation or shall bring a civil action in accordance with subsection (b) of this section.

"(2) Whenever, on the basis of information available to him, the Administrator finds that violations of permit conditions or limitations as set forth in paragraph (1) of this subsection are so widespread that such violations appear to result from a failure of the State to enforce such permit conditions or limitations effectively, he shall so notify the State. If the Administrator finds such failure extends beyond the thirtieth day after such notice, he shall give public notice of such finding. During the period beginning with such public notice and ending when such State satisfies the Administrator that it will enforce such conditions and limitations (hereafter referred to in this section as the period of 'federally assumed enforcement'), the Administrator shall enforce any permit condition or limitation with respect to any person—

"(A) by issuing an order to comply with such condition or limitation, or

"(B) by bringing a civil action under subsection (b) of this section.

"(3) Whenever on the basis of any information available to him the Administrator finds that any person is in violation of sections 301, 302, 306, 307, 308, or 316 of this Act, or is in violation of any permit condition or limitation implementing any of such sections, in a permit issued under section 402 of this Act by him or by a State, he shall issue an order requiring such person to comply with such section or requirement, or he shall bring a civil action in accordance with subsection (b) of this section.

"(4) A copy of any order issued under this subsection shall be sent immediately by the Administrator to the State in which the violation occurs and other affected States. Any order issued under this subsection shall be by personal service and shall state with reasonable specificity the nature of the violation, specify a time for compliance, not to exceed thirty days, which the Administrator determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. In any case in which an order under this subsection (or notice to a violator under paragraph (1) of this subsection) is issued to a corporation, a copy of such order (or notice) shall be served on any appropriate corporate officers. An order issued under this subsection relating to a violation of section 308 of this Act shall not take effect until the person to whom it is issued has had an opportunity to confer with the Administrator concerning the alleged violation.

"(b) The Administrator is authorized to commence a civil action for appropriate relief, including a permanent or temporary injunction, for any violation for which he is authorized to issue a compliance order under subsection (a) of this section. Any action under this subsection may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to restrain such violation and to require compliance. Notice of the commencement of such action shall be given immediately to the appropriate State.

"(c)(1) Any person who willfully or negligently violates section 301, 302, 306, 307, 308, or 316 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, shall be punished by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than one year, or by both. If the conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $50,000 per day of violation or by imprisonment for not more than two years or by both.

"(2) Any person who knowingly makes any false statement representation or certification in any application record report plan or other document filed or required to be maintained under this Act or who falsifies tampers with or knowingly renders inaccurate any monitoring device or method required to be maintained under this Act shall upon conviction be punished by a fine of not more than $10,000 or by imprisonment for not more than six months or by both.

"(3) For the purposes of this subsection, the term 'person' shall mean, in addition to the definition contained in section 505(5) of this Act, any responsible corporate officer.

"(d) Any person who violates section 301, 302, 306, 307, 308, or 316 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator, or by a State, and any person who violates any order issued by the Administrator under subsection (a) of this section, shall be subject to a civil penalty not to exceed $10,000 per day of such violation.

"(e) Whenever a municipality is a party to a civil action brought by the United States under this section, the State in which such municipality is located shall be joined as a party. Such State shall be liable for payment of any judgment, or any expenses incurred as a result of complying with any judgment, entered against the municipality in such action to the extent that the laws of that State prevent the municipality from raising

revenues needed to comply with such judgment.

"INTERNATIONAL POLLUTION ABATEMENT

"SEC. 310. (a) Whenever the Administrator, upon receipts of reports, surveys, or studies from any duly constituted international agency, has reason to believe that pollution is occurring which endangers the health or welfare of persons in a foreign country, and the Secretary of State requests him to abate such pollution, he shall give formal notification thereof to the State water pollution control agency of the State or States in which such discharge or discharges originate and to the appropriate interstate agency, if any. He shall also promptly call such a hearing, if he believes that such pollution is occurring in sufficient quantity to warrant such action, and if such foreign country has given the United States essentially the same rights with respect to the prevention and control of pollution occurring in that country as is given that country by this subsection. The Administrator, through the Secretary of State, shall invite the foreign country which may be adversely affected by the pollution to attend and participate in the hearing, and the representative of such country shall, for the purpose of the hearing and any further proceeding resulting from such hearing, have all the rights of a State water pollution control agency. Nothing in this subsection shall be construed to modify, amend, repeal, or otherwise affect the provisions of the 1909 Boundary Waters Treaty between Canada and the United States or the Water Utilization Treaty of 1944 between Mexico and the United States (59 Stat. 1219), relative to the control and abatement of pollution in waters covered by those treaties.

"(b) The calling of a hearing under this section shall not be construed by the courts, the Administrator, or any person as limiting, modifying, or otherwise affecting the functions and responsibilities of the Administrator under this section to establish and enforce water quality requirements under this Act.

"(c) The Administrator shall publish in the Federal Register a notice of a public hearing before a hearing board of five or more persons appointed by the Administrator. A majority of the members of the board and the chairman who shall be designated by the Administrator shall not be officers or employees of Federal, State, or local governments. On the basis of the evidence presented at such hearing, the board shall within sixty days after completion of the hearing make findings of fact as to whether or not such pollution is occurring and shall thereupon by decision, incorporating its findings therein, make such recommendations to abate the pollution as may be appropriate and shall transmit such decision and the record of the hearings to the Administrator. All such decisions shall be public. Upon receipt of such decision, the Administrator shall promptly implement the board's decision in accordance with the provisions of this Act.

"(d) In connection with any hearing called under this subsection, the board is authorized to require any person whose alleged activities result in discharges causing or contributing to pollution to file with it in such forms as it may prescribe, a report based on existing data, furnishing such information as may reasonably be required as to the character, kind, and quantity of such discharges and the use of facilities or other means to prevent or reduce such discharges by the person filing such a report. Such report shall be made under oath or otherwise, as the board may prescribe, and shall be filed with the board within such reasonable period as it may prescribe, unless additional time is granted by it. Upon a showing satisfactory to the board by the person filing such report that such report or portion thereof (other than effluent data), to which the Administrator has access under this section, if made public would divulge trade secrets or secret processes of such person, the board shall consider such report or portion thereof confidential for the purposes of section 1905 of title 18 of the United States Code. If any person required to file any report under this paragraph shall fail to do so within the time fixed by the board for filing the same, and such failure shall continue for thirty days after notice of such default, such person shall forfeit to the United States the sum of $1,000 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States in the district court of the United States where such person has his principal office or in any district in which he does business. The Administrator may upon application therefor remit or mitigate any forfeiture provided for under this subsection.

"(e) Board members, other than officers or employees of Federal, State, or local governments, shall be, for each day (including traveltime) during which they are performing board business, entitled to receive compensation at a rate fixed by the Administrator but not in excess of the maximum rate of pay for grade GS–18, as provided in the General Schedule under section 5332 of title 5 of the United States Code, and shall, notwithstanding the limitations of sections 5703 and 5704 of title 5 of the United States Code, be fully reimbursed for travel, subsistence, and related expenses.

"(f) When any such recommendation adopted by the Administrator involves the institution of enforcement proceedings against any person to obtain the abatement of pollution subject to such recommendation, the Administrator shall institute such proceedings if he believes that the evidence warrants such proceedings. The district court of the United States shall consider and determine de novo all relevant issues, but shall receive in evidence the record of the proceedings before the conference or hearing board. The court shall have jurisdiction to enter such judgment and orders enforcing such judgment as it deems appropriate or to remand such proceedings to the Administrator for such further action as it may direct.

"OIL AND HAZARDOUS SUBSTANCE LIABILITY

"SEC. 311. (a) For the purpose of this section, the term—

"(1) 'oil' means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil;

"(2) 'discharge' includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping;

"(3) 'vessel' means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water other than a public vessel;

"(4) 'public vessel' means a vessel owned or bareboat-chartered and operated by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce;

"(5) 'United States' means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands;

"(6) 'owner or operator' means (A) in the case of a vessel, any person owning, operating, or chartering by demise, such vessel, and (B) in the case of an onshore facility, and an offshore facility, any person owning or operating such onshore facility or offshore facility, and (C) in the case of any abandoned offshore facility, the person who owned or operated such facility immediately prior to such abandonment;

"(7) 'person' includes an individual, firm, corporation, association, and a partnership;

"(8) 'remove' or 'removal' refers to removal of the oil or hazardous substances from the water and shorelines or the taking of such other actions as may be necessary to mimimize or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches;

"(9) 'contiguous zone' means the entire zone established or to be established by the United States under article 24 of the Convention on the Territorial Sea and the Contiguous Zone;

"(10) 'onshore facility' means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States other than submerged land;

"(11) 'offshore facility' means any facility of any kind located in, on, or under, any of the navigable waters of the United States other than a vessel or a public vessel;

"(12) 'act of God' means an act occasioned by an unanticipated grave natural disaster;

"(13) 'barrel' means 42 United States gallons at 60 degrees Fahrenheit;

"(14) 'hazardous substance' means any substance designated pursuant to subsection (b)(2) of this section.

"(b)(1) The Congress hereby declares that it is the policy of the United States that there should be no discharges of oil or hazardous substances into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone.

"(2)(A) The Administrator shall develop, promulgate, and revise as may be appropriate, regulations designating as hazardous substances, other than oil as defined in this section, such elements and compounds which, when discharged in any quantity into or upon the navigable waters of the United States or adjoining shorelines or the waters of the contiguous zone, present an imminent and substantial danger to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, shorelines, and beaches.

"(B)(i) The Administrator shall include in any designation under subparagraph (A) of this subsection a determination whether any such designated hazardous substance is itself actually removable.

"(ii) The owner or operator of any vessel, onshore facility, or offshore facility from which there is discharged any hazardous substance determined not removable under clause (i) of this subparagraph shall be liable, subject to the defenses to liability provided under subsection (f) of this section, as appropriate, to the United States for a civil penalty per discharge established by the Administrator based on toxicity, degradability, and disposal characteristics of such substance, in an amount not to exceed $50,000, except that where the United States can show that such discharge was a result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States for a civil penalty in such amount as the Administrator shall establish, based upon the toxicity, degradability and disposal characteristics of such substance.

"(3) The discharge of oil or hazardous substances into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone in harmful quantities as determined by the President under paragraph (4) of this subsection, is prohibited, except (A) in the case of such discharges of oil into the waters of the contiguous zone, where permitted under article IV of the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, as amended, and (B) where permitted in quantities and at

times and locations or under such circumstances or conditions as the President may, by regulation, determine not to be harmful. Any regulations issued under this subsection shall be consistent with maritime safety and with marine and navigation laws and regulations and applicable water quality standards.

"(4) The President shall by regulation, to be issued as soon as possible after the date of enactment of this paragraph, determine for the purposes of this section, those quantities of oil and any hazardous substance the discharge of which, at such times, locations, circumstances, and conditions, will be harmful to the public health or welfare of the United States including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches except that in the case of the discharge of oil into or upon the waters of the contiguous zone, only those discharges which threaten the fishery resources of the contiguous zone or threaten to pollute or contribute to the pollution of the territory or the territorial sea of the United States may be determined to be harmful.

"(5) Any person in charge of a vessel or of an onshore facility or an offshore facility shall, as soon as he has knowledge of any discharge of oil or a hazardous substance from such vessel or facility in violation of paragraph (2) of this subsection, immediately notify the appropriate agency of the United States Government of such discharge. Any such person who fails to notify immediately such agency of such discharge shall, upon conviction, be fined not more than $10,000, or imprisoned for not more than one year, or both. Notification received pursuant to this paragraph or information obtained by the exploitation of such notification shall not be used against any such person in any criminal case, except a prosecution for perjury or for giving a false statement.

"(6) Any owner or operator of any vessel, onshore facility, or offshore facility from which oil or a hazardous substance is discharged in violation of paragraph (2) of this subsection shall be assessed a civil penalty by the Secretary of the department in which the Coast Guard is operating of not more than $5,000 for each offense. No penalty shall be assessed unless the owner or operator charged shall have been given notice and opportunity for a hearing on such charge. Each violation is a separate offense. Any such civil penalty may be compromised by such Secretary. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of such penalty to the size of the business of the owner or operator charged, the effect on the owner or operator's ability to continue in business, and the gravity of the violation, shall be considered by such Secretary. The Secretary of the Treasury shall withhold at the request of such Secretary the clearance required by section 4197 of the Revised Statutes of the United States, as amended (46 U.S.C. 91), of any vessel the owner or operator of which is subject to the foregoing penalty. Clearance may be granted in such cases upon the filing of a bond or other surety satisfactory to such Secretary.

"(c) (1) Whenever any oil or a hazardous substance is discharged, into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, the President is authorized to act to remove or arrange for the removal of such oil or substance at any time, unless he determines such removal will be done properly by the owner or operator of the vessel, onshore facility, or offshore facility from which the discharge occurs.

"(2) Within sixty days after the effective date of this section, the President shall prepare and publish a National Contingency Plan for removal of oil and hazardous substances, pursuant to this subsection. Such National Contingency Plan shall provide for efficient, coordinated, and effective action to minimize damage from oil and hazardous substance discharges, including containment, dispersal, and removal of oil and hazardous substances, and shall include, but not be limited to—

"(A) assignment of duties and responsibilities among Federal departments and agencies in coordination with State and local agencies, including, but not limited to, water pollution control, conservation, and port authorities;

"(B) identification, procurement, maintenance, and storage of equipment and supplies;

"(C) establishment or designation of a strike force consisting of personnel who shall be trained, prepared, and available to provide necessary services to carry out the Plan, including the establishment at major ports, to be determined by the President, of emergency task forces of trained personnel, adequate oil and hazardous substance pollution control equipment and material, and a detailed oil and hazardous substance pollution prevention and removal plan;

"(D) a system of surveillance and notice designed to insure earliest possible notice of discharges of oil and hazardous substances to the appropriate Federal agency;

"(E) establishment of a national center to provide coordination and direction for operations in carrying out the Plan;

"(F) procedures and techniques to be employed in identifying, containing, dispersing, and removing oil and hazardous substances; and

"(G) a schedule, prepared in cooperation with the States, identifying (i) dispersants and other chemicals, if any, that may be used in carrying out the Plan, (ii) the waters in which such dispersants and chemicals may be used, and (iii) the quantities of such dispersant or chemical which can be used safely in such waters, which schedule shall provide in the case of any dispersant, chemical, or waters not specifically identified in such schedule that the President, or his delegate, may, on a case-by-case basis, identify the dispersants and other chemicals which may be used, the waters in which they may be used, and the quantities which can be used safely in such waters.

The President may, from time to time, as he deems advisable revise or otherwise amend the National Contingency Plan. After publication of the National Contingency Plan, the removal of oil and hazardous substances and actions to minimize damage from oil and hazardous substances discharges shall, to the greatest extent possible, be in accordance with the National Contingency Plan.

"(d) Whenever a marine disaster in or upon the navigable waters of the United States has created a substantial threat of a pollution hazard to the public health or welfare of the United States, including, but not limited to, fish, shellfish, and wildlife and the public and private shorelines and beaches of the United States, because of a discharge, or an imminent discharge, of large quantities of oil, or of a hazardous substance from a vessel the United States may (A) coordinate and direct all public and private efforts directed at the removal or elimination of such threat; and (B) summarily remove, and, if necessary, destroy such vessel by whatever means are available without regard to any provisions of law governing the employment of personnel or the expenditure of appropriated funds. Any expense incurred under this subsection shall be a cost incurred by the United States Government for the purposes of subsection (f) in the removal of oil or hazardous substance.

"(e) In addition to any other action taken by a State or local government, when the President determines there is an imminent and substantial threat to the public health or welfare of the United States, including, but not limited to, fish, shellfish, and wildlife and public and private property, shorelines, and beaches within the United States, because of an actual or threatened discharge of oil or hazardous substance into or upon the navigable waters of the United States from an onshore or offshore facility, the President may require the United States attorney of the district in which the threat occurs to secure such relief as may be necessary to abate such threat, and the district courts of the United States shall have jurisdiction to grant such relief as the public interest and the equities of the case may require.

"(f) (1) Except where an owner or operator can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any vessel from which oil or a hazardous substance is discharged in violation of subsection (b) (2) of this section shall, notwithstanding any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) for the removal of such oil or substance by the United States Government in an amount not to exceed $100 per gross ton of such vessel or $14,000,000, whichever is lesser, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. Such costs shall constitute a maritime lien on such vessel which may be recovered in an action in rem in the district court of the United States for any district within which any vessel may be found. The United States may also bring an action against the owner or operator of such vessel in any court of competent jurisdiction to recover such costs.

"(2) Except where an owner or operator of an on-shore facility can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any such facility from which oil or a hazardous substance is discharged in violation of subsection (b) (2) of this section shall be liable to the United States Government for the actual costs incurred under subsection (c) for the removal of such oil or substance by the United States Government in an amount not to exceed $8,000,000, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. The United States may bring an action against the owner or operator of such facility in any court of competent jurisdiction to recover such costs. The Secretary is authorized, by regulation, after consultation with the Secretary of Commerce and the Small Business Administration, to establish reasonable and equitable classifications of those onshore facilities having a total fixed storage capacity of 1,000 barrels or less which he determines because of size, type, and location do not present a substantial risk of the discharge of oil or a hazardous substance in violation of subsection (b) (2) of this section, and apply with respect to such classifications differing limits of liability which may be less than the amount contained in this paragraph.

"(3) Except where an owner or operator of an offshore facility can prove that a dis-

charge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any such facility from which oil or a hazardous substance is discharged in violation of subsection (b)(2) of this section shall, notwithstanding any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) for the removal of such oil or substance by the United States Government in an amount not to exceed $8,000,000, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. The United States may bring an action against the owner or operator of such a facility in any court of competent jurisdiction to recover such costs.

"(g) In any case where an owner or operator of a vessel, of an onshore facility, or of an offshore facility, from which oil or a hazardous substance is discharged in violation of subsection (b)(2) of this section, proves that such discharge of oil or hazardous substance was caused solely by an act or omission of a third party, or was caused solely by such an act or omission in combination with an act of God, an act of war, or negligence on the part of the United States Government, such third party shall, notwithstanding any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) for removal of such oil or substance by the United States Government, except where such third party can prove that such discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of another party without regard to whether such act or omission was or was not negligent, or any combination of the foregoing clauses. If such third party was the owner or operator of a vessel which caused the discharge of oil or a hazardous substance in violation of subsection (b)(2) of this section, the liability of such third party under this subsection shall not exceed $100 per gross ton of such vessel or $14,000,000, whichever is the lesser. In any other case the liability of such third party shall not exceed the limitation which would have been applicable to the owner or operator of the vessel or the onshore or offshore facility from which the discharge actually occurred if such owner or operator were liable. If the United States can show that the discharge of oil or a hazardous substance in violation of subsection (b)(2) of this section was the result of willful negligence or willful misconduct within the privity and knowledge of such third party, such third party shall be liable to the United States Government for the full amount of such removal costs. The United States may bring an action against the third party in any court of competent jurisdiction to recover such removal costs.

"(h) The liabilities established by this section shall in no way affect any rights which (1) the owner or operator of a vessel or of an onshore facility or an offshore facility may have against any third party whose acts may in any way have caused or contributed to such discharge, or (2) the United States Government may have against any third party whose actions may in any way have caused or contributed to the discharge of oil or hazardous substance.

"(i)(1) In any case where an owner or operator of a vessel or an onshore facility or an offshore facility from which oil or a hazardous substance is discharged in violation of subsection (b)(2) of this section acts to remove such oil or substance in accordance with regulations promulgated pursuant to this section, such owner or operator shall be entitled to recover the reasonable costs incurred in such removal upon establishing, in a suit which may be brought against the United States Government in the United States Court of Claims, that such discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether such act or omission was or was not negligent, or of any combination of the foregoing causes.

"(2) The provisions of this subsection shall not apply in any case where liability is established pursuant to the Outer Continental Shelf Lands Act.

"(3) Any amount paid in accordance with a judgment of the United States Court of Claims pursuant to this section shall be paid from the fund established pursuant to subsection (k).

"(j)(1) Consistent with the National Contingency Plan required by subsection (c)(2) of this section, as soon as practicable after the effective date of this section, and from time to time thereafter, the President shall issue regulations consistent with maritime safety and with marine and navigation laws (A) establishing methods and procedures for removal of discharged oil and hazardous substances, (B) establishing criteria for the development and implementation of local and regional oil and hazardous substance removal contingency plans, (C) establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore facilities and offshore facilities, and to contain such discharges and (D) governing the inspection of vessels carrying cargoes of oil and hazardous substances and the inspection of such cargoes in order to reduce the likelihood of discharges of oil from vessels in violation of this section.

"(2) Any owner or operator of a vessel or an onshore facility or an offshore facility and any other person subject to any regulation issued under paragraph (1) of this subsection who fails or refuses to comply with the provisions of any such regulation, shall be liable to a civil penalty of not more than $5,000 for each such violation. Each violation shall be a separate offense. The President may assess and compromise such penalty. No penalty shall be assessed until the owner, operator, or other person charged shall have been given notice and an opportunity for a hearing on such charge. In determining the amount of the penalty, or the amount agreed upon in compromise, the gravity of the violation, and the demonstrated good faith of the owner, operator, or other person charged in attempting to achieve rapid compliance, after notification of a violation, shall be considered by the President.

"(k) There is hereby authorized to be appropriated to a revolving fund to be established in the Treasury not to exceed $35,000,000 to carry out the provisions of subsections (c), (d), (l), and (l) of this section. Any other funds received by the United States under this section shall also be deposited in said fund for such purposes. All sums appropriated to, or deposited in, said fund shall remain available until expended.

"(l) The President is authorized to delegate the administration of this section to the heads of those Federal departments, agencies, and instrumentalities which he determines to be appropriate. Any moneys in the fund established by subsection (k) of this section shall be available to such Federal departments, agencies, and instrumentalities to carry out the provisions of subsections (c) and (i) of this section. Each such department, agency, and instrumentality, in order to avoid duplication of effort, shall, whenever appropriate, utilize the personnel, services, and facilities of other Federal departments, agencies, and instrumentalities.

"(m) Anyone authorized by the President to enforce the provisions of this section may, except as to public vessels, (A) board and inspect any vessel upon the navigable waters of the United States or the waters of the contiguous zone, (B) with or without a warrant arrest any person who violates the provisions of this section or any regulation issued thereunder in his presence or view, and (C) execute any warrant or other process issued by an officer or court of competent jurisdiction.

"(n) The several district courts of the United States are invested with jurisdiction for any actions, other than actions pursuant to subsection (i)(1), arising under this section. In the case of Guam and the Trust Territory of the Pacific Islands, such actions may be brought in the district court of Guam, and in the case of the Virgin Islands such actions may be brought in the district court of the Virgin Islands. In the case of American Samoa and the Trust Territory of the Pacific Islands, such actions may be brought in the District Court of the United States for the District of Hawaii and such court shall have jurisdiction of such actions. In the case of the Canal Zone, such actions may be brought in the United States District Court for the District of the Canal Zone.

"(o)(1) Nothing in this section shall affect or modify in any way the obligations of any owner or operator of any vessel, or of any owner or operator of any onshore facility or offshore facility to any person or agency under any provision of law for damages to any publicly owned or privately owned property resulting from a discharge of any oil or hazardous substance or from the removal of any such oil or hazardous substance.

"(2) Nothing in this section shall be construed as preempting any State or political subdivision thereof from imposing any requirement or liability with respect to the discharge of oil or hazardous substance into any waters within such State.

"(3) Nothing in this section shall be construed as affecting or modifying any other existing authority of any Federal department, agency, or instrumentality, relative to onshore or offshore facilities under this Act or any other provision of law, or to affect any State or local law not in conflict with this section.

"(p)(1) Any vessel over three hundred gross tons, including any barge of equivalent size, but not including any barge that is not self-propelled and that does not carry oil or hazardous substances as cargo or fuel, using any port or place in the United States or the navigable waters of the United States for any purpose shall establish and maintain under regulations to be prescribed from time to time by the President, evidence of financial responsibility of $100 per gross ton, or $14,000,000 whichever is the lesser, to meet the liability to the United States which such vessel could be subjected under this section. In cases where an owner or operator owns, operates, or charters more than one such vessel, financial responsibility need only be established to meet the maximum liability to which the largest of such vessels could be subjected. Financial responsibility may be established by any one of, or a combination of, the following methods acceptable to the President: (A) evidence of insurance, (B) surety bonds, (C) qualification as a self-insurer, or (D) other evidence of financial responsibility. Any bond filed shall be issued by a bonding company authorized to do business in the United States.

"(2) The provisions of paragraph (1) of this subsection shall be effective April 3, 1971, with respect to oil and one year after the date of enactment of this section with respect to hazardous substances. The Presi-

dent shall delegate the responsibility to carry out the provisions of this subsection to the appropriate agency head within sixty days after the date of enactment of this section. Regulations necessary to implement this subsection shall be issued within six months after the date of enactment of this section.

"(3) Any claim for costs incurred by such vessel may be brought directly against the insurer or any other person providing evidence of financial responsibility as required under this subsection. In the case of any action pursuant to this subsection such insurer or other person shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if an action had been brought against him by the claimant, and which would have been available to him if an action had been brought against him by the owner or operator.

"MARINE SANITATION DEVICES

"SEC. 312. (a) For the purpose of this section, the term—

"(1) 'new vessel' includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on the navigable waters, the construction of which is initiated after promulgation of standards and regulations under this section;

"(2) 'existing vessel' includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on the navigable waters, the construction of which is initiated before promulgation of standards and regulations under this section;

"(3) 'public vessel' means a vessel owned or bare-boat chartered and operated by the United States, by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce;

"(4) 'United States' includes the States, the District of Columbia, the Commonwealth of Puerto Rico. the Virgin Islands, Guam, American Samoa, the Canal Zone, and the Trust Territory of the Pacific Islands;

"(5) 'marine sanitation device' includes any equipment for installation on board a vessel which is designed to receive, retain, treat, or discharge sewage, and any process to treat such sewage;

"(6) 'sewage' means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes;

"(7) 'manufacturer' means any person engaged in the manufacturing, assembling, or importation of marine sanitation devices or of vessels subject to standards and regulations promulgated under this section;

"(8) 'person' means an individual, partnership, firm, corporation, or association, but does not include an individual on board a public vessel;

"(9) 'discharge' includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

"(b)(1) As soon as possible, after the enactment of this section and subject to the provisions of section 104(j) of this Act, the Administrator, after consultation with the Secretary of the department in which the Coast Guard is operating, after giving appropriate consideration to the economic costs involved, and within the limits of available technology, shall promulgate Federal standards of performance for marine sanitation devices (hereafter in this section referred to as 'standards') which shall be designed to prevent the discharge of untreated or inadequately treated sewage into or upon the navigable waters from new vessels and existing vessels, except vessels not equipped with installed toilet facilities. Such standards shall be consistent with maritime safety and the marine and navigation laws and regulations and shall be coordinated with the regulations issued under this subsection by the Secretary of the department in which the Coast Guard is operating. The Secretary of the department in which the Coast Guard is operating shall promulgate regulations, which are consistent with standards promulgated under this subsection and with maritime safety and the marine and navigation laws and regulations governing the design, construction, installation, and operation of any marine sanitation device on board such vessels.

"(2) Any existing vessel equipped with a marine sanitation device on the date of promulgation of initial standards and regulations under this section, which device is in compliance with such initial standards and regulations, shall be deemed in compliance with this section until such time as the device is replaced or is found not to be in compliance with such initial standards and regulations.

"(c)(1) Initial standards and regulations under this section shall become effective for new vessels two years after promulgation; and for existing vessels five years after promulgation. Revisions of standards and regulations shall be effective upon promulgation, unless another effective date is specified, except that no revision shall take effect before the effective date of the standard or regulation being revised.

"(2) The Secretary of the department in which the Coast Guard is operating with regard to his regulatory authority established by this section, after consultation with the Administrator, may distinguish among classes, type, and sizes of vessels as well as between new and existing vessels, and may waive applicability of standards and regulations as necessary or appropriate for such classes, types, and sizes of vessels (including existing vessels equipped with marine sanitation devices on the date of promulgation of the initial standards required by this section), and, upon application, for individual vessels.

"(d) The provisions of this section and the standards and regulations promulgated hereunder apply to vessels owned and operated by the United States unless the Secretary of Defense finds that compliance would not be in the interest of national security. With respect to vessels owned and operated by the Department of Defense, regulations under the last sentence of subsection (b)(1) of this section and certifications under subsection (g)(2) of this section shall be promulgated and issued by the Secretary of Defense.

"(e) Before the standards and regulations under this section are promulgated, the Administrator and the Secretary of the department in which the Coast Guard is operating shall consult with the Secretary of State; the Secretary of Health, Education, and Welfare; the Secretary of Defense; the Secretary of the Treasury; the Secretary of Commerce; other interested Federal agencies; and the States and industries interested; and otherwise comply with the requirements of section 553 of title 5 of the United States Code.

"(f) After the effective date of the initial standards and regulations promulgated under this section, if any State determines that the protection and enhancement of the quality of some or all of the waters within such State require greater environmental protection, such State may completely prohibit the discharge from a vessel of any sewage, whether treated or not, into such waters.

"(g)(1) No manufacturer of a marine sanitation device shall sell, offer for sale, or introduce or deliver for introduction in interstate commerce, or import into the United States for sale or resale any marine sanitation device manufactured after the effective date of the standards and regulations promulgated under this section unless such device is in all material respects substantially the same as a test device certified under this subsection.

"(2) Upon application of the manufacturer, the Secretary of the department in which the Coast Guard is operating shall so certify a marine sanitation device if he determines, in accordance with the provisions of this paragraph, that it meets the appropriate standards and regulations promulgated under this section. The Secretary of the department in which the Coast Guard is operating shall test or require such testing of the device in accordance with procedures set forth by the Administrator as to standards of performance and for such other purposes as may be appropriate. If the Secretary of the department in which the Coast Guard is operating determines that the device is satisfactory from the standpoint of safety and any other requirements of maritime law or regulation, and after consideraion of the design, installation, operation, material, or other appropriate factors, he shall certify the device. Any device manufactured by such manufacturer which is in all material respects substantially the same as the certified test device shall be deemed to be in conformity with the appropriate standards and regulations established under this section.

"(3) Every manufacturer shall establish and maintain such records, make such reports, and provide such information as the Administrator or the Secretary of the department in which the Coast Guard is operating may reasonably require to enable him to determine whether such manufacturer has acted or is acting in compliance with this section and regulations issued thereunder and shall, upon request of an officer or employee duly designated by the Administrator or the Secretary of the department in which the Coast Guard is operating, permit such officer or employee at reasonable times to have access to and copy such records. All information reported to or otherwise obtained by the Administrator or the Secretary of the department in which the Coast Guard is operating or their representatives pursuant to this subsection which contains or relates to a trade secret or other matter referred to in section 1905 of title 18 of the United States Code shall be considered confidential for the purpose of that section, except that such information may be disclosed to other officers or employees concerned with carrying out this section. This paragraph shall not apply in the case of the construction of a vessel by an individual for his own use.

"(h) After the effective date of standards and regulations promulgated under this section, it shall be unlawful—

"(1) for the manufacturer of any vessel subject to such standards and regulations to manufacture for sale, to sell or offer for sale, or to distribute for sale or resale any such vessel unless it is equipped with a marine sanitation device which is in all material respects substantially the same as the appropriate test device certified pursuant to this section;

"(2) for any person, prior to the sale or delivery of a vessel subject to such standards and regulations to the ultimate purchaser, wrongfully to remove or render inoperative any certified marine sanitation device or element of design of such device installed in such vessel;

"(3) for any person to fail or refuse to permit access to or copying of records or to fail to make reports or provide information required under this section; and

"(4) for a vessel subject to such standards and regulations to operate on the navigable waters of the United States, if such vessel is not equipped with an operable marine sanitation device certified pursuant to this section.

"(i) The district courts of the United States shall have jurisdictions to restrain violations of subsection (g)(1) of this section and subsection (h)(1) through (3) of

this section. Actions to restrain such violations shall be brought by, and in, the name of the United States. In case of contumacy or refusal to obey a subpena served upon any person under this subsection, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce documents, and any failure to obey such order of the court may be punishsd by such court as a contempt thereof.

"(j) Any person who violates subsection (g)(1) of this section or clause (1) or (2) of subsection (h) of this section shall be liable to a civil penalty of not more than $5,000 for each violation. Any person who violates clause (4) of subsection (h) of this section or any regulation issued pursuant to this section shall be liable to a civil penalty of not more than $2,000 for each violation. Each violation shall be a separate offense. The Secretary of the department in which the Coast Guard is operating may assess and compromise any such penalty. No penalty shall be assessed until the person charged shall have been given notice and an opportunity for a hearing on such charge. In determining the amount of the penalty, or the amount agreed upon in compromise, the gravity of the violation, and the demonstrated good faith of the person charged in attempting to achieve rapid compliance, after notification of a violation, shall be considered by said Secretary.

"(k) The provisions of this section shall be enforced by the Secretary of the department in which the Coast Guard is operating and he may utilize by agreement, with or without reimbursement, law enforcement officers or other personnel and facilities of the Administrator, other Federal agencies, or the States to carry out the provisions of this section.

"(l) Anyone authorized by the Secretary of the department in which the Coast Guard is operating to enforce the provisions of this section may, except as to public vessels, (1) board and inspect any vessel upon the navigable waters of the United States and (2) execute any warrant or other process issued by an officer or court of competent jurisdiction.

"(m) In the case of Guam and the Trust Territory of the Pacific Islands, actions arising under this section may be brought in the district court of Guam, and in the case of the Virgin Islands such actions may be brought in the district court of the Virgin Islands. In the case of American Samoa and the Trust Territory of the Pacific Islands, such actions may be brought in the District Court of the United States for the District of Hawaii and such court shall have jurisdiction of such actions. In the case of the Canal Zone, such actions may be brought in the District Court for the District of the Canal Zone.

"FEDERAL FACILITIES POLLUTION CONTROL

"SEC. 313. Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any property or facility, or (2) engaged in any activity resulting, or which may result, in the discharge or runoff of pollutants shall comply with Federal, State, interstate, and local requirements respecting control and abatement of pollution to the same extent that any person is subject to such requirements, including the payment of reasonable service charges. The President may exempt any effluent source of any department, agency, or instrumentality in the executive branch from compliance with any such a requirement if he determines it to be in the paramount interest of the United States to do so; except that no exemption may be granted from the requirements of section 306 or 307 of this Act. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods of not to exceed one year upon the President's making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting such exemption.

"CLEAN LAKES

"SEC. 314. (a) Each State shall prepare or establish, and submit to the Administrator for his approval—

"(1) an identification and classification according to eutrophic condition of all publicly owned fresh water lakes in such State;

"(2) procedures, processes, and methods (including land use requirements), to control sources of pollution of such lakes; and

"(3) methods and procedures, in conjunction with appropriate Federal agencies, to restore the quality of such lakes.

"(b) The Administrator shall provide financial assistance to States in order to carry out methods and procedures approved by him under this section.

"(c)(1) The amount granted to any State for any fiscal year under this section shall not exceed 70 per centum of the funds expended by such State in such year for carrying out approved methods and procedures under this section.

"(2) There is authorized to be appropriated $100,000,000 for the fiscal year ending June 30, 1973; and $150,000,000 for the fiscal year 1974 for grants to States under this section which such sums shall remain available until expended. The Administrator shall provide for an equitable distribution of such sums to the States with approved methods and procedures under this section.

"NATIONAL ACADEMIES STUDY

"SEC. 315. (a) The National Academy of Sciences and the National Academy of Engineering, acting through the National Research Council, shall make a full and complete investigation and study of all of the technological aspects of achieving, and all aspects of the total economic, social, and environmental effects of achieving or not achieving, the effluent limitations and goals set forth for 1981 in section 301(b)(2) of this title. A report shall be submitted to Congress of the results of such investigation and study, together with recommendations, not later than two years after the date of enactment of this title. Notwithstanding the provisions of section 301(b)(2) of this title or any other provision of this Act to the contrary, effluent limitations, goals, and policies established for 1981 for point and nonpoint sources (other than publicly owned treatment works) and later years for point and nonpoint sources, by this Act shall not take effect until such time as Congress shall, by statute enacted after the submission of the report required by this subsection, specifically so provide.

"(b) The heads of the departments, agencies, and instrumentalities of the executive branch of the Federal Government shall cooperate with the Academies in carrying out the requirements of subsection (a) of this section, and shall furnish to such Academies such information as the Academies deem necessary to carry out this section.

"(c) There is authorized to be appropriated to the President, for use in carrying out this section, not to exceed $15,000,000.

"REGULATION OF THERMAL DISCHARGES

"SEC. 316. (a) As soon as practicable, but not later than one year after enactment of this section, the Administrator shall issue proposed regulations with respect to control of thermal discharges.

"(b) Such proposed regulations shall recognize that the optimum method of control of any thermal discharge may depend upon local conditions, including the type and size of the receiving body of water. The regulations shall require any person proposing to make such a discharge to consider all alternative methods for controlling such a discharge, including, but not limited to (1) utilization of available water bodies or cooling devices, including once-through cooling, mixing zones, cooling ponds, spray ponds, evaporative or nonevaporative cooling towers, (2) dilution of heated waters with cooler waters, and (3) an alteration of the outlet configuration. In evaluating such alternative methods of control consideration shall be given to (1) their relative engineering and technical feasibility, (2) their relative social and economic costs and benefits, (3) their relative impact on the environment, considering not only water quality but also air quality, land use, and effective utilization and conservation of natural resources, and (4) methods of minimizing adverse effects and maximizing beneficial effects of such discharges.

"(c) The Administrator shall afford interested persons an opportunity, not to exceed sixty days, for written comment on such proposed regulations. After considering such comments, he shall promulgate, within one hundred and twenty days after publication of such proposed regulations, final regulations. The Administrator shall, from time to time, as technology and alternatives change, revise such regulations.

"(d) Such regulations shall apply to thermal discharges from all sources, unless the Administrator determines, after a public hearing requested by the owner or operator of a point source, that the economic and social costs of implementing the regulations at a point source bear no reasonable relationship to the economic and social benefits (including water quality objectives) to be attained. Any such determination shall be accompanied by an appropriate adjustment of such regulations for such source, which shall reflect the greatest degree of control which the Administrator determines can reasonably be achieved at such source.

"(e) The provisions of this section shall apply to point sources owned or operated by the United States or instrumentalities thereof.

"FINANCING STUDY

"SEC. 317. (a) The Administrator shall continue to investigate and study the feasibility of alternate methods of financing the cost of preventing, controlling and abating pollution as directed in the Water Quality Improvement Act of 1970 (Public Law 91-224), including, but not limited to, the feasibility of establishing a pollution abatement trust fund. The results of such investigation and study shall be reported to the Congress not later than two years after enactment of this title, together with recommendations of the Administrator for financing the programs for preventing, controlling and abating pollution for the fiscal years beginning after fiscal year 1976, including any necessary legislation.

"(b) There is authorized to be appropriated for use in carrying out this section, not to exceed $1,000,000.

"AQUACULTURE

"SEC. 318. (a) The Administrator is authorized, after public hearings, to permit the discharge of a specific pollutant or pollutants under controlled conditions associated with an approved aquaculture project under Federal or State supervision.

"(b) There is authorized to be appropriated not later than January 1, 1974, establish any procedures and guidelines he deems necessary to carry out this section.

"TITLE IV—PERMITS AND LICENSES

"CERTIFICATION

"SEC. 401. (a) (1) Any applicant for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate, or, if appropriate, from the interstate water pollution control agency having jurisdiction over the navigable waters at the point where the discharge originates or will originate, that any such discharge will comply with the applicable provisions of sections 301, 302, 306, 307, and 316 of this Act. In the case of any such activity for which there is not an applicable effluent limitation or other limitation under sections 301(b) and 302, and there is not an applicable standard under sections 306 and 307, and there is not an applicable regulation under section 316, the State shall so certify, except that any such certification shall not be deemed to satisfy section 511(c) of this Act. Such State or interstate agency shall establish procedures for public notice in the case of all applications for certification by it and, to the extent it deems appropriate, procedures for public hearings in connection with specific applications. In any case where a State or interstate agency has no authority to give such a certification, such certification shall be from the Administrator. If the State, interstate agency, or Administrator, as the case may be, fails or refuses to act on a request for certification, within a reasonable period of time (which shall not exceed one year) after receipt of such request, the certification requirements of this subsection shall be waived with respect to such Federal application. No license or permit shall be granted until the certification required by this section has been obtained or has been waived as provided in the preceding sentence. No license or permit shall be granted if certification has been denied by the State, interstate agency, or the Administrator, as the case may be.

"(2) Upon receipt of such application and certification the licensing or permitting agency shall immediately notify the Administrator of such application and certification. Whenever such a discharge may affect, as determined by the Administrator, the quality of the waters of any other State, the Administrator within thirty days of the date of notice of application for such Federal license or permit shall so notify such other State, the licensing or permitting agency, and the applicant. If, within sixty days after receipt of such notification, such other State determines that such discharge will affect the quality of its waters so as to violate any water quality requirement in such State, and within such sixty-day period notifies the Administrator and the licensing or permitting agency in writing of its objection to the issuance of such license or permit and requests a public hearing on such objection, the licensing or permitting agency shall hold such a hearing. The Administrator shall at such hearing submit his evaluation and recommendations with respect to any such objection to the licensing or permitting agency. Such agency, based upon the recommendations of such State, the Administrator, and upon any additional evidence, if any, presented to the agency at the hearing, shall condition such license or permit in such manner as may be necessary to insure compliance with applicable water quality requirements. If the imposition of conditions cannot insure such compliance such agency shall not issue such license or permit.

"(3) The certification obtained pursuant to paragraph (1) of this subsection with respect to the construction of any facility shall fulfill the requirements of this subsection with respect to certification in connection with any other Federal license or permit required for the operation of such facility unless, after notice to the certifying State, agency, or Administrator, as the case may be, which shall be given by the Federal agency to whom application is made for such operating license or permit, the State, or if appropriate, the interstate agency or the Administrator, notifies such agency within sixty days after receipt of such notice that there is no longer reasonable assurance that there will be compliance with the applicable provisions of sections 301, 302, 306, 307, and 316 of this Act because of changes since the construction license or permit certification was issued in (A) the construction or operation of the facility, (B) the characteristics of the waters into which such discharge is made, (C) the water quality criteria applicable to such waters or (D) applicable effluent limitations or other requirements. This paragraph shall be inapplicable in any case where the applicant for such operating license or permit has failed to provide the certifying State, or, if appropriate, the interstate agency or the Administrator, with notice of any proposed changes in the construction or operation of the facility with respect to which a construction license or permit has been granted, which changes may result in violation of section 301, 302, 306, 307, or 316 of this Act.

"(4) Prior to the initial operation of any federally licensed or permitted facility or activity which may result in any discharge into the navigable waters and with respect to which a certification has been obtained pursuant to paragraph (1) of this subsection, which facility or activity is not subject to a Federal operating license or permit, the licensee or permittee shall provide an opportunity for such certifying State, or, if appropriate, the interstate agency or the Administrator to review the manner in which the facility or activity shall be operated or conducted for the purposes of assuring that applicable effluent limitations or other limitations or other applicable water quality requirements will not be violated. Upon notification by the certifying State, or if appropriate, the interstate agency or the Administrator that the operation of any such federally licensed or permitted facility or activity will violate applicable effluent limitations or other limitations or other water quality requirements such Federal agency may, after public hearing, suspend such license or permit. If such license or permit is suspended, it shall remain suspended until notification is received from the certifying State, agency, or Administrator, as the case may be, that there is reasonable assurance that such facility or activity will not violate the applicable provisions of section 301, 302, 306, 307, or 316 of this Act.

"(5) Any Federal license or permit with respect to which a certification has been obtained under paragraph (1) of this subsection may be suspended or revoked by the Federal agency issuing such license or permit upon the entering of a judgment under this Act that such facility or activity has been operated in violation of the applicable provisions of section 301, 302, 306, 307, or 316 of this Act.

"(6) No Federal agency shall be deemed to be an applicant for the purposes of this subsection.

"(7) In any case where actual construction of a facility has been lawfully commenced prior to April 3, 1970, no certification shall be required under this subsection for a license or permit issued after April 3, 1970, to to operate such facility, except that any such license or permit issued without certification shall terminate April 3, 1973, unless prior to such termination date the person having such license or permit submits to the Federal agency which issued such license or permit a certification and otherwise meets the requirements of this section.

"(b) Nothing in this section shall be construed to limit the authority of any department or agency pursuant to any other provision of law to require compliance with any applicable water quality requirements. The Administrator shall, upon the request of any Federal department or agency, or State or interstate agency, or applicant, provide, for the purpose of this section, any relevant information on applicable effluent limitations, or other limitations, standards, regulations, or requirements, or water quality criteria, and shall, when requested by any such department or agency or State or interstate agency, or applicant, comment on any methods to comply with such limitations, standards, regulations, requirements, or criteria.

"(c) In order to implement the provisions of this section, the Secretary of the Army, acting through the Chief of Engineers, is authorized, if he deems it to be in the public interest, to permit the use of spoil disposal areas under his jurisdiction by Federal licensees or permittees, and to make an appropriate charge for such use. Moneys received from such licensees or permittees shall be deposited in the Treasury as miscellaneous receipts.

"(d) Any certification provided under this section shall set forth any effluent limitations and other limitations, and monitoring requirements necessary to assure that any applicant for a Federal license or permit will comply with any applicable effluent limitations and other limitations, under section 301 or 302 of this Act, standard of performance under section 306 of this Act, or prohibition, effluent standard, or pretreatment standards under section 307 of this Act, or any regulation under section 316 of this Act, and shall become a condition on any Federal license or permit subject to the provisions of this section.

"NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

"SEC. 402. (a) (1) Except as provided in sections 318 and 404 of this Act, the Administrator may, after opportunity for public hearing, issue a permit for the discharge of any pollutant, or combination of pollutants or any thermal discharge, notwithstanding section 301(a), upon condition that such discharge will meet either all applicable requirements under sections 301, 302, 306, 307, 308, 316, and 403 of this Act, or prior to the taking of necessary implementing actions relating to all such requirements, such conditions as the Administrator determines are necessary to carry out the provisions of this Act.

"(2) The Administrator shall prescribe conditions for such permits to assure compliance with the requirements of paragraph (1) of this subsection, including conditions on data and information collection, reporting, and such other requirements as he deems appropriate.

"(3) The permit program of the Administrator under paragraph (1) of this subsection, and permits issued thereunder, shall be subject to the same terms, conditions, and requirements as apply to a State permit program and permits issued thereunder under subsection (b) of this section.

"(4) All permits for discharges into the navigable waters issued pursuant to section 13 of the Act of March 3, 1899, shall be deemed to be permits issued under this title, and permits issued under this title shall be deemed to be permits issued under section 13 of the Act of March 3, 1899, and shall continue in force and effect for their term unless revoked, modified, or suspended in accordance with the provisions of this Act.

"(5) No permit for a discharge into the navigable water shall be issued under section 13 of the Act of March 3, 1899, after the date of enactment of this title. Each application

for a permit under section 13 of the Act of March 3, 1899, pending on the date of enactment of this Act shall be deemed to be an application for a permit under this section. The Administrator may authorize a State, which he determines has the capability of administering a permit program which will carry out the objective of this Act, to issue permits for discharges into the navigable waters within the jurisdiction of such State. The Administrator may exercise the authority granted him by the preceding sentence only during the period which begins on the date of enactment of this Act and ends either on the ninetieth day after the date of the first promulgation of guidelines required by section 304(h)(2) of this Act, or the date of approval by the Administrator of a permit program for such State under subsection (b) of this section, whichever date first occurs, and no such authorization to a State shall extend beyond the last day of such period. Each such permit shall be subject to such conditions as the Administrator determines are necessary to carry out the provisions of this Act. No such permit shall issue if the Administrator objects to such issuance.

"(b) At any time after the promulgation of the guidelines required by subsection (h)(2) of section 304 of this Act, the Governor of each State desiring to administer its own permit program for discharges into navigable waters within its jurisdiction may submit to the Administrator a full and complete description of the program it proposes to establish and administer under State law or under an interstate compact. In addition, such State shall submit a statement from the attorney general (or the attorney for those State water pollution control agencies which have independent legal counsel), or from the chief legal officer in the case of an interstate agency, that the laws of such State, or the interstate compact, as the case may be, provide adequate authority to carry out the described program. The Administrator shall approve each such submitted program unless he determines that adequate authority does not exist:

"(1) To issue permits which—

"(A) apply, and insure compliance with, any applicable requirements of sections 301, 302, 306, 307, and 403;

"(B) are for fixed terms not exceeding five years; and

"(C) can be terminated or modified for cause including, but not limited to, the following:

"(i) violation of any condition of the permit;

"(ii) obtaining a permit by misrepresentation, or failure to disclose fully all relevant facts;

"(iii) change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge;

"(D) control the disposal of pollutants into wells;

"(2)(A) To issue permits which apply, and insure compliance with, all applicable requirements of section 308 of this Act, or

"(B) Except with respect to sources owned or operated by the United States, to inspect, monitor, enter, and require reports to at least the same extent as required in section 308 of this Act;

"(3) To insure that the public, and any other State the waters of which may be affected, receive notice of each application for a permit and to provide an opportunity for public hearing before a ruling on each such application;

"(4) To insure that the Administrator receives notice of each application (including a copy thereof) for a permit;

"(5) To insure that any State (other than the permitting State), whose waters may be affected by the issuance of a permit may submit written recommendations to the permitting State (and the Administrator) with respect to any permit application and, if any part of such written recommendations are not accepted by the permitting State, that the permitting State will notify such affected State (and the Administrator) in writing of its failure to so accept such recommendations together with its reasons for so doing;

"(6)(A) To issue permits which apply, and insure compliance with, all applicable requirements of section 316 of this Act; or

"(B) Except with respect to sources owned or operated by the United States, to apply and enforce control of thermal discharges from point sources located in such State to at least the same extent as is provided in section 316 of this Act;

"(7) To insure that no permit will be issued if, in the judgment of the Secretary of the Army acting through the Chief of Engineers, after consultation with the Secretary of the department in which the Coast Guard is operating, anchorage and navigation of any of the navigbale waters would be substantially impaired thereby; and

"(8) To abate violations of the permit or the permit program, including civil and criminal penalties and other ways and means of enforcement.

"(c)(1) Not later than ninety days after the date on which a State has submitted a program (or revision thereof) pursuant to subsection (b) of this section, the Administrator shall suspend the issuance of permits under subsection (a) of this section as to those navigable waters subject to such program unless he determines that the State permit program does not meet the requirements of subsection (b) of this section or does not conform to the guidelines issued under section 304(h)(2) of this Act. If the Administrator so determines, he shall notify the State of any revisions or modifications necessary to conform to such requirements or guidelines.

"(2) Any State permit program under this section shall at all times be in accordance with this section and guidelines promulgated pursuant to section 304(h)(2) of this Act.

"(3) Whenever the Administrator determines after public hearing that a State is not administering a program approved under this section in accordance with requirements of this section, he shall so notify the State and, if appropriate corrective action is not taken within a reasonable time, not to exceed ninety days, the Administrator shall withdraw approval of such program. The Administrator shall not withdraw approval of any such program unless he shall first have made public, in writing, the reasons for such withdrawal.

"(d)(1) Each State shall transmit to the Administrator a copy of each permit application received by such State and provide notice to the Administrator of every action related to the consideration of such permit application, including each permit proposed to be issued by such State.

"(2) No permit shall issue if the Administrator within sixty days of the date of his notification under subsection (b)(5) of this section objects in writing to the issuance of such permit.

"(3) The Administrator may, as to any permit application, waive paragraph (2) of this subsection.

"(e) In accordance with guidelines promulgated pursuant to subsection (h)(2) of section 304 of this Act, the Administrator is authorized to waive the requirements of subsection (d) of this subsection at the time he approves a program pursuant to subsection (b) of this section for any category (including any class, type, or size within such category) of point sources within the State submitting such program.

"(f) The Administrator shall promulgate regulations establishing categories of point sources which he determines shall not be subject to the requirements of subsection (d) of this section in any State with a program approved pursuant to subsection (b) of this section. The Administrator may distinguish among classes, types, and sizes within any category of point sources.

"(g) The Administrator or any State shall not issue a permit under this section for any point source unless such permit shall assure the maintenance or enhancement of the quality of any affected waters.

"(h) Any permit issued under this section for the discharge of pollutants into the navigable waters from a vessel or other floating craft shall be subject to any applicable regulations promulgated by the Secretary of the Department in which the Coast Guard is operating, establishing specifications for safe transportation, handling, carriage, storage, and stowage of pollutants.

"(i) In the event any condition of a permit for discharges from a treatment works (as defined in section 210 of this Act) which is publicly owned is violated, a State with a program approved under subsection (b) of this section or the Administrator, where no State program is approved, may proceed in a court of competent jurisdiction to restrict or prohibit the introduction of any pollutant into such treatment works by a source not utilizing such treatment works prior to the finding that such condition was violated.

"(j) Nothing in this section shall be construed to limit the authority of the Administrator to take action pursuant to section 309 of this Act.

"(k) A copy of each permit application and each permit issued under this section shall be available to the public, in an appropriate place (1) in each State; (2) in a regional office of the Environmental Protection Agency; or (3) with the Administrator, whichever is appropriate. Such permit application or permit, or portion thereof, shall further be available on request for the purpose of reproduction.

"(l) Compliance with a permit issued pursuant to this section shall be deemed compliance, for purposes of sections 309 and 505, with sections 301, 302, 306, 307, 316, and 403, except any standard imposed under section 307 for a toxic pollutant injurious to human health. Until January 1, 1976, in any case where a permit for discharge has been applied for pursuant to this section, but final administrative disposition of such application has not been made, and such discharge is not in violation of any applicable water quality standard under subsections (a) and (b) of section 303 of this Act, and is not in violation of any applicable regulation under section 316 of this Act, such discharge shall not be a violation of (1) this Act (other than an order under section 504), or (2) section 13 of the Act of March 3, 1899, unless the Administrator or other plaintiff proves that final administrative disposition of such application has not been made because of the failure of the applicant to furnish information reasonably required or requested in order to process the application.

"OCEAN DISCHARGE CRITERIA

"SEC. 403. (a) No permit under section 402 of this Act for a discharge into the territorial sea, the waters of the contiguous zone, or the oceans shall be issued, after promulgation of guidelines established under subsection (c) of this section, except in compliance with such guidelines.

"(b) The requirements of subsection (d) of section 402 of this Act may not be waived in the case of permits for discharges into the territorial sea.

"(c)(1) The Administrator shall, within one hundred and eighty days after enactment of this Act (and from time to time thereafter), promulgate guidelines for determining the degradation of the waters of the territorial seas, the contiguous zone, and the oceans, which shall include:

"(A) the effect of disposal of pollutants on human health or welfare, including but not

limited to plankton, fish, shellfish, wildlife, shorelines, and beaches;

"(B) the effect of disposal of pollutants on marine life including the transfer, concentration, and dispersal of pollutants or their byproducts through biological, physical, and chemical processes; changes in marine ecosystem diversity, productivity, and stability; and species and community population changes;

"(C) the effect of disposal, of pollutants on esthetic, recreation, and economic values;

"(D) the persistence and permanence of the effects of disposal of pollutants;

"(E) the effect of the disposal at varying rates, of particular volumes and concentrations of pollutants;

"(F) other possible locations and methods of disposal or recycling of pollutants including land-based alternatives; and

"(G) the effect on alternate uses of the oceans, such as mineral exploitation and scientific study.

"(2) In any event where insufficient information exists on any proposed discharge to make a reasonable judgment on any of the guidelines established pursuant to this subsection no permit shall be issued under section 402 of this Act.

"PERMITS FOR DREDGED OR FILL MATERIAL

"SEC. 404. (a) The Secretary of the Army, acting through the Chief of Engineers, may issue permits, after notice and opportunity for public hearing, for the discharge of dredged or fill material into the navigable waters, where the Secretary determines that such discharge will not unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities.

"(b) In making the determination required by subsection (a) of this section as to whether a permit may be issued, the Secretary shall apply any guidelines which have been promulgated by the Administrator pursuant to section 403(c)(1), together with an evaluation by the Secretary of the effect on navigation, economic and industrial development, and foreign and domestic commerce of the United States. In applying the guidelines established by the Administrator, the Secretary shall consult with the Administrator and shall give due consideration to the views and recommendations of the Administrator in that regard and also in regard to the designations of the Administrator of recommended sites for disposal. The Secretary may issue no permit for discharge of dredged or fill material which would violate the designation of the Administrator, found necessary to protect critical areas, of a site within which certain material may not be discharged. In regard to the designation of recommended sites or sites where certain material may not be discharged, the Secretary after consultation with the Administrator, need not follow the designation of the Administrator where the Secretary certifies that there is no economically feasible alternative reasonably available.

"(c) In connection with Federal projects involving dredged or fill material the Secretary may, in lieu of the permit procedure, issue regulations to govern the discharge of dredged or fill material into the navigable waters which shall require the application to such projects of the same criteria, other factors to be evaluated, the same procedures, and the same requirement which are made applicable to the issuance of permits under subsections (a) and (b) of this section.

"TITLE V—GENERAL PROVISIONS

"ADMINISTRATION

"SEC. 501 (a) The Administrator is authorized to prescribe such regulations as are necessary to carry out his functions under this Act.

"(b) The Administrator, with the consent of the head of any other agency of the United States, may utilize such officers and employees of such agency as may be found necessary to assist in carrying out the purposes of this Act.

"(c) Each recipient of financial assistance under this Act shall keep such records as the Administrator shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

"(d) The Administrator 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 recipients that are pertinent to the grants received under this Act.

"(e)(1) It is the purpose of this subsection to authorize a program which will provide official recognition by the United States Government to those industrial organizations and political subdivisions of States which during the preceding year demonstrated an outstanding technological achievement or an innovative process, method, or device in their waste treatment and pollution abatement programs. The Administrator shall, in consultation with the appropriate State water pollution control agencies, establish regulations under which such recognition may be applied for and granted, except that no applicant shall be eligible for an award under this subsection if such applicant is not in total compliance with all applicable water quality requirements under this Act, or otherwise does not have a satisfactory record with respect to environmental quality.

"(2) The Administrator shall award a certificate or plaque of suitable design to each industrial organization or political subdivision which qualifies for such recognition under regulations established under this subsection.

"(3) The President of the United States, the Governor of the appropriate State, the Speaker of the House of Representatives, and the President pro tempore of the Senate shall be notified of the award by the Administrator and the awarding of such recognition shall be published in the Federal Register.

"(f) Upon the request of a State water pollution control agency, personnel of the Environmental Protection Agency may be detailed to such agency for the purpose of carrying out the provisions of this Act.

"GENERAL DEFINITIONS

"SEC. 502. Except as otherwise specifically provided, when used in this Act:

"(1) The term 'State water pollution control agency' means the State agency designated by the Governor having responsibility for enforcing State laws relating to the abatement of pollution.

"(2) The term 'interstate agency' means an agency of two or more States established by or pursuant to an agreement or compact approved by the Congress, or any other agency of two or more States, having substantial powers or duties pertaining to the control of pollution as determined and approved by the Administrator.

"(3) The term 'State' means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

"(4) The term 'municipality' means a city, town, borough, county, parish, district, association, or other public body created by or pursuant to State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of this Act.

"(5) The term 'person' means an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.

"(6) The term 'pollutant' means, but is not limited to, dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, agricultural, and other waste discharged into water. This term does not mean (A) 'sewage from vessels' within the meaning of section 312 of this Act; or (B) water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if such State determines the injection or disposal of such water, gas, or other material will not result in the degradation of ground or surface water resources; or (C) thermal discharges in accordance with regulations issued pursuant to section 316 of this Act; or (D) organic fish wastes.

"(7) The term 'pollution' means the man-made or man-induced alteration of the natural chemical, physical, biological, and radiological integrity of water.

"(8) The term 'navigable waters' means the navigable waters of the United States, including the territorial seas.

"(9) The term 'territorial seas' means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles.

"(10) The term 'contiguous zone' means the entire zone established or to be established by the United States under article 25 of the Convention of the Territorial Sea and the Contiguous Zone.

"(11) The term 'ocean' means any portion of the high seas beyond the contiguous zone.

"(12) The term 'effluent limitation' means any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents (other than thermal discharges) which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean, including schedules and timetables for compliance.

"(13) The term 'discharge of a pollutant' and the term 'discharge of pollutants' each means (A) any addition of any pollutant to navigable waters from any point source, (B) any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft.

"(14) The term 'toxic pollutant' means those pollutants, or combinations of pollutants, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will, on the basis of information available to the Administrator, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction) and physical deformations, in such organisms or their offspring.

"(15) The term 'point source' means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, dis-

crete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged, or from which there is or may be a thermal discharge.

"(16) The term 'biological monitoring' shall mean the determination of the effects on aquatic life, including accumulation of pollutants in tissue, in receiving waters due to the discharge of pollutants (A) by techniques and procedures, including sampling of organisms representative of appropriate levels of the food chain, appropriate to the volume and the physical, chemical, and biological characteristics of the effluent, and (B) at appropriate frequencies and locations.

"(17) The term 'thermal discharge' means the introduction of water into the navigable waters or the waters of the contiguous zone from a point source at a temperature different from the ambient temperature of the receiving waters.

"(18) The term 'discharge' when used without qualification includes a discharge of a pollutant, a discharge of pollutants, and a thermal discharge.

"WATER POLLUTION CONTROL ADVISORY BOARD

"SEC. 503. (a)(1) There is hereby established in the Environmental Protection Agency a Water Pollution Control Advisory Board, composed of the Administrator or his designee, who shall be Chairman, and nine members appointed by the President, none of whom shall be Federal officers or employees. The appointed members, having due regard for the purposes of this Act, shall be selected from among representatives of various State, interstate, and local governmental agencies, of public or private interests contributing to, affected by, or concerned with pollution, and of other public and private agencies, organizations, or groups demonstrating an active interest in the field of pollution prevention and control, as well as other individuals who are expert in this field.

"(2)(A) Each member appointed by the President shall hold office for a term of three years, except that (i) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and (ii) the terms of office of the members first taking office after June 30, 1956, shall expire as follows: three at the end of two years after such date, and three at the end of three years after such date, as designated by the President at the time of appointment, and (iii) the term of any member under the preceding provisions shall be extended until the date on which his successor's appointment is effective. None of the members appointed by the President shall be eligible for reappointment within one year after the end of his preceding term.

"(B) The members of the Board who are not officers or employees of the United States, while attending conferences or meetings of the Board or while otherwise serving at the request of the Administrator, shall be entitled to receive compensation at a rate to be fixed by the Administrator, but not exceeding $100 per diem, including traveltime, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 73b–2) for persons in the Government service employed intermittently.

"(b) The Board shall advise, consult with, and make recommendations to the Administrator on matters of policy relating to the activities and functions of the Administrator under this Act.

"(c) Such clerical and technical assistance as may be necessary to discharge the duties of the Board shall be provided from the personnel of the Environmental Protection Agency.

"EMERGENCY POWERS

"SEC. 504. Notwithstanding any other provision of this Act, the Administrator upon receipt of evidence that a pollution source or combination of sources is presenting an imminent and substantial endangerment to the health of persons, may bring suit on behalf of the United States in the appropriate district court to immediately restrain any person causing or contributing to the alleged pollution to stop the discharge of pollutants causing or contributing to such pollution or to take such other action as may be necessary.

"CITIZEN SUITS

"SEC. 505. (a) Except as provided in subsection (b) of this section, any citizen may commence a civil action on his own behalf—

"(1) against any person (including (i) the United States, and (ii) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of (A) an effluent standard or limitation under this Act or (B) an order issued by the Administrator or a State with respect to such a standard or limitation, or

"(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this Act which is not discretionary with the Administrator.

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such an effluent standard or limitation, or such an order, or to order the Administrator to perform such act or duty, as the case may be, and to apply any appropriate civil penalties under section 309(d) of this Act.

"(b) No action may be commenced—

"(1) under subsection (a)(1) of this section—

"(A) prior to sixty days after the plaintiff has given notice of the alleged violation (i) to the Administrator, (ii) to the State in which the alleged violation occurs, and (iii) to any alleged violator of the standard, limitation, or order, or

"(B) if the Administrator or State has commenced and is diligently prosecuting a civil or criminal action in a court of the United States or a State to require compliance with the standard, limitation, or order, but in any such action in a court of the United States any citizen may intervene as a matter of right.

"(2) under subsection (a)(2) of this section prior to sixty days after the plaintiff has given notice of such action to the Administrator,

except that such action may be brought immediately after such notification in the case of an action under this section respecting a violation of sections 301, 302, 306, and 307 of this Act, or in violation of a permit, or conditions thereunder, issued by the Administrator under section 402 of this Act, or in violation of an order issued by the Administrator pursuant to section 309 of this Act. Notice under this subsection shall be given in such manner as the Administrator shall prescribe by regulation.

"(c)(1) Any action respecting a violation by a discharge source of an effluent standard or limitation or an order respecting such standard or limitation may be brought under this section only in the judicial district in which such source is located.

"(2) In such action under this section, the Administrator, if not a party, may intervene as a matter of right.

"(d) The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

"(e) Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any effluent standard or limitation or to seek any other relief (including relief against the Administrator or a State agency).

"(f) For purposes of this section, the term 'effluent standard or limitation under this Act' means (1) effective July 1, 1973, an unlawful act under subsection (a) of section 301 of this Act; (2) an effluent limitation or other limitation under section 301 or 302 of this Act; (3) standard of performance under section 306 of this Act; (4) prohibition, effluent standard or pretreatment standard under section 307 of this Act; (5) certification under section 401 of this Act; or (6) a permit or condition thereof issued under section 402 of this Act, which is in effect under this Act (including a requirement applicable by reason of section 313 of this Act).

"(g) For the purposes of this section the term 'citizen' means (1) a citizen (A) of the geographic area and (B) having a direct interest which is or may be affected, and (2) any group of persons which has been actively engaged in the administrative process and has thereby shown a special interest in the geographic area in controversy.

"(h) A Governor of a State may commence a civil action under subsection (a), without regard to the limitations of subsection (b) of this section, against the Administrator where there is alleged a failure of the Administrator to enforce an effluent standard or limitation under this Act the violation of which is occurring in another State and is causing an adverse effect on the public health or welfare in his State, or is causing a violation of any water quality requirement in his State.

"APPEARANCE

"SEC. 506. The Administrator shall request the Attorney General to appear and represent the United States in any civil or criminal action instituted under this Act to which the Administrator is a party. Unless the Attorney General notifies the Administrator within a reasonable time, that he will appear in a civil action, attorneys who are officers or employees of the Environmental Protection Agency shall appear and represent the United States in such action.

"EMPLOYEE PROTECTION

"SEC. 507. (a) No person shall fire, or in any other way discriminate against, or cause to be fired or discriminated against, any employee or any authorized representative of employees by reason of the fact that such employee or representative has filed, instituted, or caused to be filed or instituted any proceeding under this Act, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this Act.

"(b) Any employee or a representative of employees who believes that he has been fired or otherwise discriminated against by any person in violation of subsection (a) of this section may, within thirty days after such alleged violation occurs, apply to the Secretary of Labor for a review of such firing or alleged discrimination. A copy of the application shall be sent to such person who shall be the respondent. Upon receipt of such application, the Secretary of Labor shall cause such investigation to be made as he deems apropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to such review to enable the parties to present information relating to such alleged violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be

of record and shall be subject to section 554 of title 5 of the United States Code. Upon receiving the report of such investigation, the Secretary of Labor shall make findings of fact. If he finds that such violations did occur, he shall issue a decision, incorporating an order therein and his findings, requiring the party committing such violation to take such affirmative action to abate the violation as the Secretary of Labor deems appropriate, including, but not liimted to, the rehiring or reinstatement of the employee or representative of employees to his former position with compensation. If he finds that there was no such violation, he shall isue an order denying the application. Such order issued by the Secretary of Labor under this subparagraph shall be subject to judicial review in the same manner as orders and decisions of the Administrator are subject to judicial review under this Act.

"(c) Whenever an order is issued under this section to abate such violation, at the request of the applicant, a sum equal to the aggregate amount of all costs and expenses (including the attorney's fees), as determined by the Secretary of Labor, to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing such violation.

"(d) This section shall have no application to any employee who, acting without direction from his employer (or his agent) deliberately violates any prohibition of effluent limitation or other limitation under section 301 or 302 of this Act, standards of performance under section 306 of this Act, effluent standard, prohibition or pretreatment standard under section 307 of this Act, thermal discharge regulation under section 316 of this Act, or any other prohibition or limitation established under this Act.

"(e) The Administrator shall conduct continuing evaluations of potential loss or shifts of employment which may result from the issuance of any effluent limitation or order under this Act, including, where appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such limitation or order. Any employee who is discharged or laid-off, threatened with discharge or lay-off, or otherwise discriminated against by any person because of the alleged results of any effluent limitation or order issued under this Act, or any representative of such employee, may request the Administrator to conduct a full investigation of the matter. The Administrator shall thereupon investigate the matter and, at the request of any party, shall hold public hearings on not less than five days notice, and shall at such hearings require the parties, including the employer involved, to present information relating to the actual or potential effect of such limitation or order on employment and on any alleged discharge, lay-off, or other discrimination and the detailed reasons or justification therefor. Any such hearing shall be of record and shall be subject to section 554 of title 5 of the United States Code. Upon receiving the report of such investigation, the Administrator shall make findings of fact as to the effect of such effluent limitation or order on employment and on the alleged discharge, lay-off, or discrimination and shall make such recommendations as he deems appropriate. Such report, findings, and recommendations shall be available to the public. Nothing in this subsection shall be construed to require or authorize the Administrator to modify or withdraw any effluent limitation or order issued under this Act.

"FEDERAL PROCUREMENT

"SEC. 508. (a) No Federal agency may enter into any contract with any person, who has been convicted of any offense under section 309(c) of this Act, for the procurement of goods, materials, and services if such contract is to be performed at any facility at which the violation which gave rise to such conviction occurred, and if such facility is owned, leased, or supervised by such person. The prohibition in the preceding sentence shall continue until the Administrator certifies that the condition giving rise to such conviction has been corrected.

"(b) The Administrator shall establish procedures to provide all Federal agencies with the notification necessary for the purposes of subsection (a) of this section.

"(c) In order to implement the purposes and policy of this Act to protect and enhance the quality of the Nation's water, the President shall, not more than one hundred and eighty days after enactment of this Act, cause to be issued an order (1) requiring each Federal agency authorized to enter into contracts and each Federal agency which is empowered to extend Federal assistance by way of grant, loan, or contract to effectuate the purpose and policy of this Act in such contracting or assistance activities, and (2) setting forth procedures, sanctions, penalties, and such other provisions, as the President determines necessary to carry out such requirement.

"(d) The President may exempt any contract, loan, or grant from all or part of the provisions of this section where he determines such exemption is necessary in the paramount interest of the United States and he shall notify the Congress of such exemption.

"(e) The President shall annually report to the Congress on measures taken in compliance with the purpose and intent of this section, including, but not limited to, the progress and problems associated with such compliance.

"ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW

"SEC. 509. (a) In connection with any determination under section 301(b)(3) of this Act, or for purposes of obtaining information under section 305 of this Act, or carrying out section 507(e) of this Act, the Administrator may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and he may administer oaths. Except for effluent data, upon a showing satisfactory to the Administrator that such papers, books, documents, or information or particular part thereof, if made public, would divulge trade secrets or secret processes, the Administrator shall consider such record, report, or information or particular portion thereof confidential in accordance with the purposes of section 1905 of title 18 of the United States Code, except that such paper, book, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this Act, or when relevant in any proceeding under this Act. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpena served upon any person under this subsection, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Administrator, to appear and produce papers, books, and documents before the Administrator, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

"(b) Review of the Administration's action (1) in promulgating any standard of performance under section 306,(2) in making any determination pursuant to section 306 (b)(1)(C), (3) in promulgating any effluent standard, prohibition, or treatment standard under section 307, (4) in making any determination as to a State permit program submitted under section 402(b), (5) in approving or promulgating any effluent limitation or other limitation under section 301, 302, or 306, and (6) in issuing or denying any permit under section 402, may be had by any interested person in the district court of the United States for the district in which such person resides or transacts such business upon application by such person. Any such application shall be made within thirty days from the date of such determination, approval, promulgation, issuance or denial, or after such date only if such application is based solely on grounds which arose after such thirtieth day.

"(c) In any judicial proceeding brought under subsection (b) of this section in which review is sought of a determination under this Act required to be made on the record after notice and opportunity for hearing, if any party applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, in such manner and upon such terms and conditions as the court may deem proper. The Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original determination, with the return of such additional evidence.

"STATE AUTHORITY

"SEC. 510. Except as expressly provided in this Act, nothing in this Act shall (1) preclude or deny the right of any State or political subdivision thereof or interstate agency to adopt or enforce (A) any standard or limitation respecting discharges of pollutants, or (B) any requirement respecting control or abatement of pollution; except that if an effluent limitation, or other limitation, effluent standard, prohibition, pretreatment standard, standard of performance, or thermal discharge regulation is in effect under this Act, such State or political subdivision or interstate agency may not adopt or enforce any effluent limitation, or other limitation, effluent standard, prohibition, pretreatment standard, standard of performance, or thermal discharge regulation which is less stringent than the effluent limitation, or other limitation, effluent standard, prohibition, pretreatment standard, standard of performance, or thermal discharge regulation under this Act; or (2) be construed as impairing or in any manner affecting any right or jurisdiction of the States with respect to the waters (including boundary waters) of such States.

"OTHER AFFECTED AUTHORITY

"SEC. 511. (a) This Act shall not be construed as (1) limiting the authority or functions of any officer or agency of the United States under any other law or regulation not inconsistent with this Act; (2) affecting or impairing the authority of the Secretary of the Army (A) to maintain navigation or (B) under the Act of March 3, 1899 (30 Stat. 1112); except that any permit issued under section 404 of this Act shall be conclusive as to the effect on water quality of any discharge resulting from any activity subject to section 10 of the Act of March 3, 1899, or (3) affecting or impairing the provisions of any treaty of the United States.

"(b) Discharges of pollutants into the navigable waters subject to the Rivers and Harbors Act of 1910 (36 Stat. 593; 33 U.S.C. 421) and the Supervisory Harbors Act of 1888

(25 Stat. 209; 33 U.S.C. 441–451b) shall be regulated pursuant to this Act, and not subject to such Act of 1910 and the Act of 1888 except as to effect on navigation and anchorage.

"(c) The requirements of the National Environmental Policy Act of 1969 (83 Stat. 852) as to water quality considerations shall be deemed to be satisfied—

"(1) by certification pursuant to section 401 of this Act with respect to any Federal license or permit for the construction of any activity; and

"(2) by certification pursuant to section 401 of this Act and the issuance of a permit pursuant to section 13 of the Act of March 3, 1899, or section 402 of this Act with respect to any Federal license or permit for the operation of any activity.

"SEPARABILITY

"SEC. 512. If any provision of this Act, or the application of any provision of this Act to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this Act, shall not be affected thereby.

"LABOR STANDARDS

"SEC. 513. The Administrator shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors or subcontractors on treatment works for which grants are made under this Act shall be paid wages at rates not less than those prevailing for the same type of work on similar construction in the immediate locality, as determined by the Secretary of Labor, in accordance with the Act of March 3, 1931, as amended, known as the Davis-Bacon Act (46 Stat. 1494; 40 U.S.C., sec. 276a through 276a–5). The Secretary of Labor shall have, with respect to the labor standards specified in this subsection, 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 (48 Stat. 948; 40 U.S.C. 276c).

"AGRICULTURAL FACILITIES

"SEC. 514. In the case of any water pollution control facility required to be constructed for any property used for any agricultural purpose, no owner or operator of any such property shall be required to expend any funds for the construction of any such facility (A) until a plan for such facility and its operation shall have been approved by the Administrator; and (B) until a certification by the Administrator that such plan, and the construction and operation of any facility in accordance with such plan, will not result in a violation of the laws or regulations of any local, State, or Federal health agency or other governmental agency.

"EFFLUENT STANDARDS AND WATER QUALITY INFORMATION ADVISORY COMMITTEE

"SEC. 515. (a) (1) There is established an Effluent Standards and Water Quality Information Advisory Committee, which shall be composed of a Chairman and eight members who shall be appointed by the Administrator within sixty days after the date of enactment of this Act.

"(2) All members of the Committee shall be selected from the scientific community, qualified by education, training, and experience to provide, assess, and evaluate scientific and technical information on effluent standards and limitations.

"(3) Members of the Committee shall serve for a term of four years, and may be reappointed.

"(b) (1) No later than one hundred and eighty days prior to the date on which the Administrator is required to publish any proposed regulations required by section 304 (b) of this Act, any proposed standard of performance for new sources required by section 306 of this Act, or any proposed toxic effluent standard required by section 307 of this Act, he shall transmit to the Committee a notice of intent to propose such regulations. The Chairman of the Committee within ten days after receipt of such notice may publish a notice of a public hearing by the Committee, to be held within thirty days.

"(2) No later than one hundred and twenty days after receipt of such notice, the Committee shall transmit to the Administrator such scientific and technical information as is in its possession, including that presented at any public hearing, related to the subject matter contained in such notice.

"(3) Information so transmitted to the Administrator shall constitute a part of the administrative record and comments on any proposed regulations or standards as information to be considered with other comments and information in making any final determinations.

"(4) In preparing information for transmittal, the Committee shall avail itself of the technical and scientific services of any Federal agency, including the United States Geological Survey and any national environmental laboratories which may be established.

"(c) (1) The Committee shall appoint and prescribe the duties of a Secretary, and such legal counsel as it deems necessary. The Committee shall appoint such other employees as it deems necessary to exercise and fulfill its powers and responsibilities. The compensation of all employees appointed by the Committee shall be fixed in accordance with chapter 51 and subchapter III of chapter 53 of title V of the United States Code.

"(2) Members of the Committee shall be entitled to receive compensation at a rate to be fixed by the President but not in excess of the maximum rate of pay for grade GS–18, as provided in the General Schedule under section 5332 of title V of the United States Code.

"(d) Five members of the Committee shall constitute a quorum, and official actions of the Committee shall be taken only on the affirmative vote of at least five members. A special panel composed of one or more members upon order of the Committee shall conduct any hearing authorized by this section and submit the transcript of such hearing to the entire Committee for its action thereon.

"(e) The Committee is authorized to make such rules as are necessary for the orderly transaction of its business.

"REPORTS TO CONGRESS

"SEC. 516. (a) Within ninety days following the convening of each session of Congress, the Administrator shall submit to the Congress a report, in addition to any other report required by this Act, on measures taken toward implementing the objective of this Act, including, but not limited to, (1) the progress and problems associated with developing comprehensive plans under section 102 of this Act, areawide plans under section 208 of this Act, basin plans under section 209 of this Act, and plans under section 303 (e) of this Act; (2) a summary of actions taken and results achieved in the field of water pollution control research, experiments, studies, and related matters by the Administrator and other Federal agencies and by other persons and agencies under Federal grants or contracts; (3) the progress and problems associated with the development of effluent limitations and recommended control techniques; (4) the status of State programs, including a detailed summary of the progress obtained as compared to that planned under State program plans for development and enforcement of water quality requirements; (5) the identification and status of enforcement actions pending or completed under such Act during the preceding year; (6) the status of State, interstate, and local pollution control programs established pursuant to, and assisted by, this Act; (7) a summary of the results of the survey required to be taken under section 210 of this Act; (8) his activities including recommendations under sections 109 through 111 of this Act; and (9) all reports and recommendations made by the Water Pollution Control Advisory Board.

"(b) The Administrator, in cooperation with the States, including water pollution control agencies and other water pollution control planning agencies, shall make (1) a detailed estimate of the cost of carrying out the provisions of this Act; (2) a detailed estimate, biennially revised, of the cost of construction of all needed publicly owned treatment works in all of the States and of the cost of construction of all needed publicly owned treatment works in each of the States; (3) a comprehensive study of the economic impact on affected units of government of the cost of installation of treatment facilities; and (4) a comprehensive analysis of the national requirements for and the cost of treating municipal, industrial, and other effluent to attain the water quality objectives as established by this Act or applicable State law. The Administrator shall submit such detailed estimate and such comprehensive study of such cost to the Congress no later than February 10 of each odd-numbered year. Whenever the Administrator, pursuant to this subsection, requests and receives an estimate of cost from a State, he shall furnish copies of such estimate together with such detailed estimate to Congress.

"GENERAL AUTHORIZATION

"SEC. 517. There are authorized to be appropriated to carry out this Act, other than sections 104, 105, 106(a), 107, 108, 112, 113, 114, 206, 207, 208 (f) and (h), 209, 304, 311 (c), (d), (i), (l), and (k), 314, 315, and 317, $250,000,000 for the fiscal year ending June 30, 1973, $300,000,000 for the fiscal year ending June 30, 1974, and $350,000,000 for the fiscal year ending June 30, 1975.

"SHORT TITLE

"SEC. 518. This Act may be cited as the 'Federal Water Pollution Control Act'."

AUTHORIZATIONS FOR FISCAL YEAR 1972

SEC. 3. (a) There is authorized to be appropriated for the fiscal year ending June 30, 1972, not to exceed $11,000,000 for the purpose of carrying out section 5(n) (other than for salaries and related expenses) of the Federal Water Pollution Control Act as it existed immediately prior to the date of the enactment of the Federal Water Pollution Control Act Amendments of 1972.

(b) There is hereby authorized to be appropriated for the fiscal year ending June 30, 1972, not to exceed $350,000,000 for the purpose of making grants under section 8 of the Federal Water Pollution Control Act as it existed immediately prior to the date of the enactment of the Federal Water Pollution Control Act Amendments of 1972.

(c) The Federal share of all grants made under section 8 of the Federal Water Pollution Control Act as it existed immediately prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972 from sums herein and heretofore authorized for the fiscal year ending June 30, 1972, shall be that authorized by section 202 of such Act as established by the Federal Water Pollution Control Act Amendments of 1972.

(d) Sums authorized by this section shall be in addition to any amounts heretofore authorized for such fiscal year for sections 5(n) and 8 of the Federal Water Pollution Control Act as it existed immediately prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972.

SAVINGS PROVISION

SEC. 4. (a) No suit, action, or other proceeding lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of

his official duties under the Federal Water Pollution Control Act as in effect immediately prior to the date of enactment of this Act shall abate by reason of the taking effect of the amendment made by section 2 of this Act. The court may, on its own motion or that of any party made at any time within twelve months after such taking effect, allow the same to be maintained by or against the Administrator or such officer or employee.

(b) All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to the Federal Water Pollution Control Act as in effect immediately prior to the date of enactment of this Act, and pertaining to any functions, powers, requirements, and duties under the Federal Water Pollution Control Act as in effect immediately prior to the date of enactment of this Act, shall continue in full force and effect after the date of enactment of this Act until modified or rescinded in accordance with the Federal Water Pollution Control Act as amended by this Act.

(c) The Federal Water Pollution Control Act as in effect immediately prior to the date of enactment of this Act shall remain applicable to all grants made from funds authorized for the fiscal year ending June 30, 1972, and prior fiscal years, including any increases in the monetary amount of any such grant which may be paid from authorizations for fiscal years beginning after June 30, 1972, except as specifically otherwise provided in section 202 of the Federal Water Pollution Control Act as amended by this Act and in subsection (c) of section 3 of this Act.

OVERSIGHT STUDY

SEC. 5. In order to assist the Congress in the conduct of oversight responsibilities the Comptroller General of the United States shall conduct a study and review of the research, pilot, and demonstration programs related to prevention and control of water pollution, including waste treatment and disposal techniques, which are conducted, supported, or assisted by any agency of the Federal Government pursuant to any Federal law or regulation and assess conflicts between, and the coordination and efficacy of, such programs, and make a report to the Congress thereon by October 1, 1973.

INTERNATIONAL TRADE STUDY

SEC. 6. (a) the Secretary of Commerce, in cooperation with other interested Federal agencies and with representatives of industry and the public, shall undertake immediately an investigation and study to determine—

(1) the extent to which pollution abatement and control programs will be imposed on, or voluntarily undertaken by United States manufacturers in the near future and the probable short- and long-range effects of the costs of such programs (computed to the greatest extent practicable on an industry-by-industry basis) on (A) the production costs of such domestic manufacturers, and (B) the market prices of the goods produced by them;

(2) the probable extent to which pollution abatement and control programs will be implemented in foreign industrial nations in the near future and the extent to which the production costs (computed to the greatest extent practicable on an industry-by-industry basis) of foreign manufacturers will be affected by the costs of such programs;

(3) the probable competitive advantage which any article manufactured in a foreign nation will likely have in relation to a comparable article made in the United States if that foreign nation—

(A) does not require its manufacturers to implement pollution abatement and control programs,

(B) requires a lesser degree of pollution abatement and control in its programs, or

(C) in any way reimburses or otherwise subsidize its manufacturers for the costs of such programs;

(4) alternative means by which any competitive advantage accruing to the products of any foreign nation as a result of any factor described in pargaraph (3) may be (A) accurately and quickly determined, and (B) equalized, for example, by the imposition of a surcharge or duty, on a foreign product in an amount necessary to compensate for such advantage; and

(5) the impact, if any, which the imposition of a compensating tariff or other equalizing measure may have in encouraging foreign nations to implement pollution and abatement control programs.

(b) The Secretary shall make an initial report to the President and Congress within six months after the date of enactment of this section of the results of the study and investigation carried out pursuant to this section and shall make additional reports thereafter at such times as he deems appropriate taking into account the development of relevant data, but not less than once every twelve months.

INTERNATIONAL AGREEMENTS

SEC. 7. The President shall undertake to enter into international agreements to apply uniform standards of performance for the control of the discharge and emission of pollutants from new sources, uniform controls over the discharge and emission of toxic pollutants, and uniform controls over the discharge of pollutants into the ocean. For this purpose the President shall negotiate multilateral treaties, conventions, resolutions, or other agreements, and formulate, present, or support proposals at the 1972 United Nations Conference on the Human Environment and other appropriate international forums.

LOANS TO SMALL BUSINESS CONCERNS FOR WATER POLLUTION CONTROL FACILITIES

SEC. 8. (a) Section 7 of the Small Business Act is amended by inserting at the end thereof a new subsection as follows:

"(g)(1) The Administration also is empowered to make loans (either directly or in cooperation with banks or other lenders through agreements to participate on an immediate or deferred basis) to assist any small business concern in affecting additions to or alterations in the equipment, facilities (including the construction of pretreatment facilities and interceptor sewers), or methods of operation of such concern to meet water pollution control requirements established under the Federal Water Pollution Control Act, if the Administration determines that such concern is likely to suffer substantial economic injury without assistance under this subsection.

"(2) Any such loan—

"(A) shall be made in accordance with provisions applicable to loans made pursuant to subsection (b)(5) of this section, except as otherwise provided in this subsection;

"(B) shall be made only if the applicant furnishes the Administration with a statement in writing from the Environmental Protection Agency or, if appropriate, the State, that such additions or alterations are necessary and adequate to comply with requirements established under the Federal Water Pollution Control Act.

"(3) The Administrator of the Environmental Protection Agency shall, as soon as practicable after the date of enactment of the Federal Water Pollution Control Act Amendments of 1972 and not later than one hundred and eighty days thereafter, promulgate regulations establishing uniform rules for the issuance of statements for the purpose of paragraph (2)(B) of this subsection.

"(4) There is authorized to be appropriated to the disaster loan fund established pursuant to section 4(c) of this Act not to exceed $800,000,000 solely for the purpose of carrying out this subsection."

(b) Section 4(c)(1)(A) of the Small Business Act is amended by striking out "and 7(c)(2)" and inserting in lieu thereof "7(c)(2), and 7(g)".

ENVIRONMENTAL COURT

SEC. 9. The President, acting through the Attorney General, shall make a full and complete investigation and study of the feasibility of establishing a separate court, or court system, having jurisdiction over environmental matters and shall report the results of such investigation and study together with his recommendations to Congress not later than one year after the date of enactment of this Act.

NATIONAL POLICIES AND GOALS STUDY

SEC. 10. The President shall make a full and complete investigation and study of all of the national policies and goals established by law for the purpose of determining what the relationship should be between these policies and goals, taking into account the resources of the Nation. He shall report the results of such investigation and study together with his recommendations to Congress not later than two years after the date of enactment of this Act. There is authorized to be appropriated not to exceed $5,000,000 to carry out the purposes of this section.

EFFICIENCY STUDY

SEC. 11. The President shall conduct a full and complete investigation and study of ways and means of utilizing in the most effective manner all of the various resources, facilities, and personnel of the Federal Government in order most efficiently to carry out the objective of the Federal Water Pollution Control Act. He shall report the results of such investigation and study together with his recommendations to Congress not later than two hundred and seventy days after the date of enactment of this Act.

ENVIRONMENTAL FINANCING

SEC. 12. (a) This section may be cited as the "Environmental Financing Act of 1972".

(b) There is hereby created a body corporate to be known as the Environmental Financing Authority, which shall have succession until dissolved by Act of Congress. The Authority shall be subject to the general supervision and direction of the Secretary of the Treasury. The Authority shall be an instrumentality of the United States Government and shall maintain such offices as may be necessary or appropriate in the conduct of its business.

(c) The purpose of this section is to assure that inability to borrow necessary funds on reasonable terms does not prevent any State or local public body from carrying out any project for construction of waste treatment works determined eligible for assistance pursuant to subsection (e) of this section.

(d)(1) The Authority shall have a Board of Directors consisting of five persons, one of whom shall be the Secretary of the Treasury or his designee as Chairman of the Board, and four of whom shall be appointed by the President from among the officers or employees of the Authority or of any department or agency of the United States Government.

(2) The Board of Directors shall meet at the call of its Chairman. The Board shall determine the general policies which shall govern the operations of the Authority. The Chairman of the Board shall select and effect the appointment of qualified persons to fill the offices as may be provided for in the bylaws, with such executive functions, powers, and duties as may be prescribed by the bylaws or by the Board of Directors, and such persons shall be the executive officers of the Authority and shall discharge all such executive functions, powers, and duties. The members of the Board, as such, shall not receive compensation for their services.

(e)(1) The Authority is authorized to

make commitments to purchase, and to purchase on terms and conditions determined by the Authority, any obligation or participation therein which is issued by a State or local public body to finance the non-Federal share of the cost of any project for the construction of waste treatment works which the Administrator of the Environmental Protection Agency has determined to be eligible for Federal financial assistance under the Federal Water Pollution Control Act.

(2) No commitment shall be entered into, and no purchase shall be made, unless the Administrator of the Environmental Protection Agency (A) has certified that the public body is unable to obtain on reasonable terms sufficient credit to finance its actual needs; (B) has approved the project as eligible under the Federal Water Pollution Control Act; and (C) has agreed to guarantee timely payment of principal and interest on the obligation. The Administrator is authorized to guarantee such timely payments and to issue regulations as he deems necessary and proper to protect such guarantees. Appropriations are hereby authorized to be made to the Administrator in such sums as are necessary to make payments under such guarantees, and such payments are authorized to be made from such appropriations.

(3) No purchase shall be made of obligations issued to finance projects, the permanent financing of which occurred prior to the enactment of this section.

(4) Any purchase by the Authority shall be upon such terms and conditions as to yield a return at a rate determined by the Secretary of the Treasury taking into consideration (A) the current average yield on outstanding marketable obligations of the United States of comparable maturity or in its stead whenever the Authority has sufficient of its own long-term obligations outstanding, the current average yield on outstanding obligations of the Authority of comparable maturity; and (B) the market yields on municipal bonds.

(5) The Authority is authorized to charge fees for its commitments and other services adequate to cover all expenses and to provide for the accumulation of reasonable contingency reserves and such fees shall be included in the aggregate project costs.

(f) To provide initial capital to the Authority the Secretary of the Treasury is authorized to advance the funds necessary for this purpose. Each such advance shall be upon such terms and conditions as to yield a return at a rate not less than a rate determined by the Secretary of the Treasury taking into consideration the current average yield on outstanding marketable obligations of the United States of comparable maturities. Interest payments on such advances may be deferred, at the discretion of the Secretary, but any such deferred payments shall themselves bear interest at the rate specified in this section. There is authorized to be appropriated not to exceed $100,000,000, which shall be available for the purposes of this subsection without fiscal year limitation.

(g) (1) The Authority is authorized, with the approval of the Secretary of the Treasury, to issue and have outstanding obligations having such maturities and bearing such rate or rates of interest as may be determined by the Authority. Such obligations may be redeemable at the option of the Authority before maturity in such manner as may be stipulated therein.

(2) As authorized in appropriation Acts, and such authorizations may be without fiscal year limitation, the Secretary of the Treasury may in his discretion purchase or agree to purchase any obligations issued pursuant to paragraph (1) of this subsection, and for such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds of the sale of any securities hereafter issued under the Second Liberty Bond Act, as now or hereafter in force, and the purposes for which securities may be issued under the Second Liberty Bond Act as now or hereafter in force, are extended to include such purchases. Each purchase of obligations by the Secretary of the Treasury under this subsection shall be upon such terms and conditions as to yield a return at a rate not less than a rate determined by the Secretary of the Treasury, taking into consideration the current average yield on outstanding marketable obligations of the United States of comparable maturities. The Secretary of the Treasury may sell, upon such terms and conditions and at such price or prices as he shall determine, any of the obligations acquired by him under this paragraph. All purchases and sales by the Secretary of the Treasury of such obligations under this paragraph shall be treated as public debt transactions of the United States.

(h) The Secretary of the Treasury is authorized and directed to make annual payments to the Authority in such amounts as are necessary to equal the amount by which the dollar amount of interest expense accrued by the Authority on account of its obligations exceeds the dollar amount of interest income accrued by the Authority on account of obligations purchased by it pursuant to subsection (e) of this section.

(i) The Authority shall have power—

(1) to sue and be sued, complain and defend, in its corporate name;

(2) to adopt, alter, and use a corporate seal, which shall be judicially noticed;

(3) to adopt, amend, and repeal bylaws, rules, and regulations as may be necessary for the conduct of its business;

(4) to conduct its business, carry on its operations, and have offices and exercise the powers granted by this section in any State without regard to any qualification or similar statute in any State;

(5) to lease, purchase, or otherwise acquire, own, hold, improve, use, or otherwise deal in and with any property, real, personal, or mixed, or any interest therein, wherever situated;

(6) to accept gifts or donations of services, or of property, real, personal, or mixed, tangible or intangible, in aid of any of the purposes of the Authority;

(7) to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of its property and assets;

(8) to appoint such officers, attorneys, employees, and agents as may be required, to define their duties, to fix and to pay such compensation for their services as may be determined, subject to the civil service and classification laws, to require bonds for them and pay the premium thereof; and

(9) to enter into contracts, to execute instruments, to incur liabilities, and to do all things as are necessary or incidental to the proper management of its affairs and the proper conduct of its business.

(j) The Authority, its property, its franchise, capital, reserves, surplus, security holdings, and other funds, and its income shall be exempt from all taxation now or hereafter imposed by the United States or by any State or local taxing authority; except that (A) any real property and any tangible personal property of the Authority shall be subject to Federal, State, and local taxation to the same extent according to its value as other such property is taxed, and (B) any and all obligations issued by the Authority shall be subject both as to principal and interest to Federal, State, and local taxation to the same extent as the obligations of private corporations are taxed.

(k) All obligations issued by the Authority shall be lawful investments, any may be accepted as security for all fiduciary, trust, and public funds, the investment or deposit of which shall be under authority or control of the United States or of any officer or officers thereof. All obligations issued by the Authority pursuant to this section shall be deemed to be exempt securities within the meaning of laws administered by the Securities and Exchange Commission, to the same extent as securities which are issued by the United States.

(l) In order to furnish obligations for delivery by the Authority, the Secretary of the Treasury is authorized to prepare such obligations in such form as the Authority may approve, such obligations when prepared to be held in the Treasury subject to delivery upon order by the Authority. The engraved plates, dies, bed pieces, and so forth, executed in connection therewith shall remain in the custody of the Secretary of the Treasury. The Authority shall reimburse the Secretary of the Treasury for any expenditures made in preparation, custody, and delivery of such obligations.

(m) The Authority shall, as soon as practicable after the end of each fiscal year transmit to the President and the Congress an annual report of its operations and activities.

(n) The sixth sentence of the seventh paragraph of section 5136 of the Revised Statutes, as amended (12 U.S.C. 24), is amended by inserting "or obligations of the Environmental Financing Authority" immediately after "or obligations, participations, or other instruments of or issued by the Federal National Mortgage Association or the Government National Mortgage Association".

(o) The budget and audit provisions of the Government Corporation Control Act (31 U.S.C. 846) shall be applicable to the Environmental Financing Authority in the same manner as they are applied to the wholly owned Government corporations.

(p) Section 3689 of the Revised Statutes, as amended (31 U.S.C. 711), is further amended by adding a new paragraph following the last paragraph appropriating moneys for the purposes under the Treasury Department to read as follows:

"Payment to the Environmental Financing Authority: For payment to the Environmental Financing Authority under subsection (h) of the Environmental Financing Act of 1972."

SEX DISCRIMINATION

SEC. 13. No person in the United States shall on the ground of sex be excluded from participation in, be denied the benefits of or be subjected to discrimination under any program or activity receiving Federal assistance under this Act, the Federal Water Pollution Control Act, or the Environmental Financing Act. This section shall be enforced through agency provisions and rules similar to those already established, with respect to racial and other discrimination, under title VI of the Civil Rights Act of 1964. However, this remedy is not exclusive and will not prejudice or cut off any other legal remedies available to a discriminatee.

Mr. RANDOLPH. Mr. President, I move that the Senate disagree to the amendment of the House on S. 2770, and ask for a conference with the House on the disagreeing votes of the two Houses thereon, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. MUSKIE, Mr. RANDOLPH, Mr. BAYH, Mr. EAGLETON, Mr. BOGGS, Mr. COOPER, and Mr. BAKER conferees on the part of the Senate.

WAR POWERS ACT

The Senate resumed the consideration of the bill (S. 2956) to make rules governing the use of the Armed Forces of the

United States in the absence of a declaration of war by the Congress.

AMENDMENT NO. 1085

Mr. FULBRIGHT. Mr. President, I call up my amendment, No. 1085.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

On page 7, beginning with line 21, strike out through line 23 on page 8 and insert in lieu thereof the following:

"SEC. 3. In the absence of a declaration of war by the Congress, the Armed Forces of the United States may be employed by the President only—

"(1) to respond to any act or situation that endangers the United States, its territories or possessions, or its citizens or nationals when the necessity to respond to such act or situation in his judgment constitutes a national emergency of such a nature as does not permit advance congressional authorization to employ such forces; but, except in response to a nuclear attack or to an irrevocable launch of nuclear weapons, the President may not use nuclear weapons without the prior, explicit authorization of the Congress; or".

On page 8, line 24, strike out "(4)" and insert in lieu thereof "(2)".

On page 10, line 1, strike out "(4)" and insert in lieu thereof "(2)".

Mr. FULBRIGHT. Mr. President, the fundamental purpose of the war powers bill is to "reconfirm and define with precision the constitutional authority of Congress with respect to 'undeclared' wars."

In the commendable effort of Senator JAVITS and his colleagues, they have in section 3 stated that "in the absence of a declaration of war" the Armed Forces of the United States may be committed to hostilities by the Commander in Chief only in specified instances—to repel an armed attack; to retaliate; to forestall the direct and imminent threat of attack; to repel an armed attack on forces of the United States located outside the United States; and for other specified purposes.

The difficulty I have with this approach is that by specification, the language may by implication have the unintended effect of giving more power to the President than is withheld.

For example, authority to "forestall the direct and imminent threat" of an attack might be used as the basis of an intervention of the type undertaken in 1970 when we invaded Cambodia; or, for example, the President might cite secret reasons for believing that an attack was imminent and, thus justify the use of armed force.

In short, the language of section 3 in the war powers bill makes it possible for the President to cite fairly specific authority for the widest possible range of military initiatives.

My amendment is a simple, straightforwarded recognition of the fact that the President may find it absolutely necessary to use the Armed Forces without, or prior to, congressional authorization. If he does so, this language puts the burden of responsibility squarely on the shoulders of the President, where it belongs.

In other words, it puts the responsibility on the President after the fact and after the circumstances are known to Congress and the people to justify it.

My amendment will leave the President free to act but without the prop of specific authorization. He would need to act entirely on his own responsibility and with no advance assurance of congressional support.

A prudent and conscientious President, under these circumstances, would hesitate to take action that he did not feel confident he could defend to the Congress—to whom he would be accountable within 30 days.

There is one other aspect of this amendment to which I call attention.

There now exists the danger that a President on his own authority could escalate conventional hostilities into a nuclear war.

To escalate a conventional war into a nuclear conflict cannot be considered a mere change of tactics.

My amendment states that:

The President except in response to a nuclear attack or to an irrevocable launch of nuclear weapons . . . may not use nuclear weapons without the prior, explicit authorization of Congress.

Mr. David Lawrence, reputedly a columnist with a close relationship with the White House, stated in his column of April 3 that:

The United States is willing to pledge not to use nuclear weapons provided other governments will do likewise.

If the administration is willing to go this far, I see no reason why we should not make it clear that the United States will not be the first nation to use nuclear weapons in a war—particularly in the "undeclared war" situation to which this war powers bill is directed.

Mr. President, as I said yesterday in debate, I consider that this bill is a very important piece of legislation designed to reconfirm what I believe to be the traditional constitutional purpose that our Founding Fathers intended by the Constitution. It is not a departure from it; it is not intended to be by the authors. It is intended to reaffirm and redefine, if we can, the responsibilities of the President and Congress in making war.

It is to a great extent an educational process. It is not intended, as was made very clear yesterday, to take away from or add to the constitutional powers of the President or Congress. In recent years, especially since World War II, there has grown up, I think, considerable confusion about this matter, but more important to me, I think there has grown up the idea that the President, as Commander in Chief, has some inherent power not designated or defined in the Constitution.

I think powers have been assumed at the expense of the legislative body in our constitutional system and I think this is very dangerous. This goes back a number of years. Certainly, I would not for a moment leave the impression that I think this administration has in any way contributed as much as or more than previous administrations.

One of the most extreme statements on this subject was made as long ago as 1951 by Dean Acheson in connection with the consideration of legislation having to do with NATO. I think it is well to call his statement to the attention of the Senate. This is carried in the National Commitments report of the Committee on Foreign Relations. I would like to read it for the RECORD because it shows where this started. I think it fair to the present administration to make it quite clear that we are not trying to leave the impression that this President has in any way gone beyond what his predecessors did or that they are especially deserving of credit.

I might add that I think Congress has acquiesced in these matters; so from that point of view there is no question that I or the sponsors of this legislation are trying to blame anyone. All we are trying to do is to review the circumstances that have led us to a very serious situation in our international relations.

In 1951 the Committee on Foreign Relations and the Committee on Armed Services held joint hearings to discuss President Truman's plan to station six divisions of American soldiers in Europe. Secretary of State Acheson came before the committee and gave the following interpretation of the President's powers:

Not only has the President the authority to use the Armed Forces in carrying out the broad foreign policy of the United States and implementing treaties, but it is equally clear that this authority may not be interfered with by the Congress in the exercise of power which it has under the Constitution.

He thought it inappropriate to even discuss constitutional matters. He said that we are "in a position in the world today where the argument as to who has the power to do this, that, or the other thing is not exactly what is called for for America in this very critical hour."

I think that states the proposition quite well and I think the thrust of this legislation is to challenge particularly that last statement; that it is not for the Congress to even discuss or call into question the authority of the President to do as he pleases in the field of foreign relations.

I confess that this bill is not self-executing and it is not going to hamstring the President in doing as he pleases with respect to the Armed Forces he commands. But I think it will develop a much more accurate view of what his rights and responsibilities are, and legitimate powers under the Constitution, and those of Congress. Our system is based on a mutual respect of one division of Government for another. We do not want and it will not work if we have to rely on force. We have no force at our command comparable to what the President has. He is the President, and the Army obeys his commands; he can do as he pleases.

In most countries of the world today there is a totalitarian system or dictatorship. There are totalitarian systems of government and many of them resulted from the executive taking the armed forces and abolishing congress. For example, in Africa not too long ago a president said in effect:

We cannot afford Parliament any more, they cost so much and they talk so much. We will abolish them. It is a luxury we cannot afford.

This is a sentiment that prevails in much of the world. I am not sure it does not prevail in this country.

I believe this measure is designed to reestablish a proper respect for the Constitution, and not only on the part of Congress but also this and future executives. This general subject arose some years ago, and in thinking about this debate today I looked up my remarks made in connection with a resolution which was often called the Middle East resolution.

I thought, just for my own satisfaction, I would read this. I believe it is interesting to see that this is not entirely a new issue.

Before I do that, I want to read the general proposition in the National Commitments report which was passed by the Senate by a very large majority in 1969. It had the overwhelming support of the Senate, and it was directed at the same purpose, as I understand, to which the present legislation is.

On page 25 of that report, it reads as follows:

> Finally, should the President find himself confronted with a situation of such complexity and ambiguity as to leave him without guidelines for constitutional action, it would be far better for him to take the action he saw fit without attempting to justify it in advance and leave it to Congress or the courts to evaluate his action in retrospect. A single unconstitutional act, later explained or pronounced unconstitutional, is preferable to an act dressed up in some spurious, precedent-setting claim of legitimacy. As a member of the Nation's First Congress, Alexander White, of Virginia, said:
>
> It would be better for the President to extend his powers on some extraordinary occasions, even where he is not strictly justified by the Constitution, than the legislature should grant an improper power to be exercised at all times * * *.

That quotation from Alexander White, it seems to me, sums up very succinctly the feeling that I have about this undertaking in section 3, to specify, or, as he says, to grant, an improper power to be exercised at all times. That is, as I conceive it, the danger of attempting to specify.

Reading that in connection with our very sad experience in this body, and in the country, with the late Gulf of Tonkin resolution—which I am glad this body repealed, and, as I recall, the distinguished Senator from Pennsylvania pointed out very clearly that we repealed it twice, and the House also repealed it—I think it is very relevant to that experience.

There we did grant, clearly, an improper power to be exercised at all times—at all times as long as it lasted—and I think we paid a very high and heavy price. All but two Members of this body voted for it, and a great many Senators have acknowledged it was a great mistake to do it. At least, I have on innumerable occasions, because it has been a cause of a great deal of soul-searching on the part of a great many Members of this body.

In connection with that resolution in 1957, which again attempted to grant to the President in advance an authority to do whatever he deemed proper, in effect the language was not unlike that of the Tonkin Gulf resolution.

To make the record clear, I opposed it and made a statement about it, which appeared on page 1856 of the RECORD for February 11, 1957:

> I am not unaware that cases can arise as they have arisen in the past, where Presidents have employed the Armed Forces of the Nation in military operations without the express consent of the Congress. I am not unaware that the actions of the Executive in these emergency cases have well served the defense of the Republic. Experience tells us that when the highest interests of the country are at stake, an Executive who is timid represents a far greater danger to the preservation of our constitutional system than does one who exceeds the letter of the law in a vigorous use of Executive power to defend the Government, the Nation, and the Constitution. Yet experience also tells us something else. It tells us that we do a disservice to ourselves and the Executive if we try to define in exact terms what emergency power is. Why so?
>
> An official who is required to justify the exercise of a power which he does not legally possess is in a very different situation from an official who is charged with abusing a power which is legally his, and who pleads necessity as a legal defense. The former will be very careful to see that the necessity which he pleads to excuse his act is clear and beyond question; he will also take care that the necessity he pleads did not arise from a fault of his own, lest his excuse be turned against him. The latter official can act with much less caution. An abuse of power, unlike the usurpation of power, is condoned by the nonaction of Congress. There is in this case no necessity for seeking the positive approval of the constitutional authority, that is, the Congress. And that is what this resolution would absolve the administration from doing.
>
> Instead of coming to us after the fact, when all the circumstances are known, and asking for our approval, this administration, not being willing to trust the fairness and justice of this body, asks us for an acquittance in advance of the fact, when none of the circumstances justifying the acquittance can possibly be known. I, for one, am unwilling to accept such a drastic change in constitutional practice.
>
> In the First Congress, in 1789, a distinguished Member from Virginia, Alexander White, stated the applicable principle clearly and succinctly . . .

And I quoted the same principle that I just read from the report which I think sums up the matter extremely well.

I think that describes as well as I can the thought behind it. If we put this language in section 3 in the legislation, in effect authorizing the anticipation of an imminent attack, it reminds me very much of the circumstances of Cambodia, even though there was not an imminent attack. That is a case which at best would be an abuse of power as distinguished from a usurpation of power which he does not have. The language I am suggesting here does not give him any specific power to move under circumstances that are attempted to be described in that language.

It is almost impossible to anticipate all of the circumstances of any occasion in this general language. The trouble about the Gulf of Tonkin situation was this.

I do not like to dwell upon it. It is a very distasteful subject. But it was presented as a move primarily to show the unity of the Congress and the country with the President's retaliation for an unprovoked attack. We proceeded on the assumption that those allegations were correct.

In contrast, for example, if he had taken the action he did and proceeded as he did, and then came in, in the light of the facts, when we knew the facts, I think we would have had a very different situation. As a matter of fact, I do not think he would have taken the action he did. Certainly, we would not have approved it if we had known the facts as they were. Specifically, it was not an unprovoked attack. It was a long time after that we discovered all the circumstances that surrounded the initial attack. But even the ultimate purpose, which he finally fulfilled, of a full scale war in South Vietnam was never suggested in the presentation of the administration's case before the committee or on this floor. I myself represented on the floor what the purpose of the administration was, repeating what they had told us in the committee and in the briefing at the White House. That proved to be incorrect. It was not just unity they wanted. They went all out for a military victory and it amounted to a major war.

I am not saying that was his intention at the time. I do not know what his intention was. There is no way to read a man's mind. But it was certainly inconsistent with what was said in the meeting before the committee. The record before the Committee on Foreign Relations is there for anyone who doubts that.

In this connection, there was just one more brief statement at that time that I think is relevant.

> That this fear is not mere idle speculation, but on the contrary is precisely the situation we now have in our Government is demonstrated by comparing the responsible attitude Jefferson took toward an incident in 1806, with the attitude of the present administration toward its responsibility in the Middle East.
>
> "In 1806, during the recess of Congress, the *Leopard* attacked the *Chesapeake*. War with England appeared a possibility. The magazines were ill-provided with some necessary articles, nor had any appropriations been made for their purchase. In these circumstances Jefferson did not hesitate to provide them and place the country in safety, even though in so doing he violated the appropriation laws. Then he made a full disclosure to Congress and asked for an acquittance: 'To have awaited a previous and special sanction by law would have lost occasions which might not be retrieved. * * * I trust that the legislature, feeling the same anxiety for the safety of our country, so materially advanced by this precaution, will approve, when done, what they would have seen so important to be done if then assembled.' In due course the retrospective sanction which he asked was given."

I think it is rather interesting to see their attitude. Jefferson, having been one of the architects of our Constitution, and of our country, for that matter, was very conscious of the role, the rights, and the prerogatives of the President and of Congress, and he did not wish to undermine Congress, but I think the practice that he followed there of exercising in an emergency his power as President—and Congress, of course, did give him an acquittance and did approve of it—is the proper procedure to follow in the circumstances which are sought to be dealt with in section 3.

The language of section 3 is broad enough to let the President do anything he wants, but it is narrow enough to give his action the apeparance of congressional sanction in advance. My amendment will leave him with the same but no greater leeway, while depriving him of any appearance in advance of congressional sanction.

He would be wholly accountable for his acts.

I think that is a very healthy thing to do. It would not inhibit his doing whatever he believes to be in the national interest, and to guarantee our security, but we would have—any man would, I think—a very different approach. He would be very conscious that after the fact, after he is well acquainted with all the circumstances, he is going to have to then explain and justify his action; and no one, the President or this body, can anticipate those facts and circumstances which may arise in any kind of an emergency such as we have had in the past or which we may have in the future.

So I submit to the sponsors of this legislation, who have done so much to bring this measure to the floor, the Senator from New York, the Senator from Virginia, the Senator from Missouri, and others, that this is a very serious amendment, and that I believe it could improve the prospect of the bill's acceptance, not only by the President but certainly also by constitutional lawyers. I think my amendment is more in accord with constitutional practice, especially in the early days, if not in recent days.

Congress has a record of having passed some of these resolutions. At least one—the Middle East resolution—was passed over my opposition. I cannot recall the exact vote, but there was a substantial dissent, I think in the neighborhood of something like 25 or 30 votes, and those votes were based upon what I call the strict constructionist point of view.

We did not want to authorize in advance whatever he wished to do. We were not saying, "No, he shall not do it"; we did not undertake to do that, nor am I saying he shall not do it. We simply recognize his responsibility to do what is necessary in the mind of a reasonable man, but it is a precaution, and keeps alive the responsibility of the President to justify after the fact, after whatever occurs is known to the Congress and the people, and to me this would have a much more restraining effect. It does not prohibit anything, but would be restraining in the sense that consideration, deliberate and profound consideration, would be given by the President before he took action to commit this country to war.

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

The PRESIDING OFFICER. The Senator from Arkansas has 30 minutes remaining.

Mr. FULBRIGHT. I reserve the remainder of my time.

Mr. SPONG. Mr. President, I yield myself such time as I may require.

I ask the Senator from Arkansas, if he will, to respond to one or two questions with respect to his amendment.

If I understand the presentation of the Senator from Arkansas correctly, his amendment does two things: First, it replaces the language in section 3 of the bill before us which seeks to delineate the circumstances or emergencies under which the President may go to war, and replaces it with a general authority for the President to respond to any act or situation that in his judgment endangers the United States or its territories, its citizens or nationals. That portion deals with conventional situations. Is that a true statement?

Mr. FULBRIGHT. I would accept it, with one amendment. I do not think we should confer upon the President any authority he does not have. It is a recognition of what I believe to be the best constitutional practice. We simply are recognizing it. I am not attempting to confer upon him any powers he does not have, but my amendment recognizes what I believe to be sound constitutional practice in conventional situations, that is correct.

Mr. SPONG. Of course, as shown by my exchange yesterday with the Senator from Arkansas, my interpretation of the language is that it confers—the Senator's language is that it recognizes—but I believe it confers additional powers. Aside from that, however we are dealing with conventitonal situations. Is that correct?

Mr. FULBRIGHT. That is correct.

Mr. SPONG. And situations involving nuclear warfare are addressed as an exception. Is that correct?

Mr. FULBRIGHT. That is correct.

Mr. SPONG. And the exception is that the President may not use nuclear weapons without the prior explicit authorization of Congress except in response to a nuclear attack or to an irrevocable launch of nuclear weapons?

Mr. FULBRIGHT. That is correct. This, may I say, is an effort to extract from the committee's language that we are not going to be the first to start a nuclear war. That is about what that amounts to, and that seemed to be the best way we could phrase that idea.

Mr. SPONG. So, under the amendment of the Senator from Arkansas, the President may in the conventional situations, if in his judgment the situation endangers the United States, proceed without prior congressional authorization. In the nuclear situations, however, unless the attack has taken place or there is an irrevocable launch—I assume that means it has been shot off, and you have a period of time when you can act—a prior authorization is required?

Mr. FULBRIGHT. That is correct. As I say, I think that is the equivalent of saying or attempting to say that we are not going to be the people who start a nuclear war. We are the only country that has dropped nuclear weapons in anger, in warfare, and I think it is our responsibility to try, as reasonably as we can, to assure the world that it is not our intention to be the first country to start a nuclear war. Other countries, I think China is one of them, have made positive public statements that they will not be the first to use nuclear weapons. They do not say they will not use them in retaliation. I would hope that all countries would take that position. If they would, there would not be a nuclear war.

Mr. SPONG. The Senator from Virginia hopes that this country never would be the first one to use nuclear weapons.

But is it correct to say that the amendment of the Senator from Arkansas differentiates the constitutional powers of the President in conventional situations, as opposed to nuclear situations?

Mr. FULBRIGHT. It is a matter of degree, except that nuclear weapons, I think, are a very different matter and one which, in view of our history, deserves a slightly different approach; because, as I have said, we are the only country that has used them. Since that time, on various occasions, there has been great apprehension that we may use them again.

This matter came up at one period in the war in Vietnam. There were rumors that we had nuclear weapons in ships off the shore and that we might use them. I think it would be very helpful if we took the position that we were not going to be the first to use nuclear weapons.

As to the other matter, I can only repeat that I do not think we are giving him any new powers. I am recognizing what I believe to be good constitutional practice as it now exists.

I think the Senator takes these words to mean something else. I do not think we are. We are saying, "You are the leader, and you can take these actions, but you are responsible for them. We are not giving you advance authority to do these things."

Fundamentally, except in an emergency, he should come to Congress and get its approval. I thought we all agreed upon it. That is the main thrust of this bill—that except in dire emergencies, he should have the authority of Congress.

Mr. SPONG. That is the idea of the bill. The Senator from Virginia, in his later questions, was only trying to point out that emergencies involving conventional situations are treated differently in the amendment of the Senator from Arkansas than are emergencies involving nuclear situations.

Mr. FULBRIGHT. The Senator is correct. We have special laws on our books. We treat nuclear weapons and nuclear affairs differently from the way we treat conventional situations. We have a Joint Committee on Atomic Energy, which has much to do, of course, with the basic problem of the supply of atomic energy to be used in nuclear weapons as well as peaceful uses. We have treated it differently all along. I stated in the report of the committee on this bill, as clearly as I could, on page 26:

> So enormous is the significance of nuclear war that the conversion of any conventional conflict into a nuclear conflict cannot realistically be considered a mere change of tactics in a continuing conflict. In effect, the introduction of nuclear weapons would constitute the beginning of a whole new war.

I think that is true. This is what I meant.

It was on the minds of some Members of this body in a recent hearing, when they specifically asked representatives of the Executive, "Is there any plan or intention to use nuclear weapons if the situation in Vietnam escalates to a very dangerous situation with regard to the program of Vietnamization?" They denied it.

The administration takes a different view at this time in the conduct of the war. They are dropping unlimited amounts of high explosives on Vietnam, but they are not using nuclear weapons. They, themselves, recognize that there is a great distinction in using tactical or any other nuclear weapons and conventional.

So I think this is not inconsistent with the recognized policy of the Government as it is now conducted.

Mr. SPONG. I thank the Senator for his response. I intend to address myself a little later to my own opinion that under the Senator's amendment we would be conferring more powers upon the President than the Constitution confers.

At this time I yield to the Senator from New York such time as he may need.

Mr. JAVITS. Mr. President, this amendment, as has already been developed in the very interesting questions and answers between Senator SPONG and Senator FULBRIGHT, has two very delineated parts.

In one part, the specificity of paragraphs 1, 2, and 3 of section 3 would be eliminated in favor of a general declaration; and the other part of the amendment deals with the ultilization of nuclear weapons. I will discuss each separately, because I think they are separate questions.

Before I do so, it should be stated, in connection with an amendment offered by the chairman of the Committee on Foreign Relations, that it is very doubtful that this bill would be before us at all were it not for the interest in this whole concept, both as a teacher and a leader in the Senate, of the Senator from Arkansas. I want that very clear. We may have some difference—and we do—on this amendment, precisely what it would accomplish and so fourth; but no question should arise as to the dedication and leadership of the Senator from Arkansas in the effort to find some way to codify the issues respecting undeclared war. His role has been indispensable in bringing this measure to where it is, where it has the chance to become an historic measure. So before in any way discussing the amendment upon which we may intellectually differ, I feel it my duty to acknowledge the indispensable position of the Senator from Arkansas in bringing this measure to the Senate.

As to the amendment itself, as to the first part, for me, the specificity which is contained in the first part, as we move into an area where in order to get a true participation in the war powers we need specificity, is more desirable than the general approach which the Senator from Arkansas has used.

Our problem has been that Presidents have construed their own powers so broadly that the very absence of parameters has caused them gradually, in my judgment, to erode the power and narrow the role of Congress. I would consider that I was joining in compounding the historic situation which brought about the really urgent need for this bill were I to go for less specificity than we have arrived at.

I do not want to go for less specificity in spelling out the situations in which the President can put us into hostilities without a declaration of war, or specific statutory authorization as defined in section 3(4).

No one knows better than I the grave problems which will be presented to Congress to stop a war which the President has started. That will be difficult enough. I do not want to pyramid that difficulty with any lack of specificity such as is here presented as an alternative. I much prefer this formulation to the general provision, which again, as I say, invites the President to extend his authority and to erode our authority, in my judgment.

Mr. President, I have a deep difference with the Senator from Arkansas as to the latter part of his amendment, which involves the question of nuclear response. This problem, with which we are trying to deal, is itself so monumental and so historic that I do not believe it contributes to its solution to raise the separate question and endeavor to solve the total nuclear policy of the United States. The fact is that we do not have, as a matter of national policy, the doctrine of "no first use," with respect to strategic weapons. The implications of a flat and total "no first use" doctrine are far-reaching, and fundamental to the whole strategic posture of the United States.

Also Senator FULBRIGHT'S concept, which I think is a most interesting one and deserving of the most prayerful consideration, is that in an on-going war the initiation of nuclear hostilities, even tactical nuclear hostilities, creates a new war and there is a separation, indeed a wall of separation between conventional weapons. I do not wish to move into the whole question of nuclear response and responsibility.

I am constrained to oppose the amendment. But, Mr. President, there are yet other problems with the amendment. For example, there is a subtle constitutional question involved here.

It is one thing to deny a weapon. We can prevent a weapon from going into the arsenal of the United States. That goes for tactical as well as strategic nuclear weapons. Indeed, we have had a tremendous struggle on this floor with respect to denying a nuclear weapon or a weapons system. But, Mr. President, that weapon or weapons system, once having been placed by Congress in the arsenal of the United States, there is a question in my mind whether we can then instruct the President as to whether, when, or how to use or not to use it. That may be a Commander in Chief prerogative, so long as he has authority to use any weapon in hostilities.

I can appreciate the intellectual—dialectical, if you will—problem which faced the Senator from Arkansas and the reason for his coming up with the concept of a separate war precisely on that point. I am not prepared to accept that concept. I believe, so far, until we come to some other conclusion with respect to our national policy, that the nuclear weapon is a weapon, and an awesome one, to be treated with the greatest respect, to be negotiated for a limitation, and so forth, if we can humanly limit it; but, nonetheless, a weapon in our arsenal, as is the B–52 with its "block-buster" and "cheeseburger" bombs.

I have a deep concern, and I am not trying to conclude the question, as to whether the President of the United States with his constitutional authority as Commander in Chief can be prevented from using a weapon in our arsenal in defense of the United States or in defense of the Armed Forces of the United States. I do not believe that this is the time or the place to make the decision that we will not use a nuclear weapon under any circumstances, here I quote from the Senator's amendment, "except in response to a nuclear attack or to an irrevocable launch of nuclear weapons."

Finally, we are entering into the SALT negotiations, hoping, deeply and fervently, that they may be successful. I would not wish, in even so historic a measure as this, to throw into the balance some basic decision on the use of nuclear weapons which I feel would be represented by this amendment.

For all those reasons, Mr. President, and again stating the tremendous debt which all of us interested in this legislation owe to the Senator from Arkansas (Mr. FULBRIGHT), I am constrained to oppose the amendment.

Mr. SPONG. Mr. President, I yield 10 minutes to the Senator from Missouri (Mr. EAGLETON).

The PRESIDING OFFICER (Mr. TALMADGE). The Senator from Missouri is recognized for 10 minutes.

Mr. EAGLETON. Mr. President, I thank the Senator from Virginia for yielding me this time. I rise to speak in opposition to the Fulbright amendment——

Mr. FULBRIGHT. Mr. President, will the Senator yield so that I may ask for the yeas and nays?

Mr. EAGLETON. I am happy to yield for that purpose.

Mr. FULBRIGHT. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. FULBRIGHT. I thank the Senator from Missouri.

Mr. EAGLETON. Mr. President, the distinguished chairman of the Foreign Relations Committee is as much responsible for this legislation as any of the major sponsors. Under his leadership the Foreign Relations Committee has conducted hearings which will serve as a graphic record of the deliberation which went into the drafting of this bill.

But Senator FULBRIGHT'S contribution to this bill amounts to much more than the strong influence he has had on the drafting of it. He has been a persistent conscience to this body during times when Congress has seemed most reluctant to fulfill its constitutional obligations. We are here today largely because of his persistence.

Because I understand the great contribution the Senator has made to this bill, I take no joy in having to differ with him on this amendment.

The Senator is justifiably concerned that the war powers legislation before this body be as airtight as possible. In his "Additional Views," which were included with the committee report, he states that he is "apprehensive that the

very comprehensiveness and precision of the contingencies listed in section 3 may be drawn upon by future Presidents to explain or justify military initiatives which would otherwise be difficult to explain or justify. A future President might, for instance, cite 'secret' or 'classified' data to justify almost any conceivable foreign military initiative.

I recognize that Presidents may well attempt to circumvent this legislation by withholding vital information from Congress. This is exactly why I am convinced that we must circumscribe his emergency powers in a most comprehensive way. If we do this we will be more capable as a body to weigh the available evidence, whether open information or classified, against the specific provision cited by the President.

Further on that point, Mr. President, I cite to my colleagues the testimony of Professor Bickel of Yale relative to the President's emergency powers, on page 588 of the hearing record.

To set the scene for the professor's testimony, let me point out that at the outset of the hearings and the deliberations before the committee on war powers legislation, Professor Bickel of Yale was of the mind that we should not attempt to categorize or codify the President's emergency powers to repel attacks but that we should describe them in a more general or amorphous way. But he changed his initial viewpoint and he said as follows:

> As I said before, Senator Spong, my doubts then were not about the constitutional powers of Congress to act. My doubts were the normal reaction of a common law trained man. We don't like codes. I have since come to the view that, (*a*) that a code can be—Senator Javits taught me that with his successive drafts, that the code in this instance can be written so as to avoid most of what we common law lawyers think is bad about codes and I, secondly, have come to the view if something of this sort is not done now, we will have passed this great opportunity to redress the balance without doing anything.

Mr. President, I think this quotation from Professor Bickel is especially important because——

Mr. FULBRIGHT. Mr. President, will the Senator from Missouri yield at that point for a clarification?

Mr. EAGLETON. Yes, I would be very pleased to yield to the Senator.

Mr. FULBRIGHT. It is my impression that Professor Bickel is not talking about the explicit provisions at issue but is talking about the bill as a whole. He is for the bill, as I am. I do not think that goes to the issue that is between us on this amendment. This is the way he was saying it, by way of this whole business, that we need a bill now—not this specific language. Is that not the way the Senator interprets it?

Mr. EAGLETON. Frankly, it is not. I was not present, at the time the testimony was given, not being a member of the Foreign Relations Committee, but in reading the testimony I was of the impression that I was reading it in the proper context of the exchange between Senator SPONG and Professor Bickel. Professor Bickel was not only saying he favored this bill or a bill, but he was saying to the Senator that he preferred a bill which would codify the situations under which the President could act unilaterally and those situations where he would be prohibited from acting unilaterally vis-a-vis the Congress. But this was a specific quote by Professor Bickel that goes to the proposition of what can be done in a general way—as it is under the Zablocki resolution which the Senator from Virginia (Mr. SPONG) spoke about in his questioning of Professor Bickel—or whether it should be specified and codified.

I also feel that the Bickel quote can be explained by his own general attitude, that he originally had a leaning to an amorphous approach, but had concluded as in the last sentence of this quote:

> . . . and I, secondly, have come to the view if something of this sort is not done now, and I interpret that to mean codification, we will have passed this great opportunity to redress the balance without doing anything.

Mr. FULBRIGHT. Mr. President, before we get away from that, the Lawyers Committee made this suggestion. However, it is quite different from the bill as reported. And this was not Mr. Bickel. It was the Lawyers Committee who discussed this point. They were willing to say:

> Repel a sudden attack against the United States, its territories and possessions;
>
> Repel a sudden attack against the armed forces of the United States on the high seas or lawfully stationed on foreign territory.

If that is what we had here, and if the Senator would like to require that—which I do not think is unrecognized and I do not know anybody that does not agree that the President has that responsibility—and if that is all it was, I would not offer my amendment. However, we go much further than that when we begin to talk about anticipating imminent attacks, et cetera. This is what aroused my interest in the beginning.

I am so clearly reminded of our recent experiences in Cambodia. I think the reasons given there did not prove to be valid. And I do not want to be in a position of giving color or credence to a repetition of that sort of thing by a future President who can say, "Here is the authority." And he does not have to explain anything. He can say, "It is already authorized. It is in the law. How can Congress raise the question?"

I want him to be in a position of always being responsive. The question is raised by his act and he has to explain it. It shifts the burden to him rather than to us. The Senator is proposing to relieve him of the burden if he confines this to the lawyers' committee suggestion, about which I think there is no question. Then this does not arise.

I was worried about going further and describing a kind of situation like Cambodia where the President says it involves the protection of troops from imminent attack from Cambodia. When we look at the result of that now, I do not think we are far apart.

Mr. EAGLETON. Mr. President, I fully share the concern and apprehension of the Senator from Arkansas with respect to the fact that a future President of the United States might, under a given factual circumstance try to take refuge in the language of this bill, or in the language of the Senator's amendment, and find in that language sanction to do that which he had no authority to do.

I am not saying that future Presidents of the United States will be men of ill will. Quite the contrary. We have to operate in this country under the assumption that he who occupies that high office will be a man of good will.

I submit to the Senator from Arkansas that a future President could find safer refuge in the generalized language of this amendment than he could in the specific and codified language in the bill before us. That is, based on such information as the President would provide us either in the public domain or such classified information as might be imparted in a session of the Senate as a whole or the Foreign Relations Committee.

The specific language gives a much more precise benchmark against which to measure the action proposed by the President so that the Congress can judge whether or not it should go along with it. To emphasize it another way, I think a future President with the language suggested by this amendment would be able to take safe refuge and could find in this language the "authority" for his conduct which that same President might not be able to find in the specific language contained in the Javits bill.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. SPONG. Mr. President, I yield the Senator from Missouri 3 additional minutes.

The PRESIDING OFFICER. The Senator from Missouri is recognized for 3 additional minutes.

Mr. EAGLETON. Mr. President, under the generalized emergency provision contained in Senator FULBRIGHT'S amendment a President would still be able to withhold information but without a specific citation, the Congress would find it much more difficult to assess the President's justification.

The problem of the Executive withholding information that the Congress must have to fulfill its constitutional responsibilities is a serious one. In my second appearance to testify before the Foreign Relations Committee on this bill, I discussed this problem at some length. I suggested in that testimony that Congress—

> Must be willing to demand, receive and act upon relevant information it needs to exercise the most solemn of its constitutional responsibilities—making the decision that takes this country to war.

I ask unanimous consent that the complete text of this testimony of July 27, 1972, be printed in the RECORD directly following my remarks.

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

(See exhibit 1.)

Mr. EAGLETON. Mr. President, I would also like to acknowledge that Senator FULBRIGHT has taken a very important initiative to attempt to solve this problem by introducing legislation pertaining to the alleged right of "Executive privilege." I suggest that is a much overused and abused right.

The second part of Senator FULBRIGHT's amendment would require congressional authorization for the use of nuclear weapons other than to respond to a nuclear attack. I share Senator FULBRIGHT's concern about the use of nuclear weapons in conventional warfare. I feel, however, that any restriction of this type should remain separate from this legislation.

The purpose of this bill is to define and delineate the war powers of Congress and the President. The sponsors have taken great care to avoid encroaching upon the recognized powers of the President to conduct authorized hostilities.

This bill is not the proper vehicle for restricting the President's use of weapons previously appropriated by Congress to the executive arsenal by defense procurement and appropriations measures.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. SPONG. Mr. President, I yield the Senator from Missouri 2 additional minutes.

The PRESIDING OFFICER. The Senator from Missouri is recognized for 2 additional minutes.

Mr. EAGLETON. Mr. President, if Congress feels that the use of any weapon should be restricted, this should be accomplished by amendment to those measures. I would be pleased to join with the Senator should he wish to offer such an amendment.

Mr. President, I wish to emphasize again that I have the utmost respect for the contribution that the Senator from Arkansas has made to this bill. The printed hearings on this act are ample testimony to the great personal input of Senator FULBRIGHT and to his continuing effort to make this body comprehend and fulfill its responsibilities.

EXHIBIT 1

STATEMENT OF SENATOR EAGLETON

I believe the release of the Pentagon Papers throws new light on the crucial decision of the Vietnam War—new light that is relevant to this Committee's deliberations regarding the war powers of Congress.

Viewed broadly in the context of determining foreign policy, the Pentagon Papers portray an ever-broadening, almost boundless unilateral decision-making role by the post World War II Executive Branch. The papers show decisions being made without the knowledge and consent either of the Congress or of the people.

The key to this enormous accretion of power to the Executive Branch is secrecy, motivated by a far-too-broad view of the President's foreign policy prerogatives. According to every recent occupant of the White House, the President can pursue foreign policy not only by diplomacy, but by the threat of force, or even the actual use of force, as well.

Admittedly the President does have great diplomatic latitude. Diplomacy by referendum or consensus was not sensible when the Constitution was drafted and it is no more sensible today. Unquestionably the President is this nation's chief diplomat.

But when diplomacy fails or when diplomacy leads to an impasse which threatens to result in war, the decision is no longer the President's alone. The Constitution mandates that when the talking stops, Congress, not the President, decides if the shooting starts.

In fact, nothing is clearer from the deliberations of the Founding Fathers than their desire to ensure that the decision to go to war, as distinguished from the routine conduct of diplomacy, be a collective decision.

But as Neil Sheehan of the *New York Times* wrote, the intent of the Constitution was a secondary consideration as the post-World-War-II Executive decided that the use of force was necessary in Vietnam:

"To read the Pentagon Papers in their vast detail is to step through the looking glass into a new and different world. This world has a set of values, a dynamic, a language and a perspective quite distinct from the public world of the ordinary citizen and of the other two Branches of the Republic—Congress and the Judiciary...

"Clandestine warfare . . . naturally has an important effect on public events. Covert operations also occasionally violate treaties and contradict open policy pronouncements.

"Clandestine warfare against North Vietnam, for example is not seen, either in the written words of the senior decision-makers in the Executive Branch or by the anonymous authors of the study, as violating the Geneva Accords of 1954, which ended the French-Indochina War, or as conflicting with the public policy pronouncements of the various administrations. Clandestine warfare, because it is covert, does not exist as far as treaties and public posture are concerned. Further, secret commitments to other nations are not sensed as infringing on the treaty-making powers of the Senate because they are not publicly acknowledged.

"The guarded world of the government insider and the public world are like two intersecting circles. Only a small portion of the government circle is perceived from the public domain, however. Vigorous internal policy debates are only dimly heard and high-level intelligence analyses that contradict policy are not read outside. But as the Pentagon Papers demonstrate, knowledge of these policy debates and the dissents from the intelligence agencies might have given Congress and the public a different attitudes toward the publicly announced decisions of the successive administrations.

"The segments of the public world—Congress, the news media, the citizenry, even international opinion as a whole—are regarded from within the world of the government insider as elements to be influenced. The policy memorandums repeatedly discuss ways to move these outside "audiences" in the desired direction, through such techniques as the controlled release of information and appeals to patriotic stereotypes. The Pentagon Papers are replete with examples of the power the Executive Branch has acquired to make its influence felt in the public domain."

In short, the picture that emerges of the post-World-War-II Executive Branch can give little comfort to a Congress intent on reclaiming its constitutional war powers and restoring deliberate decision-making on whether or not we go to war.

For if knowledge is power, the President has become all-powerful in the conduct of both diplomacy and war-making. By taking secret actions suggested by a few men in secret sessions, a President can effectively limit Congressional war-making options in advance, or distort Congressional judgment by withholding crucial information—as in the Gulf of Tonkin incident.

Unless Congress has regular access to information about Executive decisions which could move us towards war, any "war powers" legislation emerging from this Committee will be only a half step.

The Pentagon Papers indicate that if Congress is going to reassert its rightful authority to decide when this country goes to war, it must have the pertinent and vital material to make an informed judgment. Such a judgment requires more than the material which the Executive Branch force-feeds Congress, more even than the specific information Congress requests. Such a judgment requires all revelant information that deals with Executive actions that could take us into war.

That information must be secured on a regularized basis.

Senator Cooper has taken a step in this direction with the introduction of S. 2224, which amends the National Security Act of 1947 and requires the Central Intelligence Agency to keep the germane committees of Congress "fully and currently" informed through regular and special reports to Congress and special reports in response to requests made by the appropriate committees.

The importance of this step cannot be underestimated.

Executive privilege is likewise coming under closer Congressional scrutiny as indicated by Senator Fulbright's testimony before Senator Ervin's Separation of Powers Judiciary Subcommittee which is delving into executive privilege.

Through the years Congressional indifference has allowed to go unchallenged the broad Presidential claims of constitutional power to withhold information from Congress.

One of the clearest, and one of the most constitutionally unsupportable views of "Executive privilege, was expounded by then Attorney General William P. Rogers in 1954 when he stated:

"For over 150 years—almost from the time that the American form of government was created by the adoption of the Constitution—our Presidents have established, by precedent, that they and members of their Cabinet and other heads of executive departments have an undoubted privilege and discretion to keep confidential, in the public interest, papers and information which require secrecy. American history abounds in countless illustrations of the refusal, on occasion by the President and heads of departments, to furnish papers to Congress, or its committees, for reasons of public policy. The messages of our past Presidents reveal that almost every one of them found it necessary to inform Congress of his constitutional duty to execute the Office of the President, and, in furtherance of that duty, to withhold information and papers for the public good."

Past Presidents probably assumed that withholding the full extent of our commitment to, and covert operations in, Southeast Asia was for the "public good." It certainly was the most effective way to work without the hinderance of public opinion or of Congress.

No one denies that the Executive has the right to counsel from his advisors in private. However, when that private counsel becomes national policy, announced or covert, then Congress has the need and the right to know.

Some mechanism, and I admit that I am not sure at this time what that mechanism should be, must be found to ensure that Congress has access to relevant information regarding all decisions calling for action, before those decisions lead to violent reaction elsewhere in the world.

Finally, Congress itself must want to, and be prepared to, participate in the process by which we go to war.

For Congress to pay more than pious lip service to its war making role, it must not only pass a strong war powers bill, but also must be willing to demand, receive and act upon relevant information it needs to exercise the most solemn of its constitutional responsibilities—making the final decision that takes this country to war.

The PRESIDING OFFICER. Who yields time?

Mr. SPONG. Mr. President, I yield 10 minutes to the Senator from Kentucky.

The PRESIDING OFFICER. The Senator from Kentucky is recognized for 10 minutes.

Mr. COOPER. Mr. President, I would prefer that the Chair would notify me when 5 minutes have expired.

The PRESIDING OFFICER. The Senator from Kentucky is recognized for 5 minutes.

Mr. COOPER. Mr. President, I share the concern of the distinguished Senator from Arkansas with respect to that part of his amendment which deals with nuclear weapons.

But we must note that the Senator's amendment is a complete substitute for that part of section 3 which would express the interpretation by the Congress of the powers of the President to enter hostilities without a declaration of war or expression of approval by Congress. I refer to constitutional power.

I must say that I do not believe there was any testimony before the committee and I do not know of any support on the part of those who oppose the bill or who support the bill, which support the thesis of the first part of the Senator's amendment.

His amendment would condition the constitutional authority of the President to act only in those situations when a national emergency exists. All constitutional authorities I have heard or read, hold that the President has the right to use force to repel an attack on our forces, our possessions, and upon this country.

The amendment differs. Even if there should be an attack upon the United States, its possessions or forces, unless the President determines it a national emergency he would be prohibited by the amendment from repelling the attack or defending our forces. Similarly, if a situation arose which the President considered an imminent threat to our country or forces, unless there was a national emergency he would be prohibited from acting.

It could limit a national emergency to an attack by the Soviet Union or some power which had the capability to destroy our country. I must say I know of no constitutional authority which would prohibit the President from his duty to protect this country and its people.

There is a great deal of talk about priorities, but I believe the obligation to protect our country and its people is a first priority. The sponsors of this bill were very careful to provide that in case the President should act to forestall an attack, the threatened attack must be imminent and authority would be only to repel that attack. The safeguards are in the bill.

There must be authority to protect our forces, our country, and its possessions if they are attacked. We cannot wait for a national emergency. The national emergency may grow out of the failure to protect our country, its possessions, and its troops, while if we stand supinely by and let such an attack proceed.

I am concerned about the second part of the Senator's amendment. The Senator has not made it a separate part but includes it in the body of the amendment. The question of the use of nuclear arms is one of the most serious questions before the world today. If a nuclear attack of any kind is ever launched it is conceivable it could escalate into major nuclear exhanges which would destroy our country and the attacking country, because the United States and the Soviet Union have the capability to destroy the other even though subjected to the first strike of nuclear warheads.

All of our Presidents have said they would not use our nuclear power in a first strike.

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

Mr. COOPER. I yield.

Mr. FULBRIGHT. I would like to put that in the RECORD if the Senator can tell me where he heard that.

Mr. COOPER. I may be wrong.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. SPONG. Mr. President, I yield the Senator 5 additional minutes.

The PRESIDING OFFICER. The Senator from Kentucky is recognized for 5 additional minutes.

Mr. COOPER. Mr. President, frankly, I regret that the latter part of the Senator's amendment has been presented as a part of the amendment. I will tell the Senator why I make the statement.

As the Senator from New York (Mr. JAVITS) said, we are engaged in the SALT talks. Whatever action we may take on this amendment, if it has any effect on world opinion or the negotiation, some may interpret a vote against it as the will of one body of Congress that we should use nuclear weapons in a first strike.

If Senators vote for the provision, some might interpret it, no matter what the exigencies, even to the very existence of our country, to mean it could be destroyed without the ultimate effort to protect it.

I do not think that writing this language into a statute can in any way limit the constitutional authority of the President to use nuclear weapons if he thought it necessary to protect the existence of our country. We cannot by statute deny the constitutional power of the President. I would hope that as the Senator feels deeply about this, and I do, that would be placed in a resolution expressing the sense of the Senate that nuclear weapon should not be used in a first strike. I would support it.

The use of nuclear weapons can hardly be contemplated, because if they are ever used, tactical or otherwise, the possibility of escalation could occur until all is destroyed. It is horrendous to contemplate.

I say this with great respect to the Senator. I am sorry he has presented the matter in this way because I do not think it accomplishes anything, except to provide for misinterpretation of our vote. In some ways on the floor of the Senate, with others, I have introduced amendments to prevent the development of nuclear systems which would increase the danger of nuclear instability and war. In that effort we learned a great deal about their awesome capability. I share the Senator's concern, but I regret the form in which he presents this subject to us.

The PRESIDING OFFICER. Who yields time?

Mr. FULBRIGHT. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from Arkansas is recognized for 5 minutes.

Mr. FULBRIGHT. Mr. President, I regret the Senator from Kentucky takes the view he does about this being a measure, the rejection of which would have a great significance for our purposes. As a matter of fact, I do not recall at any time that this or any other President made a commitment against first use of nuclear weapons, and Congress has not done anything, and the Congress I still think is an important part of our Government. I do not accept the idea that what we say is not significant; we should not presume to downgrade Congress in this fashion.

I do not recall any President saying we will not be the first to use nuclear weapons. They like to keep the option open as a form of pressure on other countries, so that they cannot be too sure of our intentions and do not take us for granted.

From a military point of view I suppose that is true, and I suspect military authorities, if they were consulted, would resist a declaration that we should not be the first to use nuclear weapons. I think it would be a good policy, we already having demonstrated that we will use them; that we do not refrain from using them. We are the only country in the world that has used one in war, which puts us in a little different class from other countries. No other country to my knowledge has used nuclear weapons in anger. They have used them in experiments.

That, in itself, puts some responsibility on this country to express itself about the matter and I think Congress should share in the expression.

Fundamentally I return to what was said yesterday. I thought it was agreed that the bill is not an amendment to the Constitution; it is not giving or taking away constitutional power of the President. It is not a presumption on my part or anyone else's part that we are changing the constitutional power of the President. Senators can engage in all the rhetoric they like and make great speeches here, but it does not change the constitutional power of the President. If we are going to change it, it has to be in the form of an amendment to the Constitution. I am not changing his power.

I think what I am doing, as we said yesterday, is engaging in an educational project. I think we are restating, as closely and accurately as we can, what we believe to be the real meaning of the Constitution.

The Constitution, of course, speaks for itself, but every man looks upon these matters in the light of his own experience, and no two men look at it exactly alike. If one is accustomed to the acceptance of the dominance of the Executive, he sees these values in a different light from one who is accustomed to thinking of the legislative as an important body.

I was brought up in the school that the Legislature is an important body. I be-

lieve, as I read the Constitution, that it has primacy in the question of making war. I would say from my background of experience, when I read the language that says the Congress shall have that power, that it means something. It means the Congress, not the President, has the power to declare war and to make war, and that Congress has the power to make regulations for the governing of the Armed Forces.

The Senator from New York says we have no business telling the President he cannot use nuclear weapons first. I do not know what he thinks the Constitution means when it says Congress shall have the power to determine on war and regulate the Armed Forces. It does not say the President has that power. It does not even say "in conjunction with the President." The only power the President would have in this case, if it is a law, in connection with something that would be a regulation, is the veto power. That is no final power. All he has is the power to have it passed again by two-thirds.

If I read the Constitution correctly, the President does not have power to make regulations governing the Armed Forces. The Constitution does not say the President shall have exclusive power to use nuclear weapons. They did not even have nuclear weapons at that time. The control of the use of weapons used by the country seems to me to be within the power of Congress to determine. I do not see that that is a constitutional question——

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mr. FULBRIGHT. I yield myself 5 more minutes.

There is reference here to an emergency. With reference to the way the Senator from Kentucky interprets the language, I do not read that language to mean this country must be on the verge of complete defeat and overwhelming disaster in order for the President to employ the forces in accordance with the language of subsection (1). The President will rationalize a particular situation in accordance with his particular background. Whether it would be a relatively minor matter, whether it would be the involvement of a few individuals whose lives were in danger, whether it would involve a ship at sea, or whatever it was, if it was significant in the President's view to warrant intervention, he has that power. All in the world he does—this has been done many times, and nobody is questioning it—is, in response to an incursion against our ships at sea, for example, or the mistreatment of our citizens if they are in a place where they have a right to be, and so on, is to respond and act. Those are recognized examples.

What is at issue here is a very simple proposition. Do we wish to make it very easy for future Presidents to invade a country like Cambodia, as an example, or to fight a war and use our forces in a place like Vietnam, or do we wish to cause him to ponder about it and to be more careful—he might even consult Congress—in order to be sure, himself, that he is not making an irresponsible judgment or that he should have some further advice? He might even be so bold as to consult Congress in advance and say, "Look, I am confronted with such and such. What do you think"? He would do it through committees, of course. That is the usual way. I assume he would. That, I think, would be a very healthy thing. I think the participation of more people in these decisions is, to some degree, insurance against serious mistakes. That is about what it comes down to.

I do not for a moment think that either the bill as presented or what I am submitting is going to deprive him of or give the President more constitutional power. It will, if it is taken seriously and the Congress accepts it and the country approves it, give him pause and cause him to be more careful in arriving at decisions to employ our Armed Forces in warfare.

I would call it an educational—psychological if you like—exercise so that in the future Presidents will be much more careful than they have been in the past in committing our troops.

As I have tried to say, I think beginning certainly not later than Secretary Acheson's statement that I read a moment ago, there has grown up a feeling that the President can do anything he likes, regardless of Congress. He does not even have to consult it. In recent years there has developed the concept of inherent presidential power. When I went to law school many years ago I do not remember any professor or teacher telling about the inherent presidential power to make war, or the inherent presidential power to do this and that. They talked about his constitutional powers.

What does the Constitution give the President? The Constitution does not give him the power to make war. I should be more precise; I should say the constitutional authority to make war. So long as the Army will obey his commands, he has the raw power to do it, no matter how unconstitutional it is. That is what has happened.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. FULBRIGHT. I yield myself 3 minutes.

I have supported these measures. I appreciate the fine compliments of the sponsors of the bill. That is customary when they are getting ready to vote against a Senator. They say what a great fellow he is. I wish someone would stand up and denounce me but vote with me. I would like to have a little balance.

I think this is important, but not in the sense implied, that we are giving or conferring or taking away power, legitimate constitutional power. I think it is important because we are giving advice to the President and we are causing people to ponder this question.

As I see it, the difference between my suggestion and the committee's proposal is that I say, "Look, you be more careful. You must go ahead and justify it. You do whatever the circumstances require, be it little or big." It says here "in his judgment." "But just remember, when you do it, you are going to have to answer for it to the Congress and the people." Instead of that, the proposal is to say, "Look, if there is an attack or an imminent threat, go to it. You do not have to come back. We are giving you the authority in advance. We are saying, 'Go to it.' "

All he has to do, when it is over, no matter how irrelevant his action may have been to the facts, or how faulty his judgment may have been, is say, "Look, you gave me the authority"—just as President Johnson did. When anybody asked him about Tonkin Gulf, he carried the resolution in his hip pocket, and every time I saw him—which was not often—he would say, "Here, look what Congress said." He did not have to bother going to the merits. He did not have to say, "Look, this is a very serious question. The future of this country is involved in Vietnam." He did not say, "Look, even though you think it is silly to go 10,000 miles away, even though you do not think Vietnam is a great and imminent threat to us." He did not have to explain. He did not have to go into detail. He said, "Look, you authorized anything I wanted to do."

When Secretary Rusk would come up, he would first try to justify it by talking about the threat of communism and containing Red China, and when that began to be exploded by events, he turned to it in the beginning but he went back to the SEATO treaty.

I said to him, "I do not believe the SEATO treaty ever contemplated any such action," but in his desperation, all his other justifications having evaporated, he retreated to the SEATO treaty, saying, "You passed it."

So what are we doing under these particular circumstances? Inviting future Presidents to take decisions of great importance more lightly than they otherwise would, is about what it comes down to, thinking they are already authorized to do whatever they want to do.

The President is going to do whatever he wants to do anyway. The difference is that in one case he may do it quickly and impulsively, because he does not have to bother about justifying it. In the other case, under my language, he might think, "Oh, my goodness, I better think about that twice. Maybe I even better consult with somebody besides Mr. Kissinger. Maybe I better talk to the Secretary of State, or even maybe a Senator, because they are going to be involved."

That is about the practical difference. On the one hand, he will feel free to do, with practically no consideration, whatever his impulse may tell him at the moment. On the other hand, I think he would very seriously consider the consequences of his action. And that is about what this proposal comes down to. In neither case is this bill going to put any strong inhibitions upon any President, because it does not change the Constitution.

I would conclude by saying that I think my language describes what the constitutional situation really is better than the language of the bill, and that is about what it comes down to.

Mr. President, I am prepared, if the other side is, to yield back the remainder of the time and vote.

Mr. SPONG. Mr. President, I shall be prepared to yield back my time in a few moments.

I laughingly say to the Senator from Arkansas that, while other Senators have made commendatory remarks, I have so far, as the junior member of his committee, sat moot. He has made a great contribution to this legislation and to this debate.

I want just 1 or 2 more minutes to summarize. Whether or not his approach increases or restricts the President's powers is a matter of interpretation of language. I think the words "in his judgment" broaden the possibilities. The Senator from Kentucky has talked briefly about the idea that "national emergency" may restrict the situation.

Nevertheless, I agree with the Senator from Arkansas that the purpose of all this legislation will be to bring about more consultation before the fact, before actions are taken.

Mr. FULBRIGHT. Mr. President, will the Senator permit me to ask, whose judgment does he think the President is going to use? I do say "his judgment"; I cannot imagine his using anyone else's.

Mr. SPONG. Of course not, and under our bill, he has a great deal of latitude. But under the circumstances recited by the Senator from Arkansas in the past, he would not have been prohibited from using his judgment by the Senator's amendment.

If a President had information that he did not want Congress discussing, or if he felt even remotely that a situation resembled a national emergency, he could go ahead and act.

Second, I want to agree with the Senator from New York, the Senator from Kentucky, and the Senator from Missouri that this matter of the nuclear situation should be addressed outside of the context of this bill.

With these closing remarks, unless the Senator from New York or the Senator from Kentucky have something further to say, I am prepared to yield back the remainder of my time.

The PRESIDING OFFICER (Mr. McGEE). Do both sides yield back their time?

Mr. FULBRIGHT. I yield back the remainder of my time.

The PRESIDING OFFICER (Mr. McGEE). All remaining time having been yielded back, the question is on agreeing to the amendment of the Senator from Arkansas (Mr. FULBRIGHT). On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Indiana (Mr. BAYH), the Senator from North Carolina (Mr. ERVIN), the Senator from Oklahoma (Mr. HARRIS), the Senator from Iowa (Mr. HUGHES), the Senator from Minnesota (Mr. HUMPHREY), the Senator from North Carolina (Mr. JORDAN), the Senator from Montana (Mr. MANSFIELD), the Senator from Arkansas (Mr. McCLELLAN), the Senator from South Dakota (Mr. McGOVERN), the Senator from Montana (Mr. METCALF), the Senator from Maine (Mr. MUSKIE), the Senator from Rhode Island (Mr. PASTORE), the Senator from New Jersey (Mr. WILLIAMS), the Senator from Alabama (Mr. SPARKMAN), the Senator from New Hampshire (Mr. McINTYRE), and the Senator from Louisiana (Mr. ELLENDER) are necessarily absent.

I also announce that the Senator from Connecticut (Mr. RIBICOFF), is absent because of a death in the family.

I further announce that, if present and voting, the Senator from Louisiana (Mr. ELLENDER), the Senator from Rhode Island (Mr. PASTORE), the Senator from North Carolina (Mr. JORDAN), the Senator from Connecticut (Mr. RIBICOFF), would each vote "nay."

Mr. GRIFFIN. I announce that the Senator from Vermont (Mr. AIKEN), the Senator from Utah (Mr. BENNETT), and the Senator from Arizona (Mr. GOLDWATER) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Tennessee (Mr. BROCK) is detained on official business.

If present and voting, the Senator from Utah (Mr. BENNETT) would vote "nay."

The result was announced—yeas 10, nays 68, as follows:

[No. 145 Leg.]

YEAS—10

Cranston	Hartke	Proxmire
Fulbright	Mondale	Stevenson
Gravel	Nelson	
Hart	Pell	

NAYS—68

Allen	Dole	Montoya
Allott	Dominick	Moss
Anderson	Eagleton	Packwood
Baker	Eastland	Pearson
Beall	Fannin	Percy
Bellmon	Fong	Randolph
Bentsen	Gambrell	Roth
Bible	Griffin	Saxbe
Boggs	Gurney	Schweiker
Brooke	Hansen	Scott
Buckley	Hatfield	Smith
Burdick	Hollings	Spong
Byrd, Harry F., Jr.	Hruska	Stafford
	Inouye	Stennis
Byrd, Robert C.	Jackson	Stevens
Cannon	Javits	Symington
Case	Jordan, Idaho	Taft
Chiles	Kennedy	Talmadge
Church	Long	Thurmond
Cook	Magnuson	Tower
Cooper	Mathias	Tunney
Cotton	McGee	Weicker
Curtis	Miller	Young

NOT VOTING—22

Aiken	Hughes	Mundt
Bayh	Humphrey	Muskie
Bennett	Jordan, N.C.	Pastore
Brock	Mansfield	Ribicoff
Ellender	McClellan	Sparkman
Ervin	McGovern	Williams
Goldwater	McIntyre	
Harris	Metcalf	

So Mr. FULBRIGHT'S amendment was rejected.

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. SPONG. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOMINICK. Mr. President, I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER (Mr. PROXMIRE). The amendment will be stated.

The legislative clerk read the amendment as follows:

On page 13, at the end of section 9, add the following: "And nothing in this Act shall be construed to limit any authority which the President was authorized to exercise in implementation of the United Nations Charter or any treaty ratified by the United States prior to the date of enactment of this Act."

Mr. DOMINICK. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from Colorado is recognized for 5 minutes.

Mr. DOMINICK. Mr. President, first I say to my colleagues, I should like to ask for the yeas and nays.

The yeas and nays were ordered.

Mr. DOMINICK. Second, I do not intend to take long on this amendment. I believe I have a half hour and I will yield myself 6 minutes to start with.

The PRESIDING OFFICER. The Senator from Colorado is recognized for 6 minutes.

Mr. DOMINICK. Mr. President, this amendment is a variation of a printed amendment, No. 1110. The reason I varied it was to conform with the wording which was used by Senators SPONG and JAVITS in their limitation of what would happen under this bill with respect to NATO; but, unfortunately, in my opinion, they did not go far enough in that, in order to keep NATO a viable method for protecting a vital part of the free world.

Let me, if I may, precisely outline why I say that.

Section 4(B), on page 9 of the bill, starting on line 14, reads in part as follows:

Specific statutory authorization is required for the assignment of members of the Armed Forces of the United States to command, coordinate, participate in the movement of, or accompany the regular or irregular military forces of any foreign country or government when such Armed Forces are engaged, or there exists an imminent threat that such forces will become engaged, in hostilities.

When I called the attention of the Senators from New York and Virginia to the problems which this would create with respect to NATO, the Senator from New York added an amendment at the back of the bill which provided that, notwithstanding what was said in 4(B), nothing would prohibit an American from participating in the command authority in headquarters. In his particular statement interpreting his own amendment, the Senator from New York said, and I quote from the RECORD.

I want to point out, Mr. President, that this position is very narrowly drafted. It does not except any use of actual combat forces. It does not except any command arrangements which are included only in contingency plans, and it refers solely to the use of members of the Armed Forces in their "headquarters operations of high-level military commands which were established prior to date of enactment of this act and pursuant to the United Nations Charter or any treaty ratified by the United States prior to such date."

The difficulty with this, as I see it—and I say this with all due respect to my friends from Virginia and New York—is that the whole concept of NATO forces in Europe, or for that matter the United Nations forces in Korea, is based on a universal response to an attack on any member.

In each one of these, I am willing to admit that in the NATO Treaty it says

"in accordance with constitutional processes, and so forth," but the constitutional processes are not spelled out. But they are spelled out in this bill, as I understand it.

Now, what have we done under the bill?

We have said that none of our troops in Western Europe can respond to an attack on Greece or on Germany or on England or on France unless the President decides that this is a tremendously serious situation, and then he has to interpret it, to say whether this puts our own troops in the problem.

Second, by virtue of the interpretation which the Senator from New York put on his own amendment when he put it in the bill, it means that we can continue to participate in imminent hostilities or in hostilities themselves as part of a command authority, but that we cannot do that at a lower level, that we cannot, by virtue of that, take action with respect to American forces. All we can do, as I understand his amendment, is to participate in the process of helping in the command and control of our Allied Forces there, not with our own. So it puts us in the position where the President or any of our allies, frankly, will not know what kind of response might or might not be made under the agreements that have been reached, before or under a contingency plan, unless Congress acts.

With all due deference, this is equally as important in the Korean situation as it is in NATO from the point of view of the exposure of our Armed Forces. This amendment does not say that we have to go to war. It does not say we have to do anything. It merely says that whatever other authority the President had in these situations he retains, despite the provisions of the bill. This seems to me to leave the President with much more flexibility and a far greater degree of credibility insofar as our allies are concerned, so that each ally on the United Nations forces in Korea or in our NATO forces in Europe will not have to try to interpret what the language in the bill means by itself, or to determine whether a mutual defense alliance has any bearing at all.

I do not believe that this is a difficult amendment. It does not hurt the bill. It would be my hope that this could be one of the amendments we could possibly pass as a worthwhile amendment, to try and salvage what I believe is an important part of the internal strength of the free world.

Mr. President, I reserve the remainder of my time.

Mr. SPONG. Mr. President, I yield 5 minutes to the Senator from New York.

The PRESIDING OFFICER. The Senator from New York is recognized for 5 minutes.

Mr. JAVITS. Mr. President, this is another of those "nothing in this bill shall" amendments. I spoke before of the difficulty which we get into in trying to negate what the bill does not mean. I have opposed a number of amendments on that score. But this particular amendment has yet another problem which is contained in it.

It will be noted that this measure provides, and I read now from page 9, line 21 of the bill, to the first word on line 1 of page 10:

> No treaty in force at the time of the enactment of this Act shall be construed as specific statutory authorization for, or a specific exemption permitting, the introduction of the Armed Forces of the United States in hostilities or in any such situation, within the meaning of this clause . . .

The reason we did that was that we locked into law the determination of the State Department, officially made to us, that under the NATO Treaty the President had no power except pursuant to the constitutional process.

The State Department has officially construed the whole treaty, and it was in the original Foreign Relations Committee report that accompanied the treaty, to mean that he may only use our forces pursuant to the constitutional process.

What the Senator from Colorado is contending for in this amendment is that we leave this question open. We have already said in the amendment to which he referred, and quite properly, that it lets our top commanding echelon, in association with the commanding echelon of the other NATO forces function, even if there are hostilities, without coming under the inhibitions of this bill, the 30 days, et cetera. That is already in. And now the Senator from Colorado wants to extend that. We oppose it because it leaves open the question of what the NATO Treaty may mean. It invites the construction that under the NATO Treaty the President cannot respond automatically if another NATO country is attacked.

If another NATO country is attacked he can come to Congress. We say that, but we do not in any way negate the other parts of this bill which give the President, or confirm the power—we do not give it to him—to repel an armed attack on the United States or to forestall it if he considers it a direct and imminent threat on the United States or the forces of the United States.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. SPONG. Mr. President, I yield the Senator from New York such time as he might require.

Mr. JAVITS. Mr. President, the Senator from Colorado has properly said that the President has to determine whether his action is of such a nature—that is, the action against NATO allies—as to involve an imminent threat to the United States or to the Armed Forces of the United States. In that case he can act against it, with the use of the Armed Forces of the United States, subject to the provisions of the bill.

In short, there is nothing in the definition of the NATO Treaty which I have described which changes the capability of the President to move against any attack or imminent threat of an attack against the United States or the Armed Forces of the United States. Therefore, we believe that the network of his authority is kept the way this bill defines that it should be. At that point, if he finds that he construes that as a major thing which threatens the United States or its forces, we have the 30-day provision.

That is why we do not feel that we should have this broad-scale exemption. There is ample power in the bill to deal with major situations, and we do not want the President, without our authority, to use the pretext of minor situations and escalate them to the point of the utilization of hostilities by the Armed Forces of the United States, without our authority, remembering always that the President's good faith is involved here.

The President is the one who decides whether the situation is of such size as to justify him in determining that he has to use the Armed Forces because of an imminent threat against the United States or against the Armed Forces of the United States.

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

Mr. JAVITS. I yield.

Mr. SPONG. Mr. President, what the Senator from New York is saying is correct. But is it not true that when the NATO exemption was made all of us recognized that the NATO treaty was not self-executing and that we cannot make it self-executing by this legislation.

Mr. JAVITS. The Senator is correct.

Mr. SPONG. Secondly—and the Senator from New York has pointed this out—the response is a matter of discretion with the President of the United States. For instance, if Greece was attacked by Warsaw Pact nations, the President could certainly construe this as the threat of imminent attack on NATO forces and respond accordingly.

Mr. JAVITS. Our NATO forces?

Mr. SPONG. Our NATO forces; the Senator is correct. If, on the other hand, there is a fight on Cyprus between various factions, but involving Greece, this is a matter which the President can choose to ignore. There is no call upon the President to act or upon the United States to respond in the latter situation.

Mr. JAVITS. The Senator is exactly correct. There is one additional fact, that in all the time, with any of these situations, the NATO Command, of which we are a part, continues to function. We have expressly made that clear in the bill.

Mr. SPONG. I thank the Senator.

Mr. JAVITS. I thank the Senator from Virginia.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. DOMINICK. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from Colorado is recognized for 5 minutes.

Mr. DOMINICK. Mr. President, I have listened with great interest to the remarks of the Senators. They say on the one hand that we do not need it. On the other hand they say that the bill covers contingencies which we did not want the NATO Treaty to cover to begin with.

This is quite interesting, because I refer now to the committee print of the 82d Congress, the 1st session in 1951, entitled "Powers of the President Regarding the Armed Forces Outside of the United States."

On page 26 of this, referring to the NATO Treaty, this is what was said:

> That article 5 might require the President to order the armed forces into action was

clearly foreseen by the opponents to the treaty in the Senate. To forestall this possibility Senator Watkins introduced a reservation to the treaty which read as follows:

The United States understands and construes article V of the treaty as follows:

That the United States assumes no obligation to restore and maintain the security of the North Atlantic area or to assist any other party or parties in said area, by armed force or to employ the military, air, or naval forces of the United States under article V or any article of the treaty, for any purpose, unless in any particular case the Congress, which under the Constitution has the sole power to declare war or authorize the employment of the military, air, or naval forces of the United States, shall by act or joint resolution so provide (vol. 95, Congressional Record, July 21, 1949, p. 9898).

This reservation was rejected by a vote of 84 to 11 (ibid., p. 9916). The Senate thus repudiated the idea that the President could not use the armed forces of the United States to carry out article 5 without congressional authority.

So, many of the arguments that are being presented by the Senator from Virginia and the Senator from New York were advanced by former Senator Watkins of Utah in 1951 and were overwhelmingly rejected by the Senate. Then they went on to take care of the NATO Treaty itself.

What I am saying is not designed to clarify that situation to say that Watkins was wrong or right, or whatever it might be. All I am saying is that nothing in the bill shall prevent the President from exercising these powers and in fact he has not.

In other words, it gives him the authority as may have been conveyed upon him by past practices and procedures and by the number of situations in which this country has been involved where the President had to move. It may not have been a move in defense of the United States. President Eisenhower moved into Lebanon with marines. He did that without authorization of Congress. He got out in 2 weeks, which would have been within the 30 days provided in this bill, but by so doing we established a stable government in the area, in a situation which otherwise could have been a holocaust for the Middle East.

All I am saying is allow the President to retain his flexibility; do not constantly try to block him, so that the President, with all the intelligence information at his hands would subsequently have to find out whether or not he has been violating the law in taking action he thought necessary for the safety of the American people, or for allies, for that matter.

This world is too small for us to build a wall around ourselves and become a fortress America. This is one more step in that direction. We must not do it.

Here I am speaking as a conservative talking in favor of internationalism. Is that a new word for a conservative? I guess it is, but I feel deeply about this matter.

Unless we go forward with alliances with our allies around the world we are going to be pushed further and further into a corner until we will have to do something. That does not gain peace; it increases the dangers of real war. All I am doing here, to repeat again, and this will be my final statement on this matter, is to provide that:

Nothing in this Act shall be construed to limit any authority the President was authorized to exercise in implementation of the United Nations Charter or in any treaty ratified by the United States prior to date of enactment of this Act.

I cannot see any problem with the amendment and I hope it is agreed to.

Mr. JAVITS. Mr. President, I will just take 2 minutes.

Mr. SPONG. Mr. President, I yield 2 minutes to the Senator from New York.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. JAVITS. Mr. President, I take this time only to deal with the question of the Watkins reservation. If Senators will refer to the RECORD of the other day they will find on April 4, 1972, page 11481, a reference, and this is in the State Department memorandum, to the report of the Committee on Foreign Relations on the NATO Treaty. The Foreign Relations Committee report of the time states:

"The committee wishes to emphasize the fact that the protective clause 'in accordance with their respective constitutional processes' was placed in article 11 in order to leave no doubt that it applies not only to article 5, for example, but to every provision in the treaty. This safeguard is thus all-inclusive.

Obviously the Watkins reservation was rejected. We know the Watkins reservation might have required the renegotiation of the treaty. The committee made clear the power remained in Congress. We are locking that in at a time when we are setting a legislative framework in which this whole operation of going into an undeclared war—actions on the United States and its Armed Forces—shall be set. We say this should not be left open as the Dominick amendment would leave the matter open. The NATO Treaty is not automatic.

I hope the amendment is rejected.

Mr. SPONG. I am prepared to yield the remainder of our time.

Mr. DOMINICK. I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment. The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Indiana (Mr. BAYH), the Senator from North Carolina (Mr. ERVIN), the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Oklahoma (Mr. HARRIS), the Senator from Iowa (Mr. HUGHES), the Senator from Minnesota (Mr. HUMPHREY), the Senator from North Carolina (Mr. JORDAN), the Senator from Montana (Mr. MANSFIELD), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from South Dakota (Mr. MCGOVERN), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Montana (Mr. METCALF), the Senator from Maine (Mr. MUSKIE), the Senator from Rhode Island (Mr. PASTORE), the Senator from Alabama (Mr. SPARKMAN), and the Senator from New Jersey (Mr. WILLIAMS) are necessarily absent.

I also announce that the Senator from Connecticut (Mr. RIBICOFF) is absent because of a death in the family.

I further announce that, if present and voting, the Senator from North Carolina (Mr. JORDAN), the Senator from Rhode Island (Mr. PASTORE), and the Senator from Connecticut (Mr. RIBICOFF) would each vote "nay."

Mr. GRIFFIN. I announce that the Senator from Vermont (Mr. AIKEN), the Senator from Utah (Mr. BENNETT), the Senator from Nebraska (Mr. HRUSKA), and the Senator from Arizona (Mr. GOLDWATER) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Kentucky (Mr. COOPER) is detained on official business.

If present and voting, the Senator from Utah (Mr. BENNETT) would vote "yea."

The result was announced—yeas 24, nays 53, as follows:

[No. 146 Leg.]

YEAS—24

Allen	Curtis	Jackson
Allott	Dole	Jordan, Idaho
Baker	Dominick	McGee
Beall	Fannin	Miller
Bellmon	Fong	Smith
Brock	Griffin	Taft
Buckley	Gurney	Thurmond
Cotton	Hansen	Tower

NAYS—53

Anderson	Gambrell	Pell
Bentsen	Gravel	Percy
Bible	Hart	Proxmire
Boggs	Hartke	Randolph
Brooke	Hatfield	Roth
Burdick	Hollings	Saxbe
Byrd, Harry F., Jr.	Inouye	Schweiker
	Javits	Scott
Byrd, Robert C.	Kennedy	Spong
Cannon	Long	Stafford
Case	Magnuson	Stennis
Chiles	Mathias	Stevens
Church	Mondale	Stevenson
Cook	Montoya	Symington
Cranston	Moss	Talmadge
Eagleton	Nelson	Tunney
Eastland	Packwood	Weicker
Ellender	Pearson	Young

NOT VOTING—23

Aiken	Hruska	Metcalf
Bayh	Hughes	Mundt
Bennett	Humphrey	Muskie
Cooper	Jordan, N.C.	Pastore
Ervin	Mansfield	Ribicoff
Fulbright	McClellan	Sparkman
Goldwater	McGovern	Williams
Harris	McIntyre	

So Mr. DOMINICK's amendment was rejected.

Mr. JAVITS. I move to reconsider the vote by which the amendment was rejected.

Mr. SPONG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1105

Mr. McGEE. Mr. President, I call up my amendment No. 1105, and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk proceeded to read the amendment.

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

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

Mr. McGEE's amendment is as follows:

On page 13, line 5, strike out "This" and insert in lieu thereof "Sections 1 through 9 of this".

At the end of the bill, add the following new section:

"NATIONAL COMMISSION ON UNITED STATES FOREIGN POLICY, NATIONAL COMMITMENTS, AND WAR POWERS

"SEC. 10. (a) Since the world situation and relations between nations have vastly changed since our Founding Fathers drafted the Constitution in 1787, and since questions have arisen as to the respective constitutional powers of the executive and the legislative branches of our Government with respect to the formulation of United States foreign policy, national commitments, and war powers, it is essential that a comprehensive review of these questions be conducted by our best minds of diverse backgrounds and philosophies to determine whether, and to what extent, if any revisions are necessary in the Constitution, laws, and decisionmaking processes of the United States as they relate to formulation of United States foreign policy, national commitments, and the war powers. Accordingly, there is established a National Commission on United States Foreign Policy, National Commitments, and War Powers (hereafter referred to as the 'Commission'), which shall conduct such comprehensive review.

"(b)(1) The Commission shall be composed of the following twenty-four members:

"(A) Twelve members appointed by the President from private life;

"(B) Six members of the Senate appointed by the President of the Senate; and

"(C) Six members of the House of Representatives appointed by the Speaker of the House of Representatives.

Appointments to each class of membership under this paragraph shall be made on the basis of experience and knowledge in the areas of United States foreign policy, national commitments, and war powers, and on the basis of diversity of backgrounds and philosophies. Of each such class, one-half of the members shall be from each of the major political parties.

"(2) Twelve members of the Commission shall constitute a quorum. Any vacancies in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointments were made.

"(3) The President shall select a chairman of the Commission from among those members appointed under paragraph (1)(A) of this subsection.

"(4) Each member of the Commission appointed under paragraph (1)(A) of this subsection shall receive $100 a day (including traveltime) during which he is engaged in the actual performance of his duties as a member of the Commission. A member of the Commission appointed under paragraph (1) (B) or (C) of this subsection shall serve without additional compensation. All members of the Commission shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

"(c) The Commission shall submit a report on its review not later than two years after funds are first appropriated to carry out this section. Such report shall include findings and recommendations the Commission considers appropriate, including any proposed constitutional amendments, legislation, or administrative action. The Commission shall cease to exist thirty days after the submission of its report.

"(d)(1) The Commission is authorized to appoint and fix the compensation of such personnel as it deems advisable, without regard to those provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at rates not to exceed the maximum daily rate prescribed for GS–18 under section 5332 of that title.

"(2) The Commission may employ experts and consultants in accordance with section 3109 of title 5, United States Code.

"(e) The Commission or, on the authorization of the Commission, any subcommittee thereof, may for the purpose of carrying out the provisions of this section, hold such public hearings at such times and places as the Commission may deem advisable.

"(f) There are authorized to be appropriated such sums as may be necessary to carry out this section.".

Amend the title so as to read: "A bill to make rules governing the use of the Armed Forces of the United States in the absence of a declaration of war by the Congress, and to establish a National Commission on United States Foreign Policy, National Commitments, and War Powers.".

The PRESIDING OFFICER. How much time does the Senator from Wyoming yield himself?

Mr. McGEE. Mr. President, it appears I shall yield myself 4 or 5 minutes, and be prepared to yield back the remainder of my time so that we can get out of here.

Mr. SYMINGTON. Mr. President, a point of order.

The PRESIDING OFFICER. The Senator will state it.

Mr. SYMINGTON. What does the amendment say?

Mr. McGEE. I shall state for the Senator from Missouri what the amendment says in my 4 or 5 minutes. I was trying to be cooperative.

Mr. ROBERT C. BYRD. Mr. President, is it the intention of the distinguished Senator to ask for the yeas and nays?

Mr. McGEE. I ask for them. Maybe we can withdraw them later.

The yeas and nays were ordered.

Mr. McGEE. Mr. President, all this amendment does is accept the overwhelming——

Mr. STENNIS. Mr. President, may we have order?

The PRESIDING OFFICER (Mr. PROXMIRE). The Senate is not in order. The Senate will be in order.

The Senator from Wyoming may proceed.

Mr. McGEE. The Senator from Wyoming would say he is grateful for the disorder in the Senate; with this many bodies around him, he feels we are away ahead of the game.

But I do want to say all this amendment does is follow up the earlier proposal of the Senator from Maryland (Mr. BEALL) that, now that the will of the Senate has been overwhelmingly expressed again and again as to this war powers bill we have been voting on in several respects, what I would propose is a supplement to it, not to tamper with it in the least, but to set up a Presidential commission to follow through upon the Javits, Spong, and so forth bill, for it is my judgment, and I think the judgment of a good many, that we are still trying to change the mechanism, trying to update it, trying to make it as modern as we can in terms of warmaking powers and the responsibility for decisionmaking, and this proposal would create a Presidential commission made up of six Members of the Senate appointed equally from the two sides by the President of the Senate, six from the House on the same terms appointed by the Speaker of the House, and 12 public members appointed by the President, to be distributed over the spectrum of philosophy, expertise, and the like.

The purpose of the Commission, very frankly, is to have a look at where we are in the real world now, and what it is we ought to do in our system to keep us responsible and to keep the authority and the proper relationship across the board. This is simply saying what we should have done long, long ago: The times have changed since 1787. The Fathers could not have envisaged the kind of things we are faced with now, and that is why we are in this debate; that is why we are in this bind. The times have changed.

Look at the warmaking declaration itself under the Constitution. It is reserved to the Congress. Yet we find ourselves in a period of modern history, where wars, many believe, cannot be declared again because of nuclear capabilities, but they are nonetheless waged, and this is to update, to have a look at what these times require of us constitutionally, in statutory matters, in terms of decisionmaking, in the warmaking powers, which we believe ought to be examined in depth.

Very frankly, the pending measure has been an effort on the part of the members of the Committee on Foreign Relations, on which I also serve, to try to make sure that in the interim, nothing else can happen to involve us in reckless and irresponsible ways.

But I would submit to my colleagues that it is not going to happen that way, probably, the next time anyway. All of us have learned a great deal by what we have been through in the last 10 years, but there will be another kind of crisis, and we will be caught short again, because it will come up under different circumstances.

My position is that we look at that now, while we have this legislation before us that we are about to enact, and see which way we ought to be pointing toward, and the way we ought to be addressing ourselves to it.

That is all this amendment would do. It would add this on to the pending action of Congress. It in no way alters or substitutes for any of the aspects of the pending legislation.

It does specify that the group would serve for not more than 2 years, report back at the end of that time, and then go out of existence.

With that explanation, I am prepared to yield back the remainder of my time, if that is agreeable.

Mr. SPONG. Mr. President, I yield myself such time as I may require.

I rise in opposition to the amendment of the Senator from Wyoming. If we add his amendment to the bill, it would represent as an uncertain trumpet the finished work of the Senate on this legislation. Two years have lapsed from the time this legislation was introduced until the time when it will be voted upon tomorrow. The legislation, in my judgment, should go forth from this body, regardless of what fate awaits it on the other side of the Capitol, or at the hands of the President, on its own as the best collective thinking of the

Senate on the question of the war powers division of power between Congress and the President of the United States.

I respect the Senator from Wyoming, who has been consistent from the time of his dissent on the national commitments resolution and through this debate in his view that the world has changed so much that perhaps the Constitution of yesterday does not meet the requirements of today. Nevertheless, the proper course of action, in my judgment, would be that if a study is indicated in the future, it should be considered as separate legislation. Do not tie it on the end of this legislation, so that the House of Representatives or anyone else who views it can say, "Well, that is an uncertain body. They debated for almost 2 years, they studied for almost 2 years, they developed a hybrid bill out of five different approaches on the subject of war powers, and then, on the end of it, they said, 'But we better turn it over to a Presidential commission to study during the first 2 years of its enactment.' "

It is on this basis that I oppose the amendment, as we did the suggestion by the Senator from Maryland which was voted on, many hours ago, today.

I respect the thoughts of both these Senators that this very complex matter needs additional study. Perhaps it does. But to send this legislation forth now as a measure that would say, "This is what we have decided to do, but we better study it 2 more years," would indeed be an uncertain trumpet.

Mr. President, I yield to the Senator from New York such time as he may require.

Mr. JAVITS. Mr. President, I have no desire to say anything on this score. I think the Senator from Virginia has said it superbly well.

The Senator from Wyoming is a member of the Committee on Foreign Relations. Should the Senate see fit not to accept his amendment, I hope the Senator will introduce it as an affirmative bill.

The Senator from Virginia (Mr. SPONG), too, is a member of the Foreign Relations Committee, and there are others on the floor who are members of the committee. Such a measure would certainly have the most respectful and thorough consideration in the committee.

I might remind Senator MCGEE that in the current bill on the State Department authorization, Senator AIKEN and Senator FULBRIGHT have proposed a commission to consider the organization of the handling of our foreign affairs. Conceivably, these two might fit together.

I agree thoroughly with Senator SPONG that we should not try to attach it to this bill. But I would hope that no one would consider that any final prejudice to the idea which the Senator has proposed to us.

Mr. MCGEE. Mr. President, I yield myself 2 minutes to respond.

The reason why I believe it belongs here now is that I gather it is a rather widely held view that the proposed legislation is not the ultimate, that this was designed in the short run to meet the kind of crisis we may face next month, next year, or a year from now.

I once discussed with the distinguished Senator from New York the thought of a substitute for his bill through this procedure, and the objection was raised—and understandably—that this puts it off for another 2 years, that it is a delaying action. I am suggesting here that we not delay anything, that we support this measure, because it does cover the short run. I think most Senators here would be the last to suggest that it holds the ultimate of the answers on the question of facing future policy crisis decisions. We still have not caught up with the changing times. This amendment would only urge that we put this group at work right now, looking ahead, to make recommendations back. It, in turn, does not prejudice what we are doing here tonight. It seems to me that it strengthens it by saying to all who would listen to us that we want this done over the long range, the right way. We have waited too long as it is.

Thus, they go in tandem; and, traveling in tandem, I think it makes a much stronger case than to handle them first one and then, if luck has it, handle the other. I think they are quite inseparable in the dimensions of the overall problem.

Mr. SPONG. Mr. President, I yield to the Senator from Mississippi such time as he requires.

Mr. STENNIS. Mr. President, I think it has been clear all the way through that this bill is an attempt to bring Congress back into the picture for more direct exercise of its responsibility, just on the question of when the manpower resources of this Nation actually will be committed to war. The bill certainly makes some headway in that direction. It is not perfect. It seems to have the overwhelming support of this body, as a whole.

Anything the Senator from Wyoming proposes in this field certainly is worthy of the Senate's consideration, and certainly has mine. But I think that now, having inched forward somewhat in the single purpose of the bill, we would confuse the issue, and the interpretation would be that we did not know which we wanted to do.

I would favor this overall reconsideration or renegotiation of our commitments in the light of conditions as they exist now. I have said that many times here in arguing the procurement bill. But they are different matters.

The idea of the Senator from Wyoming deserves the fullest consideration of this body as a bill—the weighing of it, the careful wording of it, the consultation with the executive, and all the considerations that would go into an exhaustive review of all the matters that he mentions, not only the war powers but also the U.S. foreign policy and national commitments.

So I hope that at this late time the Senate will not mar the bill—if I may use that term—and its single purpose, but will save this idea for a separate consideration on its own merits.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. SPONG. Mr. President, I am prepared to yield back the remainder of the time of the opponents to the amendment.

Mr. ROBERT C. BYRD. Mr. President, will the Senator from Virginia reserve 1 minute of his time and yield to me?

Mr. SPONG. I yield to the Senator.

Mr. ROBERT C. BYRD. Mr. President, I take this time in order that we might foresee what remains ahead of the Senate tonight and tomorrow.

I ask whether any Senator has an amendment to offer which we are not aware of at the present time. I am aware of one more amendment by the distinguished Senator from Colorado (Mr. DOMINICK) and one amendment by the distinguished Senator from New York (Mr. BUCKLEY). Is there any other amendment? I see no indication of such.

Mr. President, this will be the last rollcall vote, therefore, today. The distinguished Senator from Colorado (Mr. DOMINICK) will call up his amendment tonight, and disposition of that amendment will occur tomorrow morning. Thereafter, a vote will occur on the amendment by Mr. BUCKLEY, and a final vote on the bill will occur at 1:30 p.m. tomorrow.

Mr. SPONG. I yield back the remainder of my time.

Mr. MCGEE. I yield back the remainder of my time.

The PRESIDING OFFICER. All time on the amendment has been yielded back.

The question is on agreeing to the amendment of the Senator from Wyoming. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Mississippi (Mr. EASTLAND), the Senator from North Carolina (Mr. ERVIN), the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Oklahoma (Mr. HARRIS), the Senator from Iowa (Mr. HUGHES), the Senator from Minnesota (Mr. HUMPHREY), the Senator from North Carolina (Mr. JORDAN), the Senator from Montana (Mr. MANSFIELD), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from South Dakota (Mr. MCGOVERN), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Montana (Mr. METCALF), the Senator from Maine (Mr. MUSKIE), the Senator from Rhode Island (Mr. PASTORE), the Senator from Alabama (Mr. SPARKMAN), and the Senator from New Jersey (Mr. WILLIAMS) are necessarily absent.

I also announce that the Senator from Connecticut (Mr. RIBICOFF) is absent because of death in the family.

I further announce that, if present and voting, the Senator from Rhode Island (Mr. PASTORE), the Senator from North Carolina (Mr. JORDAN), and the Senator from Connecticut (Mr. RIBICOFF) would each vote "nay."

Mr. GRIFFIN. I announce that the Senator from Arizona (Mr. GOLDWATER) is necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

Also, the Senator from Vermont (Mr. AIKEN), the Senator from Colorado (Mr. ALLOTT), the Senator from Nebraska (Mr.

HRUSKA), and the Senator from Utah (Mr. BENNETT) are necessarily absent.

If present and voting, the Senator from Utah (Mr. BENNETT) would vote "yea."

The result was announced—yeas 19, nays 57, as follows:

[No. 147 Leg.]

YEAS—19

Allen	Dominick	McGee
Beall	Fong	Miller
Bellmon	Gravel	Stevens
Buckley	Griffin	Thurmond
Byrd, Robert C.	Hansen	Tower
Cranston	Jackson	
Dole	Long	

NAYS—57

Anderson	Fannin	Percy
Baker	Gambrell	Proxmire
Bentsen	Gurney	Randolph
Bible	Hart	Roth
Boggs	Hartke	Saxbe
Brock	Hatfield	Schweiker
Brooke	Hollings	Scott
Burdick	Inouye	Smith
Byrd, Harry F., Jr.	Javits	Spong
	Jordan, Idaho	Stafford
Cannon	Kennedy	Stennis
Case	Magnuson	Stevenson
Chiles	Mathias	Symington
Church	Mondale	Taft
Cook	Montoya	Talmadge
Cooper	Moss	Tunney
Cotton	Nelson	Weicker
Curtis	Packwood	Young
Eagleton	Pearson	
Ellender	Pell	

NOT VOTING—24

Aiken	Harris	McIntyre
Allott	Hruska	Metcalf
Bayh	Hughes	Mundt
Bennett	Humphrey	Muskie
Eastland	Jordan, N.C.	Pastore
Ervin	Mansfield	Ribicoff
Fulbright	McClellan	Sparkman
Goldwater	McGovern	Williams

So Mr. MCGEE's amendment (No. 1105) was rejected.

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. SPONG. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1111

Mr. DOMINICK. Mr. President, I call up my amendment No. 1111 and ask that it be reported.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

On page 8, line 8, strike out "possessions," and insert in lieu thereof the following: "possessions; to take necessary and appropriate retaliatory actions in the event of such an attack;".

Mr. DOMINICK. Mr. President, I yield myself 3 minutes.

The PRESIDING OFFICER. The Senator from Colorado is recognized for 3 minutes.

Mr. DOMINICK. Mr. President, I yield to the Senator from West Virginia.

Mr. ROBERT C. BYRD. I thank the Senator for yielding.

UNANIMOUS-CONSENT AGREEMENT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that it may be in order to order the yeas and nays upon both the Buckley amendment and on the final passage of the bill with one show of hands.

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

Mr. ROBERT C. BYRD. I ask for the yeas and nays.

The PRESIDING OFFICER. The yeas and nays are ordered on both the Buckley amendment and the bill.

Mr. DOMINICK. Mr. President, is it my understanding that the amendment will remain the pending business and will be the pending business tomorrow morning?

The PRESIDING OFFICER. The Senator is correct.

Mr. DOMINICK. Mr. President, in the remaining time I will explain the amendment briefly. I hope the managers of the bill will accept the amendment. I think that there is a chance that they may. Hence I did not ask for the yeas and nays on the amendment now in case there is an acceptance of it tomorrow. The amendment, of course, is very brief. On page 8 under subsection 1, it gives the President the power not only to repel attacks on the United States but also to take retaliatory action. Under section 2 it provides that he has power to repel attacks against the Armed Forces of the United States located outside of the United States. But it says nothing about the power to take retaliatory action. I have simply inserted this in order to conform it so that in the same possessions, whether inside or outside, we have power to take retaliatory action.

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the distinguished Senator from Rhode Island (Mr. PELL) be recognized for not to exceed 5 minutes, with the time being charged to neither side. It is a matter of personal privilege.

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

PERSONAL STATEMENT BY SENATOR PELL

Mr. PELL. Mr. President, on Thursday, April 6, the junior Senator from Kansas (Mr. DOLE) was in the State which I am honored to represent here in the Senate. During his visit to Rhode Island he was quoted in the press as saying:

If you see your junior Senator, remind him we are in session this year.

I will readily confess that I try to spend as much time as possible in my home State. In doing so, however, I make great efforts, as I know most of my colleagues do, not to neglect official duties here in Washington.

In fact, I find upon examining the RECORD, that I have voted on 94.4 percent of all rollcall votes in this session of the Congress, a record that is well above the average for the Senate as a whole.

The record also shows that the junior Senator from Rhode Island has, in fact, missed fewer rollcall votes in this session of Congress than has the junior Senator from Kansas.

I would note further that while the junior Senator from Kansas was in Rhode Island to deliver allegations about me and my voting record, I was in Washington tending to my duties.

Mr. President, I expect a certain amount of rough and tumble in the politics of an election year. But, I also expect among my colleagues a respect for accuracy of the record, particularly when a colleague is visiting in my own State.

WAR POWERS ACT

The Senate continued with the consideration of the bill (S. 2956) to make rules governing the use of the Armed Forces of the United States in the absence of a declaration of war by the Congress.

The PRESIDING OFFICER. Who yields time?

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senator from New York (Mr. BUCKLEY) may be recognized without the time being charged to either side.

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

Mr. BUCKLEY. Mr. President, on tomorrow I will be calling up my amendment No. 1106.

I would like to take this occasion to outline its objective so that my colleagues may familiarize themselves with this matter before the debate on tomorrow as it relates to an area beyond that which is directly covered by the War Powers Act and also relates directly to that purpose.

The amendment which I will be calling up is designed to tie up a loose end which is not covered by the act. It is designed, in fact, to restore congressional control over an area where there is a potential delegation to the United Nations, the Security Council, of authority to deploy U.S. forces in combat.

Mr. President, to place this discussion in focus, it is necessary to quote from chapter 7 of the United Nations Charter, which chapter is entitled "Action With Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression."

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

Article 41 suggests peaceful means of enforcing peace such as economic sanctions and the rest.

Article 42 reads as follows, and it is germane to the subject matter of my amendment:

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

Other articles in this chapter provide for member states to enter into an agreement or agreements with the United Nations by which the size and numbers of forces and military facilities could be made available to the Security Council to utilize pursuant to the authority granted in this chapter.

In 1945, the Congress of the United States enacted what is called the United Nations Participation Act of 1945. Section 6 of the act reads as follows:

SEC. 6. The President is authorized to negotiate a special agreement or agreements with the Security Council which shall be subject to the approval of the Congress by appropriate Act or joint resolution, providing for the numbers and types of armed forces, their degree of readiness and general locations, and the nature of facilities and assistance, including rights of passage, to be made available to the Security Council on its call for the purpose of maintaining international peace and security in accordance with article 43 of said Charter.

In other words, this legislation authorizes the President to set up that standby machinery not addressed to any particular crisis, but one which would help to provide a body of military force, air, sea, and land, to be available to the Security Council for its peacekeeping mission.

The section then goes on to read:

The President shall not be deemed to require the authorization of the Congress to make available to the Security Council, on its call in order to take action under article 42 of said charter and pursuant to such special agreement or agreements, the Armed Forces, facilities, or assistance provided for therein.

In other words, after Congress has ratified or approved the agreement or agreements entered into by the President and the United Nations, from that moment forward the President and the Security Council may commit those forces to whatever action is approved by the Security Council without specific referral back to the Congress of the United States.

I suggest that this is a delegation of agreements which have not been negotiated before, which delegation flies in the face of the intent of the War Powers Act which is now the subject of debate. I feel this is a loophole which should be covered. I feel if we are not willing to have the President of the United States in his discretion exercise broad powers we certainly do not want a group of foreign nations to have the power which we are trying to recapture for this body. My amendment would modify the second sentence of section 6 to read as follows:

"The President shall be required to obtain the prior authorization of the Congress to make available to the Security Council on its call . . . the Armed Forces"

provided for in the agreement between the President and the United Nations.

Mr. President, this is enough description to outline the amendment I am going to offer tomorrow.

The PRESIDING OFFICER. Who yields time?

Mr. BUCKLEY. I understand the Senator from Virginia wishes to make comment on the amendment I am going to propose tomorrow.

The PRESIDING OFFICER. The Senator from Virginia is recognized.

Mr. HARRY F. BYRD, JR. Mr. President, I ask unanimous consent that I may speak without the time being charged to either side.

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

Mr. HARRY F. BYRD, JR. Mr. President, before commenting on the amendment offered by the distinguished junior Senator from New York, I want to say I strongly support the pending legislation, namely the War Powers Act. Throughout this debate and throughout the numerous rollcall votes which have taken place on proposed amendments I have voted against all amendments which have been presented. I have supported the bill as it was reported by the committee.

The purpose of the War Powers Act is to more clearly define and to tighten the responsibilities of the President and Congress insofar as sending U.S. forces into war is concerned. I support this proposal.

Now, we come to the amendment to be offered by the distinguished Senator from New York (Mr. BUCKLEY). It seems to me he has focused attention on a part of a law enacted in 1945 that should appropriately be considered by the Senate in connection with tightening the opportunities to send U.S. troops into combat.

Mr. President, I wish to read parts of Public Law 264, 79th Congress, chapter 583, first session, Senate 1580, an act to provide for the appointment of representatives of the United States in the organs and agencies of the United Nations and to make other provision with respect to the participation of the United States in such organization. I want to read section 6 of the United Nations Participation Act approved by Congress on December 20, 1945. I will read parts of this section for emphasis and then I shall ask unanimous consent that the entire section consisting of only two sentences be inserted in the RECORD.

Section 6 states:

The President is authorized to negotiate a special agreement . . . with the Security Council. . . .

and that agreement shall be subject to approval by Congress by appropriate act for joint resolution.

But the next sentence states that once an agreement is concluded, and I quote section 6 of United Nations Participation Act:

The President shall not be deemed to require the authorization of the Congress to make available to the Security Council . . . the armed forces, facilities, or assistance provided for therein.

Mr. President, I ask unanimous consent to have printed in the RECORD the two sentences of section 6 of the United Nations Participation Act to which I have referred.

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

Sec. 6. The President is authorized to negotiate a special agreement or agreements with the Security Council which shall be subject to the approval of the Congress by appropriate Act or joint resolution, providing for the numbers and types of armed forces, their degree of readiness and general locations, and the nature of facilities and assistance, including rights of passage, to be made available to the Security Council on its call for the purpose of maintaining international peace and security in accordance with article 43 of said Charter. The President shall not be deemed to require the authorization of the Congress to make available to the Security Council on its call in order to take action under article 42 of said Charter and pursuant to such special agreement or agreements, the armed forces, facilities, or assistance provided for therein:

Mr. HARRY F. BYRD, JR. Mr. President, a reading of section 6 of the United Nations Participation Act approved by Congress on December 20, 1945, shows that under certain conditions the President shall not be deemed to require authorization of Congress to make available to the Security Council the Armed Forces of the United States. What the Senator from New York seeks to do is simply to require prior congressional authorization for the deployment of U.S. forces under the United Nations command. He does that by adding at the end of the bill section 10 which states that the second sentence of section 6 of the United Nations Participation Act of 1945 is amended by striking out "not be deemed to require the" and insert in lieu thereof "be required to obtain the prior approval of the Congress."

This is an ideal time for the Senate to tackle this section of the United Nations Participation Act, because by tackling it in the way suggested by the Senator from New York it does precisely to the United Nations what the Senate is seeking to do to the President; namely, to require that before the Armed Forces of our country are put into use, that prior approval must be obtained from the Congress of the United States.

The President, under the pending legislation, can act in emergencies, but at the end of 30 days he must seek approval from Congress, but unless the United Nations Participation Act is changed the law will read that, insofar as the United Nations is concerned, under certain conditions the President and the United Nations may utilize U.S. troops without coming to Congress.

If we are going to tighten—and I think we should—the potential use of American troops by the President of the United States, then I do not see how we can justify not tightening the use of American troops by the United Nations.

I think that sentence—it is only a brief sentence—in section 6 of the United Nations Participation Act—and I will read it again—"The President shall not be deemed to require the authorization of the Congress to make available to the Security Council * * * the Armed Forces" of the United States, is a sentence which should be tackled now. This is the time to tackle that problem and to remove that wordage from the United Nations Participation Act.

As a matter of fact, if we are not willing to do that, it seems to me it negates to a considerable extent the importance of the pending War Powers Act, which I strongly support. I think it is important legislation. I think it is important that it be passed.

I would hope that Senators who are sponsoring this bill would take a very careful look at the language of section 6 of the United Nations Participation Act, and in so doing I would be hopeful that they would support the amendment of-

fered by the distinguished Senator from New York.

I realize that there are many in this Chamber who feel that the United Nations are sacrosanct. They do not want any word raised against the United Nations. They do not want any word said or any act done that would in any way reduce the authority and the power of the United Nations. Well, if we are going to seek to circumscribe in an appropriate way the power of the President of the United States in regard to the use of the Armed Forces, then it seems to me we are not only justified in applying, but obligated to apply, that same principle to the authority which is contained in this statute permitting the United Nations and the President together to utilize the Armed Forces without congressional consent.

I want to say, since I have mentioned the United Nations in a little stronger way than I had expected to, that I came back from the Pacific, from Okinawa, on the day the United Nations was born, or in the same month the United Nations was born. I came back through San Francisco when the world leaders were meeting there to set up the United Nations, and I felt at that time that it was a very important world organization and it was one which would make it unnecessary for people like myself, in the years to come, to go overseas to fight the battles for the United States and citizens of other countries of the world to do the same thing.

So I have been a strong supporter of the United Nations down through the years. I think it is an important organization. That does not mean that I am willing to turn over to that organization vast authority over American troops. It does not mean that I am willing to overlook the great shortcomings of that organization that have developed through the years. I do not think the United Nations is perfect, but I think it is a desirable organization to have, and I support it. But I do not like to see in the American statutes language which states—and I will read it again—"Section 6. The President shall not be deemed to require the authorization of the Congress to make available to the Security Council * * * the armed forces * * *" of the United States.

I hope the Congress, in considering the War Powers Act, which consideration up to this point has been directed entirely at the powers of the President, will also consider the power which was given to the United Nations by the Congress some 26 years ago.

Some persons will say that, since the Congress approved the establishment of the United Nations, adopted the Participation Act of 1945, we should not attempt to change it now. But, Mr. President, I am convinced that if the United Nations Participation Act were to come before the Senate today in its original form as it did in 1945, the Senate would never approve such language as is contained in section 6. Times have changed. The attitude of Congress has changed. The attitude of the American people has changed. The very fact that we are considering the War Powers Act in 1972 makes clear that there has been such a change in attitude. I do not think any such act as this would have been approved by the Senate or by the House of Representatives 10 years or 5 years ago.

So times have changed. And if we are going to do the job that needs to be done—and I think the War Powers Act is good legislation; I emphasize again I have voted against every single amendment that has been proposed to it, because I favor this proposal—I think we should consider tackling one very important area, and that is the power that Congress in previous years granted to the United Nations.

For that reason, I support the proposal introduced by the distinguished Senator from New York (Mr. BUCKLEY). I think he has brought to the Senate's attention what he calls—and I agree with him—a loophole in the pending legislation. So, Mr. President, I end by saying that, if we are going to tackle the problem and the question of congressional authority over the use of the Armed Forces of the United States, then we should at the same time tackle this language in the United Nations Participation Act which says—and I quote again:

> Section 6. The President shall not be deemed to require the authorization of the Congress to make available to the Security Council on its call in order to take action under article 42 of such Charter and pursuant to such special agreement or agreements the armed forces, facilities, or assistance provided for therein.

The amendment of the Senator from New York (Mr. BUCKLEY) would simply require prior congressional authorization for use of U.S. forces under United Nations command. That certainly seems to me to be a logical amendment and one which, if we are going to do a thorough job insofar as war powers are concerned and the use of American troops are concerned, should be approved by the Senate.

The PRESIDING OFFICER. Who yields time?

Mr. COTTON. Mr. President, I ask unanimous consent that I may be permitted to proceed very briefly without the time being taken from either side.

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

Mr. COTTON. Mr. President, the hour is late, and I shall be very brief indeed, but I am compelled to say a few words in connection with this amendment which is offered by the Senator from New York. I am compelled to say a few words, because it is somewhat of a coincidence that my good friend from Virginia, with whom I almost always agree, but with whom I disagree at this time, as a friend of this bill and one who is supporting it, favors the Buckley amendment; and I, who am not a friend of the bill and do not intend to support it, and have voted consistently to amend it and will vote against it, join him in favoring the amendment offered by the Senator from New York.

I think the Senator from New York has rendered a distinguished service to the Senate and to the country by offering this amendment; and if we must have the passage of this bill, it would be highly fitting that the amendment should be a part of it.

But even if the bill should not pass—I expect it will, as indicated by the voting so far—or even if it should not survive the House and become law, I still think that the amendment offered by the Senator from New York should be offered as a separate measure, and be acted upon.

I shall not take the time of the Senate to go into any great discussion of the merits of the bill before us. I simply want to say that I have in mind three very valid experiences in my life which I wish to share with the Senate.

I have served as a Member of Congress a little more than a quarter of a century. When I was a freshman Member of the House of Representatives, I remember vividly being a guest in a private home in New Hampshire, and among the other distinguished guests—a group of Republicans who had been gathered from the countryside; we were approaching then, as we have since then, a New Hampshire presidential primary—the late Wendell Willkie was in a sense the guest of honor at that home, but by happenstance former President Herbert Hoover was also there.

I remember sitting in the living room with about 35 of the party leaders of the State when this matter of the Presidential powers as Commander in Chief was discussed, and I remember very vividly what Herbert Hoover said about it.

He said, "There always has been and there always will be, inevitably, a twilight zone under the Constitution as to just how far in his warmaking powers the President of the United States, in his capacity as Commander in Chief of the Armed Forces, may go and," he added, "how long." And he said, "It must be so, because, while most Presidents would not take the terrific responsibility and the burden of leading this country into war without the formal sanction of the Congress, nevertheless, as world relations grow more complex and as the fearful weapons of war become more horrendous, the President of the United States must, in my opinion," said ex-President Hoover "have reposed in him the authority for instant action in an hour of crisis. It might be abused sometimes, but the President of the United States is the man in whom the Republic has placed its confidence, and that twilight zone must remain." And he added, "In my opinion, there is no way to bridge it."

That is the first reason why I oppose this bill. Then I remember two other incidents which will not take me but a moment to relate.

As a Member of the House of Representatives, I remember when President Truman formally advised the Congress of his intention of sending troops into Korea, and instantly—instantly—he received the almost unanimous approval of the House of Representatives and the Senate.

Then I remember as a Senator—and remember with keen regret, I must confess, and some feelings of humiliation and shame, because it is a vote that I regret—when President Johnson called on us for approval of sending troops into Vietnam.

We could all read. We could all read that resolution. In plain English, it au-

thorized him to take such steps as he saw fit. So there is no excuse to say that there were only two votes against it, and all the rest of us proceeded on the assumption, on which I proceeded, that he had no intention of starting a ground war in the morasses of Asia. The point is that he received the approval of the Senate with only two dissenting votes, and the unanimous approval of the House of Representatives, which is certainly tantamount to reminding us that whenever a President feels it necessary to use American Armed Forces in what he considers an emergency—something more than simply sending the Marines in to bring some Americans out of a dangerous spot in another country—something of significance, usually the circumstances surrounding it are such that a wave of patriotism sweeps over everyone, and my experience does not encourage me to believe that if we pass this war powers bill, we can expect any more careful or considered, accurate decision on the part of Congress than we can on the part of the Executive.

So I have opposed and shall oppose this war powers bill. But the point raised by the distinguished Senator from New York is, in my opinion, of great merit. And it is an interesting thing to recall that when President Roosevelt led this country into the United Nations—and he did so properly, and I honor him for it—it is a point of interest to remember that on the issue of who would sit on the Security Council, he thought he was accomplishing a certain purpose in seeing to it that the four other nations that would sit with us on the Security Council were nations that each owed us a debt of gratitude—Britain, France, Russia, and China. We had just finished pouring out our blood and our treasure, fighting by their side to save them; and he believed, and I think with justification, that all four of them should have, and perhaps did have, with the possible exception of the Soviet Union, a deep sense of gratitude. But the years have gone on, and nations change, as men change; and I am not speaking in a hostile way of these countries. But the years have gone on, and we have come to the point where those nations which were placed in a position to veto and a position of power in the United Nations have long since forgotten, to a large degree, the sacrifices that this Nation has made for each of them. The makeup of the General Assembly has changed until many countries, emerging countries, countries for whom we have the best wishes in the world, but who have not been in being long enough to develop keen and careful and balanced statesmanship, have entered the United Nations with exactly the same power of a vote as the United States of America, which paid such a high price to form that organization.

I sat in my living room and watched on television the demonstration that followed the vote on the China question that humiliated our country. I saw delegates springing to their feet and jumping up and down and cheering, because they had succeeded in slapping the face of and striking a blow at a nation that has never once—at least, since the Mexican War—sought to conquer territory or wage war or engage in diplomacy for its own selfish ends, but has made more sacrifices in the interests of peace and in the interests of the brotherhood of the nations of this world than any other nation in all the history of this world.

I promised myself that I would never let the anger that I felt that night—frankly, I was so enraged that it seemed to me I did not close my eyes until 2 o'clock in the morning—affect in any way a position I would take on any question as long as I am permitted to remain in the Senate.

So I, too, have no purpose in saying anything to hurt the influence of the United Nations. We must maintain our position within its ranks. It is a forum in this world in which we cannot afford to be silent and not be represented. We must bear at least our fair and just share of its expense.

But one thing is certain: The time has come when Congress should revoke that surrender of power to permit any President of the United States—I do not care who he is—from pledging this Nation to join the United Nations in such action as they determine to take without the prior approval of Congress. That is one safeguard that is vital.

I am glad, if this war powers bill is to pass, that the Senator from New York has offered this amendment. I shall support it. If by any chance this war powers bill should fail somewhere along the line, before it passes both Houses and is approved by the President, I hope the Senator from New York will offer his amendment as a separate bill or resolution, and it will be my privilege and pleasure to support it.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that Senators may speak during the remainder of today's session without the time being charged against either side.

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

Mr. BUCKLEY. Mr. President, I just want to express my gratitude to the Senator from Virginia and the Senator from New Hampshire for their eloquent words in support of my amendment. I hope that the sponsors of the bill may see fit to accept it. We will be back here tomorrow to argue its merits.

ORDER FOR PRINTING OF CLEAN COPY OF BILL

Mr. SPONG. Mr. President, I ask unanimous consent that a clean copy of S. 2956 be printed overnight to reflect the perfecting amendments adopted heretofore by the Senate, in order that this copy might be available on the desk of each Senator tomorrow, before final passage.

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

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that today, April 12, 1972, he presented to the President of the United States the following enrolled bill:

S. 3054. An act to amend the Manpower Development and Training Act of 1962.

ADDITIONAL COSPONSORS OF BILLS

S. 3409

At the request of Mr. GRAVEL, the Senator from Maine (Mr. MUSKIE), the Senator from Oklahoma (Mr. HARRIS), the Senator from New Jersey (Mr. WILLIAMS), the Senator from Michigan (Mr. HART), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Indiana (Mr. BAYH) and the Senator from Minnesota (Mr. HUMPHREY) were added as cosponsors of S. 3409, a bill to provide for the cessation of bombing in Indochina and for the withdrawal of U.S. military personnel from the Republic of Vietnam, Cambodia, and Laos.

S. 3442

At the request of Mr. KENNEDY, the Senator from Colorado (Mr. DOMINICK) was added as a cosponsor of S. 3442, the Communicable Disease Control Amendments of 1972.

AUTHORIZATION FOR THE COMMITTEE ON COMMERCE TO FILE ITS REPORT, WITH INDIVIDUAL AND MINORITY VIEWS, ON S. 3419 PRIOR TO MIDNIGHT ON THURSDAY, APRIL 13, 1972

Mr. ROBERT C. BYRD. Mr. President, on behalf of the Senator from Washington (Mr. MAGNUSON), I ask that the Committee on Commerce be given permission to file its report on S. 3419, a bill to protect consumers against unreasonable risk of injury from hazardous products, and for other purposes, together with individual and minority views, at any time prior to midnight on Thursday, April 13, 1972.

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

ORDER FOR RECESS UNTIL 11 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 11 o'clock tomorrow morning.

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

EXPLANATION FOR LATE SESSION

Mr. ROBERT C. BYRD. Mr. President, I want to express my appreciation to all Senators and to explain the reasons for such a late session today.

It was close to 3 p.m. today when the agreement was finally reached to provide for final disposition of this bill at 1:30 p.m. tomorrow. At the time, there were at least seven amendments, three of which would require 2 hours each, four of which would require 1 hour each, making a total of seven amendments and a total of 10 hours, if all time should be required, for the handling of those amendments.

A Democratic caucus previously had been scheduled to convene tomorrow at 10 a.m. This made it impossible to con-

vene the Senate earlier than 11 a.m. tomorrow. Consequently, in order to dispose of this number of amendments, with the hours required for each, before a final vote on the disposition of the bill tomorrow at 1:30 p.m., it was necessary to go into the evening hours today.

I might say, in further explanation, that objections had been placed to any vote on final disposition of this bill later than 2 p.m. tomorrow in one instance, and 1:30 p.m. tomorrow in a second instance.

However, in view of the agreement which was reached providing for final passage of the war powers bill tomorrow, and considering the current state of the calendar, the Senate either will not be in session on Friday, or, if in session, no business, except possibly noncontroversial business which can be handled by unanimous consent, will be transacted.

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the program for tomorrow is as follows:

The Senate will convene at 11 a.m., following a recess.

There will be no period for the transaction of routine morning business in the early hours of tomorrow. Immediately, following the prayer, and any remarks by the two leaders, the Senate will resume its consideration of the pending amendment by the Senator from Colorado (Mr. DOMINICK) on which there is a time agreement of 1 hour.

Following the disposition of that amendment, the Senate will then proceed to the final amendment, the amendment of the Senator from New York (Mr. BUCKLEY), on which there is an agreement for 2 hours of time.

The yeas and nays have already been ordered on the amendment of the Senator from New York (Mr. BUCKLEY).

The yeas and nays have also been ordered on the passage of the bill.

The bill will be voted on tomorrow at 1:30 p.m.

It has been indicated by the able authors of the two remaining amendments, by the able manager of the bill, and by the able ranking minority member on the committee, that time will be yielded back at certain points so as to assure the disposition of the two remaining amendments and also to conform with the required vote on final passage of the bill at 1:30 p.m. tomorrow.

RECESS TO 11 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in recess until 11 a.m. tomorrow.

The motion was agreed to; and at 9 p.m. the Senate recessed until tomorrow, April 13, 1972, at 11 a.m.

NOMINATIONS

Executive nominations received by the Senate April 12, 1972:

DEPARTMENT OF STATE

Curtis W. Tarr, of Virginia, to be Under Secretary of State for Coordinating Security Assistance Programs (new position).

Joseph S. Farland, of West Virginia, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Iran.

DEPARTMENT OF THE TREASURY

Lee H. Henkel, Jr., of Georgia, to be an Assistant General Counsel in the Department of the Treasury (Chief Counsel for the Internal Revenue Service), vice K. Martin Worthy, resigned.

FEDERAL COMMUNICATIONS COMMISSION

Benjamin L. Hooks, of Tennessee, to be a member of the Federal Communications Commission for a term of 7 years from July 1, 1972, vice Robert T. Bartley, term expiring.

CONFIRMATIONS

Executive nominations confirmed by the Senate April 12, 1972:

SPECIAL ACTION OFFICE FOR DRUG ABUSE PREVENTION

Dr. Jerome H. Jaffe, of Virginia, to be Director of the Special Action Office for Drug Abuse Prevention.

Paul Louis Perito, of Massachusetts, to be Deputy Director of the Special Action Office for Drug Abuse Prevention.

EXTENSIONS OF REMARKS

OFFSHORE OIL RESOLUTIONS

HON. MICHAEL HARRINGTON

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, April 11, 1972

Mr. HARRINGTON. Mr. Speaker, there is a growing concern in New England and particularly in Massachusetts about the dangers posed by the proposed oil drilling off the New England coast.

I and several other Members of Congress from New England have consistently opposed this proposed offshore drilling, and have introduced legislation on the subject. We have also made known our views in meetings and communication with officials of the Nixon administration, particularly Secretary Rogers Morton of the Interior Department.

As an indication of the strong public opposition to offshore drilling in the North Atlantic, I insert into the CONGRESSIONAL RECORD resolutions of opposition from six municipal governments in my own congressional district. I would ask that these resolutions from Gloucester, Swampscott, Rockport, Salem, Beverly, and Essex be printed in the RECORD.

I applaud the efforts of these municipal governments in their efforts to block offshore drilling in the North Atlantic. I hope that the inclusion of these resolutions in the RECORD will result in just this action.

The resolutions follow:

CITY OF GLOUCESTER,
Gloucester, Mass., March 24, 1972.

Congressman MICHAEL J. HARRINGTON,
Cannon Building,
Washington, D.C.

DEAR SIR: The Gloucester City Council at its regular meeting held on January 20, 1972, voted unanimously to adopt the following order:

Ordered, that the Gloucester City Council respectfully petition Governor Sargent, Senators Brooke and Kennedy and Representative Harrington to vigorously oppose any legislation that would permit the drilling for oil off the New England Coast.

Yours very truly,
FRED J. KYROUZ, *City Clerk.*

TOWN OF SWAMPSCOTT,
Swampscott, Mass., March 8, 1972.

Mr. MIKE MILLER,
c/o Congressman Michael J. Harrington,
Cannon House Office Building,
Washington, D.C.:

The Swampscott Board of Selectmen, at its meeting held February 3, 1972, voted unanimously to respectfully petition Governor Sargent, Senators Brooke and Kennedy and Representative Harrington to vigorously oppose any legislation that would permit the drilling for oil off the New England Coast.

Yours very truly,
JOSEPH C. SINATRA, *Secretary.*

CITY OF SALEM, MASS.,
March 3, 1972.

Congressman MICHAEL J. HARRINGTON,
Cannon House Office Building,
Washington, D.C.

DEAR SIR: At a regular meeting of the Salem City Council held in the Council Chamber on Thursday, February 24, 1972, it was voted to oppose any legislation that would permit the drilling for oil off the New England Coast.

This action was approved by Mayor Samuel E. Zoll on March 2nd.

Very truly yours,
AUGUSTINE J. TOOMEY, *City Clerk.*

TOWN OF ROCKPORT, MASS.,
March 13, 1972.

Hon. MICHAEL J. HARRINGTON,
House Chamber,
Washington, D.C.

DEAR CONGRESSMAN HARRINGTON: The Rockport Board of Selectmen voted unanimously in favor of being recorded as opposed to any legislation that would permit drilling for oil off the New England coast. Your support would be appreciated.

Very truly yours,
NICOLA A. BARLETTA,
Chairman.

CITY OF BEVERLY,
February 22, 1972.

Ordered: That the Beverly Board of Aldermen respectfully petition Governor Sargent, Senators Brooke and Kennedy and Representative Harrington to vigorously oppose any legislation that would permit the drilling for oil off the New England Coast.

A true copy,
Attest:
JOHN L. COUHAG,
City Clerk.

TOWN HALL,
Essex, Mass., February 28, 1972.

Representative MICHAEL HARRINGTON,
Cannon House Office Building,
Washington, D.C.

DEAR MIKE: This is to advise you that at a regular meeting of the Board of Selectmen