H.R. 14361. A bill to provide military assistance to Israel in order to assist in the resettlement of Russian refugees; to the Committee on Foreign Affairs.

By Mr. WYATT:

H.R. 14362. A bill to amend the Tariff Schedules of the United States in order to increase the duty on shelled filberts; to the Committee on Ways and Means.

By Mr. WYMAN:

H.R. 14363. A bill to amend the Federal Food, Drug, and Cosmetic Act to include a definition of food supplements, and for other purposes; to the Committee on Interstate and Foreign Commerce.

By Mr. YOUNG of Florida:

H.R. 14364. A bill to amend chapter 15 of title 38, United States Code, to provide for the payment of pensions to World War I veterans and their widows, subject to $3,000 and $4,200 annual income limitations; to provide for such veterans a certain priority in entitlement to hospitalization and medical care, and for other purposes; to the Committee on Veterans' Affairs.

By Mr. ZABLOCKI:

H.R. 14365. A bill to require that international agreements other than treaties, hereafter entered into by the United States, be transmitted to the Congress within 60 days after the execution thereof; to the Committee on Foreign Affairs.

By Mr. CEDERBERG:

H.J. Res. 1160. 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. MAZZOLI:

H.J. Res. 1161. 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. CAREY of New York (for himself, Mr. CELLER, and Mr. STRATTON):

H. Res. 925. Resolution calling for peace in Northern Ireland and the establishment of a united Ireland; to the Committee on Foreign Affairs.

PRIVATE BILLS AND RESOLUTIONS

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

By Mr. BURKE of Massachusetts:

H.R. 14366. A bill for the relief of Chrissa K. Kouthouridou; to the Committee on the Judiciary.

By Mrs. HICKS of Massachusetts:

H.R. 14367. A bill for the relief of Tin Kwan; to the Committee on the Judiciary.

By Mr. WRIGHT:

H.R. 14368. A bill for the relief of the AIRCO Cryoplants Corp. (formerly AIRCO/BOC Cryogenic Plants Corp.), a subsidiary of AIRCO, Inc.; to the Committee on the Judiciary.

SENATE—*Thursday, April 13, 1972*

(Legislative day of Wednesday, April 12, 1972)

The Senate met at 11 a.m., on the expiration of the recess, and was called to order by Hon. ADLAI E. STEVENSON III, a Senator from the State of Illinois.

PRAYER

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

O God, be near to all who serve this Nation in this place. In their labors strengthen them, in weariness renew them, in discouragement hearten them, in monotony refresh them, and in all their efforts inspire them. Give them the inner compensation of lives lived in public service and the peace which comes from doing their best. Be in their homes to make them sanctuaries of love. Be especially with those who mourn this day, that they may be comforted by Thy continual presence.

We pray in Thy holy name. 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 13, 1972.

To the Senate:

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

ALLEN J. ELLENDER,
President pro tempore.

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

ORDER OF BUSINESS

Mr. DOMINICK. Mr. President, a parliamentary inquiry.

The ACTING PRESIDENT pro tempore. The Senator will suspend to receive a message from the House of Representatives.

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 joint resolution (S.J. Res. 169) to pay tribute to law enforcement officers of this country on Law Day, May 1, 1972, with an amendment, in which it requested the concurrence of the Senate.

The message also announced that the House had passed the following bill and joint resolution, in which it requested the concurrence of the Senate:

H.R. 13336. An act to amend the Arms Control and Disarmament Act, as amended, in order to extend the authorization for appropriations; and

H.J. Res. 1029. Joint resolution to authorize the President to issue a proclamation designating the month of May of 1972 as "National Arthritis Month."

HOUSE BILL AND JOINT RESOLUTION REFERRED

The following bill and joint resolution were each read twice by their titles and referred, as indicated:

H.R. 13336. An act to amend the Arms Control and Disarmament Act, as amended, in order to extend the authorization for appropriations; to the Committee on Foreign Relations.

H.J. Res. 1029. Joint resolution to authorize the President to issue a proclamation designating the month of May of 1972 as "National Arthritis Month"; to the Committee on the Judiciary.

ORDER OF BUSINESS

Mr. DOMINICK. Mr. President, a parliamentary inquiry.

The ACTING PRESIDENT pro tempore. The Senator from Colorado will state it.

Mr. DOMINICK. What is the pending business, and is there any other business that should come before it?

The ACTING PRESIDENT pro tempore. The Senate recessed last night until today, so it is in the same legislative day. The Journal will first be approved, then the Chair will proceed to ask whether the leadership desires recognition, and then the Senate will proceed with the unfinished business.

Mr. DOMINICK. I thank the Chair.

THE JOURNAL

Mr. SPONG. Mr. President, I ask unanimous consent that the Journal of the proceedings of Wednesday, April 12, 1972, be approved.

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

COMMITTEE MEETINGS DURING SENATE SESSION

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

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

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Does the acting minority leader seek recognition?

Mr. GRIFFIN. No, Mr. President, I do not.

WAR POWERS ACT

The ACTING PRESIDENT pro tempore. The Chair now lays before the Senate the unfinished business which the clerk will state.

The legislative clerk read as follows:

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 continued with the consideration of the bill.

The PRESIDING OFFICER (Mr. SAXBE). The pending question is on agreeing to the amendment of the Senator from Colorado (Mr. DOMINICK).

Who yields time?

Mr. JAVITS. Mr. President——

Mr. SPONG. Mr. President, I yield such time to the Senator from New York as he may need.

Mr. JAVITS. Mr. President, may we have the time division stated by the Chair, please?

The PRESIDING OFFICER. The Senator from Virginia (Mr. SPONG) has 20 minutes remaining, and the Senator from Colorado has 27 minutes remaining.

Mr. JAVITS. I thank the Chair. The Senator from Colorado is now in the Chamber. I was just holding the floor until he got here.

Mr. DOMINICK. I thank the Senator from New York very much. I had to step out.

Mr. President, I now yield myself 10 minutes.

The PRESIDING OFFICER. The Senator from Colorado is recognized for 10 minutes.

Mr. DOMINICK. Mr. President, the purpose of this amendment to the War Powers Act is really quite simple. We have been debating for a long period of time as to what the various sections of the bill meant. The section that I am concentrating on at the moment is section 3, subsection (2), on page 8 of the proposed legislation.

In order to make this clear, I believe that I should point out that the opening phrase of section 3 is important. It states:

> 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—

Only—the word "only" is extremely important there.

Then it goes on to state various instances where the proponents of the bill think this should be allowed.

Under subsection (1), it states—

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

Now, subsection (2), to which I have addressed my amendment, reads as follows:

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

Mr. President, you will notice that there is a formidable distinction between subsection 1 and subsection 2, in that it totally leaves out in subsection 2 the phraseology "to take necessary and appropriate retaliatory actions in the event of such an attack."

Those of us who are lawyers well know that if we put a phrase in of that kind, such as is in subsection 1, where we are talking about an attack upon the United States, and leave it out when we are talking about an attack on our troops when they are overseas, we have done so deliberately and, therefore, it is clear the Commander in Chief—namely, the President of the United States—is prohibited from retaliating in the event of an attack on our forces. All he can do is to repel it.

Mr. President, let me give you an example which I think would be of interest to this group.

Let us take the 6th Fleet in the Mediterranean. As we all know, Egypt and a group of other Arab States are now in possession of Soviet bombers and they have been overflying our fleet on a number of occasions, since the Mediterranean has been the subject of conflict. So that there is, obviously, an imminent danger of hostilities in those places.

Let us suppose that they attack the 6th Fleet. It is my understanding, under this legislation—and I regret that it is my understanding—that we would be permitted only to shoot down the Egyptian aircraft or we would be permitted to fend off the bombs by evasive action in some way—but namely, only to repel the attack. However, there is nothing which would permit us to attack the airfields from which the aircraft rose in order to prevent future attacks. In other words, retaliatory action would be prohibited.

Let us take another example which I think is perhaps reasonably fundamental.

Let us suppose that our troops located in Germany, were subject to attack by some of the Warsaw Pact nations. We would be permitted in that situation to repel the attack, but we would not be permitted to take any retaliatory action against the forces who had made the attack.

History shows that where we put Armed Forces either behind a maginot line or behind a line drawn in the United States and, thereby, withdraw any forward bases of any kind, we open ourselves to a great deal of punishment, if not defeat.

I cannot see the rationale of having troops overseas and then say to those troops, "OK, fellows. If you are here, you may only repel an attack against you. But you cannot retaliate, you cannot do anything against an enemy who has attacked you by a mortar attack, by an aircraft attack, or by a sapper attack, or any other conventional mechanisms of war."

I do not know why this is so. However, I suspect it stems from the Tonkin Gulf resolution. I would suspect that when we passed that measure which gave a President the authority to take any action he thought necessary in order to repel an attack or retaliate on the attacker, that we now see that he used, among other mechanisms, the introduction of over 500,000 of our own forces in Vietnam. I am sure that most Senators did not have that in mind when they passed the Tonkin Gulf resolution. Certainly I did not. However, I do not think that is justification for us to say that anywhere in the world where we have troops stationed, they do not have the authority to retaliate. We should not hamstring our Armed Forces.

This is not part of the situation where we can say, "You can do it, but you have to come back and ask Congress for permission within 30 days." By the omission of the retaliatory phrase, there is an automatic exclusion of that right.

All I am suggesting is a provision to give the Armed Forces of the United States overseas the same right as forces stationed in the United States. If our forces have the right to retaliate against them within the United States, why should they not have the same right overseas? Is an attack on U.S. forces outside the United States any less serious, because it occurs beyond our borders?

What, for example, are we going to do at Guantanamo Bay? Suppose that Guantanamo, which is completely surrounded by a hostile area, is attacked. Are we going to say, "The limit of your defensive actions is restricted. You cannot retaliate unless Congress authorizes such action"? It seems to me that this is wrong.

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

Mr. DOMINICK. I am pleased to yield to the Senator from Kentucky.

Mr. COOPER. Mr. President, I support the Senator's amendment for the reasons I shall submit. I support the war powers bill, as I believe I correctly state, with the exceptions I shall note, the powers of the President and the Congress.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. DOMINICK. Mr. President, I yield myself 4 additional minutes.

The PRESIDING OFFICER. The Senator is recognized for an additional 4 minutes.

Mr. COOPER. Mr. President, I have disagreed, as the Senator knows, with the original 30-day provision, because if the President acts within the Constitution on the first day, and if the same circumstances exist on the 30th day, he is still acting constitutionally. I disagree further with the language of the bill which the Senator from Colorado amendment would change. I disagree with the section which denies the President the right of retaliation. If he has the constitutional power to retaliate, to protect our forces and to prevent further attacks of aggression in our own land, of course, he has the same right in similar situations outside our country.

Retaliation in its proper sense does not mean going to war. It is a warning that the aggressors attacks should be stopped. This is an amendment that I support.

Mr. DOMINICK. I sincerely thank the Senator for his support. I hope that I can get his support of this amendment widely known around the Senate. I think it is extremely important when we get to a vote. Unfortunately, we do not have enough people on the floor at the moment to be able to get the yeas and nays. I will most certainly ask for them at the appropriate time.

Just continuing for a short period of time about the situation with regard to NATO, which I think is extremely interesting in the light of the explanation I have made today. For example, on the

NATO contingency plans which specify what our troops are permitted to do in the event of attack, our Armed Forces would be unable to take the initiative as regards their own defense which should allow them to retaliate as required. Suppose for example that an attack should come out of Bulgaria, to take a country out of the blue, especially if that attack were supported by Rumanian troops. Would we then be prohibited from doing anything by way of tactical maneuver to circle around them, whether it be through Germany or Czechoslovakia? I do not know. And my guess is that no one else knows.

My own opinion would be that this proposition in the event of an attack would be ignored. However, the fact that it might be ignored is no excuse for writing into a law a situation which would require the President to ignore it.

That is why I offered the amendment, not because I want to see us pass a point resolution and then have someone use it as an excuse to put 500,000 troops somewhere, such as in Vietnam.

Mr. President, I reserve the remainder of my time.

Mr. SPONG. Mr. President, I yield such time as he may require to the Senator from New York.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. JAVITS. Mr. President, the sponsors of this resolution have given most earnest consideration to the amendment. It will be recalled that I said last night that we wanted to look at it very carefully. And the view expressed by my friend, the Senator from Kentucky, certainly bears out my feeling on that score.

Having considered it very carefully and knowing the reasons why we drafted the legislation as we did, which was advised, we felt that we simply had to lay that position before the Senate and not accept the amendment.

Here is the point. The language respecting an armed attack upon the United States, its territories and possessions, differs from the language respecting an armed attack against the Armed Forces. That is apparent on sight.

The reason for it was that we can have an attack upon the Armed Forces of the United States technically which is negligible in magnitude. We want to make it clear that the order of response was not to be unlimited. We do not want to give a general hunting license. After all, we have troops all over the world.

A limited attack on U.S. forces abroad differs from an attack upon the United States, its territories and possessions. Let me give some examples. And I will also deal with the example which the Senator from Colorado mentioned.

Suppose that the Marine guards of an embassy are attacked. Should that authorize open-ended retaliation, taking a country or bombing its capital? A President could do that. However, we hope that he would not. So, we felt that by a differentiation in language we might indicate to the President this order of response, because the qualitative nature of the attack on the Armed Forces could vary so very markedly. We believe that the word "repel" in the hands of a commander could include what the Senator from Colorado and others might call tactical retaliation.

In other words, let us take an example. Suppose there was an attack by torpedo boats on two destroyers in the Gulf of Tonkin and those two torpedo boats came from given bases.

We would say that to repel that attack and forestall an imminent repetition the commander in charge does not just have to fire at those torpedo boats, but the United States can take action against the place from which they came. That is a serious matter. For example, with respect to the 6th Fleet, it need not just shoot in the air. We are not paralyzed under our wording from going after their bases. We believe that is included in the concept of repel and forestall.

Moreover, if the attack on our forces abroad is of such a nature that the President makes a good faith determination that the attack entails a direct and imminent threat of an attack upon the United States itself, he can take broad forestalling actions under the authority in section 3(1).

The commander in chief, in any event, has very ample latitude and we are not trying to classify ourselves as armchair generals. We did wish to include a clear note of caution to the President as Commander in Chief: "You cannot use the pretext of an incidental attack on U.S. forces abroad to launch broad retaliatory action far beyond the need."

Let me give a historical example. This happened in February 1965 in Vietnam. The Vietcong attacked the U.S. special forces' outpost at Pleiku. What ensued? The United States retaliated by bombing targets in North Vietnam on February 7 and 8 and using the pretext of the attack on the outpost at Pleiku the United States initiated its policy of continuous air strikes against North Vietnam. It is known that the administration was looking for an occasion to initiate air bombardment on North Vietnam—the bombardment was designed not to repel, or even retaliate for, the attack on Pleiku. It was designed to assist the Government and armed forces of South Vietnam.

Obviously, we cannot determine the degree of response, and "response" is exactly the correct word. We did feel that the language of section 3(2) would notify the President of our view respecting the Pleiku precedent, that is essentially what this section is all about; that the response had to be adjusted to the cause. The situation in the event of an armed attack on the United States, its territories, and possessions, would be an act of war in the classic sense and thus different in a subtle but meaningful sense and appropriate retaliatory actions would be fully in order.

But, Mr. President, where you deal with an incident that could be minor in character, we did not feel we wanted that incident blown up so that it became an excuse for large-scale retaliatory action which had no relationship to the incident. We could not set criteria for that in this bill, so it is signaled to the President in this way; we expect these situations to be treated with more circumspection than in dealing with direct attacks on the United States, its territories, and possessions. Of course, under section 3(4) retaliatory action could be authorized in advance, or after the fact, pursuant to specific statutory authorization.

That is the whole situation as we saw it in the discussion with other sponsors this morning. I lay it before the Senate, giving that reason for the position we have taken.

Superficially, if one looks at the language and listens to what the Senator from Colorado said, it is attractive. But when it is broken down as we have, and it is studied in light of historic experience, we feel it would not inhibit the President from doing whatever is necessary, but it would be a restraint against launching broad-scale war, under the guise of retaliatory action for an attack which could be minor. For that reason we decided we could not accept the amendment. In closing, let me remind my colleagues that in a limited juridical sense, I suppose, we are still "retaliating" against North Vietnam, 7 years later, for the August 2–4, 1965, attacks as the *Maddox* and *Turner Joy* in the Gulf of Tonkin.

The PRESIDING OFFICER. Who yields time?

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

The PRESIDING OFFICER. The Senator has 13 minutes remaining.

Mr. DOMINICK. Mr. President, I yield myself 6 minutes. I think this is so important I should attempt to further clarify this matter.

The PRESIDING OFFICER. The Senator is recognized.

Mr. DOMINICK. Let us take another situation. Let us take a situation where there is a nuclear attack on the NATO forces in Europe. I would presume under this language all we would be permitted to do would be to repel the attack. I do not know how to repel a nuclear attack; I do not know that anyone does. Certainly one possible way would be to destroy the missiles and aircraft at their source. Would this be within the definition of repel? I think not.

Under this language the President would be prohibited from taking any action with regard to retaliating against the country which initiated that attack. This is a very simple example. I do not want to say we are going to start a nuclear holocaust or that anybody should. God forbid that we would ever get into that situation.

But suppose our troops are being driven into the sea and that by superior manpower, superior artillery power, and superior heavy arms NATO troops are being defeated, and that this has been going on for some time. The President then authorizes the use of tactical nuclear weapons. This is retaliation, but necessary retaliation. However, he would be prohibited under this bill, as I see it, regardless of what he might feel or any of us might feel was necessary to protect American lives.

I wish to give another example. What is meant by deterrent? The purpose of our strong military forces is, in part, to

let others know that if they attack the United States or its forces we will retaliate against that attack. Only, to the degree your potential enemy believes this is the deterrent credible.

But the wording of this bill, will automatically destroy 50 percent of our deterrent credibility, the credibility of our deterrent posture, because we are prohibiting, whether it comes from the mainland or overseas, the power to retaliate against those who might attack our forces overseas.

I do not understand the concern that has been expressed, because Congress authorized President Johnson to go ahead, and then he did exactly what we authorized, although we did not expect things to develop as they did. We complain of that, but is that justification to restrict future Presidents from taking those actions he deems are necessary to protect our forces overseas, when in this bill we retain control through the 30-day clause.

I think this is of enormous significance and to the extent we downgrade the credibility of our deterrence we do not deter war, rather we enhance the prospects of it. I wish more Senators were here to concentrate on this subject. I think the amendment I am discussing is important if this bill should ever become law. I am not trying to create loopholes. I am trying to give the President the same right to provide the deterrent credibility to our bases overseas as we have if we are attacked on the mainland. Why should we have a divided policy on this matter?

To me, it just makes little or no sense in its present form.

Let me add one thing to try and offset the comments of my distinguished colleague from New York.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. DOMINICK. I yield myself 2 minutes.

We have authority under the bill as he has presented it to prevent a President from launching an all-out, large-scale war as a method of retaliation, because under section 6 of the bill, if the President conducts something like that, and Congress does not like it, Congress can simply pass a law, as we have put in under section 6, and cut him off. We do not have to wait 30 days. We can do it in a day.

That was a specific provision put in to prevent the type of situation the Senator from New York propounded. I do not happen to think that is right, because I do not think there ought to be 535 generals trying to determine what foreign policy decisions should be made. I think the Congress should participate in the judgment of a particular situation, but not make the decision. I have said this over and over again. I for one think the world is now too small in space and time, because of sophisticated communications systems and other technologies which are presently available, for us to retreat behind our borders and create a Fortress America.

If we adopt the bill as it is now presented, I say we have downgraded our ability to conduct our own international policies and have substantially upgraded the isolationism which is now apparent in this country.

I reserve the remainder of my time.

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

The PRESIDING OFFICER. The Senator has 23 minutes remaining.

Mr. SPONG. Mr. President, I suggest the absence of a quorum, to be charged to my time.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

Mr. SPONG. Mr. President, I ask unanimous consent that the pending amendment of the Senator from Colorado (Mr. DOMINICK), amendment No. 1111, be temporarily laid aside, that the time not used be frozen as it is, and that the Senate turn to the consideration of the amendment of the Senator from New York (Mr. BUCKLEY).

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The clerk will read the amendment.

The legislative clerk read the amendment (No. 1106) as follows:

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

UNITED NATIONS PARTICIPATION ACT OF 1945

SEC. 10. 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 inserting in lieu thereof "be required to obtain the prior".

The PRESIDING OFFICER. Who yields time?

Mr. BUCKLEY. Mr. President, I yield myself 10 minutes.

The purpose of my amendment is a simple one. It is simply to restore congressional control over the possible commitment of American forces to combat by the Security Council of the United Nations pursuant to agreements authorized to be negotiated between the President of the United States and the United Nations pursuant to the United Nations Participation Act of 1945.

It is important to understand the context within which the United Nations Participation Act of 1945 was enacted, and the best way to do that is to read from the Charter of the United Nations, particularly chapter VII, which is entitled "Action With Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression."

Article 39 of chapter VII reads as follows:

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 authorizes the Security Council to order various kinds of peaceful sanctions in order to attempt to restore or avert breaches of the peace.

Article 42, however, grants more serious powers to the Security Council, to wit:

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.

The first two sections of article 43 read as follows:

1. All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security.

2. Such agreement or agreements shall govern the numbers and types of forces, their degree of readiness and general location, and the nature of the facilities and assistance to be provided.

There are, of course, other articles in this chapter which relate to the implementation of these powers vested in the Security Council. I ask unanimous consent that the text of chapter VII of the United Nations Charter be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. BUCKLEY. Mr. President, the purpose of the United Nations Participation Act of 1945 was to set up the machinery to authorize the President to take the necessary steps to implement these and other purposes of the Charter of the United Nations. The provisions of the United Nations Participation Act which are critical to the discussion today are contained in section 6.

The first sentence in section 6 reads:

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, Congress has authorized the President to enter into negotiation for the enactment for treaties which would create a standby call on the American military forces described in those agreements, a standby call for utilization in combat situations by the Security Council in order to maintain or restore the peace.

I should point out two things. First of all, as of this date no such agreement has been negotiated by the President of the United States, and secondly, if and when he should do so, any such agreement must be approved by Congress.

Nevertheless, section 6 continues to say that upon the negotiation and approval of any such agreement, the following sentence would take effect, and I now read the second sentence of 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 said Charter and pursuant to such special agreement or agreements, the armed forces, facilities, or assistance provided for therein.

In other words, Mr. President, if we find ourselves, at some future date, with an agreement or agreements between the President of the United States and the United Nations, an agreement which must be ratified by Congress, an agreement which then gives the Security Council a call on American troops to implement decisions by the Security Council involving matters of war and peace, the U.N. Participation Act specifically provides that the President need not consult with the Congress as to any specific commitment of American forces which might be made by the Security Council pursuant to its powers under article 42 of the United Nations Charter.

The effect of my amendment is very simple. It would merely modify the second sentence of section 6 so as 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, in order to take action under Article 42 of the said Charter.

Et cetera. In other words, the President would be required explicitly, under the conditions I have stated before, to consult with Congress and secure its consent to a commitment of American forces pursuant to a directive by the Security Council.

Its effect, therefore, is to restore congressional control over the deployment of American forces under the conditions contemplated by the United Nations Participation Act of 1945. Thus, this amendment is complementary to and wholly consistent with the purposes of the War Powers Act. Whereas the act in its present form vests in the Congress a clear control over the deployment of American forces by the President, my amendment would accord to the Congress an equivalent control over the possible future deployment of American forces by the Security Council.

Mr. President, I understand and have full sympathy with the reluctance of the sponsors of this act to accept earlier amendments which attempted to refine or define aspects of the provisions of their act. My amendment, however, is of an entirely different order. It does not touch the existing language of the act, nor does it attempt to interpret it. Rather, it merely adds to the War Powers Act a provision designed to close a significant potential loophole.

I suggest that this is not an academic consideration. It is, of course, true that as of this moment no agreement has been entered into between the President and the United Nations such as would empower the Security Council to have a call upon American forces. But while the Senate is coming to grips with this whole problem of the war powers of the President, it seems to me that my colleagues ought to take the time and the trouble to examine all aspects of this problem and to enact in one piece of legislation provisions which will cope with future contingencies; and one such future contingency is that 2 or 3 years hence or a decade hence, the President might exercise the authority granted to him under the U.N. Participation Act of 1945, might negotiate an agreement, and that agreement could very well be approved by Congress, Congress having lost sight of the obscure provisions buried away in legislation enacted more than a quarter century ago.

I feel, therefore, that we are not dealing with an academic problem, but one which ought to be faced at this time, which ought to be brought, with the others, under a single umbrella.

Some might argue that Congress should do nothing which could be deemed to somehow interfere with the authority of the United Nations. I am sure that at the time that the United Nations Participation Act was enacted, it was felt that it would be desirable to give the Security Council instant military clout.

Time has passed, and I believe the mood of the American people has changed. We have witnessed, in the case of the Korean venture, the scope of operations that can be initiated by the Security Council. I believe that consistent with the philosophy which has motivated the drafting of the War Powers Act, the sponsors should wish in the future to maintain the same degree of control over the possible commitment of American forces by a body extraneous to the United States as they wish to impose upon the deployment of American forces by the President of the United States.

It is true, of course, that we have a veto power over the decisions of the Security Council, as one of its permanent members. But I would point out further that that veto power is exercisable by the representative of the President and, therefore, is no more than an extension of the President's own power.

Mr. SPONG. Mr. President, will the Senator yield? I have no wish to interrupt his remarks if he wishes to continue. But, I should like to ask a question or two, if it is convenient to him, at this time.

Mr. BUCKLEY. It is perfectly convenient.

Mr. SPONG. This is on my time.

I would preface my question by saying that I believe what the Senator from New York is endeavoring to do is consistent with some of the thoughts of the sponsors of this bill. I think, however, that the entire subject of the United Nations Participation Act would be better considered independently.

Nevertheless, the Senator from New York is seeking only to amend a sentence in section 6 of the Participation Act of 1945. The first sentence of that section reads as follows:

The President is authorized to negotiate a special agreement or agreements with the Security Council which shall be subject to the approval of Congress by appropriate act or joint resolution.

And it goes on.

My question is this: Before the situation which concerns the Senator from New York comes into play, does not the President of the United States, under this act have to come to Congress for authorization?

Mr. BUCKLEY. That is correct.

Mr. SPONG. So the concern of the Senator from New York is that, should Congress have approved such an agreement negotiated by the President, from then on the President would have carte blanche authority.

Mr. BUCKLEY. That is correct. Or, more particularly, the Security Council would have carte blanche authority, subject to a veto by the President.

Mr. SPONG. But does not the Senator from New York concede that there has to be a congressional authorization in order for the situation he fears even to be possible?

Mr. BUCKLEY. That is correct, as I tried to point out in the course of my remarks.

Mr. SPONG. So, in accordance with the present situation, the law as presently written would require that for section 6 to become operative, there has to be consideration and agreement by Congress before anything else can happen.

Mr. BUCKLEY. That is correct.

Mr. SPONG. I am among those Senators who have been disappointed in the activities of the United Nations. I find myself sometimes at cross purposes in my thoughts, because I always have felt that the prime purpose of the United Nations was as a peace-keeping force. I was disappointed by the activities preceding the 6-day war in the Middle East. I have been disappointed by the reluctance of our friends in the United Nations to participate in what I thought were very essential peace-keeping missions. I share some of the thoughts that have been expressed by the Senator from New York in his remarks last night and this morning.

But I point out to the Senator, that what we have sought in this legislation is congressional authorization and that under the U.N. Participation Act as it presently exists, congressional authorization is required.

As a member of the Committee on Foreign Relations, I can say to the Senator from New York—speaking for myself alone—that I would be pleased to give every consideration not only to the one sentence that concerns the Senator from New York but to the entire U.N. Participation Act as well. I do, however, have reservations about our changing an existing law beyond the framework of what we are trying to do in this legislation, without consideration by the Foreign Relations Committee. Also, I think that, despite the intentions of the Senator from New York, congressional protection already is built into the law.

In saying that, I do not wish to discredit the efforts of the Senator or what he has said on the floor. I do feel duty bound—and I believe the Senator said this in his remarks—to point out that what he is seeking to do would only change the situation if there had been prior congressional authorization. I am correct in that, am I not?

Mr. BUCKLEY. The Senator from Virginia is correct.

Mr. SPONG. I thank the Senator from New York.

The PRESIDING OFFICER. Who yields time?

Mr. JAVITS. Mr. President, will the Senator yield me 2 minutes?

Mr. SPONG. I yield.

Mr. JAVITS. I wish to pursue the point the Senator made, which I think is the whole answer to this situation.

What the Senator from New York, my colleague, is worried about is that when Congress gives authorization for the troop strength to be made available for Security Council uses, Congress "having lost sight of this other language"—might have overlooked that. Therefore he is going to pick it up again by the provision which he wants to write into this bill.

It is inconceivable to me, under our procedures here, that Congress would overlook the War Powers Act if, as, and when hereafter it gave authorization for the assignment of troop strength for United Nations Council uses. No agreement heretofore has been negotiated or approved.

One could say, "Well, it's surplus, so what does it matter? You may be stating something that is not necessary."

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. JAVITS. Mr. President, will the Senator yield me 1 additional minute?

Mr. SPONG. I yield.

Mr. JAVITS. I believe this is a substantive change in what the United Nations Enabling Act states respecting any prospective American commitment to the Security Council and it should be separately considered by the Senate and by the House of Representatives, as a policy matter. I do not know to what decision we would come.

However, in terms of the War Powers Act there is no loophole being closed here. There is something new being done. Whether we should do it respecting the United Nations is something which I think should be a matter of separate consideration.

For these reasons, I would feel, myself, that the amendment should be rejected.

Mr. COOK. Mr. President, will the Senator from New York (Mr. BUCKLEY) yield?

Mr. BUCKLEY. I am happy to yield to the Senator from Kentucky.

Mr. COOK. Mr. President, I find much sympathy for the amendment of the Senator from New York (Mr. BUCKLEY)——

The PRESIDING OFFICER. (Mr. SAXBE). How much time does the Senator yield?

Mr. COOK. I really wish to ask the Senator only a question.

Mr. BUCKLEY. I yield the Senator from Kentucky 3 minutes.

The PRESIDING OFFICER. The Senator from Kentucky is recognized for 3 minutes.

Mr. COOK. What I am wondering, in the bill as presently before us, on page 9, it states:

> Pursuant to specific statutory authorization, but authority to introduce the Armed Forces of the United States in hostilities or in any such situation shall not be inferred (A) from any provision of law hereafter enacted, including any provision contained in any appropriation Act, unless provision specifically authorizes the introduction of such Armed Forces in hostilities or in such situation and specifically exempts the introduction of such Armed Forces from compliance with the provisions of this Act—

What I am wondering is, if in fact we are not taking care of the situation the Senator's amendment talks about, because it seems to me that as the language says, "specifically exempts the introduction of such Armed Forces from compliance with the provisions of this Act," this restriction in the bill would apply to the use of United Nations forces in a United Nations participation act.

I am trying to clarify this in my mind, because I find much sympathy for the Senator's amendment, but I am wondering if the situation is not taken care of by reason of the language in the act. If the Senator does not feel that it is, then I find nothing offensive to his amendment whatsoever and would very likely vote in favor of it; but I am wondering if he would address himself to that language, on pages 8A and 9 of the bill, particularly lines 6, 7, and 8, as they would apply to the participation of United Nations forces.

Mr. BUCKLEY. Page 8—lines 6, 7, and 8?

Mr. COOK. On page 9—read it in the context of section 1 which starts on line 24—8(a).

Mr. BUCKLEY. Quite frankly, I have not had an opportunity to study that point, but my first reading suggests it merely states this act will not interfere with any existing law, it will not upset any existing law, whereas it is the purpose of my amendment to change the existing law.

Mr. COOK. The Senator, then, has reference to nothing more than agreements or special agreements that are already in existence, and he is not making reference in regard to his amendment as to any exemption which may apply in the future.

Mr. BUCKLEY. There are no agreements now in existence pursuant to section 6. Therefore, the application of section 6 as I propose to have it amended would apply only prospectively.

Mr. COOK. Then, in fact, if it applies in the future, I reiterate, it is more forceful that the present language in this section would then apply, to the extent that it would not be necessary to adopt the amendment of the Senator from New York (Mr. BUCKLEY), because this specifically talks about the future.

Mr. BUCKLEY. An act such as this requires a fair amount of reading backward and forward. We are talking about introduction of forces by the President of the United States, whereas the United Nations Participation Act talks about the mobilization of U.S. forces by the United Nations.

Mr. COOK. Mr. President, may I take that section up for a moment?

Mr. SPONG. Yes.

Mr. COOK. In conjunction with this, because——

The PRESIDING OFFICER. The 3 minutes of the Senator from Kentucky have expired.

Mr. SPONG. Mr. President, I yield the Senator from Kentucky an additional 3 minutes.

The PRESIDING OFFICER. The Senator from Kentucky is recognized for 3 minutes.

Mr. COOK. Mr. President, I refer again to the top of page 10, which I think again enforces the position of the Senator from New York (Mr. BUCKLEY), and enforces the intent of his amendment in what he wishes to accomplish.

> and no provision of law in force at the time of enactment of this Act shall be so construed unless such provision specifically authorizes the introduction of such Armed Forces in hostilities or in any such situation.

Obviously that has to apply now and to the future.

Mr. BUCKLEY. It seems to me that as the United Nations Participation Act now stands, it currently specifically authorizes the introduction of Armed Forces into hostilities under a set of circumstances herein contemplated.

Mr. COOK. Well, I thank the Senator.

Mr. BUCKLEY. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time not be charged against either side.

Mr. SPONG. Mr. President, I object.

Mr. BUCKLEY. Mr. President, it was my understanding, when I agreed to call up my amendment, that I could only proceed so far without the presence of the distinguished Senator from Virginia (Mr. HARRY F. BYRD, JR.).

Mr. SPONG. Mr. President, this Senator from Virginia would be the last one who would want to cut off his colleague from Virginia (Mr. HARRY F. BYRD, JR.), but I would point out to the Senator from New York that, if all the time remaining is used and two rollcall votes are taken up, we may be unable to fulfill a commitment which I made to the Senator from Colorado (Mr. DOMINICK) that he will have an opportunity to use up the remainder of his time and will be able to ask for the yeas and nays.

The floor manager is trying to accommodate everyone and have a vote at 1:30 p.m. today. I am going to yield back time in order that the Senate can vote at 1:30 p.m. today. I am using up too much time now, but I must object to the time for a quorum call not being charged against both sides.

The PRESIDING OFFICER (Mr. SAXBE). The Senator's 3 minutes have expired. [Laughter.]

Objection is heard.

Mr. BUCKLEY. Mr. President, as I seem to be boxed in—and I sympathize with the dilemma faced by the Senator from Virginia (Mr. SPONG)—I will just address myself to the Senator's earlier remarks——

The PRESIDING OFFICER. How much time does the Senator yield himself?

Mr. BUCKLEY. Three minutes.

The PRESIDING OFFICER. The Senator from New York is recognized for 3 minutes.

Mr. BUCKLEY. He pointed out, quite properly, that section 6 of the United Nations Participation Act contemplates that any agreements entered into between the President and the United Nations, which would have the result of

making U.S. forces available for deployment by the Security Council pursuant to article 42, must be approved by the Congress. But I believe that such approval is of a very different quality from the kind contemplated in the war powers act. In the context of approval, the agreement contemplated between the President and the United Nations would not be an emergency situation, it would be setting up a standby mechanism. It would not be met with the scrutiny, it would not be met necessarily with the care, in more peaceful times, that would assure us that Congress would take proper and appropriate notice of an authority contained in legislation enacted two or three or four decades earlier.

So, I therefore, suggest that while he points to a distinction, it is not one which I think would certainly give the sponsors that degree of confidence to Congress' recapturing control over the ability to commit forces which is the purpose of the War Powers Act.

EXHIBIT 1

ACTION WITH RESPECT TO THREATS TO THE PEACE, BREACHES OF THE PEACE, AND ACTS OF AGGRESSION

ARTICLE 39

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 40

In order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims, or position of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measures.

ARTICLE 41

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

ARTICLE 42

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.

ARTICLE 43

1. All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security.

2. Such agreement or agreements shall govern the numbers and types of forces, their degree of readiness and general location, and the nature of the facilities and assistance to be provided.

3. The agreement or agreements shall be negotiated as soon as possible on the initiative of the Security Council. They shall be concluded between the Security Council and Members or between the Security Council and groups of Members and shall be subject to ratification by the signatory states in accordance with their respective constitutional processes.

ARTICLE 44

When the Security Council has decided to use force it shall, before calling upon a Member not represented on it to provide armed forces in fulfillment of the obligations assumed under Article 43, invite that Member, if the Member so desires, to participate in the decisions of the Security Council concerning the employment of contingents of that Member's armed forces.

ARTICLE 45

In order to enable the United Nations to take urgent military measures, Members shall hold immediately available national air-force contingents for combined international enforcement action. The strength and degree of readiness of these contingents and plans for their combined action shall be determined, within the limits laid down in the special agreement or agreements referred to in Article 43, by the Security Council with the assistance of the Military Staff Committee.

ARTICLE 46

Plans for the application of armed forces shall be made by the Security Council with the assistance of the Military Staff Committee.

ARTICLE 47

1. There shall be established a Military Staff Committee to advise and assist the Security Council on all questions relating to the Security Council's military requirements for the maintenance of international peace and security, the employment and command of forces placed at its disposal, the regulation of armaments, and possible disarmament.

2. The Military Staff Committee shall consist of the Chiefs of Staff of the permanent members of the Security Council or their representatives. Any Member of the United Nations not permanently represented on the Committee shall be invited by the Committee to be associated with it when the efficient discharge of the Committee's responsibilities requires the participation of that Member in its work.

3. The Military Staff Committee shall be responsible under the Security Council for the strategic direction of any armed forces placed at the disposal of the Security Council. Questions relating to the command of such forces shall be worked out subsequently.

4. The Military Staff Committee, with the authorization of the Security Council and after consultation with appropriate regional agencies, may establish regional subcommittees.

ARTICLE 48

1. The action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all the Members of the United Nations or by some of them, as the Security Council may determine.

2. Such decisions shall be carried out by the Members of the United Nations directly and through their action in the appropriate international agencies of which they are members.

ARTICLE 49

The Members of the United Nations shall join in affording mutual assistance in carrying out the measures decided upon by the Security Council.

ARTICLE 50

If preventive or enforcement measures against any state are taken by the Security Council, any other state, whether a Member of the United Nations or not, which finds itself confronted with special economic problems arising from the carrying out of those measures shall have the right to consult the Security Council with regard to a solution of those problems.

ARTICLE 51

Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

Mr. BUCKLEY. Mr. President, I note that the distinguished Senator from Virginia (Mr. HARRY F. BYRD, JR.) is now in the Chamber, and if he should wish to make some remarks, as I understand that he does, I am pleased to yield to him such time as he may require.

Mr. HARRY F. BYRD, JR. Mr. President, I thank the Senator from New York. Would the Chair notify me when my 10 minutes have expired?

Mr. DOMINICK. Mr. President, would the Senator from Virginia yield for a unanimous-consent request?

Mr. HARRY F. BYRD, JR. I yield to the Senator from Colorado.

Mr. DOMINICK. Mr. President, I ask for the yeas and nays on my amendment No. 1111.

The yeas and nays were ordered.

Mr. HARRY F. BYRD, JR. Mr. President, I want to start by saying that I support the War Powers Act. I have opposed all amendments to the legislation brought in by the committee. I think it is a well-drafted piece of legislation.

It seeks to tighten up the use of American Armed Forces. It grants the President leeway in regard to emergencies. After that, it requires him to come to the Congress for approval for the use of the Armed Forces of the United States after a 30-day period. I support that proposal.

The distinguished junior Senator from New York has invited the attention of the Senate to an important part of the existing law concerning the use of American troops. He refers, and his amendment refers, to section 6 of the United Nations Participation Act which legislation was approved on December 20, 1945.

The second sentence of that section 6 states, and I will abbreviate it for the purpose of emphasis:

> 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 . . .

Mr. President, if we are going to tackle this problem of war powers, and I think we should, then most certainly it is not logical to tighten restrictions on the President in regard to the use of Amer-

ican troops and yet do nothing about this section of the existing code which, under certain conditions, permits the decision on the use of American troops to lie with the United Nations and the President and—specifically stating, as the statute does, that the Congress need not be consulted.

If we are willing to vote to tighten restrictions on the President of the United States, then is it not logical that we should be willing to vote to tighten the restrictions on the United Nations in so far as the use of American troops is concerned?

I realize that there are many Members of this body who regard the United Nations as being sacrosanct. There are many Members of this body who, whenever the United Nations is mentioned, get all excited and say, "Don't talk about the United Nations. Don't make any change in the United Nations. Don't do anything that might upset the United Nations."

Mr. McGEE. Mr. President, is the Senator on limited time? Would he yield me 30 seconds?

Mr. HARRY F. BYRD, Jr. I am on limited time, but I yield to the distinguished Senator from Wyoming.

Mr. McGEE. Mr. President, I want to say that I am one of those who get excited about the United Nations. I want to state that he has held my attention.

Mr. HARRY F. BYRD, Jr. I am delighted to have the attention of the distinguished and able and articulate Senator from Wyoming.

I am aware of his keen interest in the United Nations. I might say that I have a keen interest in the United Nations.

I came back from the Pacific in World War II from Okinawa at the same time the United Nations was being formed in San Francisco. As a result of that, I have felt a rapport with the United Nations going back some 27 years. I have supported the United Nations.

I think in recent years it has not lived up to the hopes that some of us had in 1945. But I have supported the United Nations, and I think it is important that we have such a world organization.

But what I feel that the Senate should tackle today, since we are dealing with war powers and the statutory requirement governing the use of American Armed Forces, is whether we want to leave in the statute the right of the United Nations to act under certain conditions, and act along with the President without the consent of Congress to utilize American men and material in war.

I say again, Mr. President, that it does not seem to me very logical to say that we want to tighten the restrictions placed on the President of the United States as to the use of American troops and be unwilling to say that we want to tighten the restrictions placed on the United Nations insofar as the use of American troops are concerned.

It is a fundamental point. No doubt if the Senate were to approve this proposal of the distinguished junior Senator from New York, there are some folks in the United Nations who perhaps would be upset.

I am informed that the President of the United States is not too happy about having the restrictions placed on him made a little tighter, and yet many of us are prepared to vote to do that. I doubt that we should be unduly alarmed or unduly concerned that some people in the United Nations might not be too happy if we were to tighten the restrictions on the United Nations in regard to the use of American troops.

Yesterday, during the debate on one of the Dominick amendments, the distinguished and able senior Senator from New York (Mr. JAVITS) said: "The time has come to be specific." I agree with that. The time has come to be specific.

And if we are going to tackle this question of war powers, then most certainly one of the specific items that needs to be tackled is that of the delegation of power to the United Nations, and the President, where they to act together in the dispersal and use of American troops without reference to Congress.

Mr. President, I read again a part of 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.

Mr. President, I ask unanimous consent to have section 6 of the United Nations Participation Act printed in the RECORD at this point.

There being no objection, the section 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 location, 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: *Provided*, That nothing herein contained shall be construed as an authorization to the President by the Congress to make available to the Security Council for such purpose armed forces, facilities, or assistance in addition to the forces, facilities, and assistance provided for in such special agreement or agreements.

The PRESIDING OFFICER. The Chair advises the Senator from Virginia that his 10 minutes have expired.

Mr. HARRY F. BYRD, JR. Mr. President, I think I have 30 minutes. I reserve the remainder of my time.

Mr. SPONG. Mr. President, I ask unanimous consent that the time for rollcall votes today be reduced from 20 to 15 minutes.

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

Mr. SPONG. Mr. President, I yield 10 minutes to the Senator from Missouri.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

Mr. EAGLETON. Mr. President, I thank the Senator from Virginia for yielding.

I rise to speak in opposition to the amendment offered by the distinguished Senator from New York (Mr. BUCKLEY).

In a way this is an encouraging amendment because it indicates to me that the Senator, who has been an opponent of the legislation thus far, understands exactly what the sponsors of this legislation are attempting to do, and that is to assure a role for Congress in the decision to go to war.

The Senator's amendment in a certain sense captures the spirit of this legislation, but I must oppose the amendment on different grounds.

I think it is important to place the United Nations Participation Act of 1945 in proper perspective. The Senator from New York has quoted a portion of section 6 of that act which would seem to indicate that the President would have the authority to make U.S. forces available to the Security Council on its call in order to take peacekeeping action under article 42 of the U.N. Charter. A full reading of section 6 and an understanding of the legislative history of the U.N. Participation Act will show that the war powers of Congress were well protected.

As stated in section 6 of the U.N. Participation Act, the President must first negotiate a special agreement or agreements with the Security Council before the section which Senator BUCKLEY has focused on can be triggered. These agreements are subject to the approval of Congress by appropriate act or joint resolution.

It also should be noted that to date the President has not seen fit to use his authority to conduct such negotiations with the Security Council for the use of U.S. forces.

The United Nations Participation Act was debated and passed by the Congress in a postwar atmosphere, with considerable impetus on the part of the sponsors and the Congress as a whole to push on to implement the United Nations Charter which had been ratified the year before. Despite this keen desire to see the act approved there is no indication that Members of Congress were willing to sacrifice the constitutional war powers of Congress to this end. I would like to quote a portion of the colloquy between Senator Millikin and Senator Connally, who was the manager of the bill for the Foreign Relations Committee. These quotes appear on pages 10965 and 10966 of the CONGRESSIONAL RECORD of November 26, 1945.

> Mr. MILLIKIN. I think it is very clear under this enabling legislation that the representative on the Council shall act under the instructions of the President, and I do not see how it could be any other way. But if the Congress does retain any jurisdiction in the matters on which our representatives in the Council will have to act, then I am merely suggesting that to that extent the President, as he does in executing all legislation passed by Congress would be passing on the instructions of Congress. He would be merely the vehicle for expressing the will of Congress.
>
> Mr. CONNALLY. I have no quarrel with that view.

Senator Millikin, in an attempt to gain further clarification on this point stated:

Mr. MILLIKIN. As I understand the burden of the distinguished Senator's present argument, it is that under this enabling legislation we look forward to further legislation in which we can define the limits of the military forces which we will contribute for police power and for the exercise of the President's constitutional rights in matters of police power, and that the President will have to come back to Congress for the larger grants. Thus reserving to the Congress its traditional war powers.

Later, during the debate on the act, the distinguished Senator from my own State of Missouri, Senator Donnell, offered an amendment which was intended to protect the war powers of Congress from the implications of the statement under section 6, which Senator BUCKLEY has cited. This amendment was defeated because the sponsors of the act assured the Senate that the Congress would have the opportunity in the enabling legislation to strictly define the authority of the President and the Security Council to use forces under the special agreement.

Mr. President, the following quote from the report of the Senate Committee on Foreign Relations on the U.N. Participations Act of 1945 is an even more explicit assurance that the Congress was not prepared to yield its war powers.

The bill provides that such approval by Congress shall be expressed by appropriate act or joint resolution. During the debate in the Senate on the Charter last July, there was considerable discussion as to whether the military agreements should be considered as treaties or whether they might be approved by the Congress through the joint resolution procedure. The preponderant view was that the latter procedure was preferable since the agreements would be entered into for the purpose of giving effect to the obligation assumed by this country under article 43 of the Charter to make available to the Security Council the armed force necessary for the purpose of maintaining international peace and security. Under this view, the precise details of the obligation—such as the exact amount of the forces to be contributed and the places where they are to be stationed—is not a matter for treaty consideration but for legislative sanction by the Congress under its constitutional powers to raise and support armies, to provide and maintain a navy and to make rules for the government and regulation of the land and naval forces (art. 1, sec. 8, pars. 12, 13, and 14 of the Constitution). There were those who expressed a preference for the treaty method of considering these agreements, but all were agreed on the basic proposition that the military agreements could not be entered into solely by executive action. On the last day of the debate in the Senate, July 28, the President, then attending the Potsdam Conference, sent a message to the Congress in which he stated that "When any such agreement or agreements are negotiated, it will be my purpose to ask the Congress by appropriate legislation to approve them." The committee believes that it is desirable to determine this question once and for all, and that it is appropriate to specify that the military agreement or agreements should be submitted for approval to the Congress.

In a State Department position paper on a British proposal to make the "whole of a nation's forces available" to the Security Council, dated October 14, 1946, the State Department concluded that the British proposal would not be in agreement with U.S. law. Citing section 6 of the U.N. Participation Act of 1945, the Department makes the following interpretation of that section:

The wording of this section makes it clear that the special agreement to be entered into by the United States will have to be approved by Congress and that Congress expects the agreement to mention a specific quantity of armed forces, any commitment beyond which would require further authorization by the legislative branch.

It should be noted that, in light of the present debate on the Congress war powers, the Department of State is not always used by the sponsors as a nonbiased source, but in 1945 it appears that the legislative and executive branches of Government were working together much more closely.

Mr. President, the sponsors of this legislation have purposely excluded any bill or resolution which is currently in force which would even imply that the President has the congressional authority to introduce U.S. forces in hostilities. We have done this primarily so that the President and the Congress will act together to reappraise resolutions of this type with the perspective of U.S. policy considerations of 1972. This legislation, therefore, is not intended as a vehicle to readjust our national commitments or to change in any way previous resolutions acted upon by both the Congress and the President to provide the Executive with authority to act.

A close examination of the U.N. Participation Act—and the legislative history behind that act—shows clearly that the Congress had taken sufficient safeguards to protect its war powers.

It is highly unlikely that the President will ever use the authority granted to him by Congress to negotiate a special agreement with the Security Council for the use of American forces. Even if he should choose to use this authority, however, the Congress could act to protect its war powers in the enabling legislation. It is at that point, or in other legislation pertaining to our commitments abroad, that an amendment of the type offered by the Senator from New York (Mr. BUCKLEY) should be offered.

I urge my colleagues to reject it now.

Mr. BUCKLEY. Mr. President, I yield myself 2 minutes.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. BUCKLEY. Mr. President, I very much appreciate the points made by the distinguished Senator from Missouri, but by way of prologue, I answer his remarks by saying I do not believe my remarks on the United Nations justify any such broad characterization. There are certain U.N. activities whose I question. I question the size of the American contribution in the voluntary field, but that is neither here nor there.

We are talking about legislation which attempts to assert congressional control over the commitment of U.S. Armed Forces to hostilities. The purpose, according to section 2, is to insure that the collective judgment of both the Congress and the President will apply to the introduction of the Armed Forces of the United States in hostilities or in situations where a possible involvement in hostilities is clearly indicated by the circumstances.

I fully appreciate the statements made and the analysis made by the Senator from Missouri. I did not suggest that section 6 is a totally open invitation to the United Nations to commit U.S. forces.

I totally appreciate that the agreement which the President is authorized to negotiate with the Security Council is finite in terms of the forces which would be subject to it. Nevertheless, once that agreement is negotiated, it becomes a permanent thing and it provides the Security Council with a continuing ability to call up and mobilize those specific forces. Thus we have a permanent delegation by the Congress to a foreign body of its authority over the deployment of U.S. forces.

I would also like to point out that any such deployment even of limited numbers of American forces would serve to broaden the kind of situation which the sponsors of this proposal are trying to anticipate, because one of the specific exemptions in which the President is allowed to deploy American forces is one which allows—and I am quoting from subsection 2 of section 3—the President "to repel an armed attack against the Armed Forces of the United States located outside of the United States, its territories and possessions.

Certainly if we find a situation in the future where the Security Council commandeers American forces and places them in some area for the specific purpose of controlling hostilities already in existence, or to keep hostilities from erupting, we have a situation where it becomes that much more likely to have an attack on the Armed Forces of the United States such as to permit the President to throw into the breach still other forces.

The PRESIDING OFFICER (Mr. COOK). The Senator's time has expired.

Mr. BUCKLEY. I yield myself 2 more minutes.

I again appreciate that we are talking about contingencies. It is a contingency which is predicated upon the subsequent entering into by the President and the Security Council of an agreement authorized by the United Nations Participation Act; but it was my understanding that the legislation under consideration was designed to cope with almost all contingencies that might arise in the future—contingencies that cannot even be performed with any precision.

So I submit that the amendment which I have offered is totally consistent with the purposes of the War Powers Act. It is complementary to it. It does not interfere with the legislation. It merely expands its scope to take care of one situation which otherwise would remain an open loophole.

Mr. HARRY F. BYRD, JR. Mr. President, will the Senator yield me 10 minutes?

Mr. BUCKLEY. I yield to the Senator from Virginia.

Mr. HARRY F. BYRD, JR. Mr. President, I think the Senator from New York is precise and correct in his assertion that this amendment goes right to

the heart of the question of war powers, the use of American troops, and that the Congress of the United States should be consulted before American troops are used, with the limited exceptions of emergencies, where the President himself then can make a temporary decision.

The able Senator from Missouri spoke learnedly——

The PRESIDING OFFICER. The Senator's time has expired.

Mr. BUCKLEY. Mr. President, I yield to the Senator from Virginia such time as he may require.

Mr. HARRY F. BYRD, JR. Mr. President, will the Chair notify me at the end of 10 minutes?

The PRESIDING OFFICER. The Chair will do so.

Mr. HARRY F. BYRD, JR. Mr. President, the able Senator from Missouri spoke learnedly of the discussion which took place in the Senate of the United States in 1945. Most certainly, his statements were accurate and thorough.

But the point is, Mr. President, that there has been a big change since 1945. That is why we are having this discussion today in regard to the President's war powers.

The pending legislation, the War Powers Act, which restricts to some extent the President of the United States, would never have been passed 25 years ago, or 10 years ago, or perhaps even 5 years ago.

The Senate can, if it wants to, keep as a part of the statute of the United States, after its attention has been called to it by the Senator from New York (Mr. BUCKLEY), this sentence: "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.

Those Senators who want to give that broad power certainly have the right to do so, but the senior Senator from Virginia feels that when we are dealing with American troops, when we are dealing with American men, it should be the Congress of the United States, the elected representatives of the people, along with the President of the United States, who should make that decision.

Another point has been made, Mr. President, that this legislation is not directed at the President of the United States. Certainly so far as the senior Senator from Virginia is concerned, it is not.

I favor a tightening of the laws insofar as the use of our Armed Forces is concerned, regardless of who may be President. I recognize there is a twilight zone between the President and the Congress in that regard, and that twilight zone is taken care of to a considerable extent, and perhaps to a maximum extent, by the emergencies which the pending legislation, the War Powers Act, lists, where the President himself can act in an emergency and then submit to the Congress the question of whether or not the use of the Armed Forces shall be continued.

If this legislation is not directed at the President, then most certainly it should include the elimination of this very broad language in the United Nations Participation Act to which the distinguished junior Senator from New York (Mr. BUCKLEY) has called attention.

It just does not seem very logical to the senior Senator from Virginia that the Senate would be willing to vote to tighten restrictions on the President—which I plan to vote for—but then refuse to vote to tighten the restrictions on the United Nations insofar as the use of American Armed Forces are concerned.

The only thing that the amendment offered by the distinguished Senator from New York (Mr. BUCKLEY) does—it is a very short amendment—is require prior congressional authorization for the employment of U.S. forces under United Nations command. I do not know how anything could be more reasonable than that. If we are serious about the matter of the Senate's taking back to itself its responsibilities in regard to the deployment of the Armed Forces of the United States—if we are going to take back our responsibilities in that regard insofar as the President of the United States is concerned—most certainly we should take back that responsibility insofar as the United Nations is concerned.

I say again, and I speak as one who has felt a rapport with the United Nations over a period of years, that I realize when you talk in this Chamber about the United Nations, you are talking about something that many regard as sacrosanct. But if we are going to meet this question of Congress resuming its responsibilities—I say resuming because I think Congress in recent years has been giving away its responsibilities in the fields of foreign policy and the use of American troops—if we are going to reassert ourselves, and this War Powers Act is a step in that direction, and that is why I favor it, then most certainly we should include in it the elimination of the present statutory authority which gives to the President, under certain conditions, the right to use the Armed Forces of the United States in conjunction with the United Nations without prior approval of Congress.

The able, thoughtful, and distinguished Senator from Missouri, in the course of his excellent remarks, said it is highly unlikely that the President would use such power.

If we proceed on that assumption, we do not need the War Powers Act. But I hold with Thomas Jefferson, who asserted: "Put not your faith in man, but bind things down from mischief by the chains of the Constitution."

I do not propose that this be put in the Constitution, of course, nor does the distinguished Senator from New York (Mr. BUCKLEY). But he does propose, and I support his position, that we eliminate from the statute books these words in section 6 of the United Nations Participation Act:

> The President shall not be deemed to require the authorization of the Congress to make available to the Security Council on its call the Armed Forces of the United States.

There are many Members, undoubtedly, who want to leave that language on the statute books. It is very broad language. It was put in at a different time in our history. It was signed into law December 20, 1945. During the intervening 27 years, Mr. President, a great deal has taken place, and the United States has been involved in the Korean war, and for many, many long years in Vietnam.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. HARRY F. BYRD, JR. Will the Senator yield me 3 additional minutes?

Mr. BUCKLEY. I yield 3 additional minutes to the Senator from Virginia.

Mr. HARRY F. BYRD, JR. So what was appropriate in 1945—and I am glad the able Senator from Missouri read into the RECORD, because I think it is significant, the debate which took place in the Senate in 1945 between those able Senators of that period—is not necessarily appropriate now. And as I mentioned earlier, this War Powers Act would not have stood a ghost of a chance in 1945, because we had a different situation then. The whole picture has changed, and that is why we are debating the War Powers legislation today, because we want to tighten the restrictions, or many of us do, on the use of American troops.

If we refuse to accept the amendment offered by the distinguished junior Senator from New York (Mr. BUCKLEY), we will be leaving on the statute books this language:

> 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. President, I reserve the remainder of my time.

Mr. EAGLETON. Mr. President, will the distinguished Senator from New York yield to me for one brief question, which I assure him will be brief and to the point?

Mr. BUCKLEY. I yield.

Mr. EAGLETON. I would like to propound this question to the Senator from New York: He has used such language as—

> This amendment is pursuant to the War Powers Act, in furtherance of the objectives of the War Powers Act, and in accordance with the spirit of the War Powers Act.

I would like to ask him, if his amendment should be adopted, would he support the War Powers Act as amended by his amendment?

Mr. BUCKLEY. Unfortunately the junior Senator from New York finds it impossible to support the act as phrased, although I certainly am in sympathy with its overall objectives.

Mr. President, unless my friend from Virginia wishes to make some further remarks, I am prepared to yield back the remainder of my time.

Mr. DOMINICK. Mr. President, rather than have the Senator from New York and the Senator from Virginia do that, I wonder if they would reserve the remainder of their time, and we could go back to my amendment, and then they could go back to the other when we get more people in here.

Mr. SPONG. Mr. President, we should explain to Senators present our situation. I have tried to accommodate everyone.

We are supposed to have three rollcall votes between now and 1:30. It does not take a genius to look at the clock and see what the problem is.

I ask unanimous consent that the first vote be completed in 15 minutes, and that the second and third rollcalls be completed in 10 minutes.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. SPONG. Second, I ask unanimous consent that the Buckley amendment be temporarily laid aside, and that the Senator from Colorado be permitted to proceed with his amendment. He had some priority in this matter, as his amendment was set aside to accommodate everyone.

I want to put Senators on notice that we have no control over this situation, that we will vote at 1:30 today, and someone can be cut off. I regret that very much. It means that we who are opposing these amendments have no time at all. I wish to point that out to the Senate.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Virginia? The Chair hears none, and it is so ordered. The clerk will state the amendment of the Senator from Colorado.

AMENDMENT NO. 1111

The assistant 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, there are several Senators here now who were not here before, some of whom have supported previous amendments I have offered, and many who have not. I want to repeat——

The PRESIDING OFFICER. The Senator has 5 minutes remaining.

Mr. DOMINICK. I thank the Chair. I want to repeat what I have said a little earlier.

We have a provision in the act now which says that, if the United States or its possessions are attacked, not only can we repel the attack, I might state to the Senator from Virginia, but we can also retaliate.

However, we have another provision in the act which states that, if an attack occurs on our troops overseas, all we can do is repel the attack. The act does not say anything about our ability to retaliate in those circumstances. If, for example, our NATO forces were challenged or threatened in Europe, we could not mount any retaliatory attack either from Europe or from this country. The same thing would be true if Guantanamo Bay were overrun. All we could do would be to try to repel that attack. We could not retaliate. If we were in the Mediterranean and were attacked, we could repel it, but we could not retaliate with respect to knocking out bases from which these aircraft may have come.

I cannot see the logic of saying that, if this country is attacked, we can retaliate, but that if our own forces overseas are attacked we cannot retaliate. Obviously, to the extent that these forces have been deployed overseas, it has been in the interest of the free world, and certainly the United States must retain its role as a leader of the free world. To the extent that we are inhibiting our forces overseas from taking action, by passage of the bill in its present form, we are reducing the credibility of our deterrence.

I invite the attention of the Senator from Mississippi to the number of times he and I have served so well together on the Committee on Armed Services, trying to maintain a strong defense and a credible deterrent. Whenever we say that our troops, if attacked cannot retaliate, we have reduced the credibility of the deterrent strength of those troops; and to the extent that there might be hostilities, we will have encouraged the enemy to pre-position himself in all these ways, so that if any action is taken, it would be illegal under this bill.

All I am doing, therefore, is to insure that if we have forces deployed overseas and they are attacked, not only can they repel that attack but they can retaliate as necessary.

Mr. President, I urge support for my amendment. I think it is extremely important.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. SPONG. I yield 2 minutes to the Senator from Mississippi.

Mr. STENNIS. Mr. President, last night, I was one of those who wanted to look further into the amendment offered by the Senator from Colorado. Having gone into it then and again early this morning and later in conference with my colleagues, I feel that the language now in the bill is sufficient to meet the situation, even though the wording does vary somewhat.

I can illustrate my meaning in this way: Section 3, paragraph 2, as now written, would permit repelling an armed attack of the Tonkin Gulf type, and I think it would permit our forces to chase them right into the harbor and fire on them there or do whatever is necessary to subdue the attack. But from the incident alone, I do not think they could go on and bomb Peking or carry on a continuation of hostilities for years—just based on an incident of the Tonkin Gulf type. I am using that as an illustration.

So this language gives the President the power to act, to repel the armed attack, depending, of course, on the nature of it, the degree, and the location—all those things go into it—and to forestall an attack if he feels that there is a direct and imminent threat of such an attack. In other words, he could anticipate. Under all those circumstances, I think he would have full power—and I would not favor the bill if he did not—to do what was necessary to repel that attack. If other attacks or warlike gestures came about, he would similarly not be limited. He could make a new start, so to speak, and if Congress is going to act at all, it would have a chance to act.

So, after the most careful consideration, I think this language is sufficient. Therefore, I am compelled to oppose the amendment, despite its very fine intentions.

Mr. SPONG. I thank the Senator from Mississippi.

Mr. President, I yield back the remainder of our time.

Mr. DOMINICK. Mr. President, do I have 2 minutes remaining?

The PRESIDING OFFICER. The Senator is correct. The Chair recognizes the Senator from Colorado.

Mr. DOMINICK. Mr. President, I am going to take that time, because I have great respect for the Senator from Mississippi, but I think he is totally wrong. I do not usually say that on the floor, particularly to the respected chairman of my committee, but I think it is time to be frank.

We have here two separate sections. One says that you can retaliate if it is an attack on this country, and one says nothing about that if it is an attack on our Armed Forces overseas. All I can say is that any lawyer knows that if you have it in one section in certain language and do not have it in another, it is not intended to apply in the other.

This means that if our NATO troops are attacked overseas, we cannot retaliate. It means that if Guantanamo is overrun, we cannot retaliate. It means that if our ships on the high seas are attacked, we cannot retaliate. That is exactly what it means, and that is exactly why I think section 3(2) is wrong.

I yield 1 minute to the Senator from Kentucky (Mr. COOPER).

Mr. COOPER. Mr. President, I rise only because I said earlier that I support this amendment. I support it for exactly the same reason the Senator from Colorado has stated, with great deference to the Senator from Mississippi.

If you have a right to protect your troops in one place, you have a right to protect them any place there. Retaliation does not mean going to war. It is a warning. It can be a repelling attack or a warning that the aggressor's attack shall not continue.

I agree wholeheartedly with the Senator from Colorado.

Mr. DOMINICK. I thank the Senator from Kentucky.

I might also point out that if the President should take action which is beyond what we think is necessary, under section 6 of the bill we can stop him by another action.

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 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 Iowa (Mr. HUGHES), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from South Dakota (Mr. MCGOVERN), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Utah (Mr. MOSS), the Senator from Maine (Mr. MUSKIE), the Senator from Rhode Island (Mr. PASTORE), the Senator from Alabama (Mr. SPARKMAN), the Senator from New Jersey (Mr. WILLIAMS), and

the Senator from North Carolina (Mr. JORDAN) are necessarily absent.

I further announce that the Senator from Nevada (Mr. CANNON) is absent on official business.

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 Iowa (Mr. HUGHES), the Senator from North Carolina (Mr. JORDAN), the Senator from Rhode Island (Mr. PASTORE), the Senator from Connecticut (Mr. RIBICOFF), and the Senator from South Dakota (Mr. MCGOVERN) 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.

If present and voting, the Senator from Utah (Mr. BENNETT) would vote "yea."

The result was announced—yeas 37, nays 45, as follows:

[No. 148 Leg.]

YEAS—37

Allen	Dole	Miller
Allott	Dominick	Packwood
Baker	Eastland	Pearson
Beall	Ervin	Percy
Bellmon	Fannin	Roth
Boggs	Fong	Scott
Buckley	Griffin	Smith
Byrd, Harry F., Jr.	Gurney	Stevens
	Hansen	Taft
Cook	Hruska	Thurmond
Cooper	Jackson	Tower
Cotton	Jordan, Idaho	Young
Curtis	McGee	

NAYS—45

Anderson	Gravel	Montoya
Bentsen	Harris	Nelson
Bible	Hart	Pell
Brock	Hartke	Proxmire
Brooke	Hatfield	Randolph
Burdick	Hollings	Saxbe
Byrd, Robert C.	Inouye	Schweiker
Case	Javits	Spong
Chiles	Kennedy	Stafford
Church	Long	Stennis
Cranston	Magnuson	Stevenson
Eagleton	Mansfield	Symington
Ellender	Mathias	Talmadge
Fulbright	Metcalf	Tunney
Gambrell	Mondale	Weicker

NOT VOTING—18

Aiken	Humphrey	Mundt
Bayh	Jordan, N.C.	Muskie
Bennett	McClellan	Pastore
Cannon	McGovern	Ribicoff
Goldwater	McIntyre	Sparkman
Hughes	Moss	Williams

So Mr. DOMINICK's amendment (No. 1111) was rejected.

Mr. SPONG. Mr. President, I move that the vote by which the amendment was rejected be reconsidered.

Mr. JAVITS. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDER OF BUSINESS

Mr. SPONG. Mr. President, we have a vote remaining on the Buckley amendment. By unanimous consent we have to vote on final passage at 1:30. We can allow 4 minutes of additional debate on the Buckley amendment. If the Senator from New York would agree, we would share that and each have 2 minutes.

Mr. BUCKLEY. That is perfectly agreeable.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. BUCKLEY. Mr. President, I wish to restate the purpose of my amendment which is a simple one.

Mr. COTTON. Mr. President, if the Senator from New York has only 2 minutes remaining, may we have order in the Senate?

The PRESIDING OFFICER. The Senate will be in order.

Mr. BUCKLEY. Mr. President, my amendment is simple and consistent with the purposes of the War Powers Act. It is simply to restore congressional control of the possible commitment of American forces to combat by the Security Council of the United Nations pursuant to agreements authorized to be negotiated between the President of the United States and the United Nations by the United Nations Participation Act of 1945.

The sponsors of the bill have circulated three paragraphs explaining why they oppose the amendment.

Mr. President, with the greatest respect for the opponents, I would suggest that their analysis that any future agreements that can be entered into by the President of the United States with the United Nations pursuant to the United Nations Participation Act would not be subject to the approval of the War Powers Act because the War Powers Act contains a provision that no law in force at the time, enacted by this act, shall be construed—I shall not use the exact words—authorize the commitment of Armed Forces to hostilities unless such provision specifically authorizes the introduction of such Armed Forces in hostilities in any such situation.

I submit that a clear reading of section 6 of the United Nations Participation Act constitutes a present authorization to make such forces available at the request of the Security Council of the United Nations in the event two things take place: First, that the President negotiate an agreement with the Security Council defining the U.S. forces which may be committed by the Security Council for peacekeeping purposes; and second, that such agreement is approved by the Congress.

Once such an agreement is negotiated and approved, it constitutes a standing authority and delegation to the Security Council of authority to commit American ground forces, air forces, and naval forces to situations where hostilities have either erupted or are about to erupt.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. JAVITS. Mr. President, the reason that the sponsors of the bill oppose the amendment is that it is unnecessary.

It is unnecessary because the Armed Forces can only be committed to United Nations military sanctions under an agreement with the Security Council which shall be subject to the approval of Congress by appropriate act or joint resolution. There is no such agreement in existence. Therefore, if anything, it would have to be perspective. If it is perspective, that is, if we pass one, it comes under the terms of the War Powers Act pending before the Senate which says that under any perspective law, no authority to use the Armed Forces in hostilities can be inferred separate from this bill unless there is a specific exemption by the Congress from the war powers bill.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. BUCKLEY. Mr. President, I yield the remainder of my time to the Senator from Virginia.

The PRESIDING OFFICER. The Senator from Virginia is recognized.

Mr. HARRY F. BYRD, JR. Mr. President, I read into the RECORD the second section of section 6 of the United Nations Participation Act of 1945:

> 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 that the entire section 6 to which I have referred be printed in the RECORD at this point.

There being no objection, the section 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: *Provided*, That, except as authorized in section 7 of this Act, nothing herein contained shall be construed as an authorization to the President by the Congress to make available to the Security Council for such purpose armed forces, facilities, or assistance in addition to the forces, facilities, and assistance provided for in such special agreement or agreements.

Mr. HARRY F. BYRD, JR. Mr. President, if we are willing to tighten the restrictions on the President of the United States in regard to the use of the Armed Forces—and I am willing to vote to do that—then, certainly it seems logical that we should tighten the restrictions on the United Nations insofar as the Armed Forces of the United States are concerned.

The PRESIDING OFFICER. All time has expired. The question is on agreeing to the amendment of the junior Senator from New York. 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 Iowa (Mr. HUGHES), the Senator from Minnesota (Mr. HUMPHREY), the Senator from North Carolina (Mr. JORDAN), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from South Dakota (Mr. MCGOVERN), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from

Utah (Mr. Moss), the Senator from Maine (Mr. Muskie), the Senator from Rhode Island (Mr. Pastore), and the Senator from Alabama (Mr. Sparkman) are necessarily absent.

I further announce that the Senator from Nevada (Mr. Cannon) is absent on official business.

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 Iowa (Mr. Hughes), the Senator from North Carolina (Mr Jordan), the Senator from South Dakota (Mr. McGovern), 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), 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 Maryland (Mr. Beall) is detained on official business.

If present and voting, the Senator from Utah (Mr. Bennett) would vote "yea."

The result was announced—yeas 27, nays 55, as follows:

[No. 149 Leg.]

YEAS—27

Allen	Dominick	Hruska
Baker	Eastland	Jordan, Idaho
Boggs	Ervin	Miller
Brock	Fannin	Packwood
Buckley	Fong	Percy
Byrd, Harry F., Jr.	Griffin	Roth
	Gurney	Thurmond
Cotton	Hansen	Tower
Curtis	Hollings	Young
Dole		

NAYS—55

Allott	Harris	Proxmire
Anderson	Hart	Randolph
Bellmon	Hartke	Saxbe
Bentsen	Hatfield	Schweiker
Bible	Inouye	Scott
Brooke	Jackson	Stafford
Burdick	Javits	Smith
Byrd, Robert C.	Kennedy	Spong
Case	Long	Stennis
Chiles	Magnuson	Stevens
Church	Mansfield	Stevenson
Cook	Mathias	Symington
Cooper	McGee	Taft
Cranston	Metcalf	Talmadge
Eagleton	Mondale	Tunney
Ellender	Montoya	Weicker
Fulbright	Nelson	Williams
Gambrell	Pearson	
Gravel	Pell	

NOT VOTING—18

Aiken	Hughes	Moss
Bayh	Humphrey	Mundt
Beall	Jordan, N.C.	Muskie
Bennett	McClellan	Pastore
Cannon	McGovern	Ribicoff
Goldwater	McIntyre	Sparkman

So Mr. Buckley's amendment (No. 1106) was rejected.

Mr. SPONG. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. JAVITS. Mr. President, I move to lay that motion on the table.

The PRESIDING OFFICER (Mr. Hartke). The question is on agreeing to the motion to lay on the table.

The motion to lay on the table was agreed to.

Mr. ROTH. Mr. President, today we bring to a close our debate on the War Powers Act. Because I believe it is essential for the Congress to assert its constitutional authority in this area, I joined last year in sponsoring one of the original war powers measures—the bill introduced by my distinguished colleague, Senator Stennis of Mississippi. I am therefore pleased to support S. 2956, which incorporates the essential features of the Stennis bill. I would also like to commend the distinguished Senator from New York (Mr. Javits), the distinguished Senator from Missouri (Mr. Eagleton), the distinguished Senator from Virginia (Mr. Spong) and the distinguished Senator from Ohio (Mr. Taft), who, along with Senator Stennis, have been instrumental in shaping the bill we have before us today.

We have had a full debate on S. 2956—extending over 2 weeks—during which there has been ample opportunity to examine every aspect of this measure. I have studied the arguments both pro and con, and I am convinced that S. 2956 is compatible with our national security, while at the same time reinforcing our democratic institutions by insuring that Congress' voice will be heard on vital issues of war and peace. I have therefore opposed those amendments that would alter the basic framework of S. 2956, which I believe to be sound from the standpoint of our defense requirements and constitutional practice.

Mr. President, we have heard a great deal about how the War Powers Act might limit the powers of the President. It seems to me that the proponents of the bill have convincingly demonstrated that it would not inhibit the President from taking any action which might reasonably be required to protect our country in an emergency. And it is also clear that the War Powers Act cannot in any way restrict the constitutional powers which the President enjoys as Commander in Chief of the Armed Forces.

The more important point, it seems to me, is that by adopting the war powers bill, we in the Congress are making a commitment to stand up and be counted whenever our country is faced with a decision to send our young men into wars on foreign soil. We should recognize that we have not always done so in the past. Too often we have preferred to leave to the President the full responsibility for deciding when and where our Armed Forces were to be used abroad. What the war powers bill does is to set forth clear procedures whereby the Congress will consider such questions in the future. We have always had the responsibility for doing so, and I think it is time for us to recognize that the American people have a right to expect us to live up to that responsibility. We will be doing so by adopting S. 2956.

Mr. GURNEY. Mr. President, when our Founding Fathers drew up our Constitution some 183 years ago, they recognized that not all contingencies could be foreseen and that a division of warmaking powers between the executive and legislative branches of Government would allow the necessary latitude to deal with future problems. Within the framework they created, the United States has developed from a fledgling Nation to a leading world power, thereby proving the genius of the Founding Fathers in not being more specific.

In the early days of our existence as an independent nation, the major foreign policy concern was to maintain a position of neutrality and the avoidance of entangling alliances. This attitude is reflected in Washington's Farewell Address; it appears later in a letter written by Alexander Hamilton to William Ellery on June 29, 1793 under the pseudonym, Pacificus No. 1. In this letter, Hamilton defended Washington's issuance of the "Proclamation of Neutrality" in the following terms:

". . . However true it may be, that the right of the legislature to declare war includes the right of judging whether the Nation be under obligations to make war or not—it will not follow that the executive is in any case excluded from a similar right of judgment, in the execution of its own functions.

If the legislature have a right to make war on the one hand—it is on the other the duty of the executive to preserve peace till war is declared; and in fulfilling that duty, it must necessarily possess a right of judging what is the nature of the obligations which the treaties of the country impose on the Government. . . ."

It is a bit ironic, in view of subsequent events, that Hamilton should argue against undue restrictions on executive power in order to defend a policy of neutrality. But his concern was well founded. In 1812 it was the war hawks in Congress who pushed us into a declaration of war. In 1898, again it was pressure from Congress that pushed a reluctant William McKinley into asking for a declaration of war against Spain. History will also record that there were only two dissenting votes in Congress in 1964 when we gave the President the authority to take such steps as were necessary to defend South Vietnam.

As has been noted before the United States has used its military forces 192 times, 45 times in major incidents and five times in declared wars. Almost all of these adventures have had wide support hence there has been little debate over the question of the warmaking powers of Congress and the President respectively. Now, we have gone through a disillusioning experience in Vietnam, and, as we did after World War I, we are reacting to it. But, in so doing, we should ask ourselves just what we are upset about—the results of a decision or the system that produces it.

A great deal of time has been spent here discussing the constitutional implications of this bill. I will not dwell further on them except to say that the result of this legislation is interference with the constitutional prerogatives of the President to conduct foreign policy or to exercise his responsibilities as Commander in Chief of the Armed Forces and raises serious constitutional questions. As of now, Congress has ample powers in the warmaking area—the right to declare war, the right to raise an army and a navy, and the right to provide or discontinue funding—to fulfill its constitutional role. Further expansion of such powers would not only involve a question of separation of powers but would have the most serious practical consequences.

What we are really talking about here in addition to the constitutional implications, is whether the United States will

continue to be a leading world power or whether we will sink back into the same isolationism that has cost us so dearly in the past.

In 1935, 1936, and 1937, as a result of the disillusionment stemming from World War I and its aftermath, strict neutrality laws—laws that specifically sacrificed many of the principles for which we had shed blood in the War of 1812—were passed in an effort to keep the Nation from being dragged into hostilities either declared or undeclared. In arguing against the mandatory arms embargo clause that was to appear in all three bills and which prevented any distinction being made between an aggressor and the victim of aggression, President Franklin D. Roosevelt noted, in 1935, that no legislature or executive could anticipate all contingencies and that the course of history was:

> . . . Filled with unforeseeable situations that call for some flexibility of action.

How right he was. By 1939 we found these strict neutrality laws out of touch with the circumstances. In late 1939 a revised neutrality law had to be enacted in order to help keep the forces of freedom from being crushed by the driving force of Nazi tyranny.

Now in the wake of our deep involvement in Vietnam we find ourselves suffering from a disillusionment not unlike that of the 1930's. Not surprisingly, perhaps, we find ourselves considering another piece of legislation more specific and more restrictive than the neutrality laws of the interwar era, and with the same goal in mind—to keep us out of an undeclared war. But, worthy as that goal may be, history should remind us of the impracticality of trying to achieve it by means of restrictive legislation.

Today, more than ever, we need flexibility to meet the challenges of this modern nuclear age.

The key to flexibility in foreign affairs lies in the number of options that a nation can exercise. This bill not only drastically reduces our options, but it tells the world just what they are. Other nations, knowing in advance how we will respond to most any given situation, can be expected to take maximum advantage of us. The threat to the free world that would result from such an abnegation of our responsibilities would be both incalculable and unconscionable. Confidence in the ability and willingness of the United States to uphold its treaty commitments would be sadly weakened and our ability to negotiate effectively in crucial matters would be severely hampered. Any nation, whose reaction to a given situation can be predicted in advance, is in a weak bargaining position indeed.

These reasons alone should be more than sufficient cause for the defeat of this bill.

But there are other reasons—specific compelling reasons—for believing that this legislation is unwise. First of all, it would rock the NATO alliance to its very foundations. Despite the recently passed amendment that permits members of the U.S. Armed Forces to participate with military personnel of other nations in headquarters operations of high level military commands—like NATO—the bill would not seem to permit redeployment movement of U.S. troops; first, to counter enemy buildups; second, to head off developing crises; or third, to help thwart an attack against a NATO country in which we had no troops.

Also, the bill would not seem to permit any increase in forces in Europe—and elsewhere for that matter—at a time of crisis. Furthermore, if we were, at some time, to withdraw some of our troops from Europe, this legislation would prevent us from returning them in case of a Soviet buildup. And, finally, the language of the bill would not seem to permit the use of U.S. forces in a combined command without the prior approval of Congress.

Closely related to the NATO situation is the case of Berlin. We are deeply committed to protecting West Berlin from Communist aggression and to keeping open its lines of communication. Yet, if we adopt this bill, the Communists could close the access routes to West Berlin and we would be unable to respond because such a blockade would not mean an imminent threat of hostilities unless we took remedial action. At best, then, West Berlin would have to wait for assistance until Congress met, debated and passed upon the matter. By then it might be too late.

The Middle East provides another case study of where our efforts to preserve peace would be severely hampered by restrictive war powers legislation. For the same reasons that our troops would be precluded from opening access routes to West Berlin, U.S. forces would also be unable to move to head off trouble in the Middle East. For instance, President Eisenhower's prompt and succesfull action in landing marines in Lebanon in 1957 to thwart a Communist takeover could not be repeated. Nor could President Johnson's deployment of the Sixth Fleet to within 50 miles of the Syrian coast when he believed that the Soviet Union might intervene in the 6-day Arab-Israeli war. With the situation in the Middle East being as volatile as it is, inaction could be far more dangerous than action.

Of course, the Middle East is not the only place where U.S. military forces have been, or can be, used to discourage aggression and help maintain the peace. Another prime example was the Cuban missile crisis of 1962. None of us will ever forget hearing that there were offensive missiles only 90 miles from our shores. We will always remember the tense days that followed while we instituted a quarantine and forced the Russians to back down a little. But would such action be legal under the terms of this bill? It could, and would, be argued by many that such missiles constituted an imminent threat of attack which would justify utilization of our Armed Forces by the President, but many others would contend that a quarantine would increase rather than decrease the possibility of hostilities. The ensuing debate is likely to lead to hesitancy, uncertainty, and inaction.

It was just this type of uncertainty and reluctance to act that led to the appeasement at Munich in 1938. Our enemies would certainly do everything possible to see if history might repeat itself.

Of course, in such a situation the President could act, but under greater pressure than if this bill were not enacted into law. There would be a tendency either to be overly cautious in order to avoid a repudiation of our policy by Congress—with all the disadvantages and loss of prestige that would entail—or to be overly eager to conclude the matter within the 30-day limit. The first course could lead to appeasement and the second to overkill; neither alternative is desirable and I would hate to think that, by passing this bill, we would greatly increase the chances that these would be the only possible alternatives in a crisis situation.

In looking at this bill, I am reminded of Woodrow Wilson's famous 14 points. In point one Wilson called for "open covenants . . . openly arrived at," thereby expressing his long standing and cherished hopes for the end of secret negotiations. History has shown time and time again how impractical such a proposition is, something that Wilson discovered shortly thereafter. Secrecy is essential to the conduct of foreign relations. Neither friend nor foe wants to have their proposals aired in public and if they know that this will be a prerequisite to the United States taking any military action, then they are going to be much less likely to negotiate or to make agreements with the United States. Also, any strategic redevelopment of forces we might make to assist our diplomacy will be recognized as a meaningless bluff. Furthermore, the public debate that would have to ensue before any action of some consequence and duration were taken would cause unnecessary uncertainty at home, would create a loss of confidence in our willpower abroad, would give our enemies a much greater opportunity to manipulate our response—as Hanoi is trying to do right now—and surely would cause other nations to misread our intentions under almost any circumstances. Moreover, heated public debate will, of course, be reflected in Congress and could give rise to delaying and filibuster tactics by a small minority that could effectively prevent us from taking any meaningful action. All this must be an immensly comforting prospect to the Russians and Chinese. They certainly are not going to engage in any debate or negotiation if they do not have to, and they surely will benefit from any reduction in the flexibility of our position or any indication that we are not going to contest their expansionist ambitions in the Middle East, Southeast Asia or elsewhere. If I were them, I would be in favor of the passage of this bill.

Which brings me to some of the specific provisions of this bill. Section 2, as I noted last Friday, presents a view of the President's powers as chief executive officer and Commander in Chief of our Armed Forces, that is far more narrow and simplistic than the drafters of the Constitution or those who followed in their footsteps had in mind. The responsibility for conducting an effective foreign policy or providing for the security of the United States in these fast changing times, implies that the President have much more freedom of action than the authors of this bill admit.

Section 3(2) provides only that an attack or an imminent threat of attack on

U.S. Forces outside the United States be repelled. It says nothing about retaliation for such an attack by enemy forces and, if left unchanged, might prohibit such retaliation. I cannot conceive of a nation so limiting its responses and so encouraging enemies to test its willpower at the expense of its forces.

Section 3(3) has an equally serious problem. This section provides for action only when the lives of U.S. citizens, in a foreign country with its express consent, are subject to direct and immediate danger beyond the power of the host country to control. But, what about the liberties of such U.S. citizens abroad? Are we going to say explicitly in advance that, while their lives may not be endangered, hostile forces can throw them into prison et cetera with threat of response from the United States? Certainly our citizens have a right to expect a bit more than that from their government; at the very least U.S. forces ought to have the right to assist in evacuating them from a country in time of crisis that threatens their liberty.

Section 3(4) casts serious doubts about our willingness to uphold our treaty obligations. Not only is our ability to use our armed forces as a peace keeping deterrent practically eliminated, but our willingness and ability to live up to our treaty obligations is brought into question. At present, none of our treaties can be implemented unless "constitutional requirements" are met; to go further and say no future treaty can be implemented without specific legislative authorization for use of our armed forces and to attempt to apply this requirement to existing treaties is not likely to imbue our allies with much faith in our stated intentions to stand by them. Can we expect, if we do this, that other nations of the free world will have as much confidence in our word or will be very willing to work with us in the future? We should not be surprised if some of them would seek an accommodation with our foes, as a practical matter of survival, if we indicate we are willing to respond to aggression in only a very limited number of circumstances.

The 30 day provision in section 5, in addition to raising constitutional questions, is unduly restrictive. Is it our intention that the President to be limited to taking emergency action in defense of the United States for only a 30-day period without congressional approval? In days gone by, this might have been more practical, but in this day of nuclear warfare it is a possibility—admittedly an unpleasant one but one which must realistically be faced up to—that Congress could not convene in 30 days. Unfortunately, the amendment passed April 5, while a step in the right direction, does not substantially alter the situation, even in the dire circumstances just mentioned. And, of course, this amendment does nothing to ameliorate the aforementioned restrictions against the President exercising his judgment in foreign policy and national defense matters.

As for section 8—the separability clause—it, like the three amendments added to the bill by its sponsors last week, indicates to me that even the supporters of this bill have questions about both the constitutionality and the practical implications of this piece of legislation.

This uncertainty on the bill indicates to me the undesirability of trying to write up a neat set of specific rules and regulations to cover circumstances that none of us can anticipate. In this regard I am particularly struck by the appropriateness of the argument presented by Arthur Schlesinger, Jr., in the February 5, 1972, issue of New Republic. Referring to those pre-World War II neutrality acts. Schlesinger noted that this bill, if it had been in effect all along, "probably would have prevented President Roosevelt from protecting the British lifeline against Nazi submarines—and * * * it probably would not have prevented President Johnson from escalating the war in Vietnam." In view of the overwhelming congressional support for the Gulf of Tonkin resolution in 1964, as compared to the strong isolationist sentiments prior to Pearl Harbor, I think this to be an accurate assessment. There certainly is no evidence to support the conclusion that Congress would be any less likely to "shoot from the hip," as Senator JAVITS has put it, than the President, but it is quite obvious that Congress cannot keep on top of events and be in a position to make quick decisions the way the President can and should.

It is understandable that the frustration of the Vietnamese conflict should evoke a desire on the part of some to reduce the warmaking powers of the President. However, Congress must share the responsibility for the conflict; it had the opportunity to say "no" to the Gulf of Tonkin resolution, it could, at any time, have reduced the funding for the war and it could have refused to authorize the increase in our Armed Forces necessary to carry on the conflict. These powers, in addition to the power to declare war, are, if used, effective checks on the warmaking powers of the President. But, at the same time, these checks do not deprive the Nation with the flexibility it needs to meet the constant challenges of the modern world. By leaving intact the system of shared responsibilities not explicitly circumscribed in advance by legislation—a system that has worked so well for almost 200 years—we enable the President to conduct foreign policy, promote national security and handle the mutlitude of crises, that require action but which are not serious enough to occasion a declaration of war, in an effective manner. And, we lose nothing.

In fact, by drawing attention to the issue, and by indicating that we expect to be informed, Congress has made a positive contribution toward an effective partnership in this all important area of decisionmaking.

History has repeatedly shown the folly of a nation committing itself to a specific course of action before the fact. History, in more recent times, has also shown that retreating into isolationism defeats the very cause of peace that it is intended to serve. The course of history has also made us a world power and as such, has given us certain responsibilities, most particularly to those around the world who share our ideal of freedom. We cannot simply turn our backs on these responsibilities or give the appearance of turning our backs. To do so would only confuse our allies around the world, sow the seed of doubt at home, and give those who do not believe in liberty and freedom a golden opportunity to satisfy their expansionist aims at the expense of those who do.

With these thoughts in mind I strongly urge the defeat of this bill. It would be a most unfortunate precedent and one not in the best interests of the Nation. I also commend to the Senate a column written on this bill by Mr. Kenneth Crawford which appears in the April 11, 1972 issue of the Washington Post. I ask unanimous consent that this article be printed in the RECORD at the conclusion of my remarks.

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

"HOT-STOVE" LEGISLATION: BILL WOULD CURB WARMAKING POWER OF PAST PRESIDENTS

(By Kenneth Crawford)

Congress is now working on a law to prevent Presidents Kennedy and Johnson from involving the United States in the defense of South Vietnam. Since the effort comes ten years or so late, the law's sponsors explain that their object is to forestall "another Vietnam."

The chance that any President would so ignore tragic experience as to undertake again anything remotely like the Vietnam intervention is about the same as the chance that a child who has burned his hand on a hot stove would do the same thing a second time.

Yet there is always someone, after a burning, who feels that there ought to be a law against hot stoves. This time it is Sen. Jacob Javits of New York, author of the so-called war powers bill, now under debate in the Senate and scheduled for a vote today. His measure seems to have majority support in the Senate, though perhaps not in the House. In any case, a presidential veto is virtually certain if it gets as far as the White House.

This is not the first time hot-stove legislation has been handled by Congress. After the first world war and a Senate investigation of "merchants of death", the House and Senate wrote a set of neutrality laws to prevent President Wilson, then long dead, from involving the U.S. in a European war.

The effect of these laws was to hamstring President Roosevelt in his attempt to help contain Adolph Hitler before the Nazis could overrun all of Europe and precipitate another world war. Obviously, Hitler posed a different and more serious threat to the world than Kaiser Wilhelm had. Fortunately, Roosevelt, before it was too late, found ways through, over and around the neutrality laws.

What the Javits bill would do is limit a President's authority to employ armed forces abroad. In emergencies he could order the Army, Navy, Air Force or Marine Corps, or all four, into action overseas. But he could not keep them in action for more than 30 days without specific congressional sanction. Pending amendments would not substantially change the purpose and thrust of the legislation.

Opponents argue that the war powers bill, like the neutrality laws, however well intentioned, would only straightjacket future administrations by undertaking to anticipate unpredictable international developments. They even doubt the constitutionality of the proposed redistribution or war-making powers. Why, they ask, change a system that has served the nation well for almost

200 years? Why abandon flexibility in favor of rigidity at a time when world affairs are as chaotic as they are now?

Proponents counter with the argument that Vietnam has demonstrated the necessity of "redressing" the balance of war powers between Congress and the President. The Constitution gives Congress the exclusive right to declare war but the present war has never been declared. It has been fought by executive decree. What this overlooks is that this country has engaged in armed conflict more than 200 times, going all the way back to George Washington, even though Congress has declared war only five times. A balance that never has existed can't be redressed.

Not all members of the Senate have made up their minds about war powers. Some of them consider the Javits bill innocuous on the assumption that Congress would never in any conceivable circumstance pull the rug from under a President once U.S. military forces were committed. They point out that Congress already has ample authority to stop an American shooting war. Its control of the purse strings could have been used to stop American operations in Vietnam at any point.

When Congress adopted the Bay of Tonkin resolution in 1964 with only two dissenting votes in the Senate and none in the House it was approving President Johnson's escalation as surely as it could have with the Javits bill in effect. Within a year, moreover, Johnson asked for an additional $700 million for Vietnam operations in a message specifically inviting Congress to withold the funds if it disapproved of his war policy. Again the approving vote was almost unanimous.

Several senators are skeptical of the notion that Congress would be more restrained than a President in the face of provocation. It never has been in the past, not even in the case of Vietnam. Some of the skeptics will nevertheless vote for the Javits bill. Such a vote for them will be a gesture denoting second thoughts about Vietnam. A post facto vote against an unpopular war can't do them any harm.

Both advocates and foes of the Javits bill are convinced that it is the most important legislation Congress will consider at this session. Advocates believe it can help heal the Vietnam sickness that has infected American society. Foes are equally convinced that it would undermine this country's diplomatic credibility. Yet Senate debate on the issue has attracted a minimum of attention from media and public.

Perhaps this is because, like all debates on Constitution-related questions, this one has been serious and unspectacular. War powers lack the spice of an ITT investigation. Indifference may be partially explained, too, by doubts that Congress could pass the Javits bill over a presidential veto. Secretary of State William Rogers, obviously speaking for the White House, has challenged both the validity and the practicality of the proposed legislation.

However, neither in floor debate nor in Roger's statements has the most telling cloak-room argument against the bill been mentioned. It is that passage would be regarded by America's allies as a signal that Chairman William Fulbright and his Senate Foreign Relations committee are about to assume control of American foreign policy. Fulbright has been taking positions so extreme and so suggestive of an American retreat into isolationism that they frighten friendly world capitals.

He regards American overseas broadcasts as relics of a cold war that never should have been a war. He proposes to cut off funds for Vietnam as it faces the threat of extermination by an invading army. His recent article in the New Yorker, "In Thrall to Fear," argues that American intransigence was primarily responsible for the enmity of the Soviet Union and China after the second world war. Nikita Khrushchev's Cuban missiles, he writes, were merely a gesture of appeasement for the benefit of unhappy Soviet generals.

Mr. DOMINICK. Mr. President, I ask unanimous consent that a statement by the distinguished Senator from Arizona be printed in the RECORD.

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

UNANSWERED PRACTICAL AND CONSTITUTIONAL QUESTIONS REMAINING IN THE WAR POWERS BILL

(Statement by Senator GOLDWATER)

There are at least 21 grave practical and constitutional problems remaining in the war powers bill, with implications that could seriously endanger the national security of the United States.

1. "Shows of force" and other mere deployments of the Armed Forces are prohibited by the bill. The sending of reinforcements to Berlin, such as occurred in 1961, would be barred because it involves a definite risk of combat.

No matter how much the sponsors of the bill protest, the specific language of their bill would bar a show of force in trouble areas. The broad prohibition of section 3 prevents the introduction of troops into situations whenever imminent involvement in hostilities is indicated. The only exception to this general prohibition is when the nation or our troops are *already* under attack or a direct and imminent threat of attack. If our forces are not under any threat in their present position so long as they keep out of the trouble spot, there is no authority for them to go into action, but there is a prohibition against them being moved into the hot spot.

In other words, one purpose of the bill is to keep United States forces away from hot spots where a hostility might ensue. This is quite evident from early statements by the sponsors of the bill as to their purposes. For example, during the Senate hearings, Arthur Goldberg interpreted the bill as applying to deployments. Senator Javits agreed. The exchange reads:

"Mr. GOLDBERG. 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. Right.

"Mr. GOLDBERG. Deployment is a great problem and I believe Congress is the body to authorize substantial deployment of troops. I don't believe that that power is vested in the President by his role as Commander in Chief."

In his law review article discussing the war powers bill, Senator Spong, a cosponsor stated that the effort to reinvest Congress with a role in use of force policy "would require that Congress have a voice in the deployment of troops."

Senator Spong added: "The probability of war is closely related to the deployment of troops. The deployment of troops often increases the chances for conventional war and conventional war increases the prospect for nuclear reliance."

The sponsors now seek to retract these statements, but the record is clear that the sponsors themselves originally construed their bill to cover deployments.

2. The bill uses three totally different ways of describing what constitutes an "imminent threat." The sponsors have never given an explanation of what the difference is between "imminent" as used in one place and as used in another.

Section 2, relating to purpose and policy, states that the bill "is not intended to encroach upon the recognized powers of the President, as Commander in Chief and Chief Executive, . . . to respond to attacks or the *imminent* threat of attacks upon the United States, including its territories and possessions, to repeal attacks or forestall the *imminent* threat of attacks against the Armed Forces of the United States. . . ."

On the other hand, the opening words of section 3, relating to the situations where the President is prohibited from using the Armed Forces, refers to "situations where *imminent* involvement in hostilities is *clearly indicated* by the circumstances."

In contrast, sections 3(1) and (2), relating to emergencies where the President can use the Armed Forces, contain the entirely different words "to forestall the *direct and imminent* threat" of attack.

When is an attack "imminent" but not "direct and imminent"? When is our imminent involvement in hostilities "clearly indicated" but the threat of attack against our forces not "direct and imminent"?

3. United States forces cannot be used in defense against a threat which poses an indirect and future danger to the United States, even if the safety of the nation will ultimately be at stake.

In the case of an attack on Israel, for example, where no United States troops are now stationed, the bill would prohibit the United States from taking any action to prevent the overrun of a country, whose loss would vitally affect the world balance of power in the future.

Professor Alexander Bickel, who is credited by the Committee in its report with offering the definitive testimony relating to the "direct and imminent threat" clause, defined the term as applying only to situations where an attack on the United States might occur immediately, today or tomorrow.

He said: "So somebody drops an atomic bomb on Paris or somebody marches in to Paris, it is, I think, Constitutionally open to the President, and I take it Senator Javits agrees it is open under his bill, for him to say, 'I know what that means; that means that tomorrow morning they are coming at us. I am going to react to that threat,' the way after all President Kennedy reacted to what was only a threat implicit in the Cuban situation."

Also, Senator Spong indicated how restricted a view he took of the term "imminent" in an exchange at the hearings with Attorney William D. Rogers. Mr. Rogers had just recommended that the bill be reworded to specifically allow the President to forestall an imminent attack, as well as an actual attack.

Senator Spong asked, "But you are distinguishing imminent attack from future attack.

"Mr. ROGERS. Yes.

"Senator SPONG. Now, you know the word 'future' is used in the Stennis and Bentsen legislation.

"Mr. ROGERS. Future nuclear, I think.

"Senator SPONG. Future attack. He can act to repel what he believes to be future. I think there is a distinction here. Imminent, I look at as something much more likely to occur."

Thus, the Floor manager of the bill explained that his interpretation of "imminent" attack excluded the idea of a "future" attack.

4. The bill will undermine the credibility of our mutual defense agreements, in particular NATO.

Professor Richard B. Morris, who testified in support of the bill, nevertheless wrote to Senator Eagleton of his fears that NATO might be damaged by the bill. In his letter, sent after his original testimony, Professor Morris warned: "I might add that the effect could conceivably be mischievous were Congress at this time to decide, for example, that NATO was not self-executing. Such a reso-

lution might encourage the aggressive forces in Europe who would no longer see in NATO an effective deterrent to their expansionist aims."

5. The 30-day limit of the bill, after which troops cannot be used, even in emergency situations, is unrealistic and dangerous.

By allowing Congress to veto the President's judgment that continued defensive measures are required after 30 days, Congress is establishing itself as 535 Commander-in-Chiefs, something the Founding Fathers never intended.

6. The provision of the bill calling for a vote within 30 days if the emergency use of troops is to continue is potentially dangerous as a vehicle for leading the nation into total war.

The sponsors of the bill argue that Congress has the right to legislate concerning the making of war and the President has no power to contravene such legislation. According to this principle, the President would be required to engage the country into broader hostilities than he wishes in the event Congress passed a continuing authorization which included a directive, for example, that the United States invade an enemy nation, rather than blockade it, as in the Cuban Missile Crisis.

7. The bill leaves in doubt the will of the United States to act under the outstanding area resolutions.

The bill states that no provision of law now in force shall be construed as authority for Presidential action unless it "specifically authorizes" the introduction of troops in hostilities. What does this do to the Middle East Resolution which declares merely that the United States "is prepared" to use armed forces "consonant" with the Constitution of the United States? The authors of the bill contend that the term "constitutional processes," as used in our mutual defense treaties, means that no authority for action is granted unless the President returns to Congress for additional power. Accepting this interpretation, the Middle East Resolution must be repealed by the language of the bill, notwithstanding the denials of the sponsors.

8. It is doubtful the United States could participate in international humanitarian missions.

The bill provides specific authority only for the purpose of rescuing American citizens and nationals. No express authority is granted for joint missions such as the 1964 Congo rescue operation, when the major purpose was the evacuation of non-Americans, only 3% of those saved being Americans.

9. The bill provides no authority for immediate action leading toward the rescue of United States citizens hijacked on an aircraft while it is still in flight.

The "high seas" do not include the "blue skies."

10. It seems doubtful the President could protect United States fishing vessels in the territorial waters of another nation.

It is well-settled under international law that the term "high seas" does not include the waters known as "territorial waters." In fact, the two terms are given mutually exclusive definitions by the two 1958 Geneva Conventions on the High Seas and the Territorial Seas. Accordingly, the bill is ambiguous as to how it would apply to situations, such as Equador and Peru, where there are claims of a 200 mile territorial sea.

11. There is no authority under the bill for the protection of United States civilians on vessels in international straits.

Again, the term "high seas" is given a meaning under international law that is entirely different from "international straits."

12. The bill prohibits any action by the President designed to forestall an attack or the threat of an attack against the economic position of the United States.

The bill specifically restricts defensive action to situations where there is an actual armed attack upon the physical United States, its territories and possessions, or upon our Armed Forces. If an enemy should take the Suez Canal, or the Strait of Malacca, for example, the United States could not respond because the hostile action is not an attack upon any actual territory of the United States, although the attack represents a serious danger to the future economic strength of the United States.

13. The 30-day time restriction on emergency military actions might pressure a President to go all out by resorting to total war during the short period of time allowed him.

During the hearings, Senator Javits gave an indication this could occur by admitting there is nothing in his bill to stop it. Senator Javits stated: "Couldn't you wage a pretty good war if it were nuclear, and the President's immediate response were nuclear? *There is nothing in my bill that stops him from doing that.*"

14. It is impossible to prophesy all the unexpected and unlimited variations of events when the President may need to take defensive action without advance Congressional approval.

15. The declaration of war clause is an invalid basis for legislation which limits Presidential reaction to foreign dangers.

Judge Philip C. Jessup of the Council on Foreign Relations, who was cited by Senator Javits as being in support of his bill, nevertheless wrote that "the concept of 'declaration of war' . . . is now an outmoded concept." He added, "Because of my belief about the lack of real legal relevance of the declaration in these times, I would hesitate to tie new legislation so tightly to the 'declaration of war' clause of the Constitution."

Declarations were already outmoded in the 18th Century, as is proven by Hamilton's statement in the Federalist No. 25 that declarations of war were then falling into disuse.

16. The power "to declare war" has never meant the same thing as the sole power "to commence war."

Samuel Johnson's Dictionary of the English Language, which was the dictionary in vogue in the United States in the 1780's, defines "declare" as simply meaning "to make known" or "to proclaim." On the other hand, "to make" was defined as "to create" or "to bring into any state or condition."

Thus, when the Constitutional Convention struck out "make" from the Constitutional draft and substituted in its place "declare," it removed from Congress the power to bring the country into the state of war and left it with only the power to proclaim its purpose of supporting a war. The term was never construed as being an "all-inclusive" way of engaging in war.

17. The necessary and proper clause does not give Congress the power to restrict the President in the exercise of his functions.

The Library of Congress compiled a report in 1972 which found that it is unconstitutional for Congress to act under the necessary and proper clause to restrict a Presidential prerogative. The Library concluded that Congress may act to aid the President in the exercise of his functions, but not restrict him.

18. There is not a single statutory precedent for the war powers bill.

The recent Cooper-Church Amendments do no more than translate into statutory form President Nixon's own pledges not to involve American ground combat forces in Thailand or Laos. In fact, President Nixon has included the same provision in his own last two defense budgets.

Again, the provision aimed at the nonintroduction of additional ground combat forces into Cambodia merely spells out what President Nixon already says his policy is. The provision expressly declares that it is in line with the intention of the President.

Nor are the two Mansfield amendments of 1971 any precedent. As enacted, these provisions merely "request" the President to implement a policy of withdrawal from Indochina. The amendments are not binding.

19. Historical practice has conclusively established the validity of Presidential reactions to foreign dangers on his own authority.

There have been 201 hostilities in America's history and only five of them have been declared. Congress never passed a law purporting to terminate any of the 196 Presidentially-authorized hostilities.

20. The war powers bill would not prevent another Vietnam.

There are at least 24 statutes in which Congress participated jointly with the President in approving United States activities in Indochina, including the SEATO Treaty and the Tonkin Gulf Security Resolution.

21. The war powers bill might incite World War III by depriving the President of flexibility to meet unexpected threats promptly.

Dr. James McGregor Burns and George Ball each testified that war powers legislation might lead to another catastrophe similar to World War II, which an earlier Congress thought it had prevented under the Neutrality Acts adopted in the aftermath of World War I.

Mr. SPONG. Mr. President, I am pleased to have had a part in the development of the war powers legislation and to have served as a floor manager for the bill.

I believe that this is an important bill. I believe the Senate has been wise in debating it and would be wise to pass it.

Basically, this is a simple bill. Those of us who support war powers legislation believe that the war power is, constitutionally, a shared power, that the framers of the Constitution believed that both Congress and the President have responsibilities in the use of U.S. forces abroad.

In this bill we have delineated those powers which we believe were granted to the President under the Constitution. These powers include the right to protect the United States against attack or the threat of an imminent attack, to protect U.S. forces against attack or the threat of an imminent attack, to direct the activities of the Army and Navy under the Commander in Chief clause and, under certain circumstances, to take actions to rescue U.S. citizens in danger abroad.

We who support the bill also believe, however, that the framers of the Constitution in granting Congress the power to declare war gave Congress the power to participate in use of force decisions, not just the power to echo a proclamation. In order to exercise that power to declare war, Congress must, however, have a greater voice in the decisions to commit U.S. forces to hostilities abroad.

We who support this bill believe that Congress has always had powers in use of force decisions. Congress has, however, largely by inaction and acquiescence, permitted this power to atrophy. A natural result has been that Presidents throughout our history, but especially in the last quarter century, have stepped in to fill the vacuum. We have heard many times during this debate that Presidents have committed U.S. forces to hostilities abroad without a declaration of war close to 200 times. We know from the very thorough hearings conducted by the Symington subcommittee on U.S. Secu-

rity Agreements and Commitments Abroad that we have treaty commitments with more than 40 nations in the world, that we have more than 375 major military installations and more than 3,000 minor ones around the globe. In view of this, it seems quite likely that occasions will arise in the future in which consideration will be given to the committing of U.S. forces to offensive hostilities abroad.

The objective of this legislation is to give Congress a voice in those decisions. This bill provides a procedure and a methodology under which Congress may play a role in those decisions and thereby fulfill its constitutional role of declaring war.

As I have noted a number of times, the pending legislation neither confers upon nor detracts from the constitutional powers of the President. We do not seek to do that. We could not do that through legislation. Likewise, the legislation does not seek to enhance or diminish the constitutional powers of Congress. Again, we could not do that by legislation. But, the bill does seek to establish the procedures whereby Congress can exercise the war powers granted to it.

I believe the bill is important for restoring a balance between the Congress and the President in the use of war powers. It is important to the separation of powers, which is deeply embedded in our governmental tradition.

I believe the bill is important for reassuring our allies throughout the world that our commitments will be based on joint action by the Congress and executive branch and will represent a more united policy.

And, I believe the bill is particularly important for restoring a faith, a confidence, in our people that their representatives in the Congress will accept the responsibility for participating in those decisions which so vitally affect their lives.

Mr. JAVITS. Mr. President, I ask unanimous consent to have printed in the RECORD an outstanding article entitled "The Power To Make Wars," written by Richard B. Morris, who is a distinguished authority in the constitutional field, and published in the New York Times of April 13, 1972.

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

THE POWER TO MAKE WARS

(By Richard B. Morris)

Prof. Eugene Rostow's recent analysis of the Javits-Stennis war-powers bill constitutes so serious a distortion of American constitutional history and so warped an interpretation of the bill's provisions and likely effects that it should not go unanswered. Nothing in the bill justifies his condemnation of it as a "bold" bid for constitutional supremacy unrivalled "since the impeachment of Andrew Johnson" nor his contention that it is based upon a legal theory which would permit "a plenipotentiary Congress to dominate the Presidency (and the courts) more completely than the House of Commons governs in Great Britain."

This is nonsense. If any branch of the Government has usurped the war-making powers of the Constitution it has been the executive arm and not Congress, with consequences that have proven detrimental to the national interest.

The Constitution is clear on its allocation of the war powers. That document clearly distinguishes between declaring war and supporting it on the one hand, and conducting its operations on the other. Article I, section 8 vests in Congress the right to declare war and to raise and support armies, but limits to a maximum of two years the appropriation of money to their use. On the other hand, Article II, section 2 describes the President as Commander in Chief.

Throughout the debates on the drafting of the Constitution and its ratification one finds a deep concern about executive usurpation matched by an equal concern (and remarkable prescience) that the war powers remain lodged in the legislative branch of the Government, wherein they had been previously vested from the start of the American Revolution. At the same time the Founding Fathers made certain that the executive arm which they were in the throes of fashioning was given emergency powers for military defense.

To allay widespread fears that the war-making powers under the Constitution would subvert republican institutions the authors of The Federalist papers made a point of construing the President's role rather narrowly. The early Presidents used their military powers with caution. Even Washington's authority to issue a proclamation of neutrality seemed moot, James Madison contending that neutrality was merely the negative side of a declaration of war and required Congressional approval.

It is the undeclared war now being waged in Indochina, not the prospect of passage of the Javits-Stennis bill, which is damaging our prestige and credibility abroad. tragically dividing the American people, and diverting resources from the most urgent tasks of domestic reconstruction, In my considered judgment that bill sets the constitutional balance true. It provides urgently needed clarification of the warmaking powers in the spirit of the drafters and ratifiers of the Constitution without hampering the President in his capacity as Commander in Chief to act in defense of national security.

Professor Rostow and others protest that the Javits-Stennis bill would have inhibited the President in the Cuban missile confrontation. They scrupulously avoid mentioning the misconceived Bay of Pigs invasion or the dubious intervention in Santo Domingo. What the bill seeks to eliminate are brinkmanship and tiltmanship, the bankruptcy of the latter strategy all too evident in our recent posture during the India-Pakistan war.

The fact of the matter is that our disastrous involvement in Indochina did not come as a flashing meteor in the skies but resulted from a state of political erosion in that area going back a quarter of a century. Indubitably, during that considerable period of time, there must have been some moment when the issue of war or peace could have been put to Congress on a basis more candid and substantial than the Gulf of Tonkin Resolution.

Instead of candid communication between the executive and Congress we have had unparalleled doubletalk, evasion, and concealment. We have seen a phantom undeclared war, which was supposed to contract, continue to escalate; one which was supposed to shorten, spitefully drag on; one which now shrinks on land and expands in the skies.

Mr. KENNEDY. Mr. President, I rise to support the passage of S. 2956, the War Powers Act. Perhaps more than most measures before this body, the bill currently under debate represents an attempt to legislate with the national interest as the sole beneficiary.

The diverse membership of its chief sponsors indicates as well that this measure is motivated neither by partisanship, by sectional sympathies nor by private interests. The lengthy hearings, the carefully drawn bill, and the recent debate represent the best efforts of responsible legislators to codify the congressional and Executive war powers.

I believe the measure before us has successfully threaded the path between too severely restricting the President's ability to respond to emergencies and preventing the present imbalance between the executive and legislative branches in the area of war powers from continuing unchecked.

For we have seen only too well how the past two decades has witnessed a fundamental alteration in the traditional relationship of Congress and the President. Regardless whether one can point to instances in the 19th century when armed forces were deployed and hostilities begun without congressional authorization, it has been clear that since 1950, the basic power to commit the Nation to war, without limit as to duration or to extent, has been abrogated by the President.

From Korea to the invasion of the Dominican Republic, and finally to Vietnam, we have seen mounting evidence of the President unilaterally assuming the power to commit the Nation to war.

The Vietnam war, with the unbridled escalation of U.S. troops since 1965, the extension of the war into Cambodia and Laos and now the return to massive bombing, is the most compelling exhibit of how far the pendulum has swung toward Presidential decisionmaking on when, how, and under what circumstances the Nation will go to war.

It was the chief author of this measure, Senator JAVITS, who so aptly cited the "convergence of the President's role of conducting the foreign policy with his role as Commander in Chief of the most potent standing army the world has ever seen that has tilted the relationship betwen the President and Congress so far out of balance in the war powers field."

And Presidents and their spokesmen acknowledge the shift and assert its legitimacy.

Thus, Dean Acheson told the Committee on Foreign Relations and Armed Services Committees in 1951:

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 powers which it has under the Constitution.

The role for full presidential freedom of action was asserted more boldly in 1965 by then Assistant Secretary of State Nicholas Katzenbach who viewed the Gulf of Tonkin resolution as the functional equivalent of a declaration of war. For he told the Congress that the resolution was "as broad an authorization for the use of armed forces for a purpose as any declaration of war so-called could be in terms of our internal constitutional process."

And President Johnson went even further, saying in the press conference of August 18, 1967, that—

We stated then, and we repeat now, we did not think the resolution was necessary to do what we did and what we're doing. . . ."

For he viewed the presidential role as

Commander in Chief to be sufficient to justify the use of the Armed Forces in Vietnam.

The repeal of the Tonkin Gulf resolution has not in any was affected the view by this administration that the President has full authorization to use U.S. Armed Forces in Indochina in any way he feels necessary. The recent bombing escalation was justified as necessary to protect U.S. troops remaining within South Vietnam. But where is there a limit to that power?

Vietnam since 1965 represents a quantum jump in the range of presidential war powers. It represents, as Alexander Bickel of the Yale Law School has noted:

". . . an all but explicit transfer of the power to declare war from Congress, where the Constitution lodged it, to the President, on whom the framers explicitly refused to confirm it.

Article I, section 8, of the Constitution enumerates the war powers of Congress:

To provide for the common defense;

To define and punish . . . offenses against the law of nations;

To declare war;

To raise and support armies;

To make rules for the government and regulation of the land naval forces;

To provide for calling forth the military to execute the laws . . . and repel invasion;

To provide for organizing, arming, and disciplining, the militia and for governing such part of them as may be employed in the service of the United States.

To the President is given under article II, section 2 only the following authority:

The President shall be Commander-in-Chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States.

The debate at the Constitutional Convention which produced that separation of powers was long and arduous. Originally, it was to be the Congress which would "make" war. But, in the Convention, it was agreed that a very limited power should be left with the President, the power to "repel sudden attacks." Therefore, the draft language was changed to provide that the Congress have the power to "declare" war.

James Madison, perhaps the most authoritative interpreter of the Constitution, and whose amendment, along with Elbert Gerry, gave Congress the power to "declare" war rather than to "make" it, wrote in 1973:

Every just view that can be taken of this subject, admonishes the public of the necessity of a rigid adherence to the simple, the received, and the fundamental doctrine of the constitution, that the power to declare war, including the power of judging of the causes of war, is *fully* and *exclusively* vested in the legislature; that the executive has no right, in any case, to decide the question, whether there is or is not cause for declaring war; that the right of convening and informing congress, whenever such a question seems to call for a decision, is all the right which the constitution has deemed requisite and proper.

Chief Justice John Marshall in 1801 expounded the same view in Talbot against Seeman, when he wrote:

The whole powers of war being, by the Constitution of the United States, vested in Congress, the acts of that body alone can be resorted to as our guides in this inquiry.

Daniel Webster, during his service as Secretary of State, affirmed that statement when he wrote:

In the first place, I have to say that the war-making power in this Government rests entirely in Congress; and that the President can authorize belligerent operations only in the cases expressly provided for by the Constitution and the laws.

And it is to reassert that balance between Congress and the President and to provide guidance for the future, that the measure now before us must be considered.

First, it is important to indicate what it does not do. It does not prevent the President from responding to or forestalling imminent attacks upon the United States. It does not prevent the President from responding to or forestalling imminent attacks upon U.S. troops abroad. It does not prevent the President from acting to protect U.S. citizens endangered by hostilities in foreign nations during their speedy evacuation.

But it does define the limits of that ability. It does ensure that the general public view that Congress has authorized the use of American troops abroad shall be based on fact.

For it requires that when the President makes emergency use of the Armed Forces, after 30 days, there must be congressional authorization for the continued use of those forces in hostilities.

In this way, the constitutional power of the President "to repel sudden attacks" is codified and the preservation of the power to commit the Armed Forces for any extended period of time is retained to Congress.

It also insures that there will be no confusion as to whether there has been congressional authorization for sending American troops to war. For it declares that the authority to employ the Armed Forces in hostilities shall not be inferred from any provision of law, including appropriations, except where there is explicit authorization.

This administration has challenged critics of the war by noting that we had voted for appropriations and thereby acceded to the war and given it the sanction of congressional concurrence. Nothing could be further from the truth. For there is strong unwillingness to deny to our soldiers the necessary material support to survive which makes an appropriations bill a less-than-perfect vehicle for determining congressional authorization.

A Harvard Law Review article states the matter succinctly:

If the power over appropriations had been thought sufficient safeguard against presidential war making it becomes difficult to understand why the framers were so concerned about withholding the war power from the Executive in the first place.

If the Armed Forces of this Nation are to be committed to war, if the public is to be denied funds for teachers and doctors to pay for bombs and bullets, if 2 million men are to come back scarred physically or emotionally from the battlefield, then it must not be by the unilateral decision of the President. It must be as the Constitution requires, with a clear statement of justification, and after a full debate and a formal decision by the Congress to insure that the public is aware of the commitment being assumed.

For without that authorization, then the Nation will endure again the same malaise of the national spirit, the same alienation of the young, and the same doubts as to our national purpose which we have experienced during the past 7 years.

Therefore, I urge the passage of the war powers bill.

Mr. HRUSKA. Mr. President, with the passage of S. 2956, the war powers bill, the Senate would be making a most unfortunate error. Ironically, this final vote indicates that the critics of this bill were exactly right in pointing out how susceptible the Congress is to political pressures in matters of this sort—and why the principal warmaking power was, therefore, vested in the President by our Founding Fathers.

The proponents of this bill have continually said that the American people expect us to do something about future Vietnams, and that the Senate must act to restore the faith of the people in our Government. It is tragic that this body would sacrifice a constitutional principle so basic as the separation of powers on the altar of expediency, in order to satisfy imagined political needs of the moment. I say "imagined," for I am certain that the American people as a whole would be shocked and dismayed if they were truly aware of what has taken place in this Chamber today.

It has been argued by the sponsors of this legislation that no constitutional infringement is contained in this bill because the Constitution cannot be amended by simple act of Congress. That is merely stating a conclusion. It overlooks the fact that the Congress can still try to amend the Constitution with legislation, if it can get away with it. That is exactly the case with S. 2956.

I can fully understand why the advocates of this bill did not want it examined by the Judiciary Committee. They had good reason to fear inquiry into its constitutionality. The more evidence against the legality of this proposal presented by this Senator and those who supported his motion to refer the bill to the Judiciary Committee, the more adamant grew the resistance to the motion. When the motion was amended to provide a limit of but 45 days during which the Judiciary Committee would consider this measure, the resistance to the motion grew even stronger. All sorts of contradictory arguments were made against the motion to refer. It was suggested that 45 days was a paltry time to invest in further study, since the Foreign Relations Committee had given S. 2956 the benefit of its thinking for 2 years. At the same time, it was argued that 45 days was too long, and would delay the bill past the time when the Senate could act on it.

Finally, an effort was made to reduce this motion—a purely procedural step—to a matter of substance. It was argued that a vote for the motion was a vote against the bill, since one could not send

the bill to the Judiciary Committee without being convinced of its lack of constitutionality. This was, of course, utter nonsense. The motion was an effort to promote further exploration in the appropriate forum, after which conclusions could be drawn about the bill's constitutionality—not before. Having been denied this opportunity, those of us in the Senate who are mindful of the plain language of the Constitution and almost 200 years of legal precedent can only conclude that S. 2956 is unconstitutional—and that the bill's supporters are very much aware of this fact.

How else can the actions of the proponents of this bill be explained? Why the fear of further examination, limited by time? Is it logical to throw away the chance to record the testimony of such preeminent figures as Professors Rostow and McDougal of Yale Law School; Prof. Arthur Schlesinger of State University of New York; Prof. Louis Sohn of Harvard Law School; Prof. Gordon Baldwin of University of Wisconsin Law School; former Attorney General Herbert Brownell; former presidents of the American Bar Association David Maxwell and Bernard Segal; and a number of others—all of whom have already expressed grave reservations about the war powers bill?

Mr. President, the supporters of S. 2956 attempted to make light of this bill's constitutional implications in several ways, in order to resist the motion of this Senator. They argued that the study of this point had already been adequately accomplished in the Foreign Relations Committee—although only two professors of law testified on the legislation before that committee. While agreeing that the bill had constitutional import, they claimed it was no different in this respect than numerous other bills passed by this body without reference to the Judiciary Committee.

Nothing could be further from the truth, Mr. President. To begin with, the motion to refer was supported with ample evidence from noted legal authorities that S. 2956 was in fact an attempt to modify the Constitution by legislative act. Further, the bill's proponents themselves have often stated that this measure is intended to modify the existing balance between the executive and legislative branches with respect to the war powers. Is this not a truly basic constitutional question? Is this not why the Senate as a body has created the Subcommittee on Separation of Powers in the Judiciary Committee, to examine legislation raising this very issue? This bill is a perfect example of legislation that presents the kind of grave constitutional questions which mandate a referral to the Judiciary Committee.

Under our Constitution, the veto power belongs exclusively to the President—just as do the powers which this bill improperly purports to take away. This Senator would not presume to say how the President should react if S. 2956 is presented to him by the Congress in its present form. Should my advice be requested, however, I would urge the President to veto this bill as an unconstitutional intrusion on the powers of his office.

Mr. BUCKLEY. Mr. President, I have studied the arguments for and against the War Powers Act with the greatest care because I concur in the belief that we must reexamine, in the light of current realities, the respective responsibilities of the President and of the Congress for the deployment of our Armed Forces and for their commitment to combat. As the Senator from Kentucky (Mr. COOPER) has pointed out in his thoughtful "Independent Views," we are dealing in a "zone of twilight" in which "it is impossible to determine in every case the exact limits of the President's power to engage the Armed Forces of the United States in hostilities."

The distinguished Senator from Kentucky is speaking, of course, in terms of the constitutional considerations. But there are other considerations which must be weighed with equal care, and these might be termed the prudential considerations. Both the Senator from Mississippi (Mr. STENNIS) and the Senator from Wyoming (Mr. MCGEE) in their discussions on the floor of the Senate have emphasized the need to go beyond purely constitutional considerations in arriving at an appropriate definition of the Presidential and congressional responsibilities so that we might be assured that the true interests of the people of the United States are best served. Thus the great question now under debate must be examined on two fronts—the constitutional as defining the limits of what Congress can do, and the prudential as defining the limits of what Congress ought to do.

The concerns which have found their focus in the War Powers Act are certainly not new, as has been amply demonstrated by the detailed historical analyses which have been presented during the course of this debate. For nearly two centuries, the security of the Republic has been maintained by a combination of declared wars and military initiatives undertaken on the authority of the President. Yet the constitutional "tension" which has existed between the rights of the executive and the legislative branches has never in the past triggered a serious challenge to Presidential authority. This has been so, I think, because with the exception of the American operations in the Philippines in the early part of this century, our earlier undeclared wars have been small, and have been fought for well understood and limited objectives.

Within the past two decades, however, the United States has been involved in a new dimension of undeclared war in which the national commitment and the risks entailed have been far larger than they ever have been before. The Korean and Vietnam wars have involved hundreds of thousands of men, have cost tens of billions of dollars, and have endured over prolonged periods of time. It is therefore appropriate that the whole matter of the respective responsibilities and authority of the executive and legislative branches in the grave matters of war and peace should be given the most careful attention at this time in our history.

I believe it is most important that the Congress search for some mechanism which would constrain the scope and magnitude of Presidentially initiated military operations within the context of some form of explicit congressional mandate. This was the burden of the attack on the legality of our involvement in the Korean war which was made by one of the most thoughtful men ever to sit in this body, the late Senator Robert A. Taft, Sr. This the Committee on Foreign Relations has sought to do, and I commend the initiative and thought and imagination which my colleague from New York (Mr. JAVITS) has brought to bear in framing the War Powers Act. His work and that of the other members of the committee has been enormously constructive, and it has served to define more sharply the nature of the problem and the areas which, in my judgment, still need to be explored. For I am forced to conclude that the act fails to meet the prudential and constitutional tests; and I am frank to state that I am not sure if it is possible for any legislation to meet those tests which rely on a rigid definition of the circumstances within which a President can act on his own authority.

The constitutional questions which have been raised during the course of the debate have been such as to satisfy me that this aspect of the act ought to be given far deeper study. This is why I voted in favor of the motion offered by the Senator from Nebraska (Mr. HRUSKA) to refer the bill to the Committee on the Judiciary.

With respect to the prudential considerations, I believe that the bill in its present form could pose a grave danger to the future security of the United States because of the limitations which it imposes on the flexibility with which a President can react to crises involving vital national interests at home and abroad. The 30-day formula is too rigid, and the attempt to detail the circumstances in which troops can be deployed cannot possibly anticipate all the contingencies with which a President might be confronted in the future. The constraints imposed on a President, the timetables within which he would have to operate irrespective of temporary political considerations at home, the opportunities offered future antagonists to orchestrate crises in a manner so as to exploit the inelastic requirements of the act—all these aspects deeply concern me. According to an analysis of the act recently made by Professor Eugene Rostow of the Yale Law School, who was a former consultant to the Department of State during the Kennedy administration.

If the Javits bill had been on the books, it would have prevented President Kennedy from handling the Cuban missile crisis as he did. There was no claim on that occasion that we were acting to forestall an imminent threat of armed attack. Under the Javits bill, Mr. Johnson could not have moved the fleet to keep the Soviet Union out of the Six-Day War in 1967. Mr. Nixon could not have used the same method to avert general war in the Middle East in 1970, or to confine the India-Pakistan War of 1972. Nor could earlier Presidents have used force or the threat of force to induce France to leave Mexico in 1865–66, to avoid war with Britain and Spain over Florida, or to send Commodore Perry to Japan.

It is because of these constitutional and prudential considerations that I

voted in favor of the amendment offered by the Senator from Maryand (Mr. BEALL) which would have created a special commission to study in depth all aspects of this vitally important question. It is because of them that I will vote against the War Powers Act in its present form.

Mr. JAVITS. Mr. President, I think it is widely recognized by all on both sides that the debate on the War Powers Act constitutes an important historical record which will be of great value to all scholars in and out of Government for many years to come. As this debate draws to a close, I believe it would be useful in helping to complete the record to include a study just completed by Raoul Berger. Mr. Berger is a well-known lawyer and scholar of Massachusetts and one of the Nation's most respected authorities on constitutional law. Just this morning I received from him a copy of his newest study entitled "Warmaking by the President."

Accordingly, Mr. President, I ask unanimous consent that an article entitled "Warmaking by the President" be printed in the RECORD.

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

WARMAKING BY THE PRESIDENT

(By Raoul Berger)

To a nation wracked by the prolonged, undeclared war in Vietnam—described by an informed English observer as "the greatest tragedy that has befallen the United States since the Civil War [1]—the presidential power to commit it to such luckless adventures is of surpassing importance. Thirty-odd years of recurrent international crises, exploding against a background of super-power hostility such as has long been unknown to the American people, fed swollen Executive claims of war-making power, often with the acquiescence if not encouragement of Congress.[2]

It is not my purpose to conduct yet another inquest into the propriety of the presidential steps that led to our involvement in Vietnam, or whether the war received congressional sanction. Instead the focus of discussion will be whether the original constitutional distribution of powers can be restored by statute in order to insure congressional participation in war-making policy. A long over-due step in that direction was recently taken by the War Powers Bill, favorably reported by the Senate Foreign Relations Committee, which seeks to lay down rules governing the use of armed force in the absence of a declaration of war by Congress.[3] Secretary of State William Rogers warns that the Bill "would violate the Constitution," that it departs from an allocation of powers that is "basic to our system."[3a] Is such a statute really unconstitutional? To answer that question it is necessary to examine what powers the Constitution conferred both upon Congress and the President, and whether presidential "usage," even with congressional acquiescence, can alter the original distribution of powers. In the interest of a self-contained study some recapitulation of materials recently grown familiar is inescapable; [4] but I shall supplement these materials with some illuminating gleanings, and hope to strengthen the inferences drawn from the historical record.

THE INTENTION OF THE FRAMERS

a. The Commander in Chief clause

The Commander in Chief as conceived by the Framers bears slight resemblance to the role as played by the President today, when, in the words of Justice Jackson, it is invoked for the "power to do anything, anywhere, that can be done with an army or navy." [5] From history the Framers had learned of the dangers of entrusting control of the military establishment to a single man who could commit the nation to war.[6] The vast bulk of the war powers was therefore conferred on Congress, leaving to the President a very meager role. Let James Wilson, one of the leading Framers, summarize the constitutional provisions:

"The power of declaring war, and the other powers naturally connected with it, are vested in Congress. To provide and maintain a navy—to make rules for its government—to grant letters of marque and reprisal—to make rules concerning captures—to raise and support armies—to establish rules for their regulation—to provide for organizing the militia and for calling them forth in the service of the Union—all these are powers naturally connected with the power of declaring war. All these powers, therefore, are [expressly] vested in Congress." [7]

To this may be added that Congress was also empowered to "provide for the common defense" and to make appropriations for the foregoing purposes. Since all the powers "naturally connected" with that of declaring war are vested in Congress, it follows, so far as war-making goes, that they are not to be exercised by the President. The President, said Wilson, "is to take care that the laws be faithfully executed; he is commander in chief of the army and navy"; like the Saxon "first executive magistrate . . . he ha[s] authority to lead the army." [8] How narrowly the function had been conceived may be gathered from the *instruction* by the Continental Congress to George Washington in 1783 to arrange for the take-over from the British of occupied ports and for the liberation of prisoners.[9]

Virtually each early State Constitution had made the Governor "captain-general and commander in chief," to act under the laws of the State, which is to say, subject to governance by the legislature.[10] In the Convention, the New Jersey plan proposed by William Paterson provided that the Executive was "to direct all military operations" but not "on any occasion [to] take command of the troops, so as personally to conduct any enterprise as General," that is, in the field.[11] In the plan Hamilton submitted to the Convention, he proposed that the Executive should "have the direction of war when authorized or begun," implying that it was not for him to "begin" a war.[12] The words "commander in chief" were adopted without explanation; but it is a fair deduction that Hamilton's explanation in The Federalist expressed the general intention.[13] As Commander in Chief, said Hamilton, the President's authority would be "much inferior" to that of the British king: "It would amount to nothing more than the supreme command and direction of the military and naval forces, as first general and admiral . . . while that of the British King extends to the *declaring* of war and to the raising and regulating of fleets and armies—all of which, by the Constitution . . . would appertain to the legislature." [14] The fact that Hamilton felt it necessary to assure the people that the President's powers were "much inferior" to those of the King is in itself highly significant—he was well aware of "the aversion of the people to monarchy." [15]

In fact, all the roots in the royal prerogative had been cut by the State Constitutions and repudiated by the Founders; [16] consequently there is no room for a claim of "inherent" executive powers in the premises.[17] The President's severely limited role was a response to what Madison called an "axiom that the executive is the department of power most distinguished by its propensity to war; hence it is the practice of all states, in proportion as they are free, to disarm this propensity of its influence." [18] "Those who are *to conduct a war,*" stated Madison, "cannot in the nature of things, be proper and safe judges, *whether a war ought to be commenced, continued or concluded.* They are barred from the latter function by a great principle in free government, analogous to that which separates the sword from the purse, or the power of executing from the power of enacting laws." [19]

Corwin commented on Hamilton's explanation of the role of Commander in Chief: "this appears to mean that in any war . . . the President will be top general and top admiral of the forces provided by Congress [in Wilson's words, "to lead the army"], so that no man can be put over him or be authorized to give him orders in the direction of the said forces. But otherwise he will have no powers that any high military or naval commander who was not also president might not have." [20] So it appeared to Chief Justice Taney as late as 1850.[21]

b. "Congress shall have power . . . to declare war"

Under the Articles of Confederation the Continental Congress had the "sole and exclusive right and power of determining on peace and war." [22] No reference to the war-making power was contained in the Virginia Plan; the New Jersey Plan was content, through incorporation by reference, to bestow on the legislature the power vested in the Continental Congress.[23] Early in the Convention, Madison agreed with Wilson that "executive powers . . . do not include the Rights of war and peace." [24] The draft filed with the Convention by the Committee of Detail provided that the Legislature should "make war," [25] and it was this provision that was the subject of debate.

Charles Pinckney opposed "vesting this power in the Legislature. Its proceedings were too slow"; [26] he preferred the Senate, as Hamilton had earlier proposed in his own Plan.[27] Pierce Butler, on the other hand, "was for vesting the power in the President"; but Roger Sherman considered that the Committee's provision "stood very well. The Executive should be able to repel and not to commence war." [28] Elbridge Gerry was astonished to hear "a motion to empower the Executive alone to declare a war." George Mason also "was against giving the power of war to the Executive, because not safely to be trusted with it. . . . He was for clogging rather than for facilitating war." [29] The fact that no motion was made to substitute the President for Congress and that the power was left in Congress justifies the conclusion that Presidential "commencement" of a war or his power "alone to declare a war" found no favor.

Any power to which the President may lay claim, apart from what he enjoys as commander in chief, derives from a joint motion by Madison and Elbridge Gerry to substitute "declare" for "make . . . leaving to the Executive the power to repel sudden attacks." [30] The textual change from "make" to "declare" was approved; explanation of the change was furnished by Rufus King: "'make' might be understood to 'conduct' it [war] which was an executive function," [31] a function reserved to the commander in chief. But in that role the President was merely to control the tactics and strategy of combat.[32] The shift from "make" to "declare" has elicited varied views; [33] for example, Professor Leonard Ratner states that the "declare" clause recognized "the war-making authority of the President, implied by his role as executive and commander in chief and by congressional power to declare, but not make, war." [34] No war making power was conferred by the commander in chief clause; and Madison and Wilson agreed that "executive powers . . . do not include the rights of war and peace." [35] So too, the grant to Congress of *all* the powers "naturally connected" with the "declare" power (except for the Command function) excludes any war-making power from the President's "role

Footnotes at end of article.

as executive." Only in a very limited sense—command of the armed forces plus authority to repel sudden attacks—can one accurately refer to a presidential war-making power.[36]

Pretty plainly, when Madison and Gerry proposed to leave to the President power "to repel sudden attacks" they reflected Sherman's view that the "Executive should be able to repel and not to commence war." This is the true measure of the presidential power. Certainly Gerry did not mean to repudiate his rejection of the proposition that the Executive could "alone declare war," still less propel the nation into undeclared war.

Viewed against the repudiation of royal prerogative, no more can be distilled from the Madison-Gerry remark than a limited grant to the President of power to repel attack when, as the very terms "sudden attack" imply, there could be no time to consult with Congress. Despite the fact, therefore, that the replaced "make" is a verbal component of "war-making," the shift to "declare" did not remove the great bulk of the war-making powers from Congress; it merely removed that Executive power to *conduct* a war once declared, as King explained. If the war-making power did not remain in Congress, the exception for presidential power "to repel sudden attacks" was superfluous.

It needs to be underscored that the "sudden attack" remark was not incorporated into the constitutional text. Consequently, if the "intention of the Framers," as expressed in the Gerry-Madison remark be thrust aside, there is no basis whatsoever for a presidential power to repel attacks, for the President was cut off from all "inherent" power. That "intention" cannot be invoked to establish the power and dismissed as without bearing on its scope. The scope of the "repel" power may be gathered from Sherman's remark that the Executive should not be able to "commence war," from Mason's statement that the Executive was "not safely to be trusted" with the war power, and from Wilson's explanation to the Pennsylvania Ratification Convention that the power to "declare" was lodged in Congress as a guard against being "hurried" into war, so that no "single man [can] . . . involved us in such distress."

By "sudden attacks," the State Department's Legal Advisor conceded, "the framers probably had in mind attacks upon the United States"; [37] certainly there is no hint of a broader meaning in the several Convention records. But Professor Alexander Bickel, considers that the " 'sudden attack' concept of the framers . . . denotes a power to act in emergencies in order to guard against the threat of attack, as well as the attack itself, when the threat arises, for example, in such circumstances as those of the Cuban missile crisis of 1962." [38] Gerry and Madison spoke of a "power to repel sudden attacks," which connotes actual, not threatened attack; and there is reason to believe that a restricted connotation should be given to their remark. Imminent danger of attack had been provided for in the antecedent Articles of Confederation. In conferring "the sole and exclusive right and power of determining on peace and war" upon the Continental Congress, Article IX made an exception for Article VI, which provided, "no state shall engage in any war without the consent of the United States in Congress assembled, unless such state be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such state, and danger is so imminent as not to admit of a delay, till the United States in Congress assembled can be consulted." [39]

A similar provision for State resistance had been recommended to the Convention by the Committee on Style.[39a] Arguably omission of this provision speaks only against exercise of the power by a State. Nevertheless the attention of the Convention had been specifically drawn to the imminent threat of invasion problem, and it needs to be asked why no reference was made in the debates to a presidential power to react against such imminent danger. One who has studied the sources and perceived the overriding devotion of the people to the States, their jealousy of Executive power, embodying the threat of monarchical excesses,[40] will hardly conclude that the Framers meant to concede to the President power that they denied to a State for self-protection.

The problem is raised in no niggling spirit but rather because expansion of the "sudden attack" remark to include the imminent threat of invasion opens the door to a whole row of still other expansive readings of presidential power. Of course, there must be means of meeting a Cuban missile crisis, but the way is by Congressional authorization such as the War Powers Bill proposes.[40a] For it is Congress, not the President, that has plenary power to deal with all facets of war making.

Several other morals can be drawn from the Articles of Confederation provision. Resistance to invasion was limited to invasion of "such state," not to that of a contiguous sister State in the "league of friendship." Georgia was not authorized to resist the invasion of New York, let alone Canada.[41] Danger of imminent attack authorized reaction only if there was no time for consultation with Congress. Finally, we are apt to think that devastating surprise is peculiar to our times, forgetting that the Founders had lived through surprise attacks on frontier forts and settlements and well knew the havoc they could weak. It was that experience that led them to leave resistance to imminent danger of Indian attack to the individual threatened State.

The State Department would have little quarrel with this reading of the original intention: "In 1787 the world was a far larger place, and the framers probably had in mind attacks upon the United States." [42] But "in the twentieth century the world has grown much smaller. An attack on a country far from our shores can impinge directly upon the nation's security . . . The Constitution leaves to the President the judgment whether the circumstances of a particular armed attack are so urgent and the potential circumstances so threatening to the security of the United States that he should act formally without consulting the Congress." [43] What portion of the Constitution confers this astonishing power? Because the world is contracting it does not follow that the President's constitutional powers correspondingly must be expanding.[44] To the contrary, as Madison said:

"Every just view that can be taken of this subject, admonishes the public of the necessity of a rigid adherence to the simple, the received, the fundamental doctrine of the constitution, 'that the power to declare war,' including *the power of judging the causes*, is *fully and exclusively* vested in the legislature; that the executive has no right, *in any case*, to decide the question, whether there is not cause for declaring war; that the right of convening and informing congress, whenever such a question calls for a decision, *is all the right* which the constitution has deemed requisite and proper." [45]

Although Hamilton had moved from a narrow [46] to a broader view of the Executive power,[47] he still declared that it is the exclusive duty of Congress, when the nation is at peace, *to change that state into a state of war* [note this gloss on "declare"]; . . . *it belongs to Congress only to go to war*. But when a foreign nation declares or . . . *makes war* upon the the United States . . . any declaration on the part of Congress is . . . unnecessary." [48]

The argument for transformation of the phrase "to repel sudden attacks" to an alleged presidential power to commit the armed forces to battle against invasion of Korea or Vietnam has been succinctly put by Leonard Ratner: "constitutional policy for ensuing epochs is not congealed in the mold of 1787 referants. Such a policy is derived from long range-goals that underlie the constitutional language as illuminated by the Convention proceedings,[49] from the implications of the language disclosed by resolution of subsequent problems, and from its function in the context of altered social needs." [50]

Ratner's derivation of constitutional policy from the "function" of constitutional language "in the context of altered social needs," proceeds from his premise that "constitutional policy for ensuing epochs is not congealed in the mold of 1787 referants." [51] Of course it was not so congealed, for the Founders provided for change by a process of Amendment. True, the amending process reserved by Article V to the people themselves, is cumbersome;[52] but it does not follow that their servants may informally amend the Constitution without consulting the people.[53] Thus far the argument for informal amendment has generally been made on behalf of the claim that the *Supreme Court* is the necessary engine for "adaptation" of the Constitution to the needs of modern life.[54] Now the startling claim is made that the *President*, in response to the perils of a contracting world, may single-handed alter the constitutional division of powers and take unto himself a power withheld from him and expressly conferred on Congress.[55] This unilateral revision of the Constitution, it needs to be borne in mind, is claimed by him to be immune from judicial review.[56]

"The central fact," Professor Monaghan avers, "is that the framers left us with a structure of government sufficiently fluid to accommodate a good deal of shifting power between congress and the president." [57] This may be true in the "gray areas where joint power exists—where both branches have tremendous and overlapping power"; [58] but it is emphatically not the case with respect to the war-making powers. There the "vast accretion" of presidential power [59] represents an arrogation of powers expressly conferred upon Congress and intentionally withheld from the President. One may accept arguendo Richard Neustadt's view that the framers did not create "a government of separated powers" but rather a "government of separated institutions 'sharing powers' " and yet conclude that the quantum of power distributed to each branch by the Framers marks the extent of the sharing.[60] Otherwise the painstaking distribution of powers in the constitutional text is rendered meaningless.

To a believer in constitutional government, in the separation of powers as a safeguard against totalitarian oppression, there is no room for a take-over by the President, on the plea of never-ending emergency, of powers that were denied him, and, as our own times demonstrate, denied with good reason. If present exigencies demand a redistribution of powers originally conferred upon Congress—a presidential power to involve the nation in war without consulting Congress—that decision ought candidly to be submitted to the people in the form of a proposed amendment, not masked by euphemisms.[61] Presidential "Usage"—The "125 Incidents."

Presumably Ratner's suggestion that we are to glean constitutional policy "from the implications of the language disclosed by resolution of subsequent problems" reflects the State Department's statement that "Since the Constitution was adopted there have been at least 125 instances in which the President has ordered the armed forces to take action or maintain positions abroad without obtaining prior Congressional authorization, starting with the 'undeclared war' with France (1799–1800)." [62] Such incidents were invoked in 1950 by Secretary of State Dean Acheson as a warrant for "sending our troops into battle" in Korea.[63]

The painstaking analysis of the "125 in-

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cidents" by Professor Francis Wormuth cuts the ground from under the claims of Acheson & Co.[64] Under Secretary of State Nicholas Katzenbach himself stated that "most of these [incidents] were relatively minor uses of force." [65] The "vast majority" of such cases, said Edward Corwin, "involved fights with pirates, landings of small naval contingents on barbarous or semi-barbarous coasts [to protect American citizens], the dispatch of small bodies of troops to chase bandits or cattle rustlers across the Mexican border." [66] For one reason or another such cases presented little or no possibility of conflict or case, bloodshed so there was no occasion to approach Congress for authorization to make war; [67] even so, some Presidents sought authorization in such case.[68] Such incidents are far from "precedents" for sending our troops "into battle." [69] Were these incidents, contrary to the fact to be regarded as equivalent to the Executive waging of war, the last precedent would stand no better than the first; [70] usurpation is not legitimated by repetition.[71] It is one of the ironies of history that such "precedents" should be invoked for vastly greater incursions at a time when "gunboat diplomacy" has been discredited and abandoned.[72] To extrapolate from a practice of landing "six sailors in a long boat to rescue a citizen" to a right to commit the nation to a Vietnam war,[73] which has cost 30 billion dollars a year, engaged upwards of 500,000 men, resulted in some 200,000 wounded and 45,000 dead, is to make a breath taking analogical leap across a chasm of non-equivalence.[74] Whatever effect may be given to a practice as the "gloss of experience" when it concerns a power granted in general or equivocal terms to the President alone,[75] the issue differs totally when the presidential practice derogates from powers clearly conferred upon Congress.

Professor Monahan criticizes Wormuth's deflation of the "125 incidents" on which the State Department relies, first on the ground that "To dismiss American intervention in Latin America as 'minor' amounts to recognition of presidential power to wage war against weak opponents for limited purposes." [76] Consider, for example, the bombardment by an over-zealous navy captain of the "sovereign state of Greytown," Nicaragua in 1854, in reprisal for some negligible "outrages" by what President Pierce described as a band of outlaws rather than an organized society, and which Secretary of State Marcy wrote was "an embarrassing affair" that could not be repudiated because of domestic political repercussions.[77] Professor Monaghan is welcome to regard this as the "waging of war"; but few would equate it with the presidential commitment of troops to resist the invasion of South Korea. What if the "incidents" do demonstrate that "with ever-increasing frequency, presidents have employed that amount of force that they deemed necessary to accomplish their policy objectives. . . . Whatever the intention of the framers, the military machine has become simply an instrument for the achievement of foreign policy goals, which in turn have become a central responsibility of the presidency." [78] Of course, if the "intention of the framers" counts for nought it is possible to argue, as Monaghan does, that "a practice so deeply embedded in our governmental structure should be treated as decisive of the constitutional issue." [79] Even if, however, we identify these "minor" incidents with war-making, then, just as illegality does not become legal by repetition, so the President cannot by repetition legitimatize usurpation.

Monaghan's assertion that the military machine has become simply an instrument for the achievement" of presidential foreign policy is a choice example of the tail wagging the dog. By endowing the President with authority to receive ambassadors and (with Senate consent) to make treaties—such are the slight sources of his claim to be the sole organ" of foreign relations—the Framers hardly intended to confer upon him a power unmistakably withheld when the war powers were under consideration, the power all by himself to "hurry" the nation into war.

Against such dubious "precedents" there is the testimony of great contemporaries of the Constitution.[80] In 1801, President Jefferson was confronted by Tripoli's declaration of war; when an American naval vessel was attacked it disarmed but released the attacker. Jefferson explained to Congress, "Unauthorized by the Constitution, without the sanction of Congress, to go beyond the line of defense, the vessel being disabled from committing further hostilities was liberated with its crew. The Legislature will doubtless consider whether by authorizing measures of offense also, they will place our forces on an equal footing with that of adversaries." [81] In 1805 Spain disputed the boundaries of Louisiana and President Jefferson advised Congress that Spain evidenced an "intention to advance on our possessions . . . Considering that Congress alone is constitutionally invested with the power of changing our condition from war to peace, I have thought it my duty to await their authority for using force." [82] A threat of invasion did not deter Jefferson from consultation with Congress.

James Madison, the leading architect of the Constitution, who took a very narrow view of the presidential war power,[83] confirmed that view when he was President. In his message of June 1, 1812, he called attention to English outrages on American commerce, to the failure of "our remonstrances," and referred the question whether we should oppose "force to force in defense of [our] national rights" to Congress as a "solemn question which the Constitution wisely confides to the legislative department of the Government." [84]

After adoption of the Monroe Doctrine, Colombia asked for protection against France in 1824. President James Monroe, a participant in the Virginia Ratification Convention, stated in a letter to Madison that "The Executive has no right to commit the nation in any question of war"; and his Secretary of State, John Quincy Adams, replied to Colombia that "by the Constitution . . . the ultimate decision of this question belong to the Legislative Department." [85]

Few Presidents had a more jealous regard for presidential prerogatives than Andrew Jackson; yet when faced with recognition of Texas he referred the question to Congress, stating, "It will always be consistent with the spirit of the Constitution, and most safe, that it should be exercised, when probably leading to war, with a previous understanding with that body by whom war alone can be declared, and by whom all the provisions for sustaining its perils must be furnished." [86] Can it be doubted that he would have been equally reluctant, without Congressional authorization, to send troops into Texas to "defend" it against an attack by Mexico? His view was later reiterated by Secretary of State Daniel Webster (1851) when the issue was a possible attack by France on Hawaii: "the war making power . . . rests entirely in Congress . . . no power is given to the Executive to oppose an attack by one independent nation on the possessions of another." [87]

In brief, Jefferson and Madison did not regard attacks on American shipping or commerce on the high seas as dispensing with the Constitutional requirement for consultation with Congress. And Monroe, Jackson, J. Q. Adams and Webster did not view attacks on foreign nations, even though within the American sphere of influence, as a warrant to meet force without Congressional authorization. Misguided as is the construction put by the State Department on the actions of Madison, Adams and Jefferson,[88] it yet concurs that "Their views and actions constitute highly persuasive evidence as to the meaning and effect of the Constitution." [89] Their actions are faithful to the intention of the Framers as expressed by the constitutional text and in the records of the Convention; and were that intention in doubt, they would fortify it by a contemporaneous construction which carries very great weight in the interpretation of the Constitution.

To the contemporaneous construction by the great statesmen who participated in the formation and adoption of the Constitution, we may add the voice of Chief Justice Marshall, himself a vigorous participant in the Virginia Ratification Convention, who stated in *Talbot v. Seeman* (1801): "The whole power of war being, by the Constitution of the United States, vested in Congress, the acts of that body can alone be resorted to as our guides in this inquiry." [90] Not even the crisis of the Civil War led the Court to depart in the Prize Cases from the earlier view: "By the Constitution, Congress alone has the power to declare a national or foreign war." The President "has no power to initiate or declare a war against a foreign nation or a domestic State . . . If a war be made by invasion of a foreign nation, the President is . . . bound to resist force with force. He does not initiate the war, but is bound to accept the challenge." [91]

And so we come to Lincoln's "complete transformation in the President's role as Commander-in-Chief," by wedding it, says Corwin, to his duty to execute the laws to derive the "war power." [92] So far as the original meaning and intention are concerned, neither power taken alone conferred a "war power," and when nothing is added to nothing the sum remains nothing. In considering Lincoln's acts it needs to be borne in mind that they were triggered by a "sudden attack" on *American soil*, the firing upon Fort Sumter, and this when Congress was not in session,[93] exactly the situation envisioned by the Framers as the sole exception to the exclusive Congressional war powers.[94] Congress was speedily convened by Lincoln and met in about ten weeks; [95] in the words of Corwin, it accepted when it did not expressly ratify the results of Lincoln's actions "willy-nilly." [96] It would be pointless to enter upon an examination of Lincoln's acts on the domestic scene, for they do not serve as a "precedent" for presidential resistance to a "sudden attack" on a *foreign* country.[97]

Such conduct had in fact been earlier condemned by Lincoln. When President Polk sent an army into territory disputed with Mexico, which engaged in battle (1846), Congress declared war on Mexico.[98] But in 1848 the House adopted a resolution that the war had been "unconstitutionally begun by the President," and Lincoln, who voted for the Resolution along with J. Q. Adams, explained to Herndon:

"Allow the President to invade a neighboring nation whenever he shall deem it necessary to repel an invasion and you . . . allow him to make war at his pleasure. . . . The provision of the Constitution giving the war-making power to Congress was dictated by the [fact that] . . . Kings had always been involving and impoverishing their people in wars . . . and they resolved so to frame the Constitution that no one man should hold the power of bringing oppression upon us." [99]

That his conduct on the domestic front during the Civil War did not spell repudiation of his 1848 view may be gathered from the fact that in his First Annual Message (December 3, 1861), he referred to a prior authorization by Congress to American vessels to "defend themselves against and to capture pirates," and recommended an additional authorization "to recapture any prizes which pirates may make of United States vessels and their cargoes [in the Eastern seas specially]." [100] Clearly this constitutes a disclaimer of power to employ force abroad without the consent of Congress.

It was Congress rather than the reluctant President McKinley which clamored for the Spanish-American War and issued a declara-

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tion of war.[101] The nineteenth century, in sum, offers no example of a President who plunged the nation into war in order to repel an attack on some foreign nation.[102] That remained for the twentieth century.

Although World War I proved the truth of Madison's apothegm that "war is . . . the true nurse of Presidential aggrandizement," [103] this was again largely on the domestic front, a development traced by Corwin. Reelected in 1916 on the slogan "He kept us out of war," Wilson asked Congress in February, 1917, for authority to arm American merchant ships for their defense. The measure passed the House but was stalled in the Senate by a filibuster led by Senators Robert LaFollete and George Norris. Wilson then ordered the arming on his own,[104] though he later acknowledged that the action was "practically certain" to draw us into the war.[105] He summoned Congress to a special session on April 2d; German submarines sank American shipping without warning; this plus disclosure of the "Zimmerman note" fed the rising war fever, and the Congress declared war.[106] Much as Wilson expanded the war power for domestic purposes, his conduct gives no comfort to the thesis that invasion of a foreign land affords an excuse for Presidential war-making.

Franklin Roosevelt, more far-sighted than the nation, also took measures which might have involved us in World War II; he exchanged fifty destroyers for British bases in the Western Atlantic, and occupied Greenland and Iceland to insure the defense of America.[107] Doubts have been expressed as to the legality of the destroyer deal;[108] but it was soon ratified by Congress. While these measures might have involved the nation in war, they did not commit our troops to battle on foreign soil. In truth, the country, moving slowly from post-World War I isolationism, was sorely divided, and but for the Japanese attack on Pearl Harbor, which united the nation, Roosevelt might have had to remain content with measures "short of war." [109]

The historical record therefore confirms the statement by the Senate Foreign Relations Committee that "only since 1950 have Presidents regarded themselves as having authority to commit the armed forces to full scale and sustained warfare." [110] In that year President Truman committed troops to repel the sudden invasion of South Korea without Congressional authorization.[111] Secretary of State Acheson recommended to the President that he "should not ask for a resolution of approval, but rest on his constitutional authority as Commander in Chief." [112] Later he wrote, "There has never . . . been any serious doubt . . . of the President's authority to do what he did. The basis of this conclusion in legal history and historical precedent," he said, was a State Department memorandum of 1950 which "listed eighty-seven instances in the past century in which [Truman's] predecessors" had exercised "presidential power to send our forces into battle. And thus yet another decision was made." [113] The conversion of the "longboat" incidents into "historical precedents" for commitment to fullscale warfare demonstrates that notwithstanding vaunted expertise executive decision of momentous issues can be slipshod.[114]

Whether or not the Tonkin Gulf Resolution (1964)[115] authorized President Johnson to commit our armed forces to war in Vietnam, a hotly-debated issue, need not detain us because, like Acheson, Johnson and Under Secretary of State Nicholas Katzenbach, claimed plenary power. "We did not think the resolution was necessary to do what we are doing," the President told the press; "we think we are well within the grounds of our constitutional responsibility." [116] And Katzenbach asserted that the administration could continue to fight the Vietnam war even if Congress repealed the Tonkin resolution.[117] The resolution has since been repealed; [118] and the war goes on and has indeed been extended by the President to Cambodia and Laos.[119]

In summary, the nineteenth century "incidents" mustered by the State Department for a presidential war-making power are wide of the mark; [120] the acts of Wilson and Franklin Roosevelt in the twentieth century were provocative and might have drawn the nation into war, but they were still "short of war"; neither Wilson nor Roosevelt sent combat troops to engage in actual hostilities on foreign soil until Congress declared war. So far as the Korean War is viewed against the over-blown claims of Acheson, it is a "precedent" created by the President only yesterday, and thus is far from "embedded in the Constitution."

The Senate Foreign Relations Committee has handsomely acknowledged that "Congress bears a heavy responsibility for its passive acquiescence in the unwarranted expansion of Presidential power," [122] that "Congress has acquiesced in, or at the very least has failed to challenge, the transfer of war power from itself to the executive." [123] Various explanations have been proffered for this inertia,[124] the sufficiency of which need not here come in question. Coke long since said that no "Act of Parliament by non-use can be antiquated or lose his force." [125] Even less can Congress, by passivity or otherwise, divest itself of powers conferred upon it by the Constitution and accomplish the transfer of those powers to the President. It is a necessary consequence of the separation of powers that "none of the departments may abdicate its powers to either of the others." [126] Nor can any department, as John Adams was at pains to spell out in the Massachusetts Constitution of 1780, exercise the powers of another.[127] If powers, said Justice Jackson, are "granted, they are not lost by being allowed to lie dormant, any more than nonexistent powers can be prescripted by unchallenged exercise." [128]

On the foregoing analysis, the sole presidential "war-making" powers conferred by the Framers are to serve as commander in chief of the armed forces and to repel sudden attack on American soil.

SUNDRY PROBLEMS

Before considering how far these two Presidential functions are exclusive and beyond Congressional control, it is necessary to examine recent statements in a memorandum prepared for filing with the Senate by a group of Yale Law School students under the aegis of several eminent professors and former high government officers.[129] With much of the memorandum I am in accord; but the said statements, already picked up as a guide by a recent commentator,[130] seem to me both mistaken and to complicate and confuse the issue. The memorandum concludes that:

"According to [Justice] Jackson's theory: (1) There is a zone of constitutional power which is exclusively executive—an area in which the President is authorized to act even against the express will of Congress. (2) Similarly, there is a power zone which is exclusively legislative. (3) In between the two exclusive areas, there is a zone of twilight in which he [the President] and Congress may have concurrent authority, or in which its distribution is uncertain. In that twilight area, either branch can act in absence of initiative by the other . . . With regard to foreign and military affairs, however, a twilight zone *must* exist: For in those areas there is a residuum of power over and above those specifically enumerated in the constitution." [131]

Preliminarily it needs to be noted that Justice Jackson's remarks were uttered in the context of action on the *domestic* scene—President Truman's seizure of strike-bound steel plants during the Korean War—that Jackson none too obliquely cast doubt upon the legitimacy of Truman's commitment of troops to Korea,[132] and that he made no reference to a "residuum" of extra-constitutional power. Indeed, Jackson rejected what may be regarded as its equivalent—a claim to "inherent" power.[133]

Reliance for that "residuum" is placed by the Yale memorandum on dicta in the Curtis-Wright case,[134] itself dismissed by Jackson because it "involved, not the question of the President's power to act without congressional authority, but the question of his right to act in accord with an act of Congress." [135] Justice Sutherland, it is true, threw off a dictum that in foreign affairs there were supra-constitutional powers outside the sphere of "enumerated" powers on the theory that "since the states severally never possessed international powers, such powers could not have been carved from the mass of state powers but obviously were transmitted to the United States from some other source . . . the powers of external sovereignty passed from the Crown, not to the colonies severally, but to the colonies in their collective and corporate capacity as the United States of America . . . Sovereignty is never held in suspense. When, therefore, the external sovereignty of Great Britain in respect of the colonies ceased, it immediately passed to the Union. See *Penhallow v. Doane*, 3 Dall. 54, 80–81." [136] This argument does violence to the historical facts.

To the minds of the colonists, "thirteen sovereignties," as Chief Justice Jay said in 1793 (after serving as Secretary of Foreign Affairs to the Continental Congress), "were considered as emerged from the principles of the revolution." [136a] For this we need go no further than the Articles of Confederation, agreed to by the Continental Congress on November 15, 1777, ratified by six States on November 26, 1778, and accepted by all the remainder by March, 1781.[136b] Although the Articles were not binding until adopted by all thirteen States they expressed the consensus of their delegates. Article II recited. "Each State retains its sovereignty, freedom and independence, and every power . . . which is not . . . expressly delegated to the United States in congress assembled." Article III provided, "The said states hereby severally enter into a firm league of friendship with each other for their common defense."

They entered into a "league," and did not purport to create a "corporate" or "sovereign" body. Article IX declared that "The United States in congress assembled shall have the sole and exclusive right of determining on peace and war . . . entering into treaties and alliances." This express grant of war and treaty powers undermines Justice Sutherland's central premise that these powers were derived from "some other source" than the several States. If the fledgling Continental Congress possessed "inherent" war and treaty powers from the outset, the express grant was gratuitous.

Nor did the Founder share Justice Sutherland's views on sovereignty. More pragmatic than he, they spoke, not in terms of sovereignty, but of power; and they were quite clear that the people, not even the cherished States, were sovereign. Power flowed from them, not from the Crown to fill a vacuum. The people, stated Madison in the Convention, "were in fact the fountain of all power";[137] a part they conferred upon the individual States; and in the clause "We, the people of the United States . . . do ordain and establish this Constitution," said Chief Justice Jay, "we see the people acting as sovereign of the whole country." [137a] "Sovereignty" was taken by the people to themselves.

When Justice Sutherland cited *Penhallow V. Doan* (1795) he referred solely to the opinion of Justice William Paterson.[137b] The case arose on a state of facts that antedated the adoption of the Articles of Confederation; and Paterson stated that the Continental Congress exercised the "rights and powers of war," that "states individually did not." This does not tell the whole story. For example, the congress resolved on No-

Footnotes at end of article.

vember 4, 1775, "That the town of Charleston ought to be defended against attempts that may be made to take possession thereof by the enemies of America, and that the convention or council of safety of South Carolina, ought to pursue such measures, as to them shall seem most efficacious for the purpose, and that they proceed immediately to erect such fortifications and batteries in or near Charleston, as will best conduce to promote its security, the expence to be paid by said Colony." [138] Other testimony that the war-making power was thought to reside in each of the Colonies is furnished by the July 12, 1776 draft of the Articles of Confederation: "The said Colonies unite themselves . . . and hereby severally enter into a firm League of Friendship . . . binding the said Colonies to assist one another against all force offered to or attack made upon them." [138a] Indeed, as Justice Chase was to remark in a cognate case, the very fact of delegation of war power by the States to the congress demonstrates that the States must have "rightfully possessed" it.[138b] The fact that the States in course of time did not "individually" exercise the power of war did not spring from an absence of power but from the voluntary surrender expressed both in Article IX delegation and in Article XIII of the 1776 draft Articles: "No Colony . . . shall engage in any War without the previous consent of the United States assembled," a provision that was preserved in Article VI of the Articles as adopted.[139]

Justice James Iredell, whose opinion in *Penhallow* went unnoticed by Sutherland, understood all this full well. Each province, he pointed out, had comprised "a body politic," in no wise connected with the others "than by being subject to the same common sovereign." "If Congress," he continued, "previous to the articles of confederation, possessed any authority, it was an authority derived from the people of each province . . . this authority was conveyed by each body politic separately, and not by all the people in the several states, jointly." And he concluded that the war making authority "was not possessed by congress unless given by all the states." In this view he was joined by Justice William Cushing; [139a] and both are abundantly confirmed by the specific grants of war treaty powers to the States in the Articles of Confederation.

Reliance for "inherent" war and treaty powers that antedate the Articles of Confederation has also been placed upon some remarks of Justice Chase [139b] in *Ware v. Hylton*: "The powers of congress originated from necessity . . . they were revolutionary in their very nature . . . It was absolutely indispensable that congress should possess the power of conducting war against Great Britain, and therefore, if not expressly given by all (as it was by some [has had ratified in 1778]) of the states . . . congress did rightfully possess such power." [140] A simpler and more prosaic explanation is at hand. Sitting and working together, the delegates from the thirteen States, who as early as July, 1776, proposed to reduce to writing the necessary delegation by the States to Congress and who agreed to the Articles of Confederation in November, 1777, presumably were agreed that the conduct of the war required centralization and authorized the necessary "confederated" acts pending formal adoption of the proposed Articles. Roughly that view was taken by Iredell, one of the great Founders who later led the struggle for adoption of the Constitution in North Carolina.

The invocation of the treaty with France signed by Benjamin Franklin and his fellow commissioners in February, 1778 and ratified by Congress in May, little advances the argument for "inherent" national power.[140a] Franklin and the other commissioners proceeded to France under express instructions to enter into a treaty with the King of France, carrying with them "letters of credence" (September, 1776), running *not* from the congress but from "The *delegates* of the United States of New Hampshire, Massachusetts Bay" and each of the other enumerated States.[141] Doubtless the delegates from the several States believed themselves authorized to send Franklin in search of an alliance, so that again we have a power delegated by the States. The resulting treaty, it bears emphasis, was concluded with "the thirteen United States of North America, viz. New Hampshire, Massachusetts Bay" and so forth,[141a] scarcely testimony that France deemed it was concluding an alliance with a "sovereign" nation. But give the "revolutionary central government" its widest scope and it still remains to ask, what relevance do deeds resulting from "revolutionary necessity" in the absence of national machinery have to a subsequent written document, such as the Articles of Confederation, which carefully enumerates the powers granted and reserve all powers not "expressly delegated."

Study of the constitutional records convinces that the Founders jealously insisted on a federal government of enumerated, strictly limited powers.[142] Avowal of a supra-constitutional "residuum" of powers not granted expressly or by necessary implication [143] would have affrighted them and barred adoption of the Constitution.[144] Certainly James Wilson considered that all the "powers naturally connected" with that of declaring war were conferred on the Congress. And John Quincy Adams, after serving as Secretary of State and as President, stated, "in the authority given to Congress by the Constitution . . . to declare war, all the powers incidental to war are, by necessary implication, conferred upon the Government of the United States." The "war power," he continued, "is strictly constitutional." [145] To invoke an extra-constitutional "residuum" of war powers can only deepen the "twilight" gloom.

The Yale memorandum statement that there is an "exclusive" war-making zone where the President "is authorized to act even against the express will of Congress," requires a caveat in so far as it rested on Justice Jackson's schema. He did proffer three categories: "1. When the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate." The steel-seizure, he said, "is eliminated from the first" category "for it is conceded that no Congressional authorization exists for this seizure." [147] His second category "is a zone of twilight in which he [the President] may have concurrent authority, or in which its distribution is uncertain." Here again Presidential authority is subject to that of Congress. The steel-seizure, said Jackson, "seems clearly eliminated from that class because Congress . . . has covered [the field] by three statutory policies inconsistent with this seizure." [148] Given concurrent powers, as Chief Justice held in an early war-powers case, a Congressional statute must prevail.[149] Remains the third category: "When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional power minus any Constitutional powers of Congress over the matter." Judicial caution was required in such case lest "by disabling the Congress from acting upon the subject . . . the equilibrium established by our constitutional system" be disturbed. True, Jackson stated hypothetically, "we can sustain the President only by holding that seizure . . . is within his domain and beyond control by Congress," a situation "which leaves presidential power most vulnerable to attack and in the least favorable of possible constitutional positions." [150] And he went on to reject the argument that Truman's commitment of troops to Korea vested him with such seizure power." [151] Jackson could find no such power under the "executive power," the "commander in chief" power, or in an "inherent" power (presumably drawn out of the "residuum"), which he rejected out of hand.[152] If therefore we are to speak of an "exclusive" presidential power "beyond control by Congress," it should be with Jackson's caveat in mind: in this situation the "presidential power [is] most vulnerable to attack and in the least favorable of possible constitutional position."

Is the role of Commander in Chief altogether beyond the control of Congress? This can be confidently affirmed of one set of circumstances only: once war is commenced, Congress can not conduct a campaign; it cannot "deprive the President of command of the army and navy"; but in the words of Justice Jackson, "only Congress can provide him with an army or navy to command." [153] What is gives it can take away, in whole or in part.[154]

Presidential peace-time deployment of the armed forces in trouble areas sharply focuses the problem. Testifying in 1951 on behalf of President Truman's plan to station six divisions of American soldiers in Europe, Secretary of State Acheson asserted:

"Not only has the President 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 Congress in the exercise of powers which it has under the Constitution." [155]

Acheson spoke ex cathedra, disdaining the citation of authority. His claim will not withstand scrutiny. Deployment of the armed forces in "hot-spots" may invite or provoke attack, dangerously risk American involvement in war,[156] and present Congress with a *fait accompli*.

It is Congress that is to "provide for the common defense," [157] which implies the right to decide what is requisite thereto. Congress also is "to raise and support armies," and by necessary implication it can withhold or withdraw that support.[158] In determining the size of the army it will "support it is entitled to weigh priorities: shall troops be stationed in Germany or deployed in Cambodia? Indeed the constitutional mandate that "no appropriation" for support of the armies "shall be for a longer term than two years" implies that it is for Congress to decide at any point whether further appropriations should be made and in what amounts.[159] The duty of Congress, in Hamilton's words, "to deliberate upon the propriety of keeping a military force on foot" [160] surely comprehends the right to insist that a portion of the military forces should not be kept "on foot" in Vietnam or in Europe.[161]

With the power of appropriation goes the right to specify how appropriated moneys shall be spent. This is not a mere matter of logic but of established parliamentary practice. After 1665, states Hallam, it became "an undisputed principle" that moneys "granted by Parliament, are only to be expended for particular objects specified by itself." [162] The Founders were quite familiar with parliamentary practice; [163] and we may be sure that in reposing in Congress the power of raising revenues and of making and reviewing appropriations for support of the armies they conferred the concomitant right to "specify" the "particular objects" upon which its appropriations are to be expended. [164] So an early Congress read its constitutional powers in enacting a statute that all "sums appropriated by law for each branch of expenditure in the several departments shall be solely applied to the objects for which they are respectively appropriated." [165] The 1971 Act which prohibits use of appropriated funds "to finance the introduction of United States ground troops into Cambodia" is in this tradition.[166] If we may properly infer that the long-established parliamentary practice was adopted by the Founders, such statutes do not constitute an invasion of the President's powers as commander in chief.[167]

Footnotes at end of article.

There remains the Congressional power "to make rules [168] for the government and regulation of the land and naval forces."

This "was added from the existing Articles of Confederation"; but the Framers omitted the phrase that followed—"and directing their operations"—having in mind that the President would be commander in chief who, in the words of the New Jersey Plan, would "direct military operations." [170] Thus the Framers separated the presidential direction of "military operations" in time of war from the Congressional power to make rules "for the government and regulation of the armed forces," a plenary power enjoyed by the Continental Congress and conferred in the identical terms upon the federal Congress. The word "government" connotes a power "to control," "to administer the government" of the armed forces; the word "regulate" means "to dispose, order, or govern." Such powers manifestly embrace Congressional restraint upon deployment of the armed forces. Since the Constitution places no limits on the power to support and to govern the armed forces and to make or withhold appropriations therefor, arguments addressed to the impracticability of regulating all deployments go to the wisdom of the exercise, not the existence, of the Congressional power.

The Commander in Chief clause empowers the President to conduct a campaign once a war is initiated by Congress or by foreign invasion of American soil, not to create incidents which embroil the nation in war. No "first General" can provoke, extend or persist in a war against the will of Congress.[171] The duty of the President is to "take care that the laws be faithfully executed," and nothing in the Constitution absolves him from that duty in the role of Commander in Chief. Indeed the early State Constitutions were careful to spell out that the Executive was subject to the laws in his capacity of commander in chief.[172] In fine, the constitutional distribution of powers refutes Acheson's assumption that the President may deploy the armed forces as he sees fit in disregard of the Congressional will. This is the logic of Jefferson's statement that "we have already given in example one effectual check to the Dog of War by transferring the power of letting him loose from the Executive to the Legislative body, from those who are to spend to those who are to pay." [173]

Against this background the constitutionality of the proposed War Powers Bill seems unassailable. Section 3 of the Bill roughly provides that the President may use the armed forces "to repel an armed attack upon the United States" or its armed forces "located outside the United States," and "to forestall the direct and imminent threat of such an attack." The latter provisions go beyond the connotation of the Madison-Gerry "sudden attacks" remark in the Convention, on which any claim to presidential power apart from the commander-general's direction of the military forces ultimately rests.[174] Congress would thereby enable the President to meet modern exigencies.

Senator J. William Fulbright considers that the "forestall" phrase may be overbroad; [175] but it is to be read against the Committee's statement that it "accepted the view expressed in testimony before the Committee by Alexander A. Bickel," who instanced such a threat as that of the "Cuban missile crisis of 1962," that is, "a reactive, not a self-starting affirmative power." [176]

It would be difficult to maintain that the Soviet emplacement of nuclear long-range missiles some eighty miles from our shores did not constitute an immediate threat to the United States, such as moved the newborn States to reserve to each State in the Confederation the right to go to war when it "received certain advice of a resolution being formed by some nation of Indians to invade such State." [177] With Senator Fulbright I would urge that the emergency (as in the case of the Articles of Confederation provision) be such "as does not permit advance Congressional authorization to employ such forces." [178] The Federation of American Scientists, joined by Senator Fulbright recommend, and I would concur, that an authorization be sought from Congress to fire nuclear missiles *first*, leaving the President free to respond to nuclear attack.[179] Since § 3 of the Bill authorizes the President to forestall imminent threat of attack on the armed forces "located outside of the United States," I would add a requirement that Congressional authorization be had for deployment of the armed forces in areas which are likely to become involved in hostilties, e.g. "hot spots." Finally, section 5 of the Bill provides that the use of the armed forces "under any of the emergency conditions described in Section 3 . . . shall not be sustained beyond thirty days" unless Congress adopts legislation specifically authorizing the continued use of the armed forces, rounding out an exemplary step towards resumption of the powers conferred upon Congress by the Constitution.

Only if the "intention of the framers" counts for little,[180] is it possible to argue on the "125 incidents" that "a practice so deeply embedded in our constitutional structure should be treated as decisive of the constitutional issue." [181] Who would maintain that the President, by proclamation, can revise the Constitution in particulars he considers sadly wanting? Why should his progressive revision by actions rather than by writing be entitled to more respect? Nor can the fact that Congress countenanced the encroachments lift them to the plane of constitutional dogma any more than the President and Congress can by mutual consent revise the Constitution without submitting an amendment to the people. At bottom the President lays claim "to set aside, not a particular clause of the Constitution, but its most fundamental characteristic, its division of powers between Congress and the President, and thereby gather into his hands the power of both.[182] It cannot be that a statute which seeks to give effect to the original intention of the Framers, aptly expressed in the text of the Constitution, is unconstitutional.

CONCLUSION

Surveying the labors of the Framers some forty years later, Joseph Story said:

"The power of declaring war is . . . so critical and calamitous, that it requires the utmost deliberation, and the successive review of all the councils of the nation . . . The representatives of the people are to lay taxes to support a war [and to draft men for combat], and therefore have a right to be consulted, as to its propriety and necessity." [183]

For this reason the Constitution conferred virtually all of the war-making powers upon the Congress, leaving to the President only the power "to repel sudden attacks" on the United States. They meant, in the words of James Wilson, to put it beyond the power of a single man to hurry us into war. Their wisdom is confirmed by recent events: the mounting frightfulness of war, its staggering costs in blood money, disruption of the national and international economies, the wounds it inflicts on the national psyche—alienation of the young, desertion, draft evasion—all cry out for consultation before plunging into war.[184]

Some have referred to Congress' occasional lack of wisdom,[185] but that is a lack that may be exhibited by the President, as the Vietnam conflict shows.[186] Arthur Schlesinger, who sat close to the throne while some of the fateful commitments were being made, stated that "in retrospect, Vietnam is a triumph of inadvertence"; and if we are to credit General de Gaulle, a triumph of wrong-headedness.[187] Perhaps the decisions would not have been better had they been debated in Congress, but, as George Reedy, former special assistant and then Press Secretary to President Lyndon Johnson, remarked, they could not have "been much worse."[188] Since a nation of many millions cannot be convened in town meeting, the great arena of public debate is necessarily the Congress.[189] Debate may bring into the open risks that Executive advisers have overlooked; it may deflate the supposed advantages of a recommended course of action; it substitutes the experience of the many for that of the one.

"Within the executive branch," states Reedy, "there exists a virtual horror of public debate on issues," compounded by the complacent assumption that the executive branch have some sort of truth that comes out of their technical expertise and that this truth . . . is not something to be debated." [190] But executive decision itself suffers from a deep-seated malady; as Reedy points out, it lacks the benefit of "adversary discussion of issues"; the "so-called debates are really monologues in which one man is getting reflections of what he sends out." [191] If this be only one man's view, the danger is nevertheless real that courtiers are apt to say what the monarch wants to hear.

Of course public criticism is painful; but official pain is outweighed by public benefit. A seasoned observer, Sir Ivor Jennings, stated, "negotiations with foreign powers are difficult to conduct when a lynx-eyed opposition sits suspiciously on the watch. We might have a better policy if we had no Parliament: but we might have a worse . . . We are a free people because we can criticize freely." [192] It is quite likely, as Reedy concludes, that the present dissension in our country, the loss of confidence in the government, results in large part from the fact that the Vietnam commitments were made without consultation with the people.[193]

Whatever the merits of debate, this is a requirement of our democratic system. Those who are to bleed and die have a right to be consulted, to have the issues debated by their elected representatives. Unlike the totalitarian nations, we have not placed our faith in a "Fuehrer," a "Big Brother"; a benign dictatorship is not for us.[194] It is for that reason that there is an "American propensity to substitute 'for the question of the beneficial use of the powers of government . . . the question of their existence.' " [195] Events since 1936, when Corwin penned the quoted words, have demonstrated still again that "use" of power may be not only "beneficial" but "malign, fearsome, hateful and dangerous." [196]

It was because the Framers were alive to the insatiable maw of power that they contrived the separation of powers.[197] It remains a bulwark against oppression, not a hollow shibboleth. "With all its defects, delays and inconveniences," said Justice Jackson, "men have discovered no technique for long preserving free government except that the Executive be under the law, and that the law be made by parliamentary deliberations." [198] That is what the Framers provided in distributing the war-powers, and to that scheme we must return.

FOOTNOTES

[1] Alastair Buchan, Questions About Vietnam, reprinted in 2 R. Falk, The Vietnam War and International Law 35 (1969). Buchan is Director of the Institute of Strategic Studies, London.

[2] See infra, text accompanying notes 122–123.

[3] Sen. Report No. 92–606 on War Powers, 92d Cong., 2d Sess. (1972) to accompany S. 2956 (hereafter War Powers Rept.)

[3a] New York Times, March 30, 1972, p. 10. Professor Eugene Rostow declares the Bill "would radically change the constitutional relationship between Congress and the Presidency . . ." New York Times, April 16, 1972, p. 43.

[4] Sen. Report No. 797 on National Commitments, 90th Cong., 1st Sess. (1967) (hereafter National Commitments Rept.) This

admirably documented report laid the foundation on which commentators have since built.

The best study remains Note, Congress, The President, and the Power to Commit Forces to Combat, 81 Harv. L. Rev. 1771 (1968) (hereafter Harvard Note) reprinted in Falk, supra, n. 1 at 616–650, to which my Harvard Note citations are keyed. For a careful examination of the "precedents" on which the Executive Department relies, see Francis Wormuth, The Vietnam War: The President versus the Constitution, reprinted in Falk, supra, n. 1 at 711–807. See also Reveley, Presidential War-Making: Constitutional Prerogative or Usurpation, 55 Va. L. Rev. 1243 (1969).

[5] Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 642 (1952), concurring opinion (hereafter "Steel Seizure").

[6] Infra, text accompanying notes 18–19, 28–29; note 49.

set out in Article 1, § 8 of the Constitution.

[7] Wilson, Works of James Wilson 433 (R. G. McCloskey ed. 1967). The several powers are set out in Article 1, § 8 of the Constitution.

[8] Ibid. 440.

[9] 24 Journals of the Continental Congress 242 (1937).

[10] Article VII of the Massachusetts Constitution of 1780 provides that the Governor shall be "commander-in-chief of the army and navy" with power to "repeal, resist, expel" those who attempt the invasion of the Commonwealth, and entrusts him "with all these and other powers incident to the office of captain-general and commander-in-chief and admiral, to be exercised agreeably to the rules and regulations of the constitution and the laws of the land and not otherwise." 1 Poore, Federal and State Constitutions, and Colonial Charters 965–966 (1877). For Delaware, Article 9, ibid. 275; Georgia, Article 33, ibid. 381; New Hampshire (identical with the Massachusetts provision), 2 Poore 1288.

Hamilton stated in the Federalist, No 69 at 449 (Mod. Lib.Ed.1937): "the constitutions of several of the states expressly declare their governors to be commanders-in-chief . . . and it may well be a question, whether those of New Hampshire and Massachusetts, in particular, do not, in this instance, confer larger powers upon their respective governors, than could be claimed by a President of the United States."

[11] 1 Farrand, The Records of the Federal Convention of 1787, p.244 (1911). The Virginia Plan contained no provision on the subject, ibid.20–23. In North Carolina, Robert Miller demanded that "Congress should direct the motions of the army." 4 Elliot, Debates in State Conventions on Adoption of the Federal Constitution 414 (2d ed. 1836)

[12] 1 Farrand, supra, n.11 at 292.

[13] Corwin said of Federalist No. 78, "It cannot be reasonably doubted that Hamilton was here, as at other points, endeavoring to reproduce the matured conclusions of the Constitution itself." Corwin, The Doctrine of Judicial Review 44 (1914).

[14] Federalist, No. 69, supra, n.10 at 448. For similar remarks, Melancton Smith, New York Ratification Convention, 2 Elliot, supra, n.10 at 366–367.

[15] Federalist, No. 67, supra, n.10 at 436. When Monaghan, Presidential War-Making, 50 Boston U. L. Rev. 19, 23 (1970) refers to "Hamilton's contention that the president possessed broad 'inherent' powers in representing the nation in our foreign relations," he fails to take into account Hamilton's above-quoted assurance that the President's war-powers were "much inferior" to those of the King, which precludes an inference of "inherent" presidential war-making power.

[16] In the federal Convention James Wilson said, "He did not consider the Prerogatives of the British Monarch as a proper guide in defining the Executive powers. Some of the prerogatives were of a legislative nature. Among others that of war & peace." 1 Farrand, supra, n.11 at 65–66. "Fear of a return of Executive authority like that exercised by the Royal Governors" or by the King had been ever present in the States from the beginning of the Revolution. C. Warren, The Making of the Constitution 172 (1947). Warren, 177, states, "It is probable that Madison and Randolph in preparing the Virginia Plan had in mind the conception of Executive power which Thomas Jefferson had set forth in his Draft of a Fundamental Constitution for Virginia in 1783, as follows: 'By Executive power, we mean no reference to those powers exercised under our former government by the Crown as of its prerogative, nor that these shall be the standard of what may or may not be deemed the rightful powers of the Governor. We give them those powers only, which are necessary to execute the laws.' " Citing, 4 Jefferson, Writings 155–156 (Ford ed.). For a similar conception, see Wilson, supra, text accompanying note 8; see also Madison, infra, n.36; Corwin, The President: Office and Powers 5 (3d ed. 1948). And see Justice Jackson's rejection of the "claim of inherent unrestricted presidential powers" in "Steel Seizure", supra, n.5 at 650 n.7, for which the expressly enumerated powers leave no room. Berger, Congressional Inquiry v. Executive Privilege, 12 UCLA Law Rev. 1044, 1073–76 (1965).

[17] See also discussion of a "residium", infra, text accompanying notes 131–152; and note 143.

[18] Letters of Helvidius, 6 James Madison, Writings, 138, 174 (G. Hunt ed. 1906). Compare Wilson's explanation that no single man could "hurry" the nation into war. Infra, text accompanying note 39.

[19] Ibid. 148 (emphasis supplied); see also infra, text accompanying note 45.

[20] Corwin, supra, n. 16 at 276.

[21] Fleming v. Page, 9 How. (50 U.S.) 603, 615 (1850). Until 1850, says Corwin, the Commander in Chief clause "was still . . . the forgotten clause of the constitution." E. Corwin, Total War and the Constitution 15 (1947).

[22] H. Commager, Documents of American History 113 (7th ed. 1963).

[23] 1 Farrand, supra, n. 11 at 20–22, 243.

[24] Ibid. 70. Article 26 of the South Carolina Constitution of 1776 carefully spelled out that the governor "and commander-in-chief shall have no power to make war or peace, or enter into any final treaty, without the consent of the general assembly . . ." 2 Poore, supra, n. 10 at 1619. See also Wilson, supra, n. 16, to effect that the war power is "legislative."

[25] 2 Farrand, supra, n. 11 at 182.

[26] Ibid. 318.

[27] 1 Farrand, ibid. 292.

[28] 2 Farrand, ibid. 318. Butler later explained to the South Carolina legislature that the grant of this power [to "make war"] to the President "was objected to, as throwing into his hands the influence of a monarch, having an opportunity of involving his country in a war, whenever he wished to promote her destruction." 4 Elliot, supra, n. 10 at 263.

[29] 2 Farrand, supra, n. 11 at 319.

[30] Ibid. 318–319. The State Department memorandum (1966) distorts this interchange; "it was suggested that the Senate might be a better repository. Madison and Gerry then moved to substitute "to declare war' for 'to make war,' 'leaving to the Executive the power to repel sudden attacks.' It was objected that this might make it too easy for the Executive to involve the nation in war, but the motion carried with but one [actually two] dissenting votes." Legal Adviser-State Department, The Legality of United States Participation in the Defense of Viet Nam, 75 Yale L.J. 1055, 1101 (1966). From this one might infer that the Convention intended to "make it too easy for the Executive to involve the nation in war," but the fact is that *no* objection was made to the Madison-Gerry motion, which merely gave effect to the Sherman-Mason-Gerry objections to the grant of war making power to the President, except to "repel." See Wormuth, supra, n. 4 at 714.

[31] 2 Farrand, supra, n. 11 at 319. Story explains that the role of Commander in Chief gives the President "command . . . of public force . . . to resist foreign invasion . . . and the direction of war." Story, Commentaries on the Constitution of the United States, § 1491 (5th ed. 1905).

[32] Cf. Ratner, The Coordinated Warmaking Power—Legislative, Executive and Judicial Roles, 44 So. Cal. Rev. 461, 462 (1971). Clinton Rossiter concludes that "the Court has refused to speak about the powers of the President as Commander in Chief in any but the most guarded terms . . . The breathtaking estimates of their war powers announced and acted upon by Lincoln and Roosevelt have earned no blessing under the hands of the judiciary." Rossiter, The Supreme Court and the Commander in Chief 4–5 (1951). Since he wrote, the Court, in the Steel Seizure case, supra, n. 5, gave such claims a decided set-back.

[33] Harvard Note, supra, n. 4 at 618–619; National Commitment Report, supra, n. 4 at 8.

[34] Ratner, supra, n. 32 at 467.

[35] Supra, text accompanying note 15.

[36] See infra, n.41. Monaghan, supra, n.15 at 28, states that "All commentators agree that the president has some 'inherent' power to commit the armed forces to hostilities where necessary to repel 'sudden attack.' " If there be such agreement, it is at war with the records of the several Conventions, which emphatically rule out "inherent" war powers. See supra, text accompanying notes 15–18. Madison stated that it was essential "*to fix the extent* of the Executive authority . . . as certain powers were in their nature Executive, and *must be given* to that department." 1 Farrand, supra, note 11 at 66–67 (emphasis supplied). In the Convention Hamilton stated that the "Executive ought to have but little power," proposed that the Senate should "have the sole power of declaring war" and that the Executive should "have the direction of war when authorized or begun." 1 Farrand at 290,292. Be it remembered also that the Massachusetts Constitution, which expressly authorized the commander in chief to "repel, resist and expel" those who attempt invasion of the Commonwealth (thereby implying that this was not an inherent power of the commander), made the exercise of that power subject "to the laws of the land and not otherwise." And Hamilton explained that the powers of the Massachusetts commander were "larger . . . than could be claimed by the President." Supra, note 10.

[37] Legal Advisor Memorandum, supra, note 30 at 1101. Wormuth, supra, n.4 at 714–715, justly states, "It is not probable but certain that the attack Madison and Gerry had in mind was an attack upon the United States . . . they did not impute to him a discretionary right to choose between war and peace, or the right to make a judgment concerning the security of the United States."

[38] Quoted War Powers Report, supra, n.3 at 4. Professor Richard B. Morris also states that "the war-making power of the President was little more than the power to defend against imminent invasion when Congress was not in session. Quoted ibid. at 15.

[39] Commager, supra n.18 at 112.

[39a] The Committee on Style suggested that "no State without consent of the Legislature of the United States shall . . . engage in any war, unless it shall be actually invaded by enemies, or the danger of invasion be so imminent, as not to admit of a delay, until the Legislature of the United States can be consulted." 2 Farrand, supra, n.11 at 577.

[40] Berger, Congress v. the Supreme Court 260–262 (1969). In Federalist No. 48, supra, n.10 at 322, Madison stated that the "founders of our republics . . . seem never for a moment to have turned their eyes from the danger to liberty of the overgrown and all-

grasping prerogative of an hereditary magistrate . . ."

[40a] Infra, text accompanying notes 174–179.

[41] Monaghan 28, states, "few, if any [commentators] would restrict" the power to repel sudden attacks "to one of repelling attacks on American soil—thereby ignoring attacks on Canada and (in a largely interdependent world) attacks on NATO countries." Whether there is such a consensus is not important if such power is not to be found in the Constitution. I would hold with the Harvard writers that "In the case of an attack aimed solely at Canada . . . steps taken to repel the attack would amount to 'commencing' rather than 'repelling' war, the type of decision the convention debates indicate was to be made by Congress." Harvard note, supra, n.4 at 629.

[42] Legal Advisor's Memorandum, supra, n.30 at 1101. John Bassett Moore puts the matter in better perspective: "There can hardly be room for doubt that the framers of the constitution, when they vested in Congress the power to declare war, never imagined they were leaving it to the executive to use the military and naval forces of the United States all over the world for the purpose of actually coercing other nations, occupying their territory, and killing their soldiers and citizens, all according to his own notions of the fitness of things, so long as he refrained from calling his action war or persisted in calling it peace. Moore, The Control of Foreign Relations of the United States 196, quoted by Wormuth, supra, n.4 at 766–67.

[43] Legal Advisor Memorandum, supra, n. 30 at 1101.

[44] In the Steel Seizure case, supra, n. 5 at 649, 650, Justice Jackson said, "The appeal . . . that we declare the existence of inherent powers *ex necessitate* to meet an emergency asks us to do what many think would be wise, although it is something the forefathers omitted. They knew what emergencies were; knew the pressures they engender for authoritative action, knew, too, how they afford a ready pretext for usurpation . . . aside from suspension of the privilege of the writ of habeas corpus in time of rebellion or invasion . . . they made no provision for exercise of extraordinary authority because of a crisis. I do not think we rightfully may so amend their work" Emergency powers, Jackson continued, "are consistent with free government only when their control is lodged elsewhere than in the Executive who exercises them. That is the safeguard that would be nullified by our adoption of the 'inherent powers' formula." Ibid. 652.

The "emergency power" had been pressed hard by Justice Clark, ibid. 660–62, but Justice Douglas also rejected it, saying the fact that speed was essential "does not mean that the President rather than the Congress has the constitutional authority to act." Ibid. 629. In Schecter Poultry Corp. v. United States, 295 U.S. 495 (1935), Justice Cardozo stated, "Those who act under these grants are not at liberty to transcend the imposed limits because they believe that more or different power is necessary." (concurring opinion).

[45] 6 Madison, supra, n. 18 at 174 (emphasis supplied). As Wormuth, supra, n. 4 at 716 states, "if in 1787 it was the wiser course to entrust the decision as to war and peace to a broadly representative body rather than to the judgment of a single man, the greater hazards of the modern world would seem to make it all the more important to retain this check on an impetuous executive." J. N. Moore also considers that "The policy of requiring congressional authority for the major use of force abroad as a check on presidential power remains as valid today, if not more so, than in 1789." Moore, The National Executive and the Use of the Armed Forces Abroad, printed in Falk, supra, n. 1 at 808, 810. But he states that contemporary problem "militate against absolute answers based on that policy." Let us begin with denying the "absolute" presidential claims built upon a succession of self-created "incidents"; let us reverse the assumption that the President may at any time in his unfettered discretion commit the armed forces and substitute the presumption that Congressional authorization is required except in the extraordinary case. Cf. Harvard Note, supra, n. 4 at 643.

[46] Supra, n. 36.

[47] Hamilton's later expansive reading of the Executive powers in the realm of foreign relations, see Corwin, supra, n. 16 at 217–218, needs to be viewed in the light of his proposal in the Convention of a life-time Executive, of a "permanent body" of the "rich and well born" to "check the imprudence of democracy . . . their turbulent and uncontrolling disposition. 1 Farrand, supra, n. 11 at 290, 299. The patrician Henry Adams stated that "Hamilton considered democracy a fatal course, and meant to stop its progress." Quoted, Ernest Samuels, Henry Adams, The Middle Years 58 (1965). He would therefore prefer to concentrate power in the Executive and to short-circuit the democratic process which contemplated Congressional debate.

[48] No. 1 of "Lucius Crassas" (December 17, 1801), quoted Corwin, supra, n. 16 at 243.

[49] Ratner, supra, n. 32 at 467. The "long range goals . . . illuminated by the Convention proceedings" may be gathered from Mason's remark that the Executive was "not safely to be trusted" with the war power, supra, text accompanying note 29, Sherman's remark that the Executive should "be able to repel and not to commence war," supra, text accompanying n. 28, and Gerry's rejection of an Executive power "alone to declare a war." Supra, text accompanying n. 29. To this may be added Wilson's explanation to the Pennsylvania Ratification Convention that the power to declare war was lodged in Congress to "guard against" the power of a "single man" to "hurry us into war." 2 Elliot, supra, n. 10 at 528.

[50] Rotner, supra, n. 32 at 467.

[51] This is a widely-held view: Z. Chafee, Three Human Rights 154 (1956); E. Cahn, An American Contribution, in Cahn, ed. Supreme Court and Supreme Law 12,25; C. Curtis, The Role of the Constitutional Text, in Cahn, ibid. at 64,68; J. N. Moore, supra, n. 45 at 809, 812, and infra, n. 75; C. Miller, The Supreme Court and the Uses of History (1969). For additional citations, see Reveley, supra, n. 4 at 1252–53.

[52] The Founders fully understood the difficulties of amendment, Thus Patrick Henry argued in the Virginia Ratification Convention, "four of the smallest states, that do not collectively contain one tenth part of the population . . . may obstruct the most salutary and necessary amendments." 3 Elliot, supra, n. 10 at 49, 50. But the prevailing view was expressed in the North Carolina Convention by James Iredell: the Constitution "can be altered with as much regularity, and as little confusion, as any Act of Assembly; not, indeed, quite so easily, which would be extremely impolitic . . . so that alterations can without difficulty be made agreeable to the general sense of the people." 4 Elliot, ibid. at 177.

[53] Reveley, supra. n. 4 at 1252, states, "Encouraged by the Constitution's linguistic flexibility (scarcely in the case of the Commander in Chief clause), and by the difficulty of its formal amendment process, alteration by usage has proved to be the principal means of modifying our fundamental law." Elbridge Gerry, one of the Framers, objected in the First Congress that the people "directed a particular mode of making amendments, which we are not at liberty to depart from . . . [they] can never be safe, if Congress have a right to exercise the power of giving constructions to the constitution different from the original instrument. Such a power would render the most important clause in the Constitution [the amendment provision] nugatory." 1 Annals of Congress 503 (1789).

The informal amendment approach, as Willard Hurst remarked, is a way of practically reading Article V out of the Federal Constitution . . . [the Framers] provided a defined, regular procedure for changing it." In Cahn, supra, n.51 at 74.

Only when popular feeling runs high, for example, against current judicial mandates that children be bused to desegregated schools, do those opposed to the popular will find the cumbersome amending process a convenient road block.

[54] Chafee, Cahn, Curtis, supra, n.51. The Framers made clear that the initiative in policy-making was not for the judiciary. Berger, supra, n.40 at 339–346.

[55] Proponents of this claim, of course, do not state it so nakedly. Thus Monaghan, supra, n.15 at 28, argues that a line between "defensive and aggressive action" is no longer "workable," that the oceans have shrunk, that "modern presidents are faced with endless emergencies," so that "Given the evolution of the presidency, it is hardly surprising that in the twentieth century the presidential power to repel sudden attacks has developed into an undefined power . . . to employ without Congressional authorization the armed forces in the protection of American rights and interests whenever necessary."

Compare Justice Douglas in "Steel Seizure," supra, n.5 at 632: "If we sanctioned the present exercise of power by the President, we would be expanding Article II of the Constitution and rewriting it to suit the political conveniences of the present emergency." (concurring opinion). And see supra, n. 44. The "chief constitutional value which over-extension of presidential power threatens is, of course, the concept of a 'government of laws and not of men'—the 'Rule of Law' principle." Corwin, The Steel Seizure Case: A Judicial Brick Without Straw, 53 Colum. L. Rev. 53, 54 (1953).

[56] For citations see Ratner, supra, n.32 at 482–483.

[57] Monaghan, supra, n. 15 at 22.

[58] Ibid. 25.

[59] Professor Monaghan recognizes that "The great powers that are identified with the national government are conferred upon congress . . . By contrast, the textual powers conferred upon the president are both few and of uncertain dimensions." Ibid. 20. He notes a "vast accretion of power in the presidency, particularly in this century," but considers that "whether it 'defeats' the framers intention is, however, a profitless speculation," citing Justice Holmes dictum in Missouri v. Holland, 252 U.S. 416, 433 (1920): "The case before us must be considered in the light of our whole experience and not merely in that of what was said a hundred years ago." Read in the context of the case it is unobjectionable. The case involved the right of the federal government to enter into a treaty with Canada respecting migratory birds, to which no State could lay a possessory claim. Wild birds migrate from State to State, from nation to nation, so that they fall outside the exclusive jurisdiction of any one State. Consequently the subject matter was not reserved to a State by the Tenth Amendment; instead it called for federal regulation; and nothing in the "treaty" power excludes a treaty about migratory birds. The Court decided therefore that the treaty was not "forbidden by some invisible radiation from the general terms of the Tenth Amendment." Ibid. 433–436. See Reid v. Covert, 354 U.S. 1, 18 (1957). Holmes was not called upon to disregard the plainly expressed intention of the Framers as exhibited in the sharply delineated distribution of war powers.

[60] Monaghan, supra, n. 15 at 24.

[61] Compare Professor Felix Frankfurter's advice to President Franklin Roosevelt in 1937: "the Supreme Court for about a quarter of a century has distorted the power of judicial review into a revision of legislative policy, thereby usurping powers belonging to the Congress." And "people have been taught to believe that when the Supreme

Court speaks it is not they who speak but the Constitution, whereas, of course, in so many vital cases, it is *they* who speak and *not* the Constitution. And I verily believe that that is what the country needs to understand." M. Freedman, ed. Roosevelt and Frankfurter: Their Correspondence, 1928–1945, pp. 383, 390 (1967).

What would the verdict of the people be if it was brought home to them that the presidential commitment of armed forces to battle in Korea and Vietnam was utterly beyond the textual grants to the President and the intention of the Framers? Reveley, who is sympathetic to amendment by usage, notices that the "general public takes a relatively blackletter view of the Constitution" and that the "subtleties" of amendment "by usage . . . would probably be lost on the general public." Reveley, supra, n.4 at 1293, 1255n.

[62] Legal Adviser Memorandum, supra, n.30 at 1101. Wormuth, supra, n.4 at 718, justly states of the "undeclared war" with France, "This is altogether false. The fact is that President Adams took absolutely no independent action. Congress passed a series of acts [cited by Wormuth] which amounted, so the Supreme Court said, to a declaration of imperfect war; and Adams complied with the statutes." Bas v. Tingley, 4 Dallas (U.S.) 37 (1800) amply confirms that Adams acted under Congressional authorization.

[63] Quoted infra, text accompanying note 113.

[64] Sparks, n. 4. Reveley, supra, n. 4 at 1258, states, "as a precedent for Vietnam . . . the majority of the nineteenth century uses of forces do not survive close scrutiny."

[65] Quoted, Mora v. McNamara, 389 U.S. 934, 936 (1967) (Douglas, J. dissenting opinion).

[66] Corwin, The President's Power, in D. Haight & L. Johnston, eds. The President's Role and Powers 361 (1965), quoted Velvel, The War in Vietnam: Unconstitutional, Justiciable, and Jurisdictionally Attackable, reprinted in Falk, supra, n. 1 at 650, 670 n. 107.

Corwin states, "The vast proportion of the incidents . . . comprised . . . *efforts to protect definite rights of persons and property* against impending violence, and were defended on that ground as not amounting to acts of war." Corwin, Total War and the Constitution 146 (1947); see also ibid. 147–148 for critique of such incidents; and see Harvard Note, supra, n. 4 at 633, 635; Wormuth, supra, n. 4 at 742–743, 746–748.

[67] Reveley, supra, n. 4 at 1258.

[68] Infra, text accompanying notes 81, 82, 83, 86.

[69] Perhaps President Polk's dispatch of troops into Mexico (1846) may be deemed an exception, though when hostilities broke out he immediately asked Congress for approval, and after bitter debate over his assertions that his acts were "defensive," Congress declared war. Harvard Note, supra, n. 4 at 625. For condemnation of Polk's action in 1848 by a resolution of the House, in which Lincoln joined, see Wormuth, supra, n. 4 at 726; infra, text accompanying notes 98–99.

[70] Lord Denman stated, "When, in pursuit of truth, we are obliged to investigate the grounds of the law, it is plain that the mere statement or restatement of a doctrine . . . cannot make it law, unless it can be traced to some competent authority." O'Connell v. Reg. (1844) 11 Cl. & F. 155,373, 8 E.R. 1061, 1143. To the same effect Maitland, in C.H.S. Fifoot, Frederic W. Maitland, A Life 11 (1971).

[71] Cf. infra, text accompanying notes 125–128.

[72] Reveley, supra, n.4 at 1289.

[73] Cf. Wormuth, supra, n.4 at 762.

[74] As Professor Alexander Bickel stated, "there comes a point when a difference of degree achieves the magnitude of a difference in kind." Quoted in War Powers Report, supra, n.38 at 16.

[75] Of the "incidents" J.N. Moore states, "all this certainly represents a substantial gloss which experience has placed on the Constitution," Moore, supra, n.45 at 812, having earlier invoked Justice Frankfurter's statement in "Steel Seizure," supra, n.5 at 610: "It is an inadmissably narrow conception of American constitutional law to confine it to the words of the Constitution and to disregard the gloss which life has written upon them." Moore, ibid.809. But Moore overlooks that Frankfurter distinguished amorphous terms such as "due process" which allow a "relatively wide play for individual legal judgment" from clearly defined terms such as a "bill of attainder," which emerged from "specific grievances and the safeguards against their recurrence." The meaning of such terms, he stated, is "settled by history . . . Judicial enforcement of the Constitution must respect those historic limits." United States v. Lovett, 328 U.S. 303,321 (1946). Moore notes that "It seems reasonably clear from the debates that most of the framers sought to place the major war power in Congress and to leave the president only the right to repel sudden attacks," Moore, ibid at 809. And they used apt language to express their purpose, expressly endowing the President only with the power to command the armed forces. Here there is no room under the Frankfurter analysis for the "gloss [by] life." Rather there are barnacles which need to be scraped from the good ship "Constitution."

One is left in doubt how far Moore relies on the "gloss of life" for an expanded presidential power when he advocates "as a dividing line for presidential authority in the use of military abroad . . . to require congressional authorization in all cases where regular combat units are committed to sustained hostilities." Moore, ibid. at 814. If the President has independent warmaking power, "congressional authorization" is superfluous and unlikely to be sought. Only, as is the fact, if Congress has the exclusive war making power by constitutional grant does his suggestion fit into the scheme of constitutional *power*.

[76] Monaghan, supra, n.15 at 27.

[77] Wormuth, supra, n.4 at 743–746.

[78] Monaghan, supra, n.15 at 27.

[79] Ibid. 31. Monaghan's reliance on McCulloch v. Maryland, 4 Wheat, (17 U.S.) 316 (1819), for the proposition that "Matters of this character [the distribution of political power between the legislative and executive branches] are, in the words of Chief Justice Marshall, best left "to the practice of the government," is sadly misplaced. McCulloch invoked the question whether Congress had constitutional power to establish the Bank of the United States, and the issue turned on whether a bank was a proper *means* for execution of expressly granted federal powers and therefore incidental thereto and thus outside the powers reserved to the States by the Tenth Amendment "because not delegated to the United States." An ambiguity was resolved by resort to practice; no federal invasion of an expressly reserved banking power was presented. In contrast, the President's war-making plainly invades powers explicitly conferred upon Congress. Revision of express constitutional grants was not left to "the practice of the government."

Of a piece with this is Monaghan's rejection of the separation of powers "premised on an eighteenth century model of the relationship between the legislative and executive branches" in favor of "existing political reality" whereunder the "military apparatus" has merely become an adjunct of the President's foreign policy. Monaghan, ibid. at 31–32. A return to the eighteenth century model, he considers, would involve "a fundamental restructuring of our governmental institutions." Ibid. 33. It was the President, however, who "restructured" the original division of powers.

[80] These and other presidential utterances were collected by Putney, Executive Assumptions of the War Making Power, 7 National Univ. L. Rev. 1 (1927).

[81] 1 Richardson, Messages and Papers of the President 314 (1897). In 1793, Jefferson, then Secretary of State, said of reprisal, "if the case were important and ripe for that step, Congress must be called upon to take it; the right of reprisal being expressly lodged with them by the Constitution, and not with the Executive." Quoted Wormuth, supra, n. 4 at 758.

Hamilton, then a private citizen, attacked Jefferson's Tripoli position on the ground that a declaration of war by a foreign nation unleashes the President's defensive powers so that no Congressional declaration of war was required for retention of the Tripolitanian ship and crew. Harvard Note, supra, n. 4 at 624; Wormuth, supra, n. 4 at 725.

For Hamilton's narrow view of the President's war power, see supra, n.36.

[82] 1 Richardson, supra, n. 81 at 376–377.

[83] Supra, text accompanying notes 18, 19, 45.

[84] 2 Richardson, supra, n. 81 at 484–485, 489.

[85] Quoted Wormuth, supra, n. 4 at 737–738.

[86] 4 Richardson, supra, n. 81 at 1484.

[87] Quoted Wormuth, supra, n. 4 at 738–739. For other statements to the same effect by Presidents James Buchanan, Benjamin Harrison, Grover Cleveland, W. H. Taft, see Putney, supra, n. 80 at 15–16, 24–27, 36.

[88] It is a mark of the Legal Adviser's (State Department) careless advocacy that he could argue against this background that "James Madison . . . Presidents John Adams and Jefferson all construed the Constitution, and in their official actions during the early years of the Republic, as authorizing the United States to employ its armed forces abroad in hostilities in the absence of any Congressional declaration of war." Legal Advisor Memorandum, supra, n. 30 at 1106.

[89] Ibid.

[90] 1 Cranch (U.S.) 1, 28 (1801).

[91] 2 Black (67 U.S.) 635,668 (1862).

[92] Corwin, supra, n. 16 at 275,277.

[93] Ibid. 277.

[94] The dissenting Justices in the Prize Cases admitted that war had been initiated by the South in a "material sense," but maintained that it did not exist in a "legal sense" as recognized by the "law of nations" in the absence of a declaration of war by Congress. But the early statutes which authorized the President to "use the military and naval forces" to suppress insurrection would include a blockade as a measure of suppression. The Acts of February 28, 1795 and March 2, 1807 are cited in 2 Black at 691. Whatever merit the dissenting argument may have is overcome by the fact that the Convention rejected the application of the law of nations to rebellion. 3 Farrand, supra, n. 11 at 158.

[95] 7 Richardson, supra, n. 81 at 3214–16.

[96] Corwin, supra, n. 16 at 277, 282.

[97] Cf. ibid. 279–280.

[98] Wormuth, supra, n. 4 at 726.

[99] Ibid. 727.

[100] 7 Richardson, supra, n. 81 at 3245, 3248.

[101] S. E. Morison, Oxford History of the American People 801 (1965).

[102] Putney, supra, n. 80 at 1–2; Harvard Note, supra, n. 4 at 635.

[103] 6 Madison, supra, n. 18 at 174.

[104] Morison, supra, n. 101 at 855, 859.

[105] 55 Cong. Rec. 103 (April 2, 1917).

[106] Morison, supra, n. 101 at 859–860.

[107] Corwin, supra, n. 16 at 288–289; Harvard Note, supra, n. 4 at 631.

[108] Corwin, supra, n. 16 at 289; Kurland, The Impotence of Reticence, Duke Law Journal (1968) 619, 623. But see Justice Jackson's explanation, "Steel Seizure," supra, n. 5 at 645 n. 14.

[109] Morison, supra, n. 101 at 991, 995, 997.

[110] National Commitments Report, supra, n. 4 at 24.

[111] The Senate Foreign Relations Committee stated that "President Truman committed American Forces to Korea in 1950 without Congressional authorization. Congressional leaders and the press were simultaneously informed of the decision but the decision had

already been made." Ibid. 17. Dean Acheson stated that Truman consulted with Congressional leaders, and that at a second meeting several days later there was a "general chorus of approval." Acheson, Present at the Creation 408–409, 413 (1969). See also Reveley, supra, n. 4 at 1263 n. 57.

[112] Acheson, supra, n. 111 at 414.

[113] Ibid. 414–415.

[114] Buchan says of Vietnam, "one cannot fail to be impressed by the slapdash manner in which decisions of profound importance were taken." Buchan, supra, n. 1, at 38. See infra, n. 186.

[115] Quoted Velvel, supra, n. 66 at 674, n. 123.

[116] Quoted Wormuth, supra, n. 4 at 711, n. 1.

[117] Velvel, supra, n. 66 at 654.

[118] But the repeal did not "direct the termination of Indo-China hostilities, disapprove continuing combat, or correct the President's prior interpretation." Rather, supra, n. 32 at 474.

[119] "American military forces were committed to Cambodia in 1970, to Laos in 1971, without the consent, or even the knowledge of Congress." War Powers Report, supra, n. 3 at 8.

[120] It needs to be borne in mind that such statements are merely "advocacy" for a predetermined policy, such as led Justice Jackson to dismiss as "self-selving" an earlier statement he had made as Attorney General. "Steel Seizure," supra, n. 5 at 647.

[122] War Powers Report, supra, n.3 at 18. Referring to the Middle East debate in 1957, the National Commitments Report, supra, n.4 at 18, states, "Senator Fulbright, whose view has changed with time and experience, thought at the time that the President had power as Commander in Chief to use the armed forces to defend the 'vital interests' of the country . . ." And that Report states that "The Gulf of Tonkin resolution represents the extreme point in the process of constitutional erosion." Ibid. 20.

[123] National Commitments Report, supra n.4 at 14.

[124] Ibid, 14,20–21; War Powers Report, supra, n.3 at 10–11. Reveley, supra, n.4 at 1263, 1265–1271; Wormuth, supra, n.4 at 806.

[125] Coke on Littleton 81b.

[126] Corwin, supra, n.16 at 9.

[127] Article 30 of Part the First of the 1780 Massachusetts Constitution provides: "In the government of this commonwealth, the legislative department shall never exercise the legislative and judicial powers, or either of them, the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them; to the end it may be a government of laws, and not of men." 1 Poore, supra, n.10 at 960. The New Hampshire Constitution of 1784 is almost identical, 2 Poore 1288. See also the Delaware Constitution of 1776, Article 9, 1 Poore 275.

Charles Pinckney submitted to the Convention that the President "cannot be clothed with those executive authorities, the Chief Magistrate of a Government often possesses; because they are vested in the Legislature and cannot be used or delegated by them in any, but the specified mode." 3 Farrand, supra, n. 11 at 111. In the Jay Treaty debate (1796), Mr. Jonathan Havens "laid it down as an incontrovertible maxim, that neither of the branches of the Government could, rightly or constitutionally, divest itself of any powers . . . by a neglect to exercise those powers that were granted to it by the Constitution." 5 Annals of Congress 486. To the same effect, Mr. John Nicholas, ibid. 447.

Madison regarded the separation of powers as "a fundamental principle of our Government," 2 Farrand, supra, n. 11 at 56, as did Mason, ibid. 86. In 1976 President Washington, speaking to the demand of the House for information about the Jay Treaty, said, "it is essential to the due administration of the Government, that the boundaries fixed by the Constitution between the different departments should be preserved." 5 Annals of Congress 761–762. In our own time Justice Black, in Reid v. Covert, 354 U.S. 1, 40 (1957), stated, "Ours is a government of divided authority on the assumption that in division there is not only strength but freedom from tyranny."

[128] United States v. Morton Salt Co., 338 U.S. 632, 647 (1950).

In "Steel Seizure," supra, n. 5 at 588, it was stated, "It is said that other Presidents without congressional authority have taken possession of private business enterprises in order to settle labor disputes . . . Congress has not thereby lost its exclusive constitutional authority . . ."

[129] Indo-China: The Constitutional Crisis, Part I, 116 Cong. Rec. S7117 (daily ed. May 13, 1970); Part II, 116 Cong. Rec. S7528 (daily ed. May 20, 1970) (hereinafter Yale memorandum). Part I contains a succinct statement of the main historical materials bearing on the issue of presidential war powers.

[130] Ratner, supra, n. 32 at 462.

[131] Yale memorandum, supra, n. 129 at S7529. In view of the very circumscribed grant of war power to the President, and the plenary grant to Congress, I experience considerable difficulty in locating a "twilight" zone in this segment.

[132] When the government argued in "Steel Seizure," supra, n. 5 at 362, that the President "had invested himself with 'war powers' " by sending troops to Korea "by an exercise of the President's constitutional powers," Justice Jackson said, "How widely this doctrine . . . departs from the early view of presidential power is shown by a comparison "with Jefferson's message to Congress respecting the Tripolitanian pirates (discussed supra, text accompanying note 69.)

[133] Supra, n. 44.

[134] Yale memorandum, supra, n. 129 at S7529; United States v. Curtis-Wright Export Corporation, 299 U.S. 304, 315–316 n. 2 (1936). See also Monaghan, supra, n. 15 at 27.

[135] For a trenchant critique of the Curtiss-Wright dictum, see Kurland, supra, n. 108 at 622–623.

[136] United States v. Curtiss-Wright Corp., 299 U.S. 304, 316–317 (1936).

[136a] Chisholm v. Georgia, 2 Dall. (U.S.) 419, 470 (1793).

[136b] Commager, supra, n.22 at 111, 116.

[137] 2 Farrand, supra, n.11 at 476. For similar remarks by George Mason, James Iredell, James Wilson and others, see Berger, supra, n.40 at 173n, 174–175.

[137a] Chisholm v. Georgia, 2 Dall. 419, 470 (1793).

[137b] 3 Dall. (U.S.) 54, 80–81.

[138] 3 Jour. Contl. Cong. 326 (1937).

[138a] Id. at 546.

[138b] "Virginia had a right, as a sovereign and independent nation, to confiscate any British property within its territory, unless she had delegated that power to Congress . . . if she had parted with such power, it must be conceded, that she once rightfully possessed it." Ware v. Hylton, 3 Dall. (U.S.) 199, 231–232 (1796).

[139] 3 Jour. Contl. Cong. 549; Commager, supra, n.22 at 112.

[139a] 3 Dall. at 95. Cushing stated, "I have no doubt of the sovereignty of the states, saving the powers delegated to congress . . . to carry on, unitedly, the common defense in the open war." Id. at 115.

[139b] McDougal and Lans, Treaties and Congressional-Executive or Presidential Agreements: Interchangeable Instruments of National Policy, 54 Yale L.J. 181,258 (1945).

[140] 3 Dall. (U.S.) 199,232 (1796).

[140a] McDougal and Lans, supra, n.139b at 258.

[141] 5 Jour. Contl. Cong. 828,833 (emphasis added).

[141a] 11 Jour. Contl. Cong. 421. Rufus King's remarks in the Convention exhibit ignorance of the entire background: "The States were not 'sovereigns' in the sense contended for by some. They did not possess the peculiar features of sovereignty. They could not make war, nor peace, nor alliances nor treaties." 1 Farrand, supra, n.11 at 323.

[142] One example must suffice. In the Virginia Ratification Convention, Governor Edmund Randolph, defending the Constitution against powerful onslaughts, said that the powers of government "are enumerated. Is it not, then, fairly deductible, that it has no power but what is expressly given it?—for if its powers were to be general, an enumeration would be needless." 3 Elliot, supra, n.11 at 464. For other citations, see Berger, supra, n.40 at 8–14, 377 n.52; Berger, Congressional Inquiry v. Executive Privilege, 12 UCLA Law Rev. 1043,1075 (1965).

[143] In his 1791 Lectures, James Wilson, then Justice of the Supreme Court, referred to the executive powers granted by the Constitution and to the presidential veto as "a guard to protect his powers against their encroachment. Such powers and such a guard he ought to possess; but a just distribution of the powers of government requires that he *should possess no more*." 1 Wilson, supra, n.7 at 319 (emphasis supplied).

[144] As Alexander White of Virginia stated in the First Congress, after insisting that the federal government must adhere to the limits described in the Constitution: "This was the ground on which the friends of the Constitution supported the Constitution . . . it could not have been supported on any other. If this principle had not been successfully maintained by its advocates in the convention of it the state from which I come, the constitution would never have been ratified." 1 Annals of Congress 515. Cf. Berger, supra, n. 40 at 13–15.

[145] 12 Register of Debates 4037–4038 (1836). Compare Justice Harlan's statement: "Chief Justice Marshall, in McCulloch v. Maryland, 4 Wheat 316 [at 423], has taught us that the Necessary and Proper Clause is to be read with *all* the powers of Congress, so that 'where the law is not prohibited, and is really calculated to effect any of the objects entrusted to the government" the Court will not "inquire into the degree of its necessity . . . Reid v. Covert, 354 U.S. 1, 69 (1957) (concurring opinion). So read the war powers are plenary.

[146] Because Article I, §1 vests in Congress only the "legislative powers herein granted" whereas Article II, §1 vests "the exclusive power" in the President, Reveley, supra, n.4 at 128 concludes that the President "possesses residual authority to go beyond his enumerated powers," "to take whatever steps he deems necessary for the country's security." The argument had been advanced by Chief Justice Taft in Myers v. United States 272 U.S. 52, 128 (1926), over the vigorous dissent of Justices Holmes and Brandeis whose view that the Executive Power was merely a power to "execute the laws," was later espoused by Justices Black, Douglas, Frankfurter and Jackson in the Steel Seizure case. Citations to these and confirmatory historical materials are set forth in Berger, supra, n. 142 at 1074–1076. Here I shall mention only Madison's statement in the Convention that it was essential preliminary *"to fix the extent* of the Executive authority . . . as certain powers were in their nature Executive, and *must be given* to that department." 1 Farrand, supra, n. 11 at 66–67. Cf. Pinckney, supra, n.127.

Justice Jackson brushed aside the claim of plenary power with the query why did the Framers expressly empower the President to "require the Opinions, in writing" of each department head, a power that "would seem to be inherent in the Executive if anything is." "Steel Seizure," supra, n. 5 at 640–641. See also Wilson, supra, n. 143. "The United States is entirely a creature of the Constitution. Its power and authority have no other source." Reid v. Covert, 354 U.S. 1, 5–6 (1957).

[147] 343 U.S. at 637.

[148] Ibid. 637, 629. So far as Jackson's "concurrent authority" or "uncertain distribution" tests go, there is little "twilight" zone in the area under discussion. Congress can-

not encroach on the President's command of the armed forces, that is it cannot conduct a campaign. But cf. infra, n. 153. The Framers left little doubt about the restricted presidential power "to repel sudden attacks."

[149] Little v. Barreme, 2 Cranch (U.S.) 170, 177–178 (1804).

[150] 343 U.S. at 637, 638, 640.

[151] Ibid. 642; see supra, n. 44.

[152] Ibid. 641–652.

[153] Ibid. 644. Another limitation, as Madison observed, is that although the President can command, the appointment of officers requires Senate consent. 3 Elliot, supra, n. 10 at 394. By its power to make rules for the "Government and Regulation of land and naval forces," Congress, said Justice Jackson "may to some unknown extent impinge upon even command functions." 243 U.S. at 644. "Presidential power, even in the exercise of commander-in-chief power, is not autonomous." Moore, supra, n. 45 at 813.

[154] Compare Sheldon v. Sill, 8 How. (49 U.S.) 441, 448–449 (1850), respecting Congress' power to establish the inferior courts: "Congress, having the power to establish the courts, must define their respective jurisdictions . . . Congress may withhold from any court of its creation jurisdiction of any of the enumerated controversies."

[155] War Powers Report, supra, n. 3 at 17, 19. Resort to presidential power over "foreign policy" cannot supply any *military* power which the "Commander in Chief" lacks.

My criticism of Acheson's claim is not meant to be a covert attack on the *policy* of stationing troops in Europe, but on the presidential claim to be the sole arbiter of that policy.

[156] For example, on "November 28, 1941, the President and his 'War Cabinet' . . . discussed the question: "How shall we maneuver them [the Japanese] into the position of firing the first shot . . ." Corwin, Total War, supra, n. 66 at 32.

Compare Andrew Jackson, supra text accompanying note 86; see also Harvard Note, supra, n. 4 at 630–632, 641, 643; Reveley, supra, n. 4 at 1262 states that Wilson and "especially Roosevelt, were forced to resort to deception and flagrant disregard of Congress in military deployment decisions because they were unable to rally congressional backing for action essential to national security." This substitutes a "Great White Father" for constitutional processes.

[157] Article I, § 8(1).

[158] Article I, § 8(12); see supra, n. 154.

[159] Article I, § 8(12). When Gerry expressed fear about the absence of restrictions on the numbers of a peace-time army, Hugh Williamson "reminded him of Mr. Mason's motion for limiting the appropriation of revenue as the best guard in this case." 2 Farrand, supra, n. 11 at 330,327. In early days the President was *compelled* to come to Congress for authorizations to employ troops abroad because he had to obtain funds to raise and support troops. Only when Congress supplied a standing army was he enabled to escape from this necessity. Harvard Note, supra, n. 4 at 621.

[160] Federalist, No. 26 supra, n. 10 at 163: the Congress "will be *obliged*, by this provision, once at least in every two years, to deliberate upon the propriety of keeping a military force on foot; to come to a new resolution on the point. . . . They are not *at liberty* to vest in the executive department permanent funds for the support of an army, if they were even incautious enough to be willing to repose in it so improper a confidence."

[161] In his testimony before the Senate Foreign Relations Committee Professor Alexander Bickel stated, "Congress can govern absolutely, the deployment of our forces outside our borders and that Congress should undertake to review and to revise present dispositions." Quoted War Powers Report, supra, n. 3 at 29.

I would dissent from the proposition that to require congressional approval for every decision to deploy American troops is hardly desirable or constitutionally required." Harvard Note, supra, n. 4 at 643. The Congressional power is plenary, subject to no exceptions. It may be, as a practical matter that Congress should leave the President free to make some peace-time deployments that cannot possibly lead to involvement in war; but that is a matter of accommodation by Congress, not "inherent" presidential power. In any event, the Harvard writers, ibid., conclude that "there will be some situations, such as the rushing of troops to Lebanon . . . which, although not involving immediate commitment to combat, so clearly entail the possibility of conflict that prior approval should be sought . . . instead of assuming that the President may deploy American forces as he sees fit and only in the exceptional case need he seek approval, the presumption should be that Congressional collaboration is the general rule wherever the use of the military is involved, with presidential initiative being reserved for the exceptional case." What the Harvard writers, and J. N. Moore, supra, n. 45 at 814, regard merely as the part of wisdom, seems to me to lie within the constitutional power of Congress to require.

[162] 2. H. Hallam, Constitutional History of England 357 (London, 1884). The principle remains vital in England. Sir Ivor Jennings, Parliament 338, 292 (2d ed. 1957). Sir Edward Seymour was impeached for having applied appropriated funds to public purposes other than those specified. 8 Howell's State Trials 127–131, Article 1 (1680).

[163] On a related point, Mason said in the Convention, "He considered the caution observed in Great Britain on this point to be the palladium of public liberty." 2 Farrand, supra, n. 11 at 327. See Madison's reference to British appropriation practices in Federalist No. 41, supra, n. 10 at 265. Compare the assurances of Madison, John Marshall and others in the Virginia Convention that the provision for jury trial carried with it all its attributes (under English practice) including specifically, the right to challenge jurors. 3 Elliot, supra, n. 10 at 531, 546, 558–559, 573.

[164] Act of, 2 Stat. 535.

[165] For English use of appropriations to reduce the armed forces, see Coolidge & Sharrow, The War-Making Powers: The Intentions of the Framers in the Light of Parliamentary History, 50 Boston U.L.Rev.5,7 (1970).

[166] Special Foreign Assistance Act of 1971, 84 Stat. 1942.

[167] If we may properly infer that the long-established parliamentary practice was adopted by the Framers, such statutes do not constitute an invasion of the President's powers as Commander in Chief. Compare the statement of Justice Jackson: "Congress alone controls the raising of revenues and their appropriation and may determine in what manner and by what means they shall be spent for military procurement." "Steel Seizure," supra, n. 5 at 643.

[168] Article I, § 8(14).

[169] 2 Farrand, supra, n. 11 at 330.

[170] Ibid. 158.

[171] Compare General Douglas McArthur's unauthorized crossing of the Yalu River, which drew powerful Chinese forces into the Korean war, and contributed to his removal by President Truman. Acheson, supra, n. 111 at 462–466. As "first General," the President must be equally responsible to Congress for expanding a war upon Korea to one on China.

[172] Supra, n. 10.

[173] Quoted National Commitments Report, supra, n. 4 at 9: 15 Papers of Thomas Jefferson 397 (Boyd ed. 1955).

[174] Supra, text accompanying notes 30–41; for the Bill, see Appendix.

[175] War Powers Report, supra, n. 3 at 4.

[176] Ibid. 4.

[177] Supra, text accompanying note 39.

[178] War Powers Report, supra, n. 3 at 26.

[179] Ibid. 28.

[180] Cf. supra, text accompanying note 78.

[181] Monaghan, supra, n. 15 at 31. Monaghan ibid, 29, questions the constitutionality of a requirement that "the president obtain authorization from Congress before making any (major?) commitment of the armed forces to hostilities" on the ground "(1) it is too uncertain in what it demands." "What," he asks, "precisely is the president to ask of Congress? Let him ask an authorization for any "commitment of the armed force to hostilities" and leave it to Congress to determine whether the authorization should take the form of a statute, a resolution, a declaration of war, or any other form deemed by it appropriate. The Act of March 21, 1839, 5 Stat. 355, may serve as a guide; it authorizes the President to resist any attempt by Great Britian "to enforce by arms her claim to exclusive jurisdiction over that part of Maine which is in dispute between the United States and Great Britain." If Congress "is too divided to act clearly," Monaghan 29, the President will not obtain his authorization. He should not be permitted to commit a divided nation to war or the grave risk of war. Even the strong-willed Franklin Roosevelt had to wait for Pearl Harbor.

Monaghan, 30, also questions the "textual basis" of an authorization that falls short of a declaration of war. A power to "declare" war surely comprehends authorization of steps short of war; the greater embraces the less, the more so as "all" the powers "naturally connected" with the power of declaring war were vested in Congress.

[182] Corwin, Total War, supra, n. 66 at 65.

[183] Story, supra, n. 31 at § 1171.

[184] The "executive, by acquiring the authority to commit the country to war, now exercises something approaching absolute power over the life and death of every living American—to say nothing of millions of other people all over the world. . . . Plenary powers in the hands of any man or group threaten all other men with tyranny or disaster." National Commitment Report, supra, n. 4 at 26–27. Even those who take a broad view of presidential war-making powers conclude on practical grounds that "Congress must be given an opportunity to say whether it finds the potential gains from the use of force worth the potential losses." Reveley, supra, n. 4 at 1288, 1299–1301; Moore, supra, n. 45 at 814.

[185] Reveley, supra, n. 4 at 1293, 1303; Moore, supra, n. 45 at 813; Monaghan, supra, n. 15 at 25n.

[186] Consider President Kennedy's disregard of the truly "expert" advice of President Charles de Gaulle. On the occasion of his visit to France in May, 1961, Kennedy "made no secret of the fact that the United States was planning to intervene in Siam." De Gaulle records that he told Kennedy "he was taking the wrong road" that would lead to "an endless entanglement . . . We French have had experience of it . . . You Americans . . . want to . . . revive a war which we brought to an end. I predict you will sink step by step into a bottomless military and political quagmire." Excerpt from de Gaulle, Memoirs of Hope, Renewal and Endeavor, reprinted New York Times, March 15, 1972, p. 43. See also supra, n. 114.

The wage-control powers presently being exercised by the President derive from a statutory grant which he did not want. Hearings on Executive Privilege: The Withholding of Information by the Executive (S. 1125), before the Senate Subcommittee on Separation of Powers 519 (July–August 1971).

The National Commitments Report, supra, n.4 at 14, states truly, "Congress, it seems clear, was deficient in vision during the 1920s and 1930s, but so were Presidents Harding, Coolidge and Hoover and—prior to 1938—Roosevelt. Just as no one has a mo-

nopoly on vision, no one has a monopoly on myopia either.

[187] Quoted by Buchan, supra, n.1 at 38.

[188] Hearings, supra, n.186 at 460, 464.

[189] Reedy, ibid at 462.

[190] Ibid. 455, 459. The philosopher, Charles Frankel, who served a spell as an Assistant Secretary of State, shed his outsider's respect for governmental expertise: "often the government does know something that people on the outside don't, but its something that isn't so . . . After a while I came to suspect that I might not be dealing with hard facts but rather a world created out of hunch, hope, and collective illusion." Hearings, supra, n.186 at 480.

In the Executive branch there is also an ill-concealed contempt for Congress. "People like Mr. Acheson," stated Senator Fulbright, who had occasion as a member of the Foreign Relations Committee to know at first hand, "make no bones about it. They just say they are boobs and ought to have nothing to do with foreign policy." Ibid. 468. Cf. Acheson, supra, n.111 at 101: which refers to the "anguishing hours" he spent in the Senate to "suffer fools gladly." Compare W. W. Rostow, who states, "In the period 1961–1969 I had the privilege of observing the process of Congressional consultation with the President [Kennedy and Johnson] on many occasions . . . I emerged with great respect for members of the Congress and have heard them make wise and helpful observations, both critical of the President's course and supportive." Hearings, supra, n.186 at 535.

When we reflect that Truman, Kennedy, Johnson and Nixon came to the Presidency from the Senate, we need to ask by what miracle such "boobs" became demi-gods.

[191] Hearings, supra, n. 186 at 465–466. Reedy states of some meetings of the Cabinet and of the National Security Council that "every one [was] trying desperately to determine just what it is that the President wants to do." Ibid. 466. There is, of course, the occasional maverick, like Under Secretary of State George Ball, who persisted in opposition to Vietnam escalation in the teeth of an inner-circle consensus.

[192] Jennings, The British Constitution 82 (3d ed. 1950).

[193] Hearings, supra, n. 186 at 455–456.

[194] Cf. Kurland, The Impotence of Reticence (1968) Duke Law Journal 619, 625–628.

[195] Monaghan, supra, n. 15 at 19n.

[196] Jaffe, The Right to Judicial Review, 71 Harv. L. Rev. 401, 406, 769 (1958).

[197] B. Bailyn, The Ideological Origins of the American Revolution 56–57 (1967); Berger, supra, n. 40 at 9.

[198] "Steel Seizure," supra, n. 5 at 655.

WAR POWER OF THE CONGRESS NEEDS CLARIFICATION BUT NOT CODIFICATION

Mr. DOLE. Mr. President, I rise to share with my respected colleagues, and especially the distinguished senior Senator from New York, my agreement with his belief that the Congress must clarify its role in the area of the war powers. I strongly called for action on this matter on June 15, 1970. I cosponsored the war powers bill introduced by the distinguished Senator in that year, and I still believe that we must act to clarify this most crucial area affecting the balance of powers within our system of Government. However, I have serious doubts as to the approach and context in which the present bill is offered. This bill is a Mr. Hyde to its predecessor's Dr. Jekyll.

DIFFERENCES BETWEEN THIS BILL AND ITS PREDECESSOR

I supported the bill offered by the Senator in 1970 because it contained no language which could be reasonably construed as restricting the powers and role of the President of the United States. It defined the powers of the Congress, and it left enough leeway in the allocation of powers to the executive and Congress to insure room for maneuver and compromise.

The bill before us now defines the role of Congress so as to curtail the substantive power of the Presidency. Section 2 of this bill sets the stage for a codification of the war power language of the Constitution. The early bill did not do so. The language to which I particularly object is the provision whereby the meaning of article I, section 8, of the Constitution is extended to specifically restrict the power of the President to initiate hostilities.

I also find vast differences in the provisions of the two bills which define the extent of Presidential powers. The bill I supported was worded more generally and could be subject to interpretation in unforeseeable circumstances. Not so with section 3 of the present bill, which would imperil our alliances and treaties, restrain the President from using Armed Forces in areas where hostilities were "imminent" and bar him from protecting Americans on the high seas. I note that the Senator from New York disclaimed this intent in debate last Thursday, but the meaning of the language in this bill seems perfectly clear to me.

The bill before us would undermine our commitment to Europe, would further destabilize the confidence of the Japanese in our defense commitment to that nation, and would bind the President to an unnecessary handicap in the conduct of diplomacy, by compromising his powers and authority. The bill which I cosponsored in 1970 was free from these defects.

The present bill, S. 2956, despite verbal and precatory disclaimers by its drafters, clearly defines the powers of the Congress in such a way as to curtail the powers of the Presidency. The form of this bill is not, as the Senator from Kansas sees it, in keeping with the spirit and style of our Constitution which it purports to codify. Its effect is to take up the traditional slack or "grey area" which gave play and flexibility to our governmental system and replace it with a rigid definition of powers which, in my view, could not possibly provide for all future conflict situations and which, in all probability, would not have barred a Vietnam commitment even if it had been in force.

CODIFICATION OF THESE POWERS IGNORES THE LESSONS OF HISTORY

I differ with my esteemed colleague from New York because his approach to the need for this legislation—a need we both agree must be remedied—has been that of the technician seeking to prevent human frailties by the neat devices of today's language.

Mr. President, what is needed is not a hedge of words, words which the distinguished Senator himself admits are subject to contorted interpretation. But instead, we must have legislation which recognizes and will harken future Congresses back to the lessons of the past in this area. These lessons include Vietnam, and do not suggest that the present war is representative or indeed predictive. Rather, the lessons of the past suggest that we will have to meet our enemies in force on terms which we cannot now foresee. Change is the lesson of history. Codes do not anticipate change, rather they gaze back at the static examples of past problems. Like driving by reference to one's rear view mirror, they do not give their user the necessary impetus to look ahead for the unexpected. This, in my view, is the fatal flaw in the present bill. We cannot predict that the next crisis which our President could face would fall within the four categories listed in section 3 of this bill. We cannot predict that they would allow him the time for the consultations required.

The wise and respected Senator from Mississippi commented on this problem in 1970 in a manner which has much relevance to the present bill.

> In my judgment, there is no general rule which will adequately define in all cases the respect and responsibility of the Congress and the President in foreign relations. In particular, I do not think that it is wise to try to deal with the future by legislating against the errors of the past—Senator John Stennis, "The Role of Congress in Foreign Policy." American Enterprise Institute, Washington. D.C. 1970, page 28.

WE MUST BE BETTER INFORMED IF WE ARE TO USE THE POWER WE NOW HAVE

The need for war powers legislation should be met in a manner that will place responsibility on the Congress to keep itself informed—more so than is the case today. We cannot expect to intelligently act on the requests of the executive branch on the basis of emergency provisions or 30-day deadlines, when the Congress has at its disposal little information on the background events upon which the executive branch must act. Such a provision would invite capriciousness or tokenism.

The Congress must cloak itself with the capability for assertion of its prerogatives when circumstances and political considerations so warrant. This calls for the development of congressional research facilities. It calls for broader communications and exchanges of information with the executive branch.

WE MUST NOT BIND THE PRESIDENT, BUT RATHER, MAKE HIM RESPONSIBLE FOR HIS ACTIONS

If we are to meet this question squarely, we must not let the President be forced to interpret restrictive language no matter how carefully it has been used in carrying out his constitutional duties. Rather, we must be willing to assume, politically, a more regular responsibility for the issues which might lead to use of the President's war powers. But I cannot neatly separate, as does my colleague from New York, the war powers question from the overall balance of power between the executive branch and the Congress. To do so is again to imperil the respect demanded by our present and flexible law, by challenging the President to justify his actions against a code, rather than encouraging him to come to us for political sanction of what he has decided to do within his powers as Commander in Chief, which are indisputedly his and his alone.

This question brings to mind a past example where Congress tried to bind the President in his exercise of power as Commander in Chief. When the Draft Act passed Congress in 1940, by the mar-

gin of one vote, the use of draftees was limited to the Western Hemisphere. Now President Roosevelt was convinced of the growing danger to the United States in Europe, and when the British Government informed him that they could no longer garrison Iceland, which was a vital link to the Atlantic seaways and Murmansk convoys, the President chose to view Iceland as part of the Western Hemisphere. He even produced a geographer to substantiate this claim. Now I do not deplore the ingenuity of the President and his geographer. I do deplore legislation that could lead the Presidency to potential conflict with laws codified by Congress in the pursuit of his constitutional duty.

PRESIDENT MUST BE FREE TO DEAL WITH THE UNEXPECTED

Clearly, the genius of our Constitution has been its revolutionary recognition of the human factor in the process of government. Codification was abhorrent, and foreign to the Founding Fathers. They recognized that in the field of foreign affairs exigencies could arise which no man could foresee. They were aware then, as is the case today, that the society of nations has no law but strength and no principles that are not convenient to the strong. Our Constitution had been nurtured, as our colleague, Senator McGEE has rightly told us, under the protecting wings of the British Navy which, until World War II, stood between our shores and the powers of Europe. Since then, the brunt of international lawlessness has been impressed upon the United States as never before. And, as never before, the United States has had to be prepared for the unexpected. Today, as never before, we need a Presidency which is not bound by code, yet fully responsible for actions taken.

THIS BILL RAISES CONSTITUTIONAL QUESTIONS

The question before us is a political one of the highest order and is therefore also a constitutional one. It should receive the most careful attention that this body can render. If this bill is to become law, it must be improved so as to become consonant with the spirit of the Constitution. It must be a human document appealing to responsibility of the Chief Executive, rather than a technical one which would bind him to codified powers and challenge his ingenuity in interpreting such codes—to the detriment of our constitutional system generally.

Mr. President, this bill is the Mr. Hyde to its predecessor's Dr. Jekyll. It is a technical document, playing with restrictive language, where it should call upon Presidential responsibility. It defines our powers to such an extent as to restrict the power of the President. It thereby creates, or will create, under foreseeable contingencies, conflict between the two branches where cooperation must be had—we may need a war powers bill. But if so, we need one which is consonant with the spirit of flexibility inherent in the operation of the two branches of Government which share responsibility for the foreign relations of the Nation. The question is greater than just that of war powers. It is one of philosophy. It is the very spirit of our law.

THIS BILL COULD NEVER BECOME LAW

This question leads us to wonder whether this bill could ever become law. I doubt that it could pass the House. Even if it did, I am certain that it would be vetoed, and the valuable time and effort spent here will have been, at best, futile and quite possibly damaging. For, if we cannot report a product which can become law, we will have failed to fill a need which we almost all agree exists.

If this body would have a war powers bill as law, it must consider what the House can accept and what the President can accept. If the Senators, who have so often insisted that this bill would not restrict the President, are serious in their intent to pass war powers legislation then let them consider what he, the President, can accept.

I doubt that any of the living former Presidents would agree that this bill is unrestrictive of the Presidency's constitutional prerogatives. Is this, in itself, not evidence of its defects? Are we to suppose that past Presidents and their advisers would conspire with the present occupant of this great office to thwart the Constitution? Have the distinguished Senators on the Foreign Relations Committee invited a former occupant of the office to even so much as testify on the momentous legislation? I suspect not. The answer is all too clear—that what is proposed is, in fact restrictive of the presidency and, therefore, a defective vehicle for what is needed.

IT WOULD RUN AGAINST THE CONSTITUTIONAL PRINCIPLE OF OVERLAPPING JURISDICTIONS

Mr. President, our system of government is almost unique in its flexibility and its survivability, because it is a system which functions through people, and not through rigid codes which are all too soon outworn. The war power has been shared by 92 Congresses and 37 Presidents. This power has historically been in an area of "overlapping jurisdiction" between the two branches of the Government.

As Justice Holmes put it:

> The great ordinances of the Constitution do not establish and divide fields of black and white. Even the more specific of them are found to terminate in a penumbra shading gradually from one extreme to the other—(Dissent in: *Springer* v. *Philippine Islands*, Marcuse II, page 311).

The overlap also permits the Congress to withhold its sanction from actions taken by the executive, and such action carries with it the weight of law. It also covers the power of the purse and reflects the opinion of the American people, which no President can ignore.

What we need is a bill which recognizes and preserves the overlap of the two branches in the war power area. This bill obviously does not. We need a bill which clarifies the role of the Congress without restricting the powers of the President. This bill would codify the power of the Congress and extend the congressional power to include the entire "grey area." This strikes me as contrary to the intent of the framers and the precedents set by 92 Congresses before us, which, in the spirit of our law, has persuasive, if not legal, force. We may need a war powers bill. If so, I will be among the first to support one which is not restrictive of the Presidency and which has a chance of becoming law. This bill in the opinion of the Senator from Kansas, fails both tests.

I ask unanimous consent to have printed in the RECORD a comparison of the two bills.

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

S. 2956 OF 1971–2

Section 2: This Bill is ostensibly intended to protect the Congressional right to declare war and exercise due checks upon the power of the Presidency. However this section defines the powers of Congress in a manner which curtails the power of the Presidency. Sec. 2 is no less than an interpretation of the Constitution, and a definition of powers which were purposely left undefined.

Section 3(3): Restricts the use of U.S. Forces by the President in protecting U.S. nationals abroad to protection only during evacuation. Persons qualifying for such evacuation must have been in the country by consent of the Government. (Would not permit such protection of U.S. nationals on the high seas. May not permit evacuation of U.S. nationals under revolutionary regimes "not consenting" to the presence of Americans).

Section 3(4): prohibits the introduction of U.S. Forces into any foreign country where "war" is imminent. ("War"-hostilities.) It bars the use of U.S. Forces in compliance with existing Treaties in nations where hostilities may be imminent. (NATO–"RIP".) It bars the use of U.S. military personnel in nations where hostilities may be imminent. (NATO integrated command—"RIP"), deployment of U.S. Navy units to potentially hostile areas would be barred.

(These provisions would prohibit U.S. Force movements in the event of a "Berlin Crisis." They would withdraw all U.S. Officers from the NATO integrated command if hostilities became imminent. They would freeze all U.S. Forces in Europe if a member of NATO in which such forces were not based came under attack. We would not be able to show the flag in the Caribbean or the Middle East, etc. Nor would we be able to show the flag in a disputed international waterway or strait.)

DR. JEYKLL AND MR. HYDE: THE JAVITS BILLS OF 1970 AND 1971–72 COMPARED

The 1970 bill, which you cosponsored: (S. 3964 and S. 731).

S. 3964

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That use of the Armed Forces of the United States in military hostilities in the absence of a declaration of war be governed by the following rules, to be executed by the President as Commander in Chief:

(a) The Armed Forces of the United States, under the President as Commander in Chief, may act—

(1) To repulse a sudden attack against the United States, its territories and possessions;

(2) To repulse an attack against the Armed Forces of the United States on the high seas or lawfully stationed on foreign territory;

(3) To protect the lives and property, as may be required, of United States nationals abroad;

(4) To comply with a national commitment resulting exclusively from affirmative action taken by the executive and legislative branches of the United States Government through means of a treaty, conven-

tion, or other legislative instrumentality specifically intended to give effect to such a commitment, where immediate military hostilities by the Armed Forces of the United States are required.

(b) The initiation of military hostilities under circumstances described in paragraph (a), in the absence of a declaration of war, shall be reported promptly to the Congress by the President as Commander in Chief, together with a full account of the circumstances under which such military hostilities were initiated.

(c) Such military hostilities, in the absence of a declaration of war, may not be sustained beyond thirty days from the day they were initiated, unless affirmative legislative action is taken by the Congress to sustain such actions beyond thirty days.

(d) Authorization to sustain military hostilities in the absence of a declaration of war, as specified in paragraph (a) of this section may be terminated prior to the thirty day period specified in paragraph (c) of this section by joint resolution of Congress.

SEC. 2. (a) Any bill or resolution, authorizing continuance of military hostilities under paragraph (c) (section 1) of this Act, or of termination under paragraph (d) (section 1) shall, if sponsored or cosponsored by one-third of the Members of the House of Congress in which it originates, be considered reported to the floor of such House no later than one day following its introduction, unless the Members of such House otherwise determine by yeas and nays; and any such bill or resolution referred to a committee after having passed one House of Congress shall be considered reported from such committee within one day after it is referred to such committee, unless the Members of the House referring it to committee shall otherwise determine by yeas and nays.

(b) Any bill or resolution reported pursuant to subsection (a) of section 2 shall immediately become the pending business of the House to which it is reported, and shall be voted upon within three days after such report, unless such House shall otherwise determine by yeas and nays.

SEC. 3. This Act shall not apply to military hostilities already undertaken before the effective date of this Act.

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

REPORTS

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

THIRTY-DAY AUTHORIZATION PERIOD

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

TERMINATION WITHIN 30-DAY PERIOD

SEC. 6. Hostilities commenced pursuant to section 3 of this Act may be terminated prior to the 30-day period specified in section 5 by statute or joint resolution of Congress.

CONGRESSIONAL PRIORITY PROVISIONS

SEC. 7. (a) Any bill or resolution, authorizing the continuation of hostilities under subsection (a), (b), or (c) of section 3 of this Act, or the termination of hostilities under section 6 of this Act shall, if sponsored or cosponsored by one-third of the Members of the House of Congress in which it is introduced, be considered reported to the floor of such House no later than one day following its introduction unless the Members of such House otherwise determine by yeas and nays; any such bill or resolution referred to a committee after having passed one House of Congress shall be considered reported to the floor of the House referring it to committee within one day after it is so referred, unless the Members of the House referring it to committee shall otherwise determine by yeas and nays.

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

EFFECTIVE DATE

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

The 1971 War Powers Bill (S. 2956) is a very different matter.

S. 2956

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

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

SHORT TITLE

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

PURPOSE AND POLICY

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

EMERGENCY USE OF THE ARMED FORCES

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

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

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

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

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

The committee amendment in the nature of a substitute, as amended, was agreed to.

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

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass? On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Iowa (Mr. HUGHES), the Senator from Minnesota (Mr. HUMPHREY), the Senator from North Carolina (Mr. JORDAN), 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), and the Senator from Alabama (Mr. SPARKMAN), are necessarily absent.

I further announce that the Senator from Nevada (Mr. CANNON) is absent on official business.

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 Nevada (Mr. CANNON), the Senator from Iowa (Mr. HUGHES), the Senator from Minnesota (Mr. HUMPHREY), the Senator from

North Carolina (Mr. JORDAN), the Senator from South Dakota (Mr. MCGOVERN), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Rhode Island (Mr. PASTORE), and the Senator from Connecticut (Mr. RIBICOFF), would each vote "yea."

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.

On this vote, the Senator from Vermont (Mr. AIKEN) is paired with the Senator from Utah (Mr. BENNETT). If present and voting, the Senator from Vermont would vote "yea" and the Senator from Utah would vote "nay."

The result was announced—yeas 68, nays 16, as follows:

[No. 150 Leg.]

YEAS—68

Allott	Gambrell	Packwood
Anderson	Gravel	Pearson
Baker	Griffin	Pell
Bentsen	Harris	Percy
Bible	Hart	Proxmire
Boggs	Hartke	Randolph
Brock	Hatfield	Roth
Brooke	Hollings	Saxbe
Burdick	Inouye	Schweiker
Byrd, Harry F., Jr.	Jackson	Scott
	Javits	Smith
Byrd, Robert C.	Jordan, Idaho	Spong
Case	Kennedy	Stafford
Chiles	Long	Stennis
Church	Magnuson	Stevens
Cook	Mansfield	Stevenson
Cooper	Mathias	Symington
Cranston	Metcalf	Taft
Eagleton	Miller	Talmadge
Eastland	Mondale	Tunney
Ellender	Montoya	Weicker
Fong	Moss	Williams
Fulbright	Nelson	Young

NAYS—16

Allen	Dole	Hruska
Beall	Dominick	McGee
Bellmon	Ervin	Thurmond
Buckley	Fannin	Tower
Cotton	Gurney	
Curtis	Hansen	

NOT VOTING—16

Aiken	Humphrey	Muskie
Bayh	Jordan, N.C.	Pastore
Bennett	McClellan	Ribicoff
Cannon	McGovern	Sparkman
Goldwater	McIntyre	
Hughes	Mundt	

So the bill (S. 2956) was passed, as follows:

S. 2956

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

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

SHORT TITLE

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

PURPOSE AND POLICY

SEC. 2. It is the purpose of this Act to fulfill the intent of the framers of the Constitution of the United States and insure that the collective judgment of both the Congress and the President will apply to the introduction of the Armed Forces of the United States in hostilities, or in situations where imminent involvement in hostilities is clearly indicated by the circumstances, and to the continued use of such forces in hostilities or in such situations after they have been introduced in hostilities or in such situations.

Under article I, section 8, of the Constitution, it is specifically provided that the Congress shall have the power to make all laws necessary and proper for carrying into execution, not only its own powers but also all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof. At the same time, this Act is not intended to encroach upon the recognized powers of the President, as Commander in Chief and Chief Executive, to conduct hostilities authorized by the Congress, to respond to attacks or the imminent threat of attacks upon the United States, including its territories and possessions, to repel attacks or forestall the imminent threat of attacks against the Armed Forces of the United States, and, under proper circumstances, to rescue endangered citizens and nationals of the United States located in foreign countries.

EMERGENCY USE OF THE ARMED FORCES

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

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

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

(3) to protect while evacuating citizens and nationals of the United States, as rapidly as possible, from (A) any situation on the high seas involving a direct and imminent threat to the lives of such citizens and nationals, or (B) any country in which such citizens and nationals are present with the express or tacit consent of the government of such country and are being subjected to a direct and imminent threat to their lives, either sponsored by such government or beyond the power of such government to control; but the President shall make every effort to terminate such a threat without using the Armed Forces of the United States, and shall, where possible, obtain the consent of the government of such country before using the Armed Forces of the United States to protect citizens and nationals of the United States being evacuated from such country; or

(4) pursuant to specific statutory authorization, but authority to introduce the Armed Forces of the United States in hostilities or in any such situation shall not be inferred (A) from any provision of law hereafter enacted, including any provision contained in any appropriation Act, unless such provision specifically authorizes the introduction of such Armed Forces from compliance with the provisions of this Act, or (B) from any treaty hereafter ratified unless such treaty is implemented by legislation specifically authorizing the introduction of the Armed Forces of the United States in hostilities or in such situation and specifically exempting the introduction of such Armed Forces from compliance with the provisions of this Act. Specific statutory authorization is required for the assignment of members of the Armed Forces of the United States to command, coordinate, participate in the movement of, or accompany the regular or irregular military forces of any foreign country or government when such Armed Forces are engaged, or there exists an imminent threat that such forces will become engaged, in hostilities. No treaty in force at the time of the enactment of this Act shall be construed as specific statutory authorization for, or a specific exemption permitting, the introduction of the Armed Forces of the United States in hostilities or in any such situation, within the meaning of this clause (4); and no provision of law in force at the time of the enactment of this Act shall be so construed unless such provision specifically authorizes the introduction of such Armed Forces in hostilities or in any such situation.

REPORTS

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

THIRTY-DAY AUTHORIZATION PERIOD

SEC. 5. The use of the Armed Forces of the United States in hostilities, or in any situation where imminent involvement in hostilities is clearly indicated by the circumstances, under any of the conditions described in section 3 of this Act shall not be sustained beyond thirty days from the date of the introduction of such Armed Forces in hostilities or in any such situation unless (1) the President determines and certifies to the Congress in writing that unavoidable military necessity respecting the safety of Armed Forces of the United States engaged pursuant to section 3(1) or 3(2) of this Act requires the continued use of such Armed Forces in the course of bringing about a prompt disengagement from such hostilities; or (2) Congress is physically unable to meet as a result of an armed attack upon the United States; or (3) the continued use of such Armed Forces in such hostilities or in such situation has been authorized in specific legislation enacted for that purpose by the Congress and pursuant to the provisions thereof.

TERMINATION WITHIN 30-DAY PERIOD

SEC. 6. The use of the Armed Forces of the United States in hostilities, or in any situation where imminent involvement in hostilities is clearly indicated by the circumstances, under any of the conditions described in section 3 of this Act may be terminated prior to the thirty-day period specified in section 5 of this Act by an Act or joint resolution of Congress, except in a case where the President has determined and certified to the Congress in writing that unavoidable military necessity respecting the safety of Armed Forces of the United States engaged pursuant to section 3(1) or 3(2) of this Act requires the continued use of such Armed Forces in the course of bringing about a prompt disengagement from such hostilities.

CONGRESSIONAL PRIORITY PROVISIONS

SEC. 7. (a) Any bill or joint resolution authorizing a continuation of the use of the Armed Forces of the United States in hostilities, or in any situation where imminent

involvement in hostilities is clearly indicated by the circumstances under any of the conditions described in section 3 of this Act, or any bill or joint resolution terminating the use of Armed Forces of the United States in hostilities, as provided in section 6 of this Act, shall, if sponsored or cosponsored by one-third of the Members of the House of Congress in which it is introduced, be considered reported to the floor of such House no later than one day following its introduction unless the Members of such House otherwise determine by yeas and nays. Any such bill or joint resolution, after having been passed by the House of Congress in which it originated, shall be considered reported to the floor of the other House of Congress within one day after it has been passed by the House in which it originated and sent to the other House, unless the Members of the other House shall otherwise determine by yeas and nays.

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

SEPARABILITY CLAUSE

SEC. 8. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of the Act and the application of such provision to any other person or circumstance shall not be affected thereby.

EFFECTIVE DATE AND APPLICABILITY

SEC. 9. This Act shall take effect on the date of its enactment but shall not apply to hostilities in which the Armed Forces of the United States are involved on the effective date of this Act. Nothing in section 3 (4) 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.

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. SPONG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

TRIBUTE TO SENATORS SPONG, JAVITS AND OTHER SENATORS

Mr. MANSFIELD. Mr. President, I wish to extend my congratulations to the two Senators most responsible for this outstanding achievement. The distinguished senior Senator from New York (Mr. JAVITS) and the distinguished Senator from Virginia (Mr. SPONG) deserve the highest commendation of the Senate. Their tireless efforts, both in the Committee on Foreign Relations and here on the floor of the Senate joined by skillful advocacy assured the overwhelming approval of this measure by the Senate.

What it seeks to do, is to restore to the institution of Congress its proper role in the warmaking process. It is a role carved out by the Constitution. It is a role that for too long has been insufficiently exercised. This measure goes a long way in restoring the balance as it was and is intended. I commend Senator JAVITS. I commend Senator SPONG. Their leadership was truly outstanding.

Also to be commended are the many Senators who contributed to the discussion. The distinguished Senator from Arkansas (Mr. FULBRIGHT) and the distinguished Senator from Mississippi (Mr. STENNIS) are to be particularly singled out for their assistance and support. As always, their views and strong efforts were most welcome and greatly appreciated.

The Senator from Arizona (Mr. GOLDWATER) and the Senator from Colorado (Mr. DOMINICK) are similarly to be thanked for their cooperative efforts. The same may be said of the contributions of the distinguished Senator from Wyoming (Mr. MCGEE) and other Senators who, though expressing positions not in full agreement with the committee, added thoughtful and provocative views to the debate.

It should be said that it is not often that a Senator in his first term in the Senate has developed the expertise and legislative skill sufficient to develop and manage a proposal of such major and far-reaching importance as the war powers proposal. With his participation in this effort Senator SPONG has amply proven his special abilities and skills. With this success, he has made his mark early and effectively in the Senate of the United States.

At the same time, it should be said that with this achievement, Senator JAVITS has added another outstanding accomplishment to a record that is already over-abundant.

Finally, may I say that the leadership is most grateful for the exemplary manner in which the Senate has addressed the war powers issue. All Senators may share the credit.

Mr. SPONG. Mr. President, the Senate has spent 11 days debating this war powers bill. A great deal has been said and a great deal has been written. I do not wish to detain the Senate further on the subject except to say again for the record, that I commend the Senator from New York (Mr. JAVITS), who initiated this effort, and the Senator from Missouri (Mr. EAGLETON) and the Senator from Mississippi (Mr. STENNIS) who have given strong and wise counsel throughout the debate. Also, the Senator from Texas (Mr. BENTSEN) and the Senator from Ohio (Mr. TAFT) collaborated in bringing this hybrid war powers bill to the floor.

The debate has been a high level debate. Regardless of the fate of this legislation it has contributed to focusing on the problem of the constitutional war powers of the President and of Congress, and I am pleased to have been able to participate in it.

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

Mr. SPONG. I yield.

Mr. JAVITS. Mr. President, it is unusually gratifying that the Senate has acted today as it has. I consider this to be one of the truly great debates of the Senate. I hope it will be read as a matter of American history, and especially that it will be read by Presidents and what Senator MANSFIELD has so properly called "Presidents' men," who often, though they are men of intelligence, seem to have the idea that only the President has all the principles and all the patriotism that resides in the country, and that, as it was expressed here, the 535 legislators are so torn and divided that they cannot manifest the same kind of intelligence and patriotism which is manifested in the Presidency. Mr. President, the Nation should feel more secure than ever before in respect of this awesome power of undeclared war, in view of the action of the Senate today.

The question will naturally arise, Mr. President, What happens now? There are wide predictions that this matter will die in the House of Representatives, that we will not even go to conference, and many other things like that.

Mr. President, this bill will go to the other body, and the other body can then send it to conference. Or, if the Committee on Foreign Relations is willing—it has not yet acted—we can put the House bill on the table here, and endeavor to go to conference ourselves.

The important thing will be how the country feels, and how it manifests its feeling to its legislators. All predictions as to what will happen to this measure will go up in the air like smoke if the people feel this gives them a decent reassurance both as to the security of the country and as to the peril to their lives and fortunes. I have great confidence that it will, Mr. President, and that a measure very much like this one will become law.

Mr. STENNIS. Mr. President, will the Senator yield to me for just a very few sentences, since I have to leave the floor?

Mr. JAVITS. I yield.

Mr. STENNIS. Mr. President, I wish to highly commend the Senator from New York (Mr. JAVITS) and the Senator from Virginia (Mr. SPONG) for their excellent management of the bill on the Senate floor. Moreover, their splendid work on this matter has gone on for 2 years to my knowledge; they have done a splendid job in research and in applying their own abilities, and we all owe them and the country owes them a special debt of gratitude. I am delighted to have been associated with them to such extent as I could. I also want to commend highly the excellent work done by the Senator from Missouri (Mr. EAGLETON) whose resolution was a model for what many of us have done and who has also provided fine leaderships here on the floor. I finally want to thank the several staff members who have worked on the bill.

I think this is a historic thing that has happened today, Mr. President. I think it is a necessary step and a sound step, and I feel that regardless of what may be said now, something will actually come out of this and we will get something on the statute books which will mean that Congress is returning to its responsibilities in this field.

I am no isolationist. But there has been isolation in the past—what has been isolated, in a way, is that we have isolated

ourselves from our responsibilities, and thereby betrayed the people. Therefore, I commend the Senators highly for their effort.

Mr. JAVITS. Mr. President, before the Senator leaves the floor, I want to tell him that if we have done something worthwhile, I think it is absolutely attributable to the indispensable cooperation of the Senator from Mississippi who, in this matter as always, has shown a patriotism of the high order which has distinguished his whole career, and which is inspiring to me as a Senator, though I have had a wide experience.

I express the deepest feeling of appreciation in the names of millions upon millions of Americans for what he has done on this bill to my colleague the Senator from Virginia (Mr. SPONG), with whom it has been a pleasure to work as a comrade in arms on the floor and in the committee, and who has rendered a great and noble service to the country, as has the Senator from Missouri (Mr. EAGLETON), who has worked so closely with us as the fourth member of the team, as well as Senator BENTSEN and Senator TAFT who submitted similar war powers legislation and joined in cosponsorship of this legislation. They, too, are entitled to the gratitude of us all and, I feel, to the gratitude of all Americans.

A special commendation must go to the staffs who worked with each of us on the floor to bring about this end result, my own foreign policy assistant Peter Lakeland; Senator SPONG's assistant, Carolyn Fuller; Senator STENNIS had the fine assistance of Jim Woolsey, general counsel of the Armed Services Committee; and Senator EAGLETON's aide, Brian Atwood.

ANNOUNCEMENT ON VOTE

Mr. ROBERT C. BYRD. My good friend the distinguished junior Senator from North Carolina (Mr. JORDAN) is one of the cosponsors of the war powers bill to which he has given active and effective support. He got word to me this morning that he would be returning from North Carolina on a plane which would land at National Airport in time for him to be present to cast his vote for the bill at 1:30 today. As sometimes happens, however, the plane was delayed in leaving Raleigh-Durham Airport, because of weather conditions which kept it from arriving there on time, so that it was impossible for Senator JORDAN to make it to Washington in time for the vote. I am glad to make sure the RECORD shows that if he could have been present he would have voted "aye" on the bill.

VIETNAM—AMERICAN DISASTER

Mr. SYMINGTON. Mr. President, in a chapter entitled "Autumn of Disaster," Gen. Maxwell Taylor makes the following observation in his penetrating new book "Swords and Plowshares":

> In January 1963, General Wheeler, returning from his first trip to Vietnam, submitted a relatively favorable report to the Joint Chiefs of Staff on the accomplishments of the preceding year. In this period American planners in Washington and Saigon had worked out a blueprint, called the U.S. Comprehensive Plan, which undertook to estimate the requirements in Vietnamese contributions and in U.S. military assistance on the assumption that the insurgency could be brought under reasonable control by the end of 1965. Concurrently, General Harkins' staff had developed a National Campaign Plan setting forth a concept of coordinated political, economic, and military operations to be undertaken in order to attain the 1965 objective.
>
> General Wheeler and his party reported a number of favorable developments which encouraged the hope that the 1965 objective was not too ambitious. American military advisers had tripled during 1962, reaching a strength of over 3,000. Nearly 300 American-operated aircraft, largely helicopters and transports, had reached Vietnam and were already giving greater mobility to the Vietnamese forces. The latter had grown from about 300,000 to 385,000 and were showing more aggressiveness and less inclination to static defense. The impression was that this strength should be sufficient to cope with the Vietcong threat as it existed at that particular moment. The intelligence available had improved largely as a result of an extensive American advisory effort generated during 1962. In particular, there were encouraging indications of a growing willingness of the country people to provide information on the Vietcong as military successes created confidence in the protective power of the government forces.—*"Swords and Plowshares,"* Gen. Maxwell D. Taylor Chapter 23, "The Autumn of Disaster."

That was over 9 years ago.

Today, air power is now being utilized in unprecedented quantities and the morning paper states we currently have the heaviest naval concentration of this long war. Nevertheless today also the Vietcong and North Vietnamese are fighting the South Vietnamese, hand-to-hand, in the streets of An Loc, 60 miles from Saigon.

Considering that this President was elected on the basis of a pledge that he had a plan to get us out of this war, one wonders what kind of autumn the American people can expect in 1972.

THE CALENDAR

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Nos. 713, 714, 715, 716, and 717.

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

DISTRICT OF COLUMBIA PERSONNEL ACT

The bill (S. 1346) relating to benefits for employees of the government of the District of Columbia, and for other purposes was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

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

TITLE I—AUTHORIZE DISTRICT OF COLUMBIA EMPLOYEES TO ADMINISTER OATHS OF OFFICE

SEC. 101. Section 85 of the Revised Statutes Relating to the District of Columbia (D.C. Code, sec. 1–308) is amended by striking out "shall be taken and subscribed, certified, and recorded, in such manner and form as may be prescribed by law" and inserting in lieu thereof "may be administered by such employees of the government of the District of Columbia as the Commissioner in writing shall designate".

TITLE II—SETOFF OF ANNUITY PAYMENTS OR REFUNDS PAYABLE FROM THE CIVIL SERVICE RETIREMENT FUND TO LIQUIDATE DEBTS OWED THE DISTRICT OR FEDERAL GOVERNMENT

SEC. 201. Section 8346 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(c) Notwithstanding any other provision of law, the Commission is authorized to take appropriate action on counterclaims filed by the Government as setoff against amounts otherwise due and payable from the fund to the debtors concerned: *Provided,* That a tax indebtedness due the Government shall not be set off against retirement funds unless it has first been reduced to judgment through court procedures."

TITLE III—WAIVER BY DISTRICT OF COLUMBIA GOVERNMENT OF CLAIMS FOR OVERPAYMENT OF PAY

SEC. 301. (a) A claim of the government of the District of Columbia (hereinafter, "District") against a person arising out of an erroneous payment of pay made to an employee of the District before or after enactment of this title, the collection of which would be against equity and good conscience and not in the best interests of the District, may be waived in whole or in part by the Commissioner of the District of Columbia (hereinafter, "Commissioner") or his designated agent in accordance with standards which the Commissioner shall prescribe.

(b) The Commissioner may not exercise his authority under this title to waive any claim—

(1) if, in his opinion, there exists, in connection with the claim, an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim; or

(2) after the expiration of three years immediately following the date on which the erroneous payment of pay was discovered or three years immediately following the effective date of this title, whichever is later.

(c) In the audit and settlement of the accounts of any accountable official, full credit shall be given for any amounts with respect to which collection by the District is waived under this title.

(d) An erroneous payment, the collection of which is waived under this title, is deemed a valid payment for all purposes.

(e) This title shall not affect any authority under any other statute to litigate, settle, compromise, or waive any claim of the District.

TITLE IV—TRANSPORTATION FOR DISTRICT OF COLUMBIA EMPLOYEES WORKING IN MUNICIPAL FACILITIES OUTSIDE THE DISTRICT OF COLUMBIA

SEC. 401. The Commissioner of the District of Columbia, or his designated agent, is hereby authorized to provide transportation for persons employed by the government of the District of Columbia in any District facility located outside the District of Columbia upon his determination that (1) an emergency exists requiring the provision of such transportation; or (2) other means of transportation to such facility are inadequate; or (3) the location of the worksite is such as to adversely affect recruitment and retention of personnel; or (4) for other good cause the furnishing of transportation for employees to a District of Columbia facility outside the District of Columbia is necessary. Such transportation may be furnished by reimbursement, in whole or in part, to employees for their expenses in traveling to and from District facilities located outside the District of

Columbia, by the providing of vehicles for such transportation by the government of the District of Columbia, or by any other appropriate means, as determined by the Commissioner or his designated agent.

TITLE V—REPEAL THE POLITICAL ACTIVITY EXEMPTION OF THE RECORDER OF DEEDS

SEC. 501. Subsection (d) of section 7324 of title 5 of the United States Code is amended (a) by inserting "or" immediately after the semicolon at the end of clause (3); (b) by striking out the semicolon and "or" at the end of clause (4) and inserting a period in lieu thereof; and (c) striking out clause (5).

DISTRICT OF COLUMBIA EDUCATIONAL PERSONNEL ACT

The Senate proceeded to consider the bill (S. 1998) relating to educational personnel in the District of Columbia which had been reported from the Committee on the District of Columbia with amendments at the top of page 10, strike out:

TITLE III—INCREASE IN SICK AND EMERGENCY LEAVES FOR TEACHERS

SEC. 301. The second sentence of the first section of the District of Columbia Teachers' Leave Act of 1949 (63 Stat. 842), as amended (D.C. Code, sec. 31–691), is amended by striking out "one day" and inserting in lieu thereof "one and three-tenths days".

At the beginning of line 8, strike out "Title IV" and insert "Title III"; at the beginning of line 10, strike out "Sec. 401" and insert "Sec. 301"; at the beginning of line 18, strike out "Title V" and insert "Title IV"; at the beginning of line 20, strike out "Sec. 501" and insert "Sec. 401"; on page 11, at the beginning of line 7, strike out "Sec. 502" and insert "Sec. 402"; at the beginning of line 23, strike out "Sec. 503" and insert "Sec. 403"; on page 13, at the beginning of line 8, strike out "Title VI" and insert "Title V"; at the beginning of line 11, strike out "Sec. 601" and insert "Sec. 501"; at the beginning of line 19, strike out "Title VII" and insert "Title VI"; and, at the beginning of line 20, strike out "Sec. 701. Sections 401, 501, and 502 of this Act shall" and insert "Sec. 601. Sections 301, 401, and 402 of this Act shall"; so as to make the bill read:

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

TITLE I—INTERSTATE AGREEMENT ON QUALIFICATION OF EDUCATIONAL PERSONNEL

SEC. 101. The Commissioner of the District of Columbia is authorized to enter into and execute on behalf of the District of Columbia an agreement with any State or States legally joining therein in the form substantially as follows:

"THE INTERSTATE AGREEMENT ON QUALIFICATION OF EDUCATIONAL PERSONNEL

"ARTICLE I—PURPOSE, FINDINGS, AND POLICY

"1. The States party to this Agreement, desiring by common action to improve their respective school systems by utilizing the teacher or other professional educational person wherever educated, declare that it is the policy of each of them, on the basis of cooperation with one another, to take advantage of the preparation and experience of such persons wherever gained, thereby serving the best interests of society, of education, and of the teaching profession. It is the purpose of this Agreement to provide for the development and execution of such programs of cooperation as will facilitate the movement of teachers, and other professional educational personnel among the States party to it, and to authorize specific interstate educational personnel contracts to achieve that end.

"2. The party States find that included in the large movement of population among all sections of the Nation are many qualified educational personnel who move for family and other personal reasons but who are hindered in using their professional skill and experience in their new locations. Variations from State to State in requirements for qualifying educational personnel discourage such personnel from taking the steps necessary to qualify in other States. As a consequence, a significant number of professionally prepared and experienced educators is lost to our school systems. Facilitating the employment of qualified educational personnel, without reference to their States of origin, can increase the available educational resources. Participation in this Agreement can increase the availability of educational manpower.

"ARTICLE II—DEFINITIONS

"As used in this Agreement and contracts made pursuant to it, unless the context clearly requires otherwise:

"1. 'Educational personnel' means persons who must meet requirements pursuant to State law as a condition of employment in educational programs.

"2. 'Designated State official' means the education official of a State selected by that State to negotiate and enter into, on behalf of his State, contracts pursuant to this Agreement.

"3. 'Accept', or any variant thereof, means to recognize and give effect to one or more determinations of another State relating to the qualifications of educational personnel in lieu of making or requiring a like determination that would otherwise be required by or pursuant to the laws of a receiving State.

"4. 'State' means a State, territory, or possession of the United States; the District of Columbia; or the Commonwealth of Puerto Rico.

"5. 'Originating State' means a State (and the subdivision thereof, if any) whose determination that certain educational personnel are qualified to be employed for specific duties in schools is acceptable in accordance with the terms of a contract made pursuant to Article III.

"6. 'Receiving State' means a State (and the subdivisions thereof) which accept educational personnel in accordance with the terms of a contract made pursuant to Article III.

"ARTICLE III—INTERSTATE EDUCATIONAL PERSONNEL CONTRACTS

"1. The designated State official of a party State may make one or more contracts on behalf of his State with one or more other party States providing for the acceptance of educational personnel. Any such contract for the period of its duration shall be applicable to and binding on the States whose designated State officials enter into it, and the subdivisions of those States, with the same force and effect as if incorporated in this Agreement. A designated State official may enter into a contract pursuant to this Article only with States in which he finds that there are programs of education, certification standards or other acceptable qualifications that assure preparation or qualification of educational personnel on a basis sufficiently comparable even though not identical to that prevailing in his own State.

"2. Any such contract shall provide for:

"(a) Its duration.

"(b) The criteria to be applied by an originating State in qualifying educational personnel for acceptance by a receiving State.

"(c) Such waivers, substitutions, and conditional acceptances as shall aid the practical effectuation of the contract without sacrifice of basic educational standards.

"(d) Any other necessary matters.

"3. No contract made pursuant to this Agreement shall be for a term longer than five years but any such contract may be renewed for like or lesser periods.

"4. Any contract dealing with acceptance of educational personnel on the basis of their having completed an educational program shall specify the earliest date or dates on which originating State approval of the program or programs involved can have occurred. No contract made pursuant to this Agreement shall require acceptance by a receiving State of any persons qualified because of successful completion of a program prior to January 1, 1954.

"5. The certification or other acceptance of a person who has been accepted pursuant to the terms of a contract shall not be revoked or otherwise impaired because the contract has expired or been terminated. However, any certificate or other qualifying document may be revoked or suspended on any ground which would be sufficient for revocation or suspension of a certificate or other qualifying document initially granted or approved in the receiving State.

"6. A contract committee composed of the designated State officials of the contracting States or their representatives shall keep the contract under continuous review, study means of improving its administration, and report no less frequently than once a year to the heads of the appropriate education agencies of the contracting States.

"ARTICLE IV—APPROVED AND ACCEPTED PROGRAMS

"1. Nothing in this Agreement shall be construed to repeal or otherwise modify any law or regulation of a party State relating to the approval of programs of educational preparation having effect solely on the qualification of educational personnel within that State.

"2. To the extent that contracts made pursuant to this Agreement deal with the educational requirements for the proper qualification of educational personnel, acceptance of a program of educational preparation shall be in accordance with such procedures and requirements as may be provided in the applicable contract.

"ARTICLE V—INTERSTATE COOPERATION

"The party States agree that:

"1. They will, so far as practicable, prefer the making of multilateral contracts pursuant to Article III of this Agreement.

"2. They will facilitate and strengthen cooperation in interstate certification and other elements of educational personnel qualification and for this purpose shall cooperate with agencies, organizations, and associations interested in certification and other elements of educational personnel qualification.

"ARTICLE VI—AGREEMENT EVALUATION

"The designated State officials of any party States may meet from time to time as a group to evaluate progress under the Agreement, and to formulate recommendations for changes.

"ARTICLE VII—OTHER ARRANGEMENTS

"Nothing in this Agreement shall be construed to prevent or inhibit other arrangements or practices of any party State or States to facilitate the interchange of educational personnel.

"ARTICLE VIII—EFFECT AND WITHDRAWAL

"1. This Agreement shall become effective when enacted into law by two States. There-

after it shall become effective as to any State upon its enactment of this Agreement.

"2. Any party State may withdraw from this Agreement by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the Governor of the withdrawing State has given notice in writing of the withdrawal to the Governors of all other party States.

"3. No withdrawal shall relieve the withdrawing State of any obligation imposed upon it by a contract to which it is a party. The duration of contracts and the methods and conditions of withdrawal therefrom shall be those specified in their terms.

"ARTICLE IX—CONSTRUCTION AND SEVERABILITY

"This Agreement shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Agreement shall be severable and if any phrase, clause, sentence, or provision of this Agreement is declared to be contrary to the constitution of any State or of the United States, or the application thereof to any Government, agency, person, or circumstance is held invalid, the validity of the remainder of this Agreement and the applicability thereof to any Government, agency, person, or circumstance shall not be affected thereby. If this Agreement shall be held contrary to the constitution of any State participating therein, the Agreement shall remain in full force and effect as to the State affected as to all severable matters."

SEC. 102. The "designated State official" for the District of Columbia shall be the Superintendent of Schools of the District of Columbia. The Superintendent shall enter into contracts pursuant to Article III of the Agreement only with the approval of the specific text thereof by the Board of Education of the District of Columbia.

SEC. 103. True copies of all contracts made on behalf of the District of Columbia pursuant to the Agreement shall be kept on file in the office of the Board of Education of the District of Columbia and in the office of the Commissioner of the District of Columbia. The Superintendent of Schools shall publish all such contracts in convenient form.

SEC. 104. As used in the Interstate Agreement on Qualification of Educational Personnel, the term "Governor" when used with reference to the District of Columbia shall mean the Commissioner of the District of Columbia.

TITLE II—EMERGENCY LEAVE FOR TEMPORARY TEACHERS AND ATTENDANCE OFFICERS

SEC. 201. Section 4 of the District of Columbia Teachers' Leave Act of 1949 (63 Stat. 843), as amended (D.C. Code, sec. 31–694), is amended by striking out "probationary or permanent".

TITLE III—LIFE AND HEALTH INSURANCE BENEFITS FOR TEMPORARY TEACHERS

SEC. 301. Title 5 of the United States Code is amended as follows:

(a) Section 8716(b)(2) of such title is amended by striking out "two school years" and inserting in lieu thereof "one school year".

(b) Section 8913(b)(2) of such title is amended by striking out "two school years" and inserting in lieu thereof "one school year".

TITLE IV—TRANSFER OF RETIREMENT COVERAGE FOR TEMPORARY TEACHERS

SEC. 401. (a) The first sentence of section 8 of the Act entitled "An Act for the retirement of public-school teachers in the District of Columbia", approved August 7, 1946 (D.C. Code, sec. 31–728), is amended by striking out "probationary".

(b) The first sentence of section 13 of such Act (D.C. Code, sec. 31–733) is amended by striking out "permanently".

(c) The first sentence of section 19 of the District of Columbia Teachers' Salary Act of 1955 (D.C. Code, sec. 31–1548) is amended by striking out "probationary and permanent".

SEC. 402. All deductions from the salaries of temporary teachers on the rolls of the public schools of the District of Columbia on the effective date of this title and all deposits made by such temporary teachers by virtue of their service as temporary teachers, together with all matching contributions made by the government of the District of Columbia on account of such deductions to the Civil Service Retirement and Disability Fund for annuity and retirement purposes, are hereby transferred from such fund to the credit of the District of Columbia Teachers' Retirement and Annuity Fund. The teacher shall be deemed to consent and agree to the transfer provided herein. The transfer of such funds shall be a complete discharge and acquittance of all claims and demands against the Civil Service Retirement and Disability Fund on account of service rendered prior to the effective date of such transfer.

SEC. 403. (a) Section 7 of the District of Columbia Teachers' Salary Act of 1955 (D.C. Code, sec. 31–1532) is amended by adding the following new subsection:

"(d) Notwithstanding the provisions of subsection (a)(1) of this section, any educational employee who was employed by the Board of Education at the District of Columbia Teachers College and who was transferred to the Board of Higher Education pursuant to the authority conferred by section 103(a)(12) of the District of Columbia Public Education Act (D.C. Code, sec. 31–1603(a)(12)), and who wishes to be reappointed to a position under the Board of Education shall receive salary placement credit for the intervening years of service at the District of Columbia Teachers College as if he had had continuous service with the Board of Education: *Provided,* That there is no break in service between the termination of employment by the Board of Higher Education and the reappointment by the Board of Education: *Provided further,* That such service is credited to the District of Columbia Teachers' Retirement and Annuity Fund, either by deductions made for such retirement system or by the purchase of credit for such service for deposit in said fund."

(b) Section 8 of the Act entitled "An Act for the retirement of public-school teachers in the District of Columbia" (D.C. Code, sec. 31–728) is amended by adding the following new paragraph:

"Notwithstanding the provisions of this section, any teacher who is entitled to purchase service credit under the provisions of section 7(d) of the District of Columbia Teachers' Salary Act of 1955 (as added by section 503(a) of this Act) shall purchase such credit based on the salary received from the Board of Higher Education during the period of service to be credited."

TITLE V—SUMMER EMPLOYMENT OF DISTRICT TEACHER IN CONGRESSIONAL OFFICES

SEC. 501. Subsection (e) of section 5533 of title 5, United States Code, is amended (a) by inserting "(1)" immediately following "(e)"; and (b) by adding the following new paragraph:

"(2) Subsection (c) of this section does not apply to pay received by a teacher of the public schools of the District of Columbia for employment in a position during the summer vacation period.".

TITLE VI—EFFECTIVE DATE

SEC. 601. Sections 301, 401, and 402 of this Act shall become effective on the first day of the first pay period which begins on or after 60 days after the date of enactment of this Act.

The amendments were agreed to.

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

ANNUITIES FOR DISTRICT OF COLUMBIA TEACHERS

The bill (H.R. 9395) to authorize the Commissioner of the District of Columbia to enter into agreements with teachers and other employees of the Board of Education of the District of Columbia for the purchase of annuity contracts was considered, ordered to a third reading, read the third time, and passed.

INTERSTATE COMPACT ON MENTAL HEALTH

The bill (H.R. 10344) to authorize the District of Columbia to enter into the Interstate Compact on Mental Health was considered, ordered to a third reading, read the third time, and passed.

AMENDMENT OF SECTION 112 OF INTERNAL REVENUE CODE OF 1954

The Senate proceeded to consider the bill (H.R. 9900) to amend section 112 of the Internal Revenue Code of 1954 to exclude from gross income the entire amount of the compensation if members of the Armed Forces of the United States and of civilian employees who are prisoners of war, missing in action, or in a detained status during the Vietnam conflict.

Mr. BUCKLEY. Mr. President, as the sponsor of this bill, I should like to take a minute or two to express my deep appreciation to my colleagues for their support of it; 65 Senators are cosponsors. The Committee on Finance unanimously approved it and reported it in record time.

This bill provides some form of tangible recognition by the people of the United States to the very special suffering of not only our prisoners of war and those missing in action in the South Vietnamese conflict but also their families. Their lot is a peculiar one. It is never enjoyable to be a captive, but their conditions have been particularly grotesque. The enemy has accorded them none of the comforts that are provided for by the Geneva Convention. Also, they are the victims of a war in which the basic popular support has eroded, so they cannot at least feel the comfort of the full homefront support which has eased the lot of prisoners in prior wars.

This amendment exempts their pay from Federal income taxation while they are prisoners of war or while they are classified as missing in action. Monetarily, this is a small recognition of their sacrifice and contribution, but it is one to which they are fully entitled; and I think it is especially timely that they should be receiving this exemption just 2 days short of that annual date on the calendar—April 15.

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

Mr. BUCKLEY. I yield.

Mr. MANSFIELD. Mr. President, I commend the distinguished Senator from New York for the interest he has shown and the great regard and deep sympathy he has for the plight of our prisoners of war and those missing in action. This will go somewhat to help alleviate the situation in which they find

themselves. I think the Senator from New York is entitled to great credit for the leadership he has shown in this respect.

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

Mr. BUCKLEY. I yield.

Mr. BROCK. Mr. President, as a cosponsor of this proposal, I should like to join the majority leader in congratulating the Senator from New York. I appreciate the initiative of the Senator from New York with respect to this measure.

We all know that money is a very small thing in the context of this overall problem. There is no greater tragedy facing the people of this country than the continuation of the inhumane treatment of their husbands, sons, and brothers by those who have refused to observe the rights provided by the Geneva Convention.

I should like to say, in behalf of all those who have not suffered in such a way, that one of the great examples of courage in this Nation's history is illustrated daily by the families of these men who have been absent so long.

I commend the Senator, and I say to him that no act, large or small, should be overlooked in an effort to achieve the humane treatment and early release of our prisoners of war and those missing in action. I congratulate him for this effort.

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

Mr. BUCKLEY. I yield.

Mr. SCOTT. Mr. President, I should like to join in the tribute paid to the distinguished Senator from New York for his concern, and for the diligence and effectiveness with which he has pressed this important matter. He certainly has earned the respect of the Senate and the appreciation of all those who will benefit by the nature of this process.

Therefore, I should like to be associated with those who have indicated their pleasure that the distinguished Senator from New York has followed through on the commitment in this regard.

Mr. GRIFFIN. Mr. President, as a cosponsor of this bill, it gives me a great deal of satisfaction to register my strong support for it. In addition, I want to commend the distinguished junior Senator from New York (Mr. BUCKLEY) for his leadership in connection with this measure.

It is important not only because it affords appropriate tax relief in situations which deserve tax relief but also because it is another indication that the Senate and the House of Representatives are concerned and very much aware of the plight of the prisoners of war and those missing in action in the war in Indochina. I am glad this bill is going to pass, and I am glad to be associated with the distinguished Senator from New York.

The PRESIDING OFFICER. The bill is open to amendment. If there be no amendment to be proposed, the question is on the third reading and passage of the bill.

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

ENROLLED JOINT RESOLUTIONS SIGNED

The PRESIDENT pro tempore signed the following enrolled joint resolutions, which had previously been signed by the Speaker of the House of Representatives:

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".

CONSUMER SAFETY ACT OF 1972—REPORT OF A COMMITTEE (S. REPT. NO. 92-749)

Under authority of the order of the Senate of March 24, 1972, Mr. MAGNUSON, from the Committee on Commerce, submitted a report on the bill (S. 3419) to protect consumers against unreasonable risk of injury from hazardous products, and for other purposes, together with minority and supplemental views, which was ordered to be printed.

EXECUTIVE REPORTS OF COMMITTEES

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

By Mr. COTTON, from the Committee on Commerce:

John L. Hazard, of Michigan, to be an Assistant Secretary of Transportation.

CHANGE OF REFERENCE—SENATE JOINT RESOLUTION 199

Mr. SCOTT. Mr. President, on February 9, 1972, I introduced Senate Joint Resolution 199 recognizing Thomas Jefferson University in Philadelphia as the first university in the United States to bear the full name of our Nation's third President. Although I had asked that the resolution be referred to the Committee on the Judiciary, it was inadvertently referred to the Committee on Labor and Public Welfare.

I have discussed this matter with the distinguished chairman of the Labor and Public Welfare Committee (Mr. WILLIAMS), and he has no objection to having the bill re-referred. Therefore, Mr. President, I ask unanimous consent that the Committee on Labor and Public Welfare be discharged from the further consideration of Senate Joint Resolution 199; that it be referred to the Committee on the Judiciary; and that an appropriate star print be made available.

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

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. EAGLETON:

S. 3494. A bill for the relief of Ivanka Firaunovic. Referred to the Committee on the Judiciary.

By Mr. DOLE:

S. 3495. A bill to provide for reimbursement of extraordinary transportation expenses incurred by certain disabled individuals in the production of their income. Referred to the Committee on Labor and Public Welfare.

By Mr. HARTKE:

S. 3496. A bill to amend the Interstate Land Sales Full Disclosure Act to provide for the licensing of developers in order to insure the maintenance of high profession standards, and for other purposes. Referred to the Committee on Banking, Housing and Urban Affairs.

By Mr. SCOTT (for himself, Mr. CASE, Mr. JAVITS, and Mr. WILLIAMS):

S. 3497. A bill to authorize an increase in land acquisition funds for the Delaware Water Gap National Recreation Area, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

By Mr. BELLMON (for himself and Mr. HARRIS):

S. 3498. A bill to amend the act of June 16, 1906 (enabling the peoples of Oklahoma, New Mexico, and Arizona, to adopt constitutions and form States), to permit the long-term lease of school lands by the State of Oklahoma. Referred to the Committee on Interior and Insular Affairs.

By Mr. TOWER:

S. 3499. A bill to provide tax incentives to encourage physicians, dentists, and optometrists to practice in physician shortage areas. Referred to the Committee on Finance.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DOLE:

S. 3495. A bill to provide for reimbursement of extraordinary transportation expenses incurred by certain disabled individuals in the production of their income. Referred to the Committee on Labor and Public Welfare.

HANDICAPPED AMERICANS—1972

Mr. DOLE. Mr. President, for the past 3 years since coming to the Senate, I have addressed this body annually on the subject of the handicapped. Today, in my fourth such address I hope to cast light on an important aspect of the world of the handicapped in the hope that the steps proposed might be enacted to improve the world in which the handicapped live, a world which I entered 27 years ago tomorrow.

For years, I have expressed the belief that America's handicapped citizens must be fully integrated into our society, where they can pursue the same goals as nonhandicapped individuals, enjoy the same medical, educational, employment, and housing opportunities and stand on an equal footing in terms of chances to realize their full potential for individual, social, and professional development.

I believe important steps have been taken for enhancing the quality of life experienced by handicapped individuals in America.

FIRST THREE INITIATIVES

Each year as I have approached my April 14 remarks, it has been with the intention both of pointing out areas which continue to call for priority attention and calling for action to meet these needs. In my three previous statements

my focus has been framed in broad terms. In 1969 I urged the establishment by the President of a task force on the handicapped to assess and study our national effort on behalf of these individuals. In response to my suggestion, two task forces, one on the physically handicapped and one on the mentally handicapped, were appointed by President Nixon, and they conducted highly valuable reviews of efforts in both areas.

In 1970 I introduced legislation to create a National Resource and Information Center for the Handicapped to serve as a clearinghouse of research and knowledge important to handicapped individuals, their families, and organizations operating in this field. I am pleased to report that this proposal has been incorporated in H.R. 8395, the Vocational and Rehabilitation Act of 1972, which has passed the House of Representatives and now awaits action by the Senate. In 1971 I had published in the CONGRESSIONAL RECORD a "Directory of Federal Assistance Programs for the Handicapped" that I hoped would help fill the gap in knowledge of Federal efforts until the Information Center could be created.

These first three initiatives were focused on general problems and sought to be effective on a wide basis. However, this year I wish to turn to a specific problem faced by many handicapped persons and offer a measure to meet the need it raises.

TRANSPORTATION FOR THE HANDICAPPED

The problem to which I refer is the excessive, indeed monumental, transportation expenses incurred by certain handicapped individuals as they attempt to pursue gainful employment to support themselves and their families.

Of course, transportation has always been a very critical area for the handicapped. Many efforts have been made to improve the routing, accessibility and availability of transportation for them. These efforts have been conducted on private and public levels. And many who otherwise would be deprived of vital mobility have been served and are now able to move about their cities and towns to a greatly increased extent for business and pleasure.

SALARY VERSUS TRANSPORTATION COST

One particularly encouraging private effort has been that of United Cerebral Palsy of New York City, Inc. which operates the largest privately owned transportation service for the handicapped in the United States. They run 32 vehicles and employ 28 full-time and five part-time drivers. Their annual budget exceeds $400,000.

This program has been invaluable to many. But this program and others with similar purposes have not been able to serve the group of employed or employable handicapped whose disabilities prevent them from using public transportation. Their needs are so great that no present system can provide for them, for each individual requires a personalized service that is too costly for the individual to afford or for the public or private agencies to supply.

I would point out that people fortunate enough to make private transportation arrangements to and from work, pay anywhere from $50 to $75 a week. But the statistics for those who are unable to make any transportation arrangements tell an even more serious story. The urban employment survey indicated that in 1966 the median earnings of the 1.15 million full-time and part-time workers who were unable to use public transportation because of disability was $2,350. Half of these were part-time workers, 31,000 of whom made less than $20 per week. The median earnings of full-time handicapped workers unable to use public transportation was $2,520, or three-fourths the poverty level for a family of four at that time. Only 10 percent of handicapped workers unable to use public transportation made over $7,200 a year.

Clearly, this is a deplorable situation. Here are men and women who want to work, who are in fact able to work, but their ability to earn and to contribute to their support and to the self-esteem which comes from being a contributing member of society, is stifled by their inability to get to and from jobs. This situation is one of the most disturbing wastes of human resources of which I am aware. And it demands prompt and strong action to provide a remedy. Thus I am proposing today a Federal scheme of cash reimbursement to make journey-to-work transportation for severely handicapped but employable individuals possible.

TRANSPORTATION REIMBURSEMENTS

Cash reimbursements would be provided to certain disabled persons who incur extraordinary transportation expenses in the production of their income solely because of the limitations imposed by their disability. Reimbursements would not exceed 50 percent of the handicapped person's gross income or $20 per week, or $1,000 per year, whichever is less. Payments would be made either quarterly or in advance, if proper application based on estimated expenses is submitted.

The measure directs the Secretary of Health, Education, and Welfare to prescribe standards for the submission of applications and to set up provisions for the renewal of applications. The Secretary would utilize the facilities and services of State vocational rehabilitation agencies to process and verify statements made by applicants.

I believe this legislation will pay priceless dividends. It will enable individuals who want to work to travel to and from their jobs. It will enhance the incomes of persons whose unique needs demand special expenditures over and above those incurred by most individuals—even those with handicaps. It will supply a significant measure of self-respect and self-confidence to the lives of the people it will benefit. And it will end the continuing waste of these precious human resources and potentials.

Mr. President, I ask unanimous consent that the text of this bill be printed at the conclusion of my remarks, and I invite my colleagues to join in sponsoring this legislation.

MAKING WAY FOR FULL POTENTIAL

It would seem to me that there is no more valuable action that Congress can take than to remove impediments to the realization of our citizens' potentials and inner worth—whether in the field of civil rights, equality of the sexes, or, as here, the handicapped.

This is what America is all about—the freedom for everyone to live up to his God-given abilities. Neither race nor sex nor frailty of body or mind should be allowed to stand as an impediment to that fundamental fulfillment. This bill is a step toward removing one barrier, and I extend a sincere invitation to my colleagues for their support.

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

S. 3495

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 "Disabled Workers Transportation Assistance Act".

PURPOSE

SEC. 2. It is the purpose of this Act to provide for cash reimbursement to certain disabled workers who incur extraordinary transportation expenses in the production of their income solely because of the limitations imposed on them by their disability.

DEFINITIONS

SEC. 3. For the purposes of this Act—

(1) the term "transportation-handicapped worker" means an individual with a physical or mental disability, as defined by the Secretary, who—

(A) is employed part or full time in a gainful occupation;

(B) because of his disability, has only limited ability to use available mass public transportation facilities with reasonable ease or safety for the journey-to-work;

(C) because of his disability, is expected to be static or to be only slowly progressive in acquiring the ability to use available mass public transportation facilities with reasonable ease or safety; and

(D) because of his disability, training or practice is not expected to improve significantly his ability to use available mass public transportation facilities.

(2) the term "employed" means being engaged in a gainful occupation which is remunerated in cash or in kind for services rendered.

(3) the team "journey to work" means the total amount of travel from the place of residence to the place of employment and return therefrom.

(4) the term "mass public transportation facility" means regularly scheduled services provided by bus or rail, or similar vehicle, which are available to the public at large under an established schedule of fares.

(5) the term "extraordinary transportation expenses" means the total expense (including expenses for personal assistance when required) incurred by any individual in his journey-to-work that is in excess of three percent of such individual's adjusted gross income (as defined in the Internal Revenue Code of 1954), reduced by—

(A) the amount of any deductions claimed under section 212 or 214 of the Internal Revenue Code of 1954; and

(B) any amount received as reimbursement for or subsidy of such transportation expenses.

Reimbursement shall not be made for extraordinary transportation expenses which exceed actual expenses incurred, or an amount that is in excess of 50 percent of such individual's gross income (as defined in the Internal Revenue Code of 1954), or $20 per week, or $1,000 per year, whichever is less.

(6) the term "Secretary" means the Secretary of Health, Education, and Welfare.

(7) the term "State" means a State of the

United States, the District of Columbia, the Commonwealth of Puerto Rico, and a territory or possession of the United States.

REIMBURSEMENT

SEC. 4. (a) The Secretary shall reimburse each transportation-handicapped worker for extraordinary transportation expenses incurred by him upon a declaration by such worker that he is entitled to such reimbursement under the provisions of this Act.

(b) Reimbursement payments under this Act shall be made quarterly and may be made in advance upon application therefor, except that—

(1) In the case of any transportation related expenses which cannot be attributed entirely to the journey-to-work, reimbursement shall be made only to the extent that such expenses are directly attributable to the journey-to-work; and

(2) Any transportation expenses incurred by an individual who uses, unassisted, available mass transportation facilities as his sole mode of transportation in his journey-to-work shall not be reimbursable under this Act.

(c) Application for reimbursement under this section shall be made in such manner and contain such information as the Secretary shall by regulation require, including in the case of advance payments, an estimate of expenses to be incurred during the period for which such advance payments are requested. The Secretary shall prescribe standards for the submission of applications and periods for renewal of such applications.

(d) The Secretary is authorized to cooperate with and utilize the facilities and services of appropriate State vocational rehabilitation agencies to process applications and verify, on a continuing basis, the statements made by any applicant for reimbursement payments under this Act.

INCOME DISREGARD

SEC. 5. (a) In order for any State to receive any payment or other benefit under any title of the Social Security Act, with respect to expenditures for any quarter beginning on or after the date on which this Act becomes effective, such State must have in effect an agreement with the Secretary under which it will (1) disregard any amount received by an individual under this Act in determining eligibility for or the amount of any benefit paid under any public assistance program, and (2) disregard any amount received by an individual under this Act in determining the amount of such individual's income for the purpose of computing State income tax liability if such State imposes a tax on personal income.

(b) Any amount received by an individual under this Act shall be disregarded in determining eligibility for or the amount of any benefit paid under any Federal assistance or aid program and in determining the amount of such individual's income for the purpose of computing his liability for personal income tax under the Internal Revenue Code of 1954.

EVALUATION AND REPORT

SEC. 6. The Secretary, or his delegate, shall conduct a thorough and complete study of the impact of the cash reimbursement program provided for under this Act on the rehabilitation of disabled individuals to determine the program's merits and cost-effectiveness as compared to other possible approaches to the problems of the transportation-handicapped worker and shall report his findings and recommendations to the Congress not later than January 1, 1975.

AUTHORIZATION OF APPROPRIATIONS

SEC. 7. There are hereby authorized to be appropriate prior to such effective date in July 1, 1972, and for each of the next succeeding four fiscal years such sums as may be necessary to carry out the purposes of this Act.

By Mr. HARTKE:

S. 3496. A bill to amend the Interstate Land Sales Full Disclosure Act to provide for the licensing of developers in order to insure the maintenance of high professional standards, and for other purposes. Referred to the Committee on Banking, Housing and Urban Affairs.

Mr. HARTKE. Mr. President, in 1968 the Interstate Land Sales Act was enacted to combat certain practices in interstate land sales. Unfortunately, many of the practices against which the legislation was directed have continued. Today I send a bill to the desk for appropriate reference which will strengthen the present law. My bill would amend the Interstate Land Sales Full Disclosure Act to provide for the licensing of developers in order to insure the maintenance of high professional standards.

The introduction of my legislation is not intended to imply that the professionals who engage in interstate land sales are not decent and honest entrepreneurs; rather, my concern is that too often the consumer has been subjected to inequitable activity in interstate land sales.

The mobility of the 20th century has made interstate land sales a very attractive market. In order to insure that prospective customers can be reasonably safe in their investments, we must provide for the licensing of those who engage in such land sales. Until 1968, this was an area in which the consumer was afforded very little protection. The legislation that I am introducing today would strengthen the 1968 law.

Under the provisions of my bill, persons engaged in interstate land sales would be required to possess a license issued by the Secretary of Housing and Urban Development. The Secretary would issue a license after he determines that the applicant has satisfied certain standards. My bill suggests some standards that might be used for evaluation. These standards are not intended to be the exclusive means for evaluating the professionalism of the licensee but will be an important part of the evaluation process.

In addition to granting licenses the Secretary will be required to revoke licenses under certain circumstances. If the licensee has been held liable for damages under the Interstate Land Sales Act, or has engaged in any act or practice which constitutes a conflict of interest or breach of trust, the Secretary shall have the authority to suspend his license for up to 5 years. In addition the Secretary shall also have the power to suspend a license if a developer has practiced discrimination in the sale of land covered under this act.

In conclusion, I reiterate that I have the highest respect for the professionals who engage in interstate land sales. Nonetheless I do feel that many of the harsh practices which land buyers have been subjected to should be curbed. I am certain that the real estate industry will welcome this legislation as a means of enhancing their reputation and professional standing.

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

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

S. 3496

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

SECTION 1. The Interstate Land Sales Full Disclosure Act is amended by inserting after section 1410 the following new section:

"LICENSING OF DEVELOPERS

"SEC. 1410A. (a) No developer or agent shall make use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell or lease any lot in any subdivision or offer to sell or lease any such lot unless such developer or agent has a license issued by the Secretary under this section.

"(b) The Secretary shall issue a license to a developer or agent if the Secretary determines, on the basis of an application in such form as the Secretary may prescribe, that the developer or agent—

"(1) is of good character or business reputation;

"(2) meets such requirements as the Secretary may prescribe with respect to education, training, or experience; and

"(3) has not committed within the five years preceding the date on which the application is filed any act which would be grounds for suspension of a license under subsection (c).

Any developer or agent whose application is denied shall promptly be given an opportunity for a hearing to show cause why the license should be issued.

"(c) The Secretary shall suspend for not less than one year nor more than five years any license issued by him under subsection (b) if he determines that—

"(1) the licensee has submitted untrue information or has omitted to state any material fact, in connection with the issuance of the license;

"(2) the licensee has been held liable for damages in an action under section 1410 of this title;

"(3) the licensee has been convicted of any felony;

"(4) the licensee has failed to exercise proper supervision of his agents or employees and such failure has resulted in the imposition of liability referred to in clause (2) on, or in a conviction referred to in clause (3) of, any such agent or employee;

"(5) the licensee has violated any term, condition, or limitation imposed in connection with the issuance of his license;

"(6) the licensee has engaged in any Act which is unlawful under section 804, 805, or 806 of Public Law 90–284; or

"(7) the licensee has engaged in any act or practice which—

(1) constitutes a conflict of interest or breach of trust, and

(2) results in the imposition of any criminal or civil sanction or in any disciplinary or other action by any Federal, State, or local regulatory authority or professional association.

All actions of the Secretary under this subsection shall be subject to the provisions of section 554 of title 5, United States Code."

SEC. 2. The amendment made by section 1 of this Act shall become effective upon the expiration of one year following the date of its enactment, except that the Secretary may take such actions as may be necessary or appropriated for the fiscal year beginning order to issue licenses referred to in the amendment made by the first section of this Act prior to such date.

By Mr. SCOTT (for himself, Mr. CASE, Mr. JAVITS, and Mr. WILLIAMS):

S. 3497. A bill to authorize an increase in land acquisition funds for the Dela-

ware Water Gap National Recreation Area, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

DELAWARE WATER GAP NATIONAL RECREATIONAL AREA

Mr. SCOTT. Mr. President, I introduce for appropriate reference a bill to increase the authorization for the purchase of land in the Delaware Water Gap National Recreational Area from $37,412,000 to $68,812,000. I am pleased to have joining me as cosponsors in this effort the distinguished Senators from New Jersey (Mr. CASE and Mr. WILLIAMS) and the distinguished senior Senator from New York (Mr. JAVITS). Identical legislation, it is worth noting, has been introduced with wide support in the House of Representatives by Pennsylvania's very able Congressman JOSEPH M. MCDADE.

Mr. President, for the past several years lengthy preparations have been made for the creation of the Delaware Water Gap National Recreational Area to be located on the Delaware River north of the city of Stroudsburg, Pa. Acreage from the States of New York and New Jersey will also be included within the Park's boundaries. When it is created, this will represent one of the outstanding recreational areas and national parks in the eastern United States. Ultimately, millions of people from all parts of the Nation will benefit.

There is an urgent need for the passage of this authorization. The original legislation creating the Delaware Water Gap National Recreational Area set the total park acreage at 47,675, of which 10,326 acres were to be federally owned public lands not requiring purchase. Of the remaining 37,349 acres of private land, however, the Department of Interior has been able to buy only 21,807 acres, including 14,987 acres in New Jersey and 6,820 acres in the Commonwealth of Pennsylvania.

At this point, with 15,542 acres of private land still to be purchased, the Department has completely exhausted its existing authorization for land procurement and is simply unable to proceed.

A number of factors have led to the situation requiring an increase in authorization. Land speculation resulting from unforeseen delays has driven land prices up further than originally planned. At the same time, the Department discovered that incomplete land registrations in Pennsylvania and New Jersey led to significant underestimates in the actual number of individual tracts to be bought within the 37,349 acres of private land. Further, the Department has been faced with court settlements on contested purchases in amounts far larger than those included in computations on which the original authorization was based. And finally, the Department is now required to pay relocation as well as land purchase costs, an added burden not originally envisioned.

Delay has caused problems not only for the Department of Interior, but has also caused for individuals a large number of hardship cases which should be resolved as quickly as possible. Many people who own homes or businesses in the Delaware Water Gap National Recreational Area wish to relocate, but can do so only if their homes and businesses are purchased by the Government since it is obvious that the private sector will not be interested in buying property which will shortly become part of a national park.

The increased authorization proposed in this bill is based on the Department of Interior's latest estimate of the additional amount that will be needed in order to fully complete land acquisition. No additional acreage beyond the total 47,675 is anticipated. Thus, we are talking here only about legislation needed to fulfill an obligation which has already received congressional approval.

Since this additional authorization does not affect the controversial Tocks Island Dam, but involves only the Delaware Water Gap National Recreational Area, I am hopeful that Department reports will be requested without delay so that the Senate can proceed promptly to the favorable consideration of this important legislation.

By Mr. BELLMON (for himself and Mr. HARRIS):

S. 3498. A bill to amend the act of June 16, 1906 (enabling the peoples of Oklahoma, New Mexico, and Arizona to adopt constitutions and form States), to permit the long-term lease of school lands by the State of Oklahoma. Referred to the Committee on Interior and Insular Affairs.

Mr. BELLMON. Mr. President, I introduce for myself and my colleague from Oklahoma (Mr. HARRIS) a bill to amend the legislation passed by the Congress of the United States in June 1906, which allowed the people of the State of Oklahoma to form that State.

Under the terms of the enabling act, certain lands were set aside to be used for schools. That act provided for leasing of those lands but such leases were restricted to periods of up to 10 years. Since its enactment that restrictive provision has worked an undue hardship on the administration of those lands to the best advantage of the people of the State of Oklahoma. The State has been deprived of granting long-term commercial leases even though some of these school lands may have a valuable commercial potential due to their locations in or near urban areas.

I have received a copy of a resolution passed by the 33d session of the Legislature of the State of Oklahoma memorializing Congress to enact such legislation. I ask unanimous consent that a copy of this resolution be printed in the RECORD at this point.

Mr. President, it is my hope that this legislation will be considered by the Senate at an early date so that this inequity can be corrected.

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

"CONCURRENT RESOLUTION NO. 71

"A concurrent resolution memorializing Congress to amend sections 9 and 10 of the Oklahoma Enabling Act; and directing distribution.

"Whereas, the common school lands and the university and public institution lands granted by the Enabling Act to the great State of Oklahoma represent a valuable resource for funding the education of Oklahoma's youth; and

"Whereas, some of these school lands have a valuable commercial lease potential due to their location in and near urban areas; and

"Whereas, the restrictive nature of Sections 9 and and 10 of the Enabling Act deprives the state of the power and authority to grant long-term commercial leases; and

"Whereas, under similar circumstances the State of Washington has recently instituted a policy of granting long-term commercial leases and has realized an income of over four million dollars from the leasing of such properties; and

"Whereas, the Commissioners of the Land Office are charged with the responsibility of maximizing the income from school lands.

"Now, therefore, be it resolved by the Senate of the second session of the 33d Oklahoma Legislature; the House of Representatives concurring therein:

"SECTION 1. The Congress of the United States of America be and is hereby respectfully memorialized to amend Sections 9 and 10 of the Oklahoma Enabling Act by granting power and authority to the Commissioners of the Land Office to enter into long-term commercial leases of school lands.

"SEC. 2. Authenticated copies of this Resolution shall be transmitted to:

"1. The President of the United States;

"2. The Presiding Officers of the United States Senate and House of Representatives; and

"3. Each member of the Oklahoma Congressional Delegation."

By Mr. TOWER:

S. 3499. A bill to provide tax incentives to encourage physicians, dentists, and optometrists to practice in physician-shortage areas; referred to the Committee on Finance.

Mr. TOWER. Mr. President, today I introduce a bill to provide a tax incentive for physicians, dentists, and optometrists to establish their practices in hard-pressed rural and urban-core areas where there is the greatest need for health professionals to provide medical care. During the first session of the 92d Congress, I introduced similar legislation which provided a tax incentive for physicians. In recognition of the vital roles of the dental and optometrical professions in supplying necessary services to meet the essential health needs of our population, I am introducing this expanded legislation which includes dentists and optometrists, as well as physicians.

The national health manpower shortage is critical. We simply do not have enough doctors, dentists, or optometrists to meet the Nation's demand for health care. It is conservatively estimated that there is a current shortage of 48,000 physicians, 20,000 dentists, and over 10,000 optometrists.

In December, after extensive deliberation, Congress passed the Comprehensive Health Manpower Training Act of 1971. The purpose of this legislation was to increase the number of health professionals and to develop more efficient methods of utilizing their services. In order to obtain these results, we increased Federal funding to medical schools for expanded facilities and faculties to permit an increased student enrollment. Student scholarship and loan programs

were reorganized to make medical schools a financial possibility for many capable and deserving youth. Special project grants were designed to encourage medical schools to develop and operate training programs which would increase the efficient utilization of health manpower. For example, medical schools are encouraged to include projects in the use of the team approach to the delivery of health services; to train health personnel for new roles, types, or levels of proficiency, such as physicians' assistants; and to train personnel in the utilization of computer technology in health care delivery.

An increased number of health professionals, and an increased efficiency in their utilization are only part of the solution to providing an adequate system of health care delivery. There is a great disparity in the geographic distribution of health manpower. The Nation as a whole has a shortage; particular areas have an acute shortage. Some areas—such as rural and urban low-income areas—often have few, if any, health personnel to provide essential health care.

In 1967, the President's National Advisory Commission on Rural Poverty completed the most comprehensive and thorough study ever conducted on the problems and promises of Rural America. The report was entitled "The People Left Behind." Over 4 years later, the basic findings of the Commission on Health and Medical Care for Rural Areas are still true:

> This Commission is profoundly disturbed by the health problems of low income people in rural America. Nowhere in the United States is the need for health services so acute, and nowhere is it so inadequate.
>
> The statistical evidence is overwhelming yet the statistics barely suggest the inequity and the discrimination against the rural poor in medical and dental care and in modern health services.

I recently received a letter from Ralph Chase, M.D., who is chairman of the Committee of Community Health Service of the Tom Green Eight-County Medical Society, located in San Angelo, Tex. The purpose of the committee is to study the problems surrounding medical facilities and health needs with the goal of making comprehensive medical care available in isolated areas where little, if any, is now present. I would like to cite portions of the committee's statement of intent in an effort to breathe the sense of life into sterile facts and figures:

> The lack of adequate medical resources in the countryside is the result of a number of factors, of which the most important are geography, the declining ratio of primary care physicians to population, and the concentration of medical manpower and resources in the cities. The eight counties included in the Tom Green Eight County Medical Society are larger in size than the States of Massachusetts and Connecticut combined. Within this area there are 83 doctors of all kinds, with 76 doctors in Tom Green County, and a total of seven more in Sterling, Sutton, Schleicher, Crockett and Coke Counties: there are no doctors in Concho or Irion Counties which have populations of 2,759 and 1,029 respectively. However, of this total of 83 doctors in the eight county area, 56 are specialists, and only 27 primary care physicians are available to handle the general illnesses and other health care problems of 87,539 people spread over an 11,155 square mile area.
>
> The isolated locations of many of the smaller towns in West Texas mean that too many people lack convenient access to the services of physicians. A farmer or rancher may have to make an appointment days in advance to see a doctor in one of the rural towns, and then have to wait for hours before being referred to a specialist in San Angelo. At the same time, too many communities are unable to attract any physicians at all because of the availability of more sophisticated equipment, higher pay and more regular working hours in the cities—The small towns need primary care doctors, family physicians, pediatricians, and internists. . . . According to the national ratio, we should have 64 primary care physicians in the eight county area to care for the 87,539 people living here. We have 27.
>
> To complete the spiral, without physicians, or relatively few physicians, hospital facilities are unused or underused.
>
> The problems of a limited supply of medical resources in the isolated areas of West Texas are not new ones. Circumstances in the past have compelled the rural practitioner to delegate primary care tasks to his nurse, the local pharmacist and even the doctor's wife in some cases so that the physician could have the time to leave his office to attend to emergencies, to better handle his increasing office practice, to recover from an illness of his own, and to find some brief moments for relaxation . . .

This statement is typical of many rural areas in the Nation. Despite the fact that the nationwide physician/population ratio is improving, the number of physicians serving rural areas has declined six times faster than the population has decreased in those areas. There still exist 134 counties in the United States without a practicing physician. I am distressed that 24 of these 134 counties are in my State of Texas. These counties, according to the 1970 census figures, have a total population of 56,753. I ask unanimous consent to have printed at this point in the RECORD, a listing of those counties in Texas which do not have a practicing physician and their corresponding populations:

(1970 census)

County:	*(Population)*
Borden	888
Briscoe	2,794
Carson	6,358
Glasscock	1,155
Hartley	2,782
Hudspeth	2,392
Irion	1,070
Jeff Davis	1,527
Kenedy	678
Kent	1,434
King	464
Kinney	2,006
Lipscomb	3,486
Loving	164
McMullen	1,095
Martin	4,774
Oldham	2,258
Rains	3,752
Real	2,013
Roberts	967
San Jacinto	6,702
Sherman	3,657
Stonewall	2,397
Terrell	1,940
Total	56,753

In Texas, an additional 148 countries have been designated as physician-shortage areas. Of these, 96 are low-income rural counties. However, urban counties such as Hidalgo, the ninth largest in the State, also suffer a shortage.

The need of these communities for dentists and optometrists in order to provide essential health care, are just as great in many instances. For example, fewer than half the people in the country have dental exams or treatment in any given year. Of the total adult population of 110 million, over 20 million have lost all their teeth. By the age of 15, the average child has 11 teeth decayed, missing, or filled. Almost 70 percent of the children in poor families have never seen a dentist. The present ratio of dentist to population, 1:2,100, is less favorable than it was 15 years ago. These indications of the needs for additional dental and allied dental personnel are dramatic. Once again, they do not tell the whole story, for they do not show areas in which little or no dental care is available.

Generally speaking, urban centers have a lower ratio than do rural areas; however, there are many residents in both urban and rural areas who lack adequate dental care.

In Texas alone, there are 42 counties which do not have the services of even one dentist. The total population of these counties exceeds 150,000 persons. I ask unanimous consent that a list of these counties be printed at this point in the RECORD.

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

COUNTY	
Archer	Kent
Armstrong	King
Borden	Kinney
Briscoe	Leon
Cochran	Lipscomb
Concho	Loving
Cooke	Martin
Culberson	McAllen
Delta	Motley
Dickens	Oldham
Dimmitt	Rains
Duval	Real
Edwards	Roberts
Foard	San Jacinto
Glasscock	Schleicher
Hartley	Somervell
Hudspeth	Starr
Irion	Sterling
Jeff Davis	Stonewall
Jim Hogg	Terrell
Kenedy	Trinity

Mr. TOWER. Mr. President, this is a total of 42 counties with a total population of 150,000.

Mr. President, other counties have ratios of dentists to population running as high as 1 to 14,500—Randall County. The national average is one dentist for every 2,100 people. There are 90 counties in Texas in which the dentist to population ratio is over 1 to 4,000, almost double the national ratio. I ask unanimous consent to have printed in the RECORD a listing of these counties, the number of dentists currently practicing in them, and their ratio of dentist to population at this point.

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

DENTISTS—COUNTIES MORE THAN 4,000 POPULATION, 1970 FIGURES: TEXAS

	Number of dentists	Population per dentist
DALLAS REGION		
Corsicana district: Freestone County	2	6,050
Dallas district: Rockwall County	1	6,300
Fort Worth district: Wise County	3	6,800
Gainesville district: Montague County	4	4,125
Marshall district:		
Panola County	4	4,175
Upshur County	5	4,200
Paris district:		
Franklin County	1	5,600
Red River County	3	5,300
Sherman district: Fannin County	4	5,775
Texarkana district:		
Cass County	6	4,250
Morris County	2	6,150
Tyler district: Van Zandt County	5	4,260
EL PASO REGION		
Alpine district	11	4,564
Pecos County	2	6,150
Odessa district:		
Crane County	1	4,100
Upton County	1	4,100
Ward County	3	4,333
Winkler County	2	5,050
HOUSTON REGION		
Beaumont district: Hardin County	7	4,557
Hempstead district: Waller County	2	7,650
Houston district: Montgomery County	10	4,270
Jasper district:		
Newton County	1	11,600
Sabine County	1	7,900
Shelby County	3	6,733
SAN ANTONIO REGION		
Beeville district	8	4,013
Live Oak County	1	7,700
Corpus Christi district:		
Jim Wells County	6	5,667
San Patricio County	9	5,556
Cuero district: Goliad County	1	5,300
Kerrville district: Kimble County	1	4,300
Laredo district	10	13,140
La Salle County	1	5,100
Maverick County	1	18,800
Webb County	7	10,643
Zapata County	1	4,600
McAllen district	70	5,557
Brooks County	1	9,100
Cameron County	32	4,591
Hidalgo County	36	5,433
Willacy County	1	15,700
San Antonio district:		
Atascosa County	3	6,900
Bandera County	1	4,700
Medina County	2	10,900
Wilson County	3	4,700
Uvalde district	15	5,120
Frio County	2	6,250
Val Verde County	7	4,071
Zavala County	1	15,600
Victoria district: Refugio County	2	5,150
TEMPLE REGION		
Austin district:		
Bastrop County	3	5,933
Lee County	2	4,300
Brownwood district:		
Comanche County	2	6,700
Mills County	1	4,600
Cameron district:		
Burleson County	2	5,300
Milan County	5	4,080
Llano district	2	5,050
Llano County	1	6,400
San Angelo district: Reagan County	1	4,100
Temple district:		
Coryell County	4	9,075
Lampasas County	2	4,900
Waco district:		
Hill County	5	4,480
Limestone County	5	4,140
WICHITA FALLS REGION		
Abilene district:		
Callahan County	1	10,000
Fisher County	1	7,700
Amarillo district:		
Carson County	1	7,100
Randall County	4	14,050
Big Spring district: Dawson County	3	6,100
Lubbock district:		
Crosby County	2	5,550
Floyd County	3	4,267
Garza County	1	5,400
Hockley County	5	4,400
Lamb County	4	5,350
Lynn County	2	4,700
Terry County	2	8,050
Paducah district	3	6,233
Knox County	1	6,800
Pampa district:		
Hall County	1	6,600
Wheeler County	1	6,700
Plainview district	16	4,244
Castro County	2	5,950
Seagraves district	10	6,150
Andrews County	2	5,800
Gaines County	2	6,800
Parmer County	2	5,850
Yoakum County	1	7,900
Stamford district	5	6,340
Haskell County	2	4,750
Jones County	3	6,467
Vernon district: Hardeman County	1	7,200
Wichita Falls district: Clay County	1	7,400

Mr. TOWER. Mr. President, while the rural counties often illustrate the most obvious maldistribution, it should be remembered that certain sections of the urban counties have equally high ratios. In two heavily populated Texas counties, Harris with a ratio of 1 to 1,700, and Dallas with a ratio of 1 to 1,600, there are several areas within the county whose ratios equal or exceed those of the rural counties.

Our Nation's need for adequate vision care is just as necessary as medical and dental care. A study conducted by the Public Health Survey indicates the incidence of visual defects by age groups.

Under 20:	*Percent*
20–30	23
30–40	39
40–50	48
50–60	71
Over 60	95

In a report prepared by Melvin D. Wolfberg, OD., optometric consultant to the Office of the Assistant Secretary of Health and Scientific Affairs, some of the social consequences of visual disorders are enumerated. For example, visual disorders are a primary cause of underachievement in the classroom. Ninety-nine percent of those who fail the first grade and 90 percent of those who fail the second grade do so because of reading difficulties. An estimated 10-million children of school age are affected by learning disabilities associated with impaired vision. Of the 700,000 who drop out of school each year, most are 2 or 3 years behind their age group in reading skills.

Other studies have indicated that industrial employees with corrected vision have over 20-percent fewer accidents in 1 year than a control group without corrected vision.

The unmet vision needs of the elderly are of further concern to me. Older individuals who suffer a severe impairment of their vision, and do not have it corrected, will begin to limit their mobility. Gradually they will withdraw from active participation in civic and social affairs. Furthermore, 85 percent of all serious injuries experienced by persons over 65 years of age are caused by falls, and fully one-fourth of such falls are considered attributable to visual impairment.

Although the entire Nation has a shortage of optometrists and other vision care specialists, the existing manpower resources are poorly distributed to meet the needs of the population. Mr. President, at this time I ask unanimous consent to have printed in the RECORD, a study, compiled by the American Optometric Association, showing counties in Texas with a shortage of optometrists. This study includes the population figures, by county; the number of practicing optometrists in the county; the ratio of optometrists to the population; the number needed to achieve the recommended 1 to 7,000 ratio; and the net surplus or deficit of optometrists in the county.

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

County	Population 1970	Optometrists	Ratio	1-7,000	Net
Angelina	49,349	4	1–12,337	7	−3
Atascosa	18,696	0	0–18,696	3	−3
Austin	13,831	0	0–13,831	2	−2
Bell	124,483	8	1–15,560	18	−10
Bexar	830,460	53	1–15,669	119	−66
Bosque	10,966	0	0–10,966	2	−2
Bowie	67,813	7½	1–9,042	10	−2½
Brazoria	108,312	7½	1–14,442	15	−7½
Brazos	57,978	6	1–9,663	8	−2
Brooks	8,005	0	0–8,005	1	−1
Calhoun	17,831	½	1–35,662	3	−2½
Cameron	140,368	6	1–23,395	20	−14
Cass	24,153	1	1–24,153	3	−2
Chambers	12,187	0	0–12,187	2	−2
Cherokee	32,008	2	1–16,004	5	−3
Collin	66,920	5	1–13,384	10	−5
Colorado	17,638	1	1–17,638	3	−2
Coryell	35,311	1	1–35,311	5	−4
Dallas	1,327,321	83	1–15,991	190	−107
Denton	75,633	5	1–15,127	11	−6
Duval	11,722	0	0–11,722	2	−2
Ellis	46,638	5	1–9,328	7	−2
El Paso	359,291	24	1–14,970	51	−27
Fannin	22,705	1	1–22,705	3	−2
Fisher	6,344	0	0–6,344	1	−1
Fort Bend	52,314	2	1–26,157	7	−5
Frio	11,159	0	0–11,159	2	−2
Galveston	169,812	13	1–13,062	24	−11
Grayson	83,225	8	1–10,403	12	−4
Grimes	11,855	0	0–11,855	2	−2
Guadalupe	33,554	2	1–16,777	5	−3
Harris	1,741,912	125½	1–13,880	248	−122½
Hays	27,642	2	1–13,821	4	−2
Hidalgo	181,535	9	1–20,171	26	−17
Hunt	49,948	3	1–16,649	7	−4
Jasper	24,692	2	1–12,346	4	−2
Jefferson	244,773	19	1–12,883	34	−15
Jim Wells	33,032	3	1–11,011	5	−2
Johnson	45,769	5	1–9,154	7	−2
Karnes	13,462	0	0–13,462	2	−2
Kaufman	32,392	2	1–16,196	5	−3
Kleberg	33,166	2	1–16,583	5	−3
Liberty	33,014	1	1–33,014	5	−4
Limestone	18,100	0	0–18,100	3	−3
Lubbock	179,295	19	1–9,437	26	−7
McLennan	147,553	15	1–9,837	21	−6
Maverick	18,093	0	0–18,093	3	−3
Medina	20,249	1	1–20,249	3	−2

County	Population 1970	Optometrists	Ratio	1-7,000	Net
Midland	65,433	5	1-13,087	9	−4
Milam	20,028	1	1-20,028	3	−2
Montgomery	49,479	2	1-24,740	7	−5
Nacogdoches	36,362	2	1-18,181	5	−3
Navarro	31,150	2	1-15,575	4	−2
Nueces	237,544	13	1-18,273	34	−21
Orange	71,170	2	1-35,585	10	−8
Palo Pinto	28,962	1	1-28,962	4	−3
Parker	33,888	2	1-16,944	5	−3
Potter	90,511	11	1-8,228	13	−2
Red River	14,298	0	0-14,298	2	−2
Robertson	14,389	0	0-14,389	2	−2
San Patricio	47,288	½	1-94,576	7	−6½
Shelby	19,672	1	1-19,672	3	−2
Smith	97,096	6	1-16,183	14	−8
Starr	17,707	0	0-17,707	3	−3
Tarrant	716,317	56	1-12,791	102	−46
Taylor	97,853	6	1-16,309	14	−8
Tom Green	71,047	8	1-8,351	10	−2
Travis	295,516	20	1-14,776	42	−22
Tyler	12,417	0	0-12,417	2	−2
Upshur	20,976	1	1-20,976	3	−2
Val Verde	27,471	1	1-27,471	4	−3
Van Zandt	22,155	0	0-22,155	3	−3
Victoria	53,766	5	1-10,753	8	−3
Walker	27,680	1	1-27,680	4	−2
Waller	14,285	0	0-14,285	2	−2
Webb	72,859	5	1-14,572	10	−5
Wichita	121,862	13	1- 9,374	17	−4
Willacy	15,570	0	0-15,570	2	−2
Williamson	37,305	3	1-12,435	5	−2
Wise	19,687	1	1-19,687	3	−2
Total, State of Texas	11,198,885	822	1-13,624	1,600	−778

Mr. TOWER. Mr. President, I find it particularly distressing that over 65 counties, which need at least one optometrist, have none, and that there are shortages in over 165 counties in Texas.

Obviously, the problem of geographic disparity in the distribution of health manpower is as prevalent for dentists and optometrists as it is for physicians. My bill, through the incentive principle, would encourage health professionals—physicians, dentists, and optometrists—to take up practice in areas of the country where they are in the shortest supply. Generally speaking, passage of this legislation will benefit rural and inner-city areas all across the country. To narrow the gap in the most critical manpower-shortage areas should be a priority item.

Briefly, my bill proposes that the first $20,000 of a physician's, dentist's, or optometrist's adjusted gross income from medical sources be tax-exempt for the first taxable year of practice in an established shortage area. This tax incentive would continue for 5 years on a downward sliding scale. This bill further requires that the health professional practice at least 2 years in the shortage area. Designation of the shortage areas would be made by the Secretary of Health, Education, and Welfare with the advice of appropriate State agencies.

I strongly believe that the proposal I am offering today employs the best method of solving the problem of geographical disparity in health manpower distribution. The tax incentive concept creates a financial incentive for the physician, dentist, or optometrist to practice in an area where he can do the most good. It does not, however, dictate the area in which he must practice.

My proposal would use existing Government mechanisms. It will not require the establishment of yet another bureaucracy to carry out yet another proposal.

Mr. President, so that this proposal may be readily available for further examination by my colleagues, I ask unanimous consent that the complete text of this bill be printed at this point in the RECORD.

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

S. 3499

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) part III of subchapter B of chapter 1 of the Internal Revenue Code of 1954 (relating to items specifically excluded from gross income) is amended by—

(1) redesignating section 124 as section 125; and

(2) inserting after section 123 the following new section:

"SEC. 124. PHYSICIANS, DENTISTS, AND OPTOMETRISTS ESTABLISHING PRACTICE IN PHYSICIAN SHORTAGE AREAS.

"(a) IN GENERAL.—In the case of a physician, dentist, or optometrist who engages in the practice of medicine, dentistry, or optometry, respectively, in a physician shortage area, gross income does not include, at the election of the taxpayer, adjusted gross practice income from such practice in such area to the extent of—

"(A) $20,000 during the first taxable year of such practice;

"(B) $15,000 during the second taxable year of such practice;

"(C) $10,000 during the third taxable year of such practice;

"(D) $7,500 during the fourth taxable year of such practice; and

"(E) $5,000 during the fifth taxable year of such practice.

"(b) LIMITATIONS.—

"(1) TWO-YEAR PRACTICE REQUIREMENT.—The provisions of subsection (a) shall apply to a physician, dentist, or optometrist with respect to practice in a physician shortage area only if he continuously engages in such practice for at least 2 years, commencing with the day on which he first engages in such practice. The preceding sentence shall not apply—

"(A) to a physician, dentist, or optometrist who dies during such 2-year period, or

"(B) with respect to any period of disability during such 2-year period.

"(2) PROVISIONS TO APPLY ONLY ONCE.—The provisions of subsection (a) shall apply to engaging in practice in a physician shortage area only once for any physician, dentist, or optometrist.

"(c) ELECTION.—

"(1) IN GENERAL.—An election to have the provisions of subsection (a) apply shall be made at such time and in such manner as the Secretary or his delegate prescribes by regulations. Such election may not be revoked except with the consent of the Secretary or his delegate and subject to such terms and conditions as the Secretary or his delegate prescribes.

"(2) DESIGNATION OF FIRST TAXABLE YEAR.—At the time of making an election under paragraph (1), a physician, dentist, or optometrist shall designate his first taxable year of practice in a physician shortage area, for purposes of applying the provisions of subsection (a), as—

"(A) the taxable year in which he first engages in practice in such area, or

"(B) the succeeding taxable year.

"(d) DEFINITIONS.—For purposes of this section—

"(1) the term 'adjusted gross practice income' means gross income from the practice of medicine, dentistry, or optometry less any deductions arising out of such practice; and

"(2) the term 'physician shortage area' means any area within a State certified to the Secretary by the Secretary of Health, Education, and Welfare as an area in which there are an insufficient number of physicians practicing medicine to meet the need for medical care of the population of such area.

"(e) Certifications by Secretary of Health, Education, and Welfare.—

"(1) IN GENERAL.—The Secretary of Health, Education, and Welfare shall, on or before November 1 of each year (beginning with 1972) certify the physician shortage areas (if any) in each State for the following calendar year.

"(2) CERTIFICATIONS PURSUANT TO STATE AGENCY RECOMMENDATIONS.—In making the certifications of physician shortage areas for purposes of this section, the Secretary of Health, Education, and Welfare shall accept the determination as to the number and location of physician shortage areas in a State recommended to him by—

"(A) the State planning agency for such State (as designated pursuant to section 314(a)(2)(A) of the Public Health Service Act), or

"(B) if in such State there is no agency, or if such agency fails to make a recommended determination within a reasonable time prescribed by him, by such other agency of such State as he finds to be qualified to make such a recommended determination and as the Governor of such State shall have designated to make such a recommended determination;

but only if the agency, in making such recommended determination, has sought the advice and assistance of the State medical societies for such State; and

"(C) the Secretary of Health, Education, and Welfare is satisfied with the adequacy of the criteria employed by the agency as the basis upon which such recommended determination was made.

"(3) OTHER CERTIFICATIONS.—If, in the case of any State, the Secretary of Health, Education, and Welfare does not receive (within such reasonable time as he shall prescribe) a recommended determination with respect to such State which meets the requirements of paragraph (1), he shall (after seeking the advice and assistance of the State medical societies for such State) certify the number and location of the physician shortage areas (if any) of such State on the basis of the most current and appropriate data available to him.

"(4) EFFECTIVE PERIOD OF CERTIFICATION.—A certification by the Secretary of Health, Education, and Welfare under paragraph (1) of physician shortage areas in a State shall remain in effect for the calendar year for which it is made. With respect to a physician, dentist, or optometrist, who engages in practice in an area so certified during his taxable year beginning in such calendar year and who makes an election under subsection (c) to have the provisions of

subsection (a) apply, such certification (A) shall remain in effect for succeeding calendar years, and (B) shall be treated as having been in effect for prior calendar years for purposes of determining the number of taxable years of his practice in such area.

"(e) REGULATIONS.—The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this section."

(b) The table of sections for part III of subchapter B of chapter 1 of such Code is amended by striking out the item relating to section 124 and inserting in lieu thereof the following:

"Sec. 124. Physicians, dentists, and optometrists establishing practice in physician shortage areas.

"Sec. 125. Cross references to other Acts."

(c) The amendments made by this Act shall apply to taxable years beginning after December 31, 1972.

ANNOUNCEMENT OF CONTINUED HEARINGS ON S. 448

Mr. METCALF. Mr. President, the chairman of the Senate Subcommittee on Intergovernmental Relations, the distinguished Senator from Maine (Mr. MUSKIE), has asked me to announce that the subcommittee will continue hearings on S. 448, a bill to provide that the appropriation requests of certain regulatory agencies be transmitted directly to Congress.

Senator MUSKIE has requested that I preside at the hearings which are scheduled for April 18 and 19. They will begin at 10 a.m. in room 3302 of the New Senate Office Building.

Any Member of Congress or other person wishing to testify should notify Mrs. Lucinda Dennis, chief clerk of the subcommittee. She can be reached by calling 225–4718.

ANNOUNCEMENT OF HEARING ON DEEP WATER PORT POLICY ISSUES

Mr. MANSFIELD. Mr. President, on behalf of the distinguished Senator from Washington (Mr. JACKSON), I ask unanimous consent to have printed in the RECORD an announcement of a hearing and attached introduction and questions.

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

STATEMENT BY SENATOR JACKSON

After many decades of self-sufficiency or surpluses in petroleum supplies, the United States has become an oil deficit country. Since 1958 we have had oil import restrictions intended to encourage domestic exploration. Yet in 1971 imports accounted for one-fourth of the Nation's oil consumption, an advance of 15 percent over 1971.

Oil imports will keep growing to fill the increasing gap between domestic supply and national requirements. New production from the continental shelf and from Alaska can reduce the deficit, and over a longer period, coal, oil shale and nuclear power may, if new environmentally sound technologies can be developed, restore this country's self-sufficiency in fuels. Many Americans believe and hope that the growth of energy consumption can be slowed down or halted, and there is certainly room for fuel conservation and increased efficiency. While I am confident that we have the capacity to deal with long term problems of energy supply in a manner that protects national interests, it nevertheless seems inescapable that in 1980 and 1985, the United States will be importing three, four or even five times as much oil as in 1970.

Much of this oil will come a long distance, particularly from the Persian Gulf, where most of the world's reserves have been found. The most economical way to carry this oil is in supertankers, and oil is now moved between the Middle East and Europe or Japan in ships of 100-, 200-, or 300,000 tons. Tankers of half a million tons are under construction, and million ton vessels are being designed.

The United States is already the world's biggest oil importer, but we do not have a single port that can accommodate supertankers. These ships now have to unload in the Bahamas or Canada, and deliveries to U.S. ports are made in smaller tankers. This pattern encourages the building of refineries abroad, and has serious implications for costs, security of supplies and the balance of payments.

In the face of a phenomenal growth of oil imports, the Federal government does not have at present any overall policy on deep water ports and supertanker terminals. Policy now seems to be in the hands of oil companies, the states and individual port authorities. It is not clear what, if any, role the Federal government should play in the selection and development of deep water facilities, particularly whether it should take on new responsibilities for centralized planning and policy development.

Another major area of uncertainty relates to the sufficiency of the body of knowledge and experience on which these policy determinations should be made. For example, do we fully understand how the navigational safety and environmental risks compare, barrel for barrel, between oil carried in supertankers and in conventional sized vessels, and for other alternatives?

The Congress and the Executive Branch need to take a hard look at the economic, environmental, and national security consequences of alternative systems for handling oil imports, coal exports and other bulk cargoes, including the construction and operation of deep water ports and terminals. Accordingly, the Committee on Interior and Insular Affairs, together with ex-officio representatives of the Commerce, Public Works, and Joint Atomic Energy Committees, will hold a hearing on these issues on April 25 as part of the National Fuels and Energy Study, authorized by Senate Resolution 45. On this date, the Committee will hear representatives of the Commerce Department, the Corps of Engineers and the Council on Environmental Quality. Time limitations preclude hearing everyone who might have a direct interest in these hearings or might want to testify. Representatives of other agencies, coastal states and communities, industry, conservation, labor and consumer groups, and independent experts are being asked, however, to submit written statements for the hearing record.

Witnesses and others filing statements are being asked to respond to a list of specific questions on deep water port policy. I am attaching this list and its introduction at this point in my statement.

INTRODUCTION TO DEEP WATER PORT POLICY ISSUE REVIEW

United States imports of crude oil and petroleum products grew from 1,153 million barrels in 1970 to 1,324 million barrels in 1971, an increase of 15 percent. In 1971, imported oil supplied just about one-fourth of the nation's oil requirements or 12 percent of total energy. This reliance on foreign oil will play a larger and larger role in our energy supply for at least ten to twenty years, and maybe longer. Later, synthetic oil and gas from coal or from oil shale, nuclear power and other new energy sources may fill the gap between domestic oil and gas production and domestic energy needs. Meanwhile, however, most of the increase in our fuel supply will be in the form of oil from other countries.

The National Petroleum Council has projected net oil imports increasing to 2.7 billion barrels in 1975, 4.0 billion in 1980, and 5.3 billion in 1985. The latter figure would amount to 57 percent of our oil supply and half of total energy consumption.[1] These NPC forecasts for oil imports are not the highest. The New York State Public Service Commission forecasts 1980 oil imports of about 6.0 billion barrels, on the premise that the NPC has overestimated the actual supplies of low sulfur coal available for electric power generation.[2]

Some of the increased oil imports will arrive by pipeline from Canada. But the major part will be imported by tanker; in addition, some or all of the crude oil transported from Alaska to the Lower 48 may be carried on the ocean. Accordingly, it is likely that at least five to six billion barrels of oil (13.6 to 16.5 million barrels per day) would be brought into U.S. ports in 1985.[3] This figure is nearly equal to all of the oil cargoes of the whole world in 1971.

The cost per ton-mile of sea transport for bulk commodities drops sharply as vessel size increases. The use of 200,000 dwt vessels rather than those of 50–65,000 dwt, would reduce transport costs by as much as half on long voyages, or 45–55 cents per barrel in shipments from the Persian Gulf to the United States.

Western Europe and Japan, which already depend overwhelmingly on imports for their oil supply, are increasingly supplied by supertankers—vessels of 100,000 tons (dwt) or greater displacement. In 1971, there were already more than 300 such tankers in service, and there are now several hundred vessels of more than 200,000 dwt on order, including one of 525,000 dwt. Ships of up to one million tons are already in the design stage.

Supertankers cannot be accommodated at most conventional ports, and their use requires substantial engineering effort and capital outlay. Several types of supertanker port or terminal facilities exist in the major oil importing and exporting countries, ranging from accommodations at existing industrial port complexes to single purpose coastal loading terminals, and offshore facilities for transshipment to smaller coastal tankers. In each instance, however, the location and planning of supertanker accommodations, and in some cases, financing and management, are important concerns of the central governments.

No supertankers currently serve the continental United States directly. There are no terminals capable of serving them and vessels larger than 80,000 dwt can enter only two U.S. harbors, both on the West Coast. It is not inevitable or essential that the United States construct supertanker facilities.

At some higher price in transport costs all imported oil could be handled by vessels of a size that can be accommodated at existing ports. These smaller tankers could be loaded either in the exporting countries or from supertankers at transshipment terminals in foreign countries, for example in Canada or the Bahamas. Also, imports could be unloaded in Canada for movement by pipeline into the United States as crude oil,

Footnotes at end of article.

or as petroleum products after refining in Canada. These alternatives will have different implications, however, for security of fuels supply, for the balance of payments, and possibly for the environment.

Whether or not supertankers enter U.S. waters, the growth of oil imports will effect a huge increase in traffic and in tonnages carried through U.S. ports. Petroleum imports will consume capital and space for terminals and onshore transport links, require additional harbor deepening and maintenance activities, and increase the risks of collision, groundings, chronic and accidental oil discharges, and fire. However imported oil is transported, the growth of energy consumption will require new refineries, power plants and other industrial facilities to be built somewhere, and decisions on tanker size and the siting of terminals will certainly affect their location. In light of all these variables, it is not immediately obvious in what direction either the total economic benefits or the total safety and environmental risks, would compare per barrel among the various transport alternatives for importing oil.[4]

If deep water ports or terminals are to be built in the United States, their number and location are also important issues. The optimum number of such facilities on each coast may be very small. However, perceived community or private gains from port development may produce competition among states and port authorities to establish these facilities, and lead to an unnecessary commitment of space and capital to them. In such a case, competition for federal assistance can also be expected, both for construction, and afterward, to cover losses in port or terminal operations that may have been made uneconomic because of excess capacity.

On the other hand, it is conceivable that coastal states and communities will perceive few local benefits from deep water accommodations, whatever their national importance. Because the safety and environmental risks and the aesthetic damage will be borne locally, state and local opposition to coastal and esturarine development may preclude deep water port or terminal developments entirely in some regions of the country. Such opposition might also force these facilities into less desirable locations from both economic and environmental standpoints, simply because political resistance was least in these places.

The Senate Committee on Interior and Insular Affairs has scheduled hearings on issues of deep water port development for April 25. This hearing is being held under authority of Senate Resolution 45, which directed the Committee, with participation from the Commerce, Public Works and Joint Atomic Energy Committees, to conduct a study of national fuels and energy policy. The hearing planned for April 25 will examine the prospective economic benefits, and the risks, from deep water port development in the United States. At the same time the Committee will attempt to ascertain whether there is now an explicit or implicit general policy in the Federal government toward deep water port development, and what the elements of such a policy ought to be. Witnesses are being asked to respond to the specific questions in the following issue list.

DEFINITIONS

In the following questions, "intermediate tankers" refers to vessels of 65,000 to 200,000 dwt (maximum draft 42 to 64 ft.) and "supertankers" to vessels of greater than 200,000 dwt (maximum draft 64 ft. or greater).

"Port" means a complex of berths and cargo handling facilities on the coastline or in a natural harbor, "terminals" includes such facilities, whether on shore, at an artificial offshore island or fixed, floating structure. "Petroleum products" include refined products, naphtha, residual oil, natural gas liquids and LNG.

DEEP WATER PORT DEVELOPMENT ISSUES

A. Historical and projections

1. What are the current levels of oceanborne traffic in crude oil, petroleum products, and coal:

(a) U.S. domestic traffic—by region of origin and region of destination?

(b) U.S. import traffic—by country of origin and region of destination?

(c) U.S. export traffic?

(Please furnish a map indicating current patterns of crude oil, petroleum product, and coal traffic.)

2. What is the range of anticipated levels of oceanborne traffic in crude oil, petroleum products, and coal to the year 2000 (in 10-year intervals beginning with actual data for 1970):

(a) U.S. domestic traffic—by region of origin and region of destination?

(b) U.S. import traffic—by country of origin and region of destination?

(c) U.S. export traffic?

(Please furnish maps, graphs, or visual aids.)

3. Which of the existing U.S. regional port or terminal facilities are expected to be the major ports of entry for crude oil, petroleum products, and coal in each of these time periods, assuming no major changes from the present in maximum depth of existing ports and terminals, in vessel size, and in technology?

4. What is currently the maximum depth and capacity of the major U.S. ports, terminals, and harbors?

(a) What are the practical limits (considering costs, environmental impact, etc.) of expansion of the capacity of existing ports, terminals, and harbors, with and without deepening?

5. What are the present, planned and projected locations and capacities of U.S. crude oil refining and storage facilities (by region), and what is the relationship of these facilities to U.S. ports, terminals and harbors?

(Please provide a map indicating these locations, the pipelines which serve them, and their relationship to existing port and terminal facilities.)

B. Alternatives

1. A recent report on foreign deep water port developments identified eight possible alternatives for a U.S. deep water port strategy:

(a) do nothing (i.e. continue to use only vessels that can be accommodated in existing ports);

(b) lighten supercarries (unload a portion of the cargo offshore);

(c) develop or use transshipment terminals in other countries (e.g. Canada and the Bahamas);

(d) subsidize a shallow-draft supercarrier fleet;

(e) deepen and expand existing port-industrial complexes;

(f) establish new U.S. coastal transshipment terminals;

(g) develop new offshore terminals (e.g. offshore islands or loading facilities);

(h) develop new deep water, port-industrial complexes.

What are the implications of *each* of these alternatives for the various sectors of the national interest with respect to:

(a) transportation cost per barrel of oil?

(b) consumer cost of energy?

(c) total cost of energy to the national economy?

(d) balance of payments?

(e) capital requirements?

(f) regional growth and economic development?

(g) security of fuels supply?

(h) maritime and port labor requirements?

(i) time required for development?

(j) impact of chronic and/or accidental oil spills?

(k) alternative uses of the coastal environment (recreation, fishing, residential development, etc.)?

(l) other impacts on regional environments?

2. What practical alternatives are available to using supertankers and deep water ports or terminals, for achieving equivalent reductions in the consumer cost of oil, and what are their economic and environmental implications?

C. Port and terminal development

1. What projects for deep water port and terminal development are now in progress, planned, or under active consideration by Federal, interstate, State, or local authorities, and/or by private industry?

2. Assuming deep water ports and terminals are developed, how many such facilities would be needed in or adjacent to the U.S. to accommodate the projected increases in oceanborne coastal and international traffic in bulk commodities and where would they be located (furnish projections to year 2000)?

3. What physical economic, social and other factors determine the optimum location(s) of future deep water facilities?

4. What, if any, other industrial, commercial, and residential developments would normally be expected to be associated with or to follow the development of deep water facilities?

5. What are the implications of the U.S. policy toward deep water ports and terminals for the domestic or foreign locations of refinery capacity serving U.S. markets?

6. What, if any, industrial, commercial, and residential developments are now planned or under active consideration to accompany deep water facilities?

7. What is the interest in, or attitude of private enterprise (particularly the oil industry) toward initiating, financing, or constructing deep water ports and terminals? To what extent does industry interest depend upon federal initiatives, or government participation in construction and financing?

D. Bulk fuel carriers

1. In summary form, what is the size, age, registry, ownership, and country of construction of the present world tanker and coal carrier fleets (1) now in operation, (2) in reserve, (3) under construction, and (4) planned for operation in:

(a) U.S. oceanborne coastal trade?

(b) U.S. international trade?

(c) trade among other nations?

2. To what extent are the sizes of vessels operating in U.S. international and coastal trade limited by:

(a) harbor depths?

(b) port facilities?

(c) navigation facilities?

(d) other physical, technological, or engineering factors?

(e) environmental protection laws and regulations?

(f) cabotage laws and policies (e.g. the Jones Act)?

(g) other laws, regulatory policies, and international agreements?

(h) capital and/or operating costs?

(i) liability and insurability?

(j) other economic factors?

3. What, in summary, are the current trends in tanker size, registry, ownership, and country of construction, and what are the factors (policy, economic, etc.) that have influenced past and emerging trends?

4. What are the advantages and disadvantages of using intermediate tankers and supertankers to transport a given volume of crude oil or petroleum products compared to the use of smaller vessels in respect to:

(a) capital requirements?
(b) transport cost per barrel?
(c) balance of payments?
(d) traffic and facility congestion?
(e) chronic and accidental oil spills (in port, near shore, at open sea) and contingency planning for them?
(f) navigation safety and navigation facility requirements?
(g) other environmental factors?

5. What would be the distribution of net benefits from reduced transport costs resulting from the use of larger tankers, among producer governments, operating companies, ship owners, refiners, U.S. consumers, and the U.S. Treasury?

6. What, if any, unique difficulties or safety problems does the transport of LNG and other fuels present for port and terminal developments and/or the construction and operation of intermediate tankers and supertankers?

7. What are the current and anticipated size limits on vessel construction in U.S. shipyards?

8. What are the construction costs for intermediate and supertankers in U.S. shipyards as compared to foreign shipyards?

9. What are the comparative operating costs for these tankers under U.S. and foreign registry?

E. Role of government

1. What, if any, overall Federal policy exists at the present time regarding intermediate and supertanker operations and development of deep water ports or terminals? Which Federal agencies have been assigned the primary responsibility for policy development in these two areas?

2. What in-house or contractor studies have been completed or are now under way or contracted by Federal agencies regarding intermediate and supertanker operations, or development of deep water ports or terminals?

3. What federal agencies, interstate entities and types of state and local entities have authority over port and terminal planning, development, and operation, and what are their respective roles?

4. What, in summary, are the state laws and policies toward development of coastal lands, estuaries, and submerged lands that can be expected to influence or restrict deep water ports or terminal development?

5. What should be the respective roles of specific Federal agencies, state and local governments and interstate entities in overall deep water port development and in:

(a) site selection and planning?
(b) financing deep water ports and port facilities?
(c) construction of deep water ports and port facilities?
(d) operation of deep water ports and port facilities?

6. Is it desirable for the Federal government to pre-empt siting and development authority for deep water ports and terminals?

7. What, if any, policies have been implemented by central and local governments in other major countries with respect to deep water ports and terminals, and intermediate tanker and supertanker operation? What weight has been given in these policies to:

(a) transport cost savings?
(b) foreign exchange earned or saved in transport and transshipment activities?
(c) labor savings or employment creation?
(d) security of fuels supply?
(e) encouragement of domestic shipbuilding?
(f) regional economic development?
(g) navigation safety?
(h) environmental impact?

8. To what extent has the Federal government subsidized construction of intermediate tankers and supertankers?

(a) Under what statutory authorization?
(b) How many dollars have been spent and/or obligated?
(c) How many ships have been constructed and/or are under construction or contracted for under the subsidy program?

9. What are the advantages and disadvantages of a federal role in:

(a) financing the construction of intermediate tankers and supertankers?
(b) construction of intermediate tankers and supertankers?
(c) financing the operation of intermediate tankers and supertankers?

10. Does the Administration favor legislation to require that some minimal percentage of oil imported into the U.S. be transported on U.S.-flag vessels?

11. What, in summary, are the current provisions under state and Federal laws, or under international treaties, regarding liability for damages or cleanup, in connection with oil spills, collisions and other incidents in oil tanker traffic?

(a) What national and international mechanisms are available or anticipated for pooling insurance to cover these liabilities?
(b) Are the legal requirements in this area adequate to contend with projected developments in tanker size and port facilities?

12. What are the national security implications of each of the eight deep water port strategies set forth in section B–1 with respect to:

(a) the security of imported fuel supplies?
(b) the need for additional outlays or new programs by the Department of Defense, Coast Guard or other Federal agencies to insure the safety of tankers and port or terminal facilities?

FOOTNOTES

[1] In addition, the NPC foresees the need to import natural gas increasing from 1 trillion cubic feet in 1970 to 6 trillion in 1985. Some of this will be imported in tankers as LNG. (National Petroleum Council, *U.S. Energy Outlook: An Initial Appraisal, 1971–1985.* Volume 2. Washington, November, 1971.)

[2] Address of Joseph C. Swidler at the Second Annual Meeting, Division of Production, American Petroleum Institute, Houston, Texas, March 8, 1972.

[3] This figure includes an allowance for a daily 2 million barrels from the North Slope and .3 million barrels from Cook Inet.

[4] Neither is it clear how the safety and environmental risks of tanker operations compare, per barrel, with those of offshore oil drilling and production. This comparison may be important for Outer Continental Shelf policy as well as for supertanker and deep water port policy.

NOTICE OF HEARINGS

Mr. CRANSTON. Mr. President, I announce for the information of Senators that the Special Subcommittee on Human Resources of the Senate Labor and Public Welfare Committee will hold hearings on the administration's request for increased authorizations for title X, Public Health Service Act grants and contracts for family planning services, on Monday, April 17 at 9:30 a.m. in room 5320, New Senate Office Building.

The hearings will cover the extent of the need for additional Federal support of programs to provide adequate family planning services to all those who wish to receive them. I also plan to discuss the adequacy of the level of Federal support for population research programs which I feel are vitally important and relevant to the success of family planning programs.

Among those testifying will be—from the Department of Health, Education, and Welfare—Dr. Merlin K. Duval, Assistant Secretary for Health and Scientific Affairs, Dr. Louis Hellman, Deputy Assistant Secretary for Population Affairs, and Dr. John Zapp, Deputy Assistant Secretary for Legislation—Health; Dr. Alan F. Guttmacher, president, Planned Parenthood/World Population, and Frederick S. Jaffe, director, Center for Family Planning Program Development; Mr. John B. Wells, executive director, Family Planning Coordinating Council, Chicago, Ill.; and Mr. Willie T. Hancock, Jr., Planned Parenthood League of Toledo; Mrs. Deborah Oakley, MPH, of the Center for Population Planning, University of Michigan; and Miss Bickley S. Dodge, associate political director, Zero Population Growth.

OVERSIGHT HEARINGS ON THE ADMINISTRATION OF THE OUTER CONTINENTAL SHELF LANDS ACT ON TUESDAY, APRIL 18, 1972

Mr. JACKSON. On March 8, the Committee on Interior and Insular Affairs announced oversight hearings on the administration of the Outer Continental Shelf Lands Act and the Nation's ocean resource policies. Subsequently, testimony was received from Federal witnesses on March 23 and 24 and from industry representatives on April 11.

On Tuesday, April 18, additional testimony is scheduled from representatives of State and local governments and environmental organizations. The hearing will convene at 9:30 a.m. in room 3110 of the New Senate Office Building, and is being held pursuant to the National Fuels and Energy Study authorized by Senate Resolution 45. Scheduled witnesses includes:

Hon. ALAN CRANSTON, U.S. Senator from California.

Hon. Kenneth M. Curtis, Governor of Maine, National Governor's Conference.

Dr. Lyle S. St. Amant, assistant director, Louisiana Wild Life and Fisheries Commission.

SANTA BARBARA PANEL

Supervisor George Clyde, County of Santa Barbara.

Robert C. Sharp, member, Environmental Quality Advisory Board, City of Santa Barbara.

Lois S. Sidenberg, president, Get Oil Out! Inc.

SIERRA CLUB PANEL

Dr. Donald Comb, chairman, Ocean Studies Committee, New England Chapter.

Dr. Carleton Detar, member, Ocean Studies Committee, New England Chapter.

Dr. Kalon Kelley, chairman, Oil Subcommittee, Los Padres Chapter, California.

ADDITIONAL STATEMENTS

THE NEED FOR ACCELERATED APPROPRIATIONS PROCESS

Mr. ELLENDER. Mr. President, on December 15, 1971, I spoke briefly on the Senate floor to express my hope that we would be able to get the appropriations process back on a reasonable legislative schedule. Some progress was made last year in this regard. A better record should be made this year.

As I pointed out in the past, agreement on the need for improvement has been reached with the leadership on both sides of the aisle in the Senate and the House of Representatives. Personally, as chairman of the Senate Committee on Appropriations, I have done everything possible to work with all Members with responsibilities for the scheduling of appropriations bills. We have already met with some success, and I am hopeful that the weeks ahead will see some benefits from the efforts made.

I think this to be a very important subject and one worthy of attention by Congress and the executive branch. Over the last 20 years, it seems that a trend or pattern of procedure gradually developed whereby long delays in the approval of appropriation acts become the accepted order of the day. The pattern was marked by an increasing number of appropriation acts which, in each session of Congress, were not approved at the beginning of the fiscal year. The trend became more pronounced during the 1960's. Many Federal agencies have been forced to operate on continuing resolutions for long periods of time during each fiscal year of the last 10 or 12.

There is no question that this procedure is not in the interest of good government under our present system of financing. There can be little doubt that the question marks raised by long and unpredictable delays in the appropriations process are answered by considerable waste and inefficiency in the Government's operation.

In January of this year, I made an effort to obtain firm estimates as to the savings that would result if we were successful in returning the appropriations process to a reasonable schedule. I am certain that if all bills could be enacted by the start of each fiscal year, considerable economies in both dollar expenditures and manpower efficiency would result.

It was my thought that somewhere in the vast expanses of our Government such figures must be available. Accordingly, I directed letters to the Director of the Office of Management and Budget, George P. Shultz, and to the Director of the Congressional Research Service.

Unfortunately, it appears that meaningful estimates are not available at this time, although all are in agreement that considerable savings to the Government would be forthcoming.

This situation reminds me of a story once told about Franklin D. Roosevelt. On one occasion during his Presidency, he was working on a draft of some after-dinner remarks that he was soon scheduled to deliver. In one paragraph he desired to tie down his opinions with a figure, which we are all prone to do occasionally. His staff sent out his request for the appropriate figure, and word was returned from his statistician that it would take at least 6 months to arrive at any accurate numbers.

President Roosevelt said:

In that case, let us use this estimate.

And he wrote down a figure on the draft of his speech.

It sounds reasonable, it reinforces my point, and it will take my critics at least six months to prove me wrong.

Be that as it may, Mr. President, Director Shultz responded to my inquiry as follows:

The delays in enactment of appropriations in recent years have weakened management efficiency in the Government, not only in Washington, but even more so in the field. The uncertainties of day-to-day operation, during the period from July 1 until enactment of appropriations, also make it difficult for agencies to benefit from the advantages of longer range planning and program execution. Whether the program involves production of weapons systems, construction of a dam, or the development of plans for a Head Start program, appropriation delays hamper orderly planning and work scheduling. Activity cannot proceed at an even pace, often slowing while awaiting the firm distribution of funds and proceeding too hastily after appropriations become available. Often, too, the uncertainty results in delays which raise costs.

Mr. President, I ask unanimous consent that the letter to me from Director Shultz be printed in the RECORD at the conclusion of my remarks.

In a memorandum to me headed "Unavailability of Estimated Cost Resulting From the Enactment of Appropriations After the Beginning of the Fiscal Year," the Economics Division of the Library of Congress replied in much the same vein. Considerable references were provided from knowledgeable spokesmen both in and out of Government as to the problems, waste, and inefficiencies that delays in the approval of appropriations bills caused executive agencies and the people of the Nation we are supposedly attempting to help.

I have occasionally heard it said that the increasing use of continuing resolutions actually works to save Government expenditures. That argument has merit only if we assume that the programs being funded are without merit in the first place and hence should be dispensed with, or if we forget the important place that inflation has come to occupy in all Government-funded programs.

Mr. President, I ask unanimous consent that the memorandum supplied to me by the Congressional Research Service, Economics Division—marked exhibit I—be included at the conclusion of my remarks after the letter from Director Shultz. I have taken the liberty of making minor changes in the document in the interest of clarity.

I desire to draw special attention to exhibit I, for it contains a table listing the number of days delay for the approval of each appropriation bill for each year since calendar year 1963, or fiscal year 1964. For instance, in 1963, we see that the bill providing funds for the Department of Agriculture was finally approved on December 30, or 183 days after the beginning of the fiscal year. The average number of days delay for the agriculture bill from 1963 through 1971, is 107 days per year.

The defense bill averages 122 days late; foreign assistance—165. I could go on throughout this list, but I think the point is made. I believe this table will be of interest to all those concerned with reforming the appropriations process, as I am.

There was a second thrust to my remarks delivered on this subject on December 15 of last year. At that time, I pointed out that one of the largest roadblocks to speedy handling of appropriations bills is the annual delay in congressional approval of the necessary authorizing legislation. I suggested that a reasonable course of action might be to push for the approval of all of the regular appropriations bills and include in them funds only for which there was existing authorization. Funds for programs which would be authorized later in the year could be obtained in an omnibus supplemental which could be scheduled at the leisure of the appropriations committees and the congressional leadership.

In that regard. I have been supplied with a table which lists the authorizing legislation required prior to appropriations, and the money bills which were enacted after the authorizing legislation had been approved. I ask unanimous consent that this table, exhibit II, be printed at the conclusion of my remarks.

Exhibit II establishes the correlation between late enactment of authorization appropriation measures. The period covered is from the 90th Congress, second session to the 92d Congress, first session; in other words, the last 4 years.

For instance, for the 90th Congress, second session, nine of the 10 appropriations acts that required prior authorizing legislation were approved within 15 days of the authorization approval. All 10 of these appropriation acts were approved within 30 days of final approval for the related authorizing bills.

For the 91st Congress, first session, two of the nine appropriations bills that required authorizing legislation were approved within 15 days of the authorization bill. Two more of the money bills were approved within 30 days of enactment of the authorizing legislation into law.

To sum up, for the four sessions of Congress which we looked at, there was a total of 40 appropriation bills that required prior authorizing legislation. Twenty of them, exactly half, were approved within 15 days after approval of the authorizations which were bringing about delay.

Mr. President, I am hopeful that these remarks on my part will serve to reinforce the congressional interest which has already been evidenced in this regard. I, myself, am convinced that by this one change in congressional procedure, we can do more to promote rationality and efficiency in our Gov-

ernment than could be accomplished by the expenditures of millions of dollars for study programs and reorganizations.

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

OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., March 14, 1972.

Hon. ALLEN J. ELLENDER,
U.S. Senate,
Washington, D.C.

DEAR SENATOR ELLENDER: This responds to your letter of February 29 which asked for written confirmation of conversations between our staffs concerning savings which might result from earlier enactment of appropriations bills.

We are most appreciative of your announcement that you will seek to obtain enactment of all regular appropriation bills by July 1 of this year. Your remarks in the December 15, 1971, Congressional Record are entirely to the point.

The delays in enactment of appropriations in recent years have weakened management efficiency in the Government, not only in Washington, but even more so in the field. The uncertainties of day-to-day operation, during the period from July 1 until enactment of appropriations, also make it difficult for agencies to benefit from the advantages of longer-range planning and program execution. Whether the program involves production of weapons systems, construction of a dam, or the development of plans for a Head Start program, appropriation delays hamper orderly planning and work scheduling. Activity cannot proceed at an even pace, often slowing while awaiting the firm distribution of funds and proceeding too hastily after appropriations become available. Often, too, the uncertainty results in delays which raise costs.

There is also reason to believe that the delay in appropriations has cost the Government the loss of some of the more promising applicants for Government service who are available shortly after the school year ends, but who are not available by the time appropriation acts have been enacted.

While it is clear that early enactment of appropriations will result in dollar savings, we are unable to develop estimates of those savings. There is no basis for quantifying the effects of inefficiency. It is also generally not possible to distinguish between those increased costs of Government purchases caused by appropriation delays and those caused by other factors.

We strongly support your efforts in the knowledge that Government will be improved and that savings will occur; we regret that it is not possible to provide estimates of those savings.

Sincerely,

GEORGE P. SHULTZ,
Director.

EXHIBIT 1

THE LIBRARY OF CONGRESS,
CONGRESSIONAL RESEARCH SERVICE,
Washington, D.C., March 31, 1972.

To: The Honorable ALLEN J. ELLENDER.
From: Economics Division.
Subject: Unavailability of estimated cost resulting from the enactment of appropriations after the beginning of the fiscal year.

During the post World War II period a trend or general pattern has developed whereby an increasing number of appropriation acts annually are not approved by the beginning of the fiscal year. This trend has been intensified during the 1960's and 1970's. Thus many Federal agencies have been operating on continuing resolutions for significant portions of the fiscal years during the last decade.

There have been some arguments to the effect that continuing resolutions act to save the government money or at least reduce the amount of government expenditures for a specific year. Evidently, the premises on which this contention is based are:

(1) The Federal budget expenditure level generally increases annually. The budget requests usually are for a higher level than for the previous year and even though Congress may cut or trim the amount requested in the budget the final amount approved by Congress in most cases is more than the amount approved for the prior year. Therefore, the longer the agencies are required to operate at a level at or below the amount of the previous year the lower will be the total outlays for the current year.

(2) There exists a significant lag time between the granting of appropriations and the letting of contracts which delays the disbursement of funds for the expenditure due when the contracted goods or services are delivered. This is especialy true in the case of newly authorized programs. Therefore, the longer the authorization or appropriation of funds can be delayed the greater will be the reduction in expenditures for the current period. It would seem that this contention is based on an underlying assumption that the program is not needed, because delay in programs usually lead to greater costs as a result of the pattern of rising prices that has persisted since the beginning of World War II.

Contrary to the above argument, numerous persons contend that enactment of appropriations after the beginning of the fiscal year leads to waste and inefficiency in the operations of governmental agencies. Cited below are some typical complaints about the inefficiencies in government operations resulting from late enactment of appropriations.

"With delays in congressional action, State and local governments are kept in doubt about the actual availability of Federal funds until their own fiscal years have expired. School districts, for example, have completed their school terms before the Federal money is made available. Dollars distributed in this fashion hardly can be used with optimum efficiency for the purpose intended by Congress.[1]

"Delayed budget decisions have a stultifying impact on administrative operations. As the fiscal year 1970 began, no Federal department or agency knew what its appropriations—or even its authorizations—would be. Resolutions were passed permitting existing programs to continue at prior levels. This arrangement has two effects, both regrettable. Obsolete programs and others that should be cut back are extended, which is wasteful. New activities urgently needed cannot be undertaken until funding is assured.

"Resulting disruption and indecision are even more pronounced in their effects on State and local governments, which rely more and more heavily upon Federal aids. Capabilities to provide essential public services are impaired as State and local officials wait for Congress to act. The dilemma is worsened because most States and local units use the same fiscal year as the Federal Government. They adopt appropriations and set their tax rates before that fiscal year begins, as prudence would dictate. But Federal grants needed for partial support of almost every function remain unsettled for many months.

"As delays mount, the morale of conscientious officials at every level weakens.[2]

"I am quite confident I represent my fellow associates in the National Association of State Budget Officers accurately, when I say that it is this appropriation lag problem which is most distressing to any refined and responsible budgetary, decisionmaking process in the State capitols. There is no small amount of irony in the fact that the Federal Government, through the HUD 701 program, and various grant planning requirements has been the single major force in bringing sophisticated, effective financial planning processes to the State scene during the past 5 to 10 years. Yet, it is the same Federal Government that is frustrating that entire development by the appropriation lag problem.

* * * * *

"(3) A general condition which affects many program areas of our university is the short notice which many Federal agencies impose in their announcements of eligibility of Federal project funds—again directly related to the congressional appropriation lag. In many instances, a Federal agency can give no more than 3 to 4 weeks notice that applications for a complicated project are being accepted. This means that the university must scramble to develop a proposal which, when submitted, cannot do justice to the project or the university.

"(4) Yet another example of administrative difficulties occurred with the Development Disabilities Act, Public Law 91–517. This legislation was enacted in October of 1970 and authorized funds for fiscal years 1971–73. Appropriations for the 1971 fiscal year were not made, however, until January of 1971, halfway through the fiscal year. It was required that these funds be obligated prior to June 30, 1971. The Federal deadline for the first State plan was set for April 15, 1971, but guidelines for the plan were not even received by the States until April 22, 1971. The time pressure for the initial year of the program allowed the States slightly over 2 months to develop a State plan, develop applications, carry out necessary reviews and obligate funds.[3]

"The following points are illustrative of people problems:

"(1) The lag and uncertainty in appropriations for educational and research programs has a particularly unsettling impact on our university's graduate students. University programs require that a State contract be granted to teaching research fellows before the school year begins in September. Appropriations and Federal agency funding delays often preclude both the university staff and the student from effectively planning course work and research. The university is reluctant to guarantee a fellowship or teaching assistantship until it is reasonably assured of its allocated Federal aid. The student is mired in uncertainty as well.

"(2) The State-Federal cooperative program for rubella vaccination became a victim of late appropriations. The rubella program was designed to vaccinate an estimated 70 percent of the State's schoolchildren before the beginning of summer vacation in 1970. A highly efficient vaccine distribution and innoculation program had been organized with cooperating private and public health authorities, and the local school districts. The final budget approval for 1970 was not received until March 17, 1970. The few remaining school months and the need to completely reschedule many logistical requirements allowed only 30 percent of the children to be vaccinated before summer. The result was delayed immunization and an increased program cost which had to be absorbed by State and local government.[4]

"The present system leads to waste and inefficiency.

* * * * *

"If the Federal Government is to get an efficient program out of its expenditures under the Federal education grants, some kind of firm long-range commitment of grant funds must be made. A whole year in advance is required in order for year-to-year planning to fit into the budget cycle of school systems and 3 to 5 years is required for longer range planning.

Footnotes at end of article.

"We have all heard rumors of closets full of materials and equipment purchased with Federal funds in an end-of-the-year flurry to spend funds before they are lost. We have all heard of instances of failures of compensatory programs supported with Federal funds. Logically we should expect that hastily planned and staffed programs would have a high degree of failure.

"Chairman BROOKS. This is particulary well stated. I would say the same degree of failure, the same low yield, the same waste of money and effort, is true in every Government agency that received Federal money which had been delayed too long to properly plan its use.[5]

"I was in West Virginia last fall when funds were held up. Teachers were complaining about how at the end of the last year the superintendents had urged them to submit lists of equipment and books and materials that they could buy so that the money could be spent before it was lost. They lamented the fact that these materials were not available throughout the year and students who passed through the year missed that opportunity.

"They also felt a lack of continuity from year to year because they as teachers might not be staffing that classroom next fall. Materials ordered might not fit the program which was planned during the summer, so there is a high percentage of waste. Teachers are beginning to become very impatient, because you cannot really plan a Federal program.[6]

"ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965

"In 1965 the Congress enacted a major new program to aid education for the culturally and economically deprived children of school age. After years of debate spanning the administration of Abraham Lincoln to Lyndon Johnson, the Congress formulated a program of aid to education which was able to marshall support of a majority of the Congress. The bill was enacted on April 11, 1965. It was made effective July 1, 1965. Appropriations were included in an appropriations bill which was signed into law on September 23, 1965. Regulation policies and procedures were promulgated over the next several months. Final allocation of funds distributing the appropriation among counties did not occur until February 1966. In order to avail themselves of these funds, a school district had to design projects to serve the educational needs of deprived youngsters not as substitutive for existing funds but as additional activities. The State had to review and approve each individual project. Funds not obligated by a school district by June 30, 1966, were lost and reverted to the Treasury. The first year appropriation amounted to $1,057 million. The amount actually used was $958 million with the remainder lapsing.

"An evaluation of how the funds were used made by the Education and Labor Committee, was very critical of the excessive amounts that went for construction, alteration and equipment and for marginal activities of school districts. People in some areas of the country were especially critical of school boards and school administrators that failed to take advantage of and use all of the funds to which they were entitled, resulting in $100 million of funds reverting to the Treasury.

"This problem is more acute and far reaching than the extravagant and ill-considered expenditures of the first year of a program. It tended to set a pattern which would long affect the program. Low priority programs initiated in the first year have a tendency to be a first mortgage on subsequent year funds. The apparent laxity of Federal standards establish a pattern of questionable expenditure planning that tends to be perpetuated.[7]

"The late enactment of appropriations is greatly disruptive of programing and management processes. Both in the field and in Washington, managers are left in doubt as to their funds for the year and the steps they can take within available resources to meet the program requirements that materialize. It is difficult, also, to manage expenditures and net lending for the Government as a whole, in relation to receipts, when there is uncertainty for such a long time at the start of each year as to the budget authority being granted by the Congress. I might interpolate, Mr. Chairman, as the number and volume of grant programs to the States increases, I think this problem that I have described very briefly here is transmitted, passed along to the States and they, in turn, have difficulty in planning and in managing their finances because of the lag in appropriation action."[8]

These eight selected examples, contending that late enactment of appropriations generate inefficiencies in governmental operations, are only indicative of innumerable examples to be found in congressional and periodical literature of the past two decades. Unfortunately, we do not know of any discussions or examples of waste or inefficiencies resulting from late appropriation enactment that attempt to measure or stipulate the costs or losses from inefficiencies in any specific terms or dollar amounts.

The question of estimating general costs or waste to the government due to late enactment of appropriations has been discussed with several persons knowledgeable in the field of Federal budgetary processes and governmental finances. Among the persons with whom this question was discussed was Charles L. Schultze, Senior Fellow at the Brookings Institution, and former Director of the U.S. Bureau of the Budget. All of the persons with whom this question was discussed agreed that due to the multiplicity and almost unlimited number of variables involved, and further the lack of specific cost data assignable to these variables and the changes experienced from one year to another, make it impossible to derive any meaningful estimate of costs involved.

There are hundreds of Federal programs that require appropriations each year. The delay in enacting appropriations for these specific programs vary significantly from year to year. Attached is a tabulation which shows the elapsed time after the beginning of the fiscal year for all regular appropriation acts for fiscal years 1964 through 1972. From this tabulation it may be noted that the total number of elapsed days after the beginning of the fiscal year for the combined appropriation acts ranged from 685 for fiscal year 1965 to 2,162 for fiscal year 1970; the annual average for the nine years was 1,278. Furthermore, the number of elapsed days for specific appropriation acts vary significantly from one year to another; the following are some examples of the range for selected appropriation acts:

Agriculture and related agencies ranged from 39 days for fiscal year 1969 to 183 days for fiscal year 1964.

Department of Defense ranged from 50 days for fiscal year 1965 to 185 days for fiscal year 1971.

Foreign assistance and related agencies ranged from 99 days for fiscal year 1965 to 252 days for fiscal year 1972.

Department of Interior and related agencies ranged from zero days for fiscal years 1966, 1967, and 1968 to 121 days for fiscal year 1970.

Labor and H.E.W. and related agencies ranged from 41 days for fiscal year 1972 to 210 days for fiscal year 1970.

Not only does the number of days of elapsed time after beginning of fiscal year until date of appropriation enactment vary substantially for the same appropriation act each year, but also the mixture of programs and functions included in any specific appropriation measure will change to some degree from year to year. The more any appropriation measure includes obligational authority that requires a longer lead time for planning, coordinating, and allocating or apportioning among agencies or bureaus, etc., within Federal Departments or assignment to State and local agencies the greater is the likelihood for waste or inefficiencies. The planning and related functions are rushed to try to make up for the time lost due to late enactment of appropriations. Whether or not appropriation acts authorize funds for one year, multi-year, or until expended, etc., probably will affect the degree of evaluation and review of proposed uses and letting of contracts.

Outlined above are a few factors that influence the efficiency of obligating Federal funds where time pressure is a significant element in the consideration. There are numerous persons in and out of government at all levels who contend that late enactment of appropriations reduce the efficiency of government operations and thus result in a waste of funds. However, the innumerable ramifications related to the total number of Federal programs and the changing nature of these variables from year to year render it impossible to attempt to allocate or assign any meaningful overall estimate of waste or costs of inefficiencies resulting from late enactment of appropriations.

Attached as enclosure 1 is a copy of a tabulation, mentioned earlier, which shows the approval dates and number of elapsed days after beginning of the fiscal year for all regular appropriation acts for fiscal years 1964 through 1972.

GEORGE K. BRITE,
Economist in Fiscal and Financial Economics.

FOOTNOTES

[1] U.S. Congress. Joint Committee on Congressional Operations. The Federal fiscal year as it relates to the congressional budget process. Hearings, 92d Congress, 1st session. June 14, 16, 17, and 21, 1971. Washington, U.S. Government Printing Office, 1971. 330 p. (p. 50, Representative Frank Horton quoting from a statement by Senator Warren G. Magnuson on May 14, 1971, accompanying the introduction of his bill, S. 1875—to change the U.S. Government fiscal year).

[2] Ibid. (pp. 59–60. Wayne E. Thompson, Chairman, Committee for Improvement of Management in Government of the Committee for Economic Development, quoting from their report, "Making Congress More Effective".

[3] Ibid. (pp. 78–79. Statement of Wayne F. McGown, Immediate Past-President of the National Association of State Budget Officers.)

[4] Ibid. (p. 80. Statement of Wayne F. McGown, Immediate Past-President of the National Association of State Budget Officers.)

[5] Ibid. (pp. 83–84. Statement of Helen P. Bain, President, National Education Association.)

[6] Ibid. (p. 85. Statement of Helen P. Bain, President, National Education Association.)

[7] Ibid. (pp. 112–113. Statement of James F. Kelly, Vice President for Administrative Affairs, Georgetown University.)

[8] Ibid. (p. 106. Statement of Phillip S. Hughes, Deputy Director, Bureau of the Budget, accompanied by Carl W. Tiller, Special Advisor of Budgetary Development, Bureau of the Budget, October 23, 1969, before Special Subcommittee of House Rules Committee.)

THE LIBRARY OF CONGRESS—CONGRESSIONAL RESEARCH SERVICE

[Approval dates and number of elapsed days after beginning of fiscal year for all regular appropriation acts, fiscal years 1964–72]

Titles of appropriation act[1]	Fiscal year— 1964 1963[2]	1965 1964[2]	1966 1965[2]	1967 1966[2]	1968 1967[2]	1969 1968[2]	1970 1969[2]	1971 1970[2]	1972 1971[2]	Total number of elapsed days between start of fiscal year and appropriations: Total	Average per year
Agriculture, environmental and consumer protection programs:											
Date of approval	Dec. 30	Sept. 2	Nov. 2	Sept. 7	Oct. 24	Aug. 3	Nov. 26	Nov. 22	Aug. 10		
Number of days elapsed beyond beginning of fiscal year.	183	64	125	69	116	39	149	175	41	961	107
Department of Defense:											
Date of approval	Oct. 17	Aug. 19	Sept. 29	Oct. 15	Sept. 29	Oct. 17	Dec. 29	Jan. 1, 1971	Dec. 18		
Number of days elapsed beyond beginning of fiscal year.	109	50	91	107	91	109	182	185	171	1,095	122
District of Columbia:											
Date of approval	Dec. 30	Aug. 22	July 16	Nov. 2	Nov. 13	Aug. 10	Dec. 24	July 16	Dec. 18		
Number of days elapsed beyond beginning of fiscal year.	183	53	16	125	136	41	177	16	171	918	102
Office of Education:											
Date of approval	([3])	([3])	([3])	([3])	([3])	([3])	([3])	Aug. 18	July 9		
Number of days elapsed beyond beginning of fiscal year.								49	9	58	29
Foreign assistance and related agencies:											
Date of approval	Jan. 1, 1964	Oct. 7	Oct. 20	Oct. 15	Feb. 2, 1968	Oct. 17	Feb. 1, 1970	Dec. 31	Mar. 8, 1972		
Number of days elapsed beyond beginning of fiscal year.	190	99	112	107	217	109	216	184	252	1,486	165
Independent offices and Department of Housing and Urban Development:											
Date of approval	Dec. 19	Aug. 30	Aug. 16	Sept. 6	Nov. 3	Oct. 4	Nov. 26	Dec. 17	Aug. 10		
Number of days elapsed beyond beginning of fiscal year.	172	61	47	68	126	96	149	170	41	930	103
Department of Interior and related agencies:											
Date of approval	July 26	July 7	June 28	May 31	June 24	July 26	Oct. 29	July 31	Aug. 10		
Number of days elapsed beyond beginning of fiscal year.	26	7	(*)	(*)	(*)	26	121	31	41	252	28
Labor and Health, Education, and Welfare and related agencies:											
Date of approval	Oct. 11	Sept. 19	Aug. 31	Nov. 7	Nov. 8	Oct. 11	Jan. 26, 1970	Jan. 11, 1971	Aug 10		
Number of days elapsed beyond beginning of fiscal year.	103	81	62	130	131	103	210	195	41	1,056	117
Legislative Branch:											
Date of approval	Dec. 30	Aug. 20	July 27	Aug. 27	July 28	July 23	Dec. 12	Aug. 18	July 9		
Number of days elapsed beyond beginning of fiscal year.	183	51	27	58	28	23	165	49	9	593	66
Military Construction:											
Date of approval	Dec. 21	Sept. 2	Sept. 25	Nov. 2	Dec. 8	Sept. 26	Dec. 29	Dec. 11	Nov. 18		
Number of days elapsed beyond beginning of fiscal year.	174	64	87	125	161	88	182	164	141	1,186	132
Public Works and Atomic Energy Commission:											
Date of approval	Dec. 31	Aug. 30	Oct. 28	Oct. 15	Nov. 20	Aug. 12	Dec. 11	Oct. 7	Oct. 5		
Number of days elapsed beyond beginning of fiscal year.	184	61	120	107	143	43	164	99	97	1,018	113
Departments of State, Justice, Commerce, the Judiciary, and related agencies:											
Date of approval	Dec. 30	Aug. 31	Sept. 2	Nov. 8	Nov. 8	Aug. 9	Dec. 24	Oct. 21	Aug. 10		
Number of days elapsed beyond beginning of fiscal year.	183	62	64	131	131	40	177	113	41	942	105
Department of Transportation and related agencies:											
Date of approval	([4])	([4])	([4])	([4])	Oct. 23	Aug. 8	Dec. 26	Mar. 30, 1971	Aug. 10		
Number of days elapsed beyond beginning of fiscal year.					115	39	179	273	41	647	129
Treasury, Postal Service, and Executive Office of the President:											
Date of approval	June 13	Aug. 1	June 30	June 29	July 7	June 9	Sept. 29	Sept. 26	July 9		
Number of days elapsed beyond beginning of fiscal year.	(*)	32	(*)	(*)	7	(*)	91	88	9	227	25
National Aeronautics and Space Administration:											
Date of approval	([5])	([5])	([5])	([5])	Nov. 8	([5])	([5])	([5])	([5])		
Number of days elapsed beyond beginning of fiscal year.					131					131	131
Number of regular appropriation acts	12	12	12	12	14	13	13	14	14		
Number of acts approved prior to July	1	0	2	2	1	1	0	0	0		
Total number of days elapsed between start of fiscal year and approval of appropriation acts.	1,690	685	751	1,027	1,533	756	2,162	1,791	1,105	11,500	1,278

[1] The titles of the appropriation acts are listed on the basis of fiscal year 1972 breakdown. Through the years there have been changes in some of the agencies and activities included in specific appropriation acts.

[2] The years listed at the head of the columns represent the calendar years applicable to the approval date of the specific acts.

[3] Prior to fiscal year 1971, appropriations for the Office of Education were included in the Labor-Health, Education, and Welfare Appropriation Act.

[4] Prior to establishment of the Department of Transportation, appropriations for various activities of this Department were distributed among several appropriations acts, i.e., Coast Guard in the Treasury Act, Highways in Commerce Act, and Federal Aviation Administration in Independent Offices, etc.

[5] Appropriations for the National Aeronautics and Space Administration were provided in a separate act for fiscal year 1968. NASA appropriations generally are included in the Independent Offices and Department of Housing and Urban Development Appropriations Act.

Source: U.S. Statutes at Large.

EXHIBIT II

LIST OF AUTHORIZING LEGISLATION REQUIRED PRIOR TO ENACTMENT OF APPROPRIATIONS, AND APPROPRIATIONS ACTS BY SESSION OF CONGRESS
90TH CONG., 2D SESS. TO 92D CONG., 1ST SESS.

90TH CONG., 2D SESS.

ACTIVITIES OR PROGRAMS	Bill No.	Date passed [1] House	Date passed [1] Senate	Date conference report agreed to [1] House	Date conference report agreed to [1] Senate	Public Law Number	Public Law Date approved [1]
Funds appropriated to the President:							
Foreign Military and Economic Assistance:**							
Authorization Act	H.R. 15263	July 18	July 31	Sept. 19	Sept. 19	90-554	Oct. 8.
Appropriation Act	H.R. 19908	Sept. 19	Oct. 4	Oct. 10	Oct. 11	90-581	Oct. 17.
Peace Corps:**							
Authorization Act	S. 2914	June 13	April 30		June 17 [2]	90-362	June 27.
Appropriation Act	H.R. 19908	Sept. 19	Oct. 4	Oct. 10	Oct. 11	90-581	Oct. 17.
Department of Agriculture:							
Title II, Public Law 480, Foreign Assistance:							
Authorization Act	S. 2986	May 14	April 3	July 12	July 15	90-436	July 29.
Appropriation Act	H.R. 16913	May 1	May 29	July 26	July 26	90-463	Aug. 8.
Department of Commerce:							
International Activities:							
Authorization Act	H.R. 18340	July 15	July 20			90-434	July 27.
Appropriation Act	H.R. 17522	May 28	July 29	Aug. 1	Aug. 1	90-470	Aug. 9.
Office of State Technical Services:							
Authorization Act	S. 3245	July 12	June 13		July 17 [2]	90-422	July 24.
Appropriation Act	H.R. 17522	May 28	July 29	Aug. 1	Aug. 1	90-470	Aug. 9.
Maritime Administration:**							
Authorization Act	H.R. 15189	Apr. 15	June 11	July 26	July 25	90-471	Aug. 9.
Appropriation Act	H.R. 17522	May 28	July 29	Aug. 1	Aug. 1	90-470	Aug. 9.
Department of Defense:							
Procurement, Research & Development, etc.:**							
Authorization Act	S. 3293	July 11	Apr. 19	Sept. 10	Sept. 11	90-500	Sept. 20.
Appropriation Act	H.R. 18707	Sept. 12	Oct. 3	Oct. 11	Oct. 11	90-580	Oct. 17.
Military Construction:**							
Authorization Act	H.R. 16703	Apr. 25	June 25	July 11	July 11	90-408	July 21.
Appropriation Act	H.R. 18785	July 29	Aug. 1	Sept. 18	Sept. 18	90-513	Sept. 26.
Civil defense:							
Authorization Act	H.R. 15004	Mar. 18	May 29			90-336	June 10.
Appropriation Act	H.R. 17023	May 8	July 18	Sept. 19	Sept. 25	90-550	Oct. 4.
Department of Health, Education, and Welfare:							
Office of Education:							
Higher Education Amendments of 1968:							
Authorization Act [3]	S. 3769	July 25	July 15	Sept. 26	Oct. 1	90-575	Oct. 16.
Appropriation Act	H.R. 18037	June 26	Sept. 6	Oct. 10	Oct. 9	90-557	Oct. 11.
Extending programs for assistance to students in institutions of higher learning:							
Authorization Act	H.R. 16729	May 9	July 30	July 31 [4]		90-460	Aug. 3.
Appropriation Act	H.R. 18037	June 26	Sept. 6	Oct. 10	Oct. 9	90-557	Oct. 11.
Public Health Service:							
Regional medical programs, NIMH, and community health services:							
Authorization Act [3]	H.R. 15758	July 12	July 27	Oct. 1	Sept. 27	90-574	Oct. 15.
Appropriation Act	H.R. 18037	June 26	Sept. 6	Oct. 10	Oct. 9	90-557	Oct. 11.
Social and rehabilitation service:							
Vocational rehabilitation amendments of 1968:							
Authorization Act	H.R. 16819	May 6	June 24	June 25 [4]		90-391	July 7.
Appropriation Act	H.R. 18037	June 26	Sept. 6	Oct. 10	Oct. 9	90-557	Oct. 11.
Department of Housing and Urban Development:							
Urban Related Programs:							
Authorization Act	S. 3497	July 10	May 28	July 26	July 25	90-448	Aug. 1.
Appropriation Act	H.R. 17023	May 8	July 18	Sept. 19	Sept. 25	90-550	Oct. 4.
Department of the Interior:							
Bureau of Reclamation:							
Missouri River Basin:							
Authorization Act	S. 3033	May 13	Mar. 26			90-315	May 24.
Appropriation Act	H.R. 17903	June 19	July 20	July 26	July 30	90-479	Aug. 12.
Office of Saline Water:							
Water Conversion:**							
Authorization Act	S. 2912	Apr. 4	Mar. 11		Apr. 11 [2]	90-297	Apr. 29.
Appropriation Act	H.R. 17354	May 21	June 26	July 11	June 11	90-425	July 26.
Department of Transportation:							
Coast Guard (acquisition, construction and improvements):**							
Authorization Act	H.R. 15224	Mar. 19	May 27			90-334	June 8.
Appropriation Act	H.R. 18188	July 3	July 23	Aug. 1	Aug. 1	90-464	Aug. 8.
Federal Railroad Administration, High Speed Ground Transportation Research and Development:							
Authorization Act	H.R. 16024	July 12	July 19			90-423	July 24.
Appropriation Act	H.R. 18188	July 3	July 23	Aug. 1	Aug. 1	90-464	Aug. 8.
Atomic Energy Commission:**							
Operations and plant and capitol equipment:							
Authorization Act	H.R. 16324	Apr. 4	Apr. 8			90-289	Apr. 19.
Appropriation Act	H.R. 17903	June 19	July 20	July 26	July 30	90.479	Aug. 12.
National Aeronautics and Space Administration:**							
Research, construction and administration:							
Authorization Act	H.R. 15865	May 2	June 10	June 18 [4]		90-373	July 3.
Appropriation Act	H.R. 17023	May 8	July 18	Sept. 19	Sept. 25	90-550	Oct. 4.
Arms Control and Disarmament Agency:							
Authorization Act	H.R. 14940	Mar. 6	Apr. 22	May 9	May 10	90-314	May 23.
Appropriation Act	H.R. 17522	May 28	July 29	Aug. 1	Aug. 1	90-470	Aug. 9.
National Foundation on the Arts and the Humanities:							
Authorization Act	H.R. 11308	Feb. 27	May 7	June 5	May 29	90-348	June 18.
Appropriation Act	H.R. 17354	May 21	June 26	July 11	July 11	90-425	July 26.
Renegotiation Board:							
Authorization Act [5]	H.R. 17324	May 27	Sept. 11	Oct. 10	Oct. 7	90-634	Oct. 24.
Appropriation Act	H.R. 17023	May 8	July 18	Sept. 19	Sept. 25	90-550	Oct. 4.
Atlantic-Pacific Interoceanic Canal Study Commission:							
Authorization Act	H.R. 15190	Apr. 30	May 14	June 12	June 11	90-359	June 22.
Appropriation Act	H.R. 17903	June 19	July 20	July 26	July 30	90-479	Aug. 12.
Water Resources Planning Act:							
Authorization Act [6]	S. 3058	Sept. 16	June 18		Sept. 19 [2]	90-547	Oct. 2.
Appropriation Act	H.R. 17903	June 19	July 20	July 26	July 30	90-479	Aug. 12.

**Annual authorizations are required for these activities.
[1] All dates are 1968 unless otherwise indicated.
[2] Senate concurred in House amendment(s).
[3] The authorization law was approved after the related appropriation act; however, congressional action on the authorization measure was prior to the corresponding action on the appropriation measure.
[4] House concurred in Senate amendments.
[5] Title I, Section 102 of the Renegotiation Amendments Act of 1968 (Public Law 90-634, Oct. 24, 1968) amended the Renegotiation Act of 1951, as amended (50 U.S.C. app., sec. 1212(c)(1)) to extend the termination date from June 30, 1968 to June 30, 1971.
[6] Public Law 90-547, October 2, 1968, amends section 401 [Portion that pertains to title I] of the Water Resources Planning Act (Public Law 89-80) by deleting "$300,000" and insisting in lieu thereof "$500,000." Appropriations for fiscal year 1971 were granted for titles I and II of the Water Resources Planning Act as one combined sum.

91ST CONG., 1ST SESS.

ACTIVITIES OR PROGRAMS	Bill No.	Date passed [1] House	Date passed [1] Senate	Date conference report agreed to [1] House	Date conference report agreed to [1] Senate	Public Law Number	Public Law Date approved [1]
Funds appropriated to the President:							
Appalachian regional commission and development program:							
Authorization Act	S. 1072	July 15	July 8	Nov. 19	Nov. 5	91-123	Nov. 25.
Appropriation Act	H.R. 12307	June 24	Nov. 11	Nov. 18	Nov. 18	91-126	Nov. 26.
Foreign economic and military assistance:**							
Authorization Act	H.R. 14580	Nov. 20	Dec. 12	Dec. 19	Dec. 19	91-175	Dec. 30.
Appropriation Act	H.R. 15149	Dec. 9	Dec. 18	Jan. 27, 1970	Jan. 28, 1970	91-194	Feb. 9, 1970.
Office of Economic Opportunity:							
Authorization Act	S. 3016	Dec. 12	Oct. 14	Dec. 20	Dec. 20	91-177	Dec. 30.
Appropriation Act	H.R. 15931	Feb. 19, 1970	Feb. 27, 1970	Mar. 3, 1970	Mar. 4, 1970	91-204	Mar. 5, 1970.
Peace Corps:**							
Authorization Act	H.R. 11039	Sep. 8	Oct. 3	Oct. 16	Oct. 16	91-99	Oct. 29.
Appropriation Act	H.R. 15149	Dec. 9	Dec. 18	Jan. 27, 1970	Jan. 28, 1970	91-194	Feb. 9, 1970.
Department of Commerce:							
Economic development assistance:							
Authorization Act	S. 1072	July 15	July 8	Nov. 19	Nov. 5	91-123	Nov. 25.
Appropriation Act	H.R. 12964	July 24	Nov. 5	Dec. 9	Dec. 10	91-153	Dec. 24.
International activities (export controls): [2]							
Authorization Act	H.R. 4293	Oct. 16	Oct. 22	Dec. 23	Dec. 23	91-184	Dec. 30.
Appropriation Act	H.R. 12964	July 24	Nov. 5	Dec. 9	Dec. 10	91 153	Dec. 24.
National Bureau of Standards: Research and technical services:							
Authorization Act	H.R. 4284	July 10	Nov. 20			91-131	Dec. 1
Appropriation Act	H.R. 12964	July 24	Nov. 5	Dec. 9	Dec. 10	91-153	Dec. 24.
Maritime Administration:**							
Authorization Act	H.R. 4152	May 15	Sept. 22	Sept. 25 [3]		91-85	Oct. 10.
Appropriation Act	H.R. 12964	July 24	Nov. 5	Dec. 9	Dec. 10	91-153	Dec. 24.
Department of Defense:							
Military procurement, R. & D. etc.:**							
Authorization Act	S. 2546	Oct. 3	Sept. 18	Nov. 5	Nov. 6	91-121	Nov. 19.
Appropriation Act	H.R. 15090	Dec. 8	Dec. 15	Dec. 18	Dec. 18	91-171	Dec. 29.
Military construction:**							
Authorization Act	H.R. 13018	Aug. 5	Nov. 11	Nov. 20	Nov. 21	91-142	Dec. 5.
Appropriation Act	H.R. 14751	Nov. 13	Dec. 8	Dec. 19	Dec. 19	91-170	Dec. 29.
Department of Health, Education, and Welfare:							
Consumer protection and environmental health services: Air pollution control:							
Authorization Act	S. 2276	Sept. 4	July 8	Nov. 25	Nov. 25	91-137	Dec. 5.
Appropriation Act	H.R. 15931	Feb. 19, 1970	Feb. 28, 1970	Mar. 3, 1970	Mar. 4, 1970	91-204	Mar. 5, 1970.
Social and rehabilitation service: Assistance for repatriated U.S. nationals:							
Authorization Act	H.R. 8644	May 13	June 19	June 27	June 30	91-41	July 9.
Appropriation Act	H.R. 15931	Feb. 19, 1970	Feb. 28, 1970	Mar. 3, 1970	Mar. 4, 1970	91-204	Mar. 5, 1970.
Development of programs for the aging:							
Authorization Act	H.R. 11235	June 16	Aug. 13	Sept. 3 [3]		91-69	Sept. 17.
Appropriation Act	H.R. 15931	Feb. 19, 1970	Feb. 28, 1970	Mar. 3, 1970	Mar. 4, 1970	91-204	Mar. 5, 1970.
Department of the Interior:							
Bureau of Reclamation: Construction and rehabilitation:							
Authorization Act	S. 574	Sept. 24	May 23		Sept. 25 [4]	91-81	Oct. 8.
Appropriation Act	H.R. 14159	Oct. 8	Nov. 12	Dec. 3	Dec. 4	91-144	Dec. 11.
Office of Saline Water: Saline Water Commission: **							
Authorization Act	S. 1011	May 14	Mar. 24	July 1	July 1	91-43	July 11.
Appropriation Act	H.R. 12781	July 22	Spet. 22	Oct. 15	Oct. 15	91-98	Oct. 29.
Federal Water Pollution Control Administration: Pollution control operations and research:							
Authorization Act	H.R. 4148	Apr. 16	Oct. 8	Mar. 25, 1970	Mar. 24, 1970	91-224	Apr. 3, 1970.
Appropriation Act [5]	H.R. 17399	May 7, 1970	June 22, 1970	June 25, 1970	June 29, 1970	91-305	July 6, 1970.
Department of Transportation:							
Coast Guard: Acquisition, construction and improvements: **							
Authorization Act	H.R. 4153	Apr. 29	June 30	July 8 [3]		91-49	July 22.
Appropriation Act	H.R. 14794	Nov. 18	Dec. 17	Dec. 19	Dec. 19	91-168	Dec. 26.
Atomic Energy Commission:**							
Authorization Act	H.R. 12167	June 24	June 26	July 1 [3]		91-44	July 11.
Appropriation Act	H.R. 14159	Oct. 8	Nov. 12	Dec. 3	Dec. 4	91-144	Dec. 11.
National Aeronautics and Space Administration:**							
Authorization Act	H.R. 11271	June 10	Sept. 19	Nov. 6	Nov. 7	91-119	Nov. 18.
Appropriation Act	H.R. 12307	June 24	Nov. 11	Nov. 18	Nov. 18	91-126	Nov. 26.
American Revolution Bicentennial Commission:							
Authorization Act	S. 2462	Oct. 6	July 14			91-84	Oct. 10.
Appropriation Act	H.R. 12781	July 22	Sept. 22	Oct. 15	Oct. 15	91-98	Oct. 29.
National Science Foundation:**							
Authorization Act	S. 1857	Oct. 7	Sept. 18	Oct. 30	Nov. 5	91-120	Nov. 18.
Appropriation Act	H.R. 12307	June 24	Nov. 11	Nov. 18	Nov. 18	91-126	Nov. 26.
National Commission on Reform of Federal Criminal Laws:							
Authorization Act	H.R. 4297	Mar. 17	June 24	June 27 [3]		91-39	July 8.
Appropriation Act	H.R. 12964	July 24	Nov. 5	Dec. 9	Dec. 10	91-153	Dec. 24.

**Annual authorizations are required for these programs or activities.
[1] All dates are 1969 unless indicated otherwise.
[2] The authorizing legislation had passed both Houses of Congress and was in conference at time appropriation act was passed.
[3] House concurred in Senate amendment(s).
[4] Senate concurred in House amendment(s).
[5] 2d Supplemental Appropriation Act of 1970.

91ST CONG., 2D SESS.

ACTIVITIES OR PROGRAMS	Bill No.	Date passed [1] House	Date passed [1] Senate	Date conference report agreed to [1] House	Date conference report agreed to [1] Senate	Public Law Number	Public Law Date approved [1]
Funds appropriated to the President:							
Foreign Military Credit Sales: [2]							
Authorization Act	H.R. 15628	Mar. 24	June 30	Dec. 31	Dec. 31	91-672	Jan. 12, 1971.
Appropriation Act	H.R. 17867	June 4	Nov. 30	Dec. 31	Dec. 30	91-619	Dec. 31.
Foreign Economic and Military Assistance: * *							
Authorization Act [3]	H.R. 19911	Dec. 9	Dec. 16	Dec. 22	Dec. 22	91-652	Jan. 5, 1971.
Appropriation Act [3]	H.R. 19928	Dec. 10	Dec. 14	Dec. 22	Dec. 28	91-665	Jan. 8, 1971.
Peace Corps: * *							
Authorization Act	S. 3430	July 7	Apr. 10		July 9 [4]	91-352	July 24.
Appropriation Act	H.R. 17867	June 4	Nov. 30	Dec. 31	Dec. 30	91-619	Dec. 31.

Footnotes at end of table.

91ST CONG., 2D SESS.—Continued

	Bill No.	Date passed [1] House	Date passed [1] Senate	Date conference report agreed to [1] House	Date conference report agreed to [1] Senate	Public Law Number	Public Law Date approved [1]
Department of Agriculture:							
Child nutrition programs:							
Authorization Act	H.R. 515	Mar. 30, 1969	Feb. 24	May 4	Apr. 30	91-248	May 14.
Appropriation Act	H.R. 17923	June 9	July 9	Dec. 8	Dec. 8	91-566	Dec. 22.
Food stamp programs: [4]							
Authorization Act	H.R. 18582	Dec. 16	Dec. 17	Dec. 30	Dec. 31	91-671	Jan. 11. 1971.
Appropriation Act	H.R. 17923	June 9	July 9	Dec. 8	Dec. 8	91-566	Dec. 22.
Foreign assistance and export program, Public Law 480:							
Authorization Act	H.R. 18546	Aug. 5	Sept. 15	Oct. 13	Nov. 19	91-524	Nov. 30.
Appropriation Act	H.R. 17923	June 9	July 9	Dec. 8	Dec. 8	91-566	Dec. 22.
Department of Commerce:							
Economic Development Administration:							
Authorization Act	H.R. 15712	June 8	June 29			91-304	July 6.
Appropriation Act	H.R. 17575	May 14	Aug. 24	Oct. 6	Oct. 7	91-472	Oct. 21.
U.S. Travel Service (salaries and expenses):							
Authorization Act	H.R. 14685	May 14	May 21	Oct. 6 [6]	Oct. 7 [6]	91-477	Oct. 21.
Appropriation Act	H.R. 17575	May 14	Aug. 24	Oct. 6	Oct. 7	91-472	Oct. 21.
Maritime Administration: **							
Authorization Act	H.R. 15945	Mar. 11	May 7	May 11 [7]		91-247	May 13.
Appropriation Act	H.R. 17575	May 14	Aug. 24	Oct. 6	Oct. 7	91-472	Oct. 21.
Department of Defense:							
Military Procurement: **							
Authorization Act	H.R. 17123	May 6	Sept. 1	Sept. 29	Oct. 1	91-441	Oct. 7
Appropriation Act	H.R. 19590	Oct. 8	Dec. 8	Dec. 29	Dec. 29	91-668	Jan 11, 1971.
Military Construction: **							
Authorization Act	H.R. 17604	May 20	Sept. 29	Oct. 13	Oct. 14	90-511	Oct .26.
Appropriation Act	H.R. 17970	June 11	Oct. 14	Nov. 24	Nov. 25	91-544	Dec. 11.
Department of Health, Education and Welfare:							
Air Pollution Control:							
Authorization Act	H.R. 17255	June 10	Sept. 22	Dec. 18	Dec. 18	91-604	Dec. 31.
Appropriation Act	H.R. 18515	July 23	Nov. 20	Dec. 15	Dec. 30	91-667	Jan. 11, 1971.
Environmental Control:							
Authorization Act	H.R. 11833	June 23	Aug. 3	Oct. 13	Oct. 7	91-512	Oct. 26.
Appropriation Act	H.R. 18515	July 23	Nov. 20	Dec. 15	Dec. 30	91-667	Jan. 11, 1971.
Health Services (Mental Health):							
Authorization Act	S. 2523	Dec. 16, 1969	Dec. 11, 1969	Feb. 26	Feb. 26	91-211	Mar. 13.
Appropriation Act	H.R. 18515	July 23	Nov. 20	Dec. 15	Dec. 30	91-667	Jan. 11, 1971.
Health Services, Research and Development, Comprehensive Health Planning and Services, and Regional Medical Services:							
Authorization Act	H.R. 17570	Aug. 12	Sept. 9	Oct. 13	Oct. 14	91-515	Oct. 30.
Appropriation Act	H.R. 18515	July 23	Nov. 20	Dec. 15	Dec. 30	91-667	Jan. 11, 1971.
Medical Facilities Construction:							
Authorization Act [8]	H.R. 11102	June 4, 1969	Apr. 7	June 10	June 8	91-296	June 30.
Appropriation Act	H.R. 18515	July 23	Nov. 20	Dec. 15	Dec. 30	91-667	Jan. 11, 1971.
NIH, Health Manpower Formula Grants:							
Authorization Act	S. 2809	Dec. 16, 1969	Dec. 11, 1969	Feb. 26	Feb. 26	91-208	Mar. 12.
Appropriation Act	H.R. 18515	July 23	Nov. 20	Dec. 15	Dec. 30	91-667	Jan. 11, 1971.
NIH, Health Manpower Training in Allied Health Professions:							
Authorization Act	S. 3856	July 30	July 13	Oct. 13	Oct. 14	91-519	Nov. 2.
Appropriation Act	H.R. 18515	July 23	Nov. 20	Dec. 15	Dec. 30	91-667	Jan. 11, 1971.
NIH, National Library of Medicine:							
Authorization Act	H.R. 11702	July 10, 1969	Oct. 20, 1969	Feb. 26	Feb. 25	91-212	Mar. 13.
Appropriation Act	H.R. 18515	July 23	Nov. 20	Dec. 15	Dec. 30	91-667	Jan. 11, 1971.
Office of Education (extend programs of elementary and secondary education):							
Authorization Act	H.R. 514	Apr. 23, 1969	Feb. 19	Apr. 7	Apr. 1	91-230	Apr. 13.
Appropriation Act [9]	H.R. 16916	Apr. 14	July 28			91-380	Aug. 18.
Social and Rehabilitation Service:							
Authorization Act	S. 2846	July 30	Apr. 13	Oct. 13	Oct. 14	91-517	Oct. 30.
Appropriation Act	H.R. 18515	July 23	Nov. 20	Dec. 15	Dec. 30	91-667	Jan. 11, 1971.
Department of the Interior:							
Office of Territories: Trust Territory of the Pacific Islands:							
Authorization Act [10]	S. 3479	Sept. 14	May 18	Dec. 9	Sept. 29	91-578	Dec. 24.
Appropriation Act	H.R. 17619	May 19	July 1	July 22	July 22	91-361	July 31.
Bureau of Commercial Fisheries: Construction of Fishing Vessels:							
Authorization Act	H.R. 4813	Aug. 12, 1969	May 22	May 27 [7]		91-279	June 12.
Appropriation Act	H.R. 17619	May 19	July 1	July 22	July 22	91-361	July 31.
Bureau of Commercial Fisheries and Bureau of Sport Fisheries and Wildlife: Anadromous and Great Lakes Fisheries: Conservation							
Authorization Act	H.R. 1049	Feb. 16	Apr. 30			91-249	May 14.
Appropriation Act	H.R. 17619	May 19	July 1	July 22	July 22	91-361	July 31.
National Park Service:							
Preservation of Historic Properties:							
Authorization Act	H.R. 14896	Mar. 16	Apr. 27			91-243	May 9.
Appropriation Act	H.R. 17619	May 19	July 1	July 22	July 22	91-361	July 31.
Management and Protection:							
Authorization Act	H.R. 14714	Apr. 27	Dec. 1			91-549	Dec. 14.
Appropriation Act (Supplemental)	H.R. 19928	Dec. 22	Dec. 28			91-665	Jan. 8, 1971.
Bureau of Reclamation: Construction and Rehabilitation:							
Authorization Act	S. 3427	Mar. 16	Mar. 3			91-218	Mar. 25.
Appropriation Act	H.R. 18127	June 24	Aug. 24	Sept. 22	Sept. 23	91-439	Oct. 7.
Office of Saline Water: Saline Water Conversion:**							
Authorization Act	H.R. 15700	Mar. 16	Mar. 18			91-221	Mar. 31.
Appropriation Act	H.R. 17619	May 19	July 1	July 22	July 22	91-361	July 31.
Department of Transportation:							
Coast Guard: Acquisition, Construction and Improvements:**							
Authorization Act	H.R. 15694	Mar. 17	May 7			91-261	May 21.
Appropriation Act	H.R. 17755	May 27	Dec. 3	Dec. 15	Dec. 29	(11)	
Federal Highway Administration: Highway Beautification:							
Authorization Act	H.R. 19504	Dec. 7	Dec. 7	Dec. 18	Dec. 19	91-605	Dec. 31.
Appropriation Act	H.R. 17755	May 27	Dec. 3	Dec. 15	Dec. 29	(11)	
Federal Highway Administration: Traffic and Highway Safety:							
Authorization act	H.R. 10105	Sept. 3, 1969	Dec. 2, 1969	May 5	May 11	91-265	May 22.
Appropriation act	H.R. 17755	May 27	Dec. 3	Dec. 15	Dec. 29	(11)	
Federal Railroad Administration: High Speed Ground Transportation Research and Development:							
Authorization act	S. 3730	Sept. 30	July 30			91-444	Oct. 13.
Appropriation act	H.R. 17755	May 27	Dec. 3	Dec. 15	Dec. 29	(11)	
Atomic Energy Commission:**							
Regular Authorization act	S. 3818	May 19	May 13			91-273	June 2.
Appropriation act	H.R. 18127	June 24	Aug. 24	Sept. 22	Sept. 23	91-439	Oct. 7.
Additional authorization act for 1971	S. 4557	Dec. 10	Dec. 9			91-580	Dec. 24.
Appropriation act (supplemental)	H.R. 19928	Dec. 22	Dec. 28			91-665	Jan. 8, 1971.
National Aeronautics and Space Administration:**							
Authorization act	H.R. 16516	Apr. 23	May 6	June 22	June 22	91-303	July 2.
Appropriation act	H.R. 19830	Nov. 24	Dec. 7			91-556	Dec. 17.

91ST CONG. 2D SESS.—Continued

	Bill No.	Date passed [1] House	Date passed [1] Senate	Date conference report agreed to [1] House	Date conference report agreed to [1] Senate	Public Law Number	Public Law Date approved [1]
American Revolution Bicentennial Commission:							
Authorization act	S. 3630	Oct. 14	June 26		Nov. 19 [5]	91-528	Dec. 7.
Appropriation act [12]	H.R. 17619	May 19	July 1	July 22	July 22	91-361	July 31.
Arms Control and Disarmament Agency:							
Authorization Act	S. 3544	Apr. 28	Apr. 16			91-246	May 12.
Appropriation Act	H.R. 17575	May 14	Aug. 24	Oct. 6	Oct. 7	91-472	Oct. 21.
Commission on Civil Rights: [13]							
Authorization Act	S. 2455	Nov. 16	July 14			91-521	Nov. 25.
Appropriation Act	H.R. 17575	May 14	Aug. 24	Oct. 6	Oct. 7	91-472	Oct. 21.
Commission on Revision of the Criminal Laws of the District of Columbia:							
Authorization Act	S. 2601	Mar. 19	Sept. 18, 1969	July 15	July 23	91-358	July 29.
Appropriation Act (Supplemental)	H.R. 19928	Dec. 22	Dec. 28			91-665	Jan. 8, 1971.
National Foundation on the Arts and the Humanities:							
Authorization Act	S. 3215	June 30	May 21	July 13	July 13	91-346	July 20.
Appropriation Act	H.R. 17619	May 19	July 1	July 22	July 22	91-361	July 31.
National Science Foundation:							
Sea Grant:							
Authorization Act	H.R. 11766	July 6	July 10	July 15 [7]		91-349	July 23.
Appropriation Act	H.R. 19830	Nov. 24	Dec. 7			91-556	Dec. 17.
Science and Technologies:**							
Authorization Act	H.R. 16595	May 11	July 1	July 15	July 14	91-356	July 24
Appropriation Act	H.R. 19830	Nov. 24	Dec. 7			91-556	Dec. 17.

[1] All dates are 1970 unless indicated otherwise.
[2] Even though the appropriation act was signed before the authorization act the conference reports on 2 measures were approved in both Houses on almost the same dates.
[3] This was a supplemental authorization for fiscal year 1971 and the appropriations were granted in the Supplemental Appropriation Act of 1971.
[4] The authorization legislation for fiscal year 1971 was enacted after the appropriation act. However, the appropriation act (Public Law 91-566) stipulated that the "appropriation shall be available only within the limits of amounts authorized by law for fiscal year 1971."
[5] Senate concurred in House amendment.
[6] House agreed to Senate amendment with an amendment and Senate concurred in House amendment.
[7] House concurred in Senate amendment(s).
[8] Legislation was vetoed on June 22, 1970, passed House over veto June 25, 1970, and Senate June 30, 1970.
[9] This appropriation act was vetoed on Aug. 11 1970. On Aug. 13, 1970, House passed over veto and on Aug. 18, 1970, the Senate passed over veto.
[10] In reality, this act was not required prior to enactment of appropriations. The act authorized $60,000,000 to be appropriated for fiscal years 1971, 1972, and 1973. The earlier authorizing legislation allowed $50,000,000 for fiscal year 1971. The appropriation act granted $49,750,000 of appropriations.
[11] Senate tabled conference report on Dec. 29, 1970. Public Law 91-645, Jan. 2, 1971, provided through a joint resolution continuing appropriation for Department of Transportation and related agencies through Mar. 30, 1971. Public Law 92-7, Mar. 30, 1971, extended from Mar. 30 until June 30, 1971, continuing appropriations for Department of Transportation.
[12] Appropriations granted on the provision: "That this appropriation shall be available only upon enactment into law of H.R. 16408 or S. 3630, 91st Congress, or similar legislation." S. 3630 became Public Law 91-528, Dec. 7, 1970.
[13] Public Law 91-121, Nov. 25, 1970, amended the Civil Rights Act of 1957, as amended, "authorized to be appropriated for the fiscal year ending June 30, 1970, the sum of $3,400,000 and for each fiscal year thereafter until Jan. 31, 1973, the sum of $3,400,000."

EXHIBIT II

LIST OF AUTHORIZING LEGISLATION REQUIRED PRIOR TO ENACTMENT OF APPROPRIATIONS, AND APPROPRIATIONS ACTS BY SESSION OF CONGRESS
90TH CONG., 2D SESS. TO 92D CONG., 1ST SESS.

92ND CONG., 1ST SESS.

	Bill No.	Date passed [1] House	Date passed [1] Senate	Date conference report agreed to [1] House	Date conference report agreed to [1] Senate	Public Law Number	Public Law Date approved [1]
ACTIVITIES OR PROGRAMS							
Funds appropriated to the President:							
Appalachian Regional Commission and Development programs:							
Authorization Act	S. 2317	July 28	July 21		July 30 [2]	92-65	Aug. 5.
Appropriation Act	H.R. 10090	July 29	July 31	Sept. 22	Sept. 22	92-134	Oct. 5.
Foreign Assistance: [1]							
Authorization Act	S. 2819	Nov. 18	Nov. 11	Jan. 25, 1972	Dec. 17	92-226	Feb. 7, 1972.
Appropriation Act	H.R. 12067	Dec. 8	Feb. 4, 1972	In conference			
Office of Economic Opportunity:							
Authorization Act	S. 2007	Oct. 1	Sept. 9	Dec. 7	Dec. 2	(3)	
Appropriation Act	None to date	(Feb. 7, 1972).					
Peace Corps: [1]							
Authorization Act	S. 2260	Sept. 23	Aug. 2			92-135	Oct. 8.
Appropriation Act	H.R. 12067	Dec. 8	Feb. 4, 1972	In conference			
Department of Agriculture:							
Child nutrition program:							
Authorization Act	H.R. 5257	May 17	June 18	June 24	June 23	92-32	June 30.
Appropriation Act [4]	H.R. 9270	June 23	July 15	July 27	July 28	92-73	Aug. 10.
Department of Commerce:							
Economic Development Administration:							
Authorization Act	S. 2317	July 28	July 21		July 30 [2]	92-65	Aug. 5.
Appropriation Act	H.R. 9272	June 24	July 19	Aug. 2	Aug. 3	92-77	Aug. 10.
Regional Action Planning Commissions:							
Authorization Act	S. 2317	July 28	July 21		July 30 [2]	92-65	Aug. 5.
Appropriation Act	H.R. 9272	June 24	July 19	Aug. 2	Aug. 3	92-77	Aug. 10.
Maritime Administration:**							
Authorization Act	H.R. 4724	Apr. 20	May 26	June 29	June 24	92-53	July 9.
Appropriation Act	H.R. 9272	June 24	July 19	Aug. 2	Aug. 3	92-77	Aug. 10.
Department of Defense:							
Military procurement, R. & D., etc.:**							
Authorization Act	H.R. 8678	June 17	Oct. 6	Nov. 10	Nov. 11	92-156	Nov. 17.
Appropriation Act	H.R. 11731	Nov. 17	Nov. 23	Dec. 15	Dec. 15	92-204	Dec. 18.
Military construction:**							
Authorization Act	H.R. 9844	July 22	Aug. 5	Oct. 20	Oct. 21	92-145	Oct. 27.
Appropriation Act	H.R. 11418	Oct. 27	Nov. 3	Nov. 15	Nov. 15	92-160	Nov. 18.
Department of Health, Education, and Welfare:							
National Institutes of Health:							
Health manpower: Nurses:							
Authorization Act	H.R. 8630	July 1	July 14	Nov. 9	Oct. 19	92-158	Nov. 18.
Appropriation Act	H.R. 10061	July 27	July 30	Aug. 5	Aug. 6	92-80	Aug. 10.
Health manpower: Health professions:							
Authorization Act	H.R. 7736	June 18	June 22	June 24 [6]		92-52	July 9.
Appropriation Act [8]	H.R. 10061	July 27	July 30	Aug. 5	Aug. 6	92-80	Aug. 10.
Health manpower: Comprehensive health manpower:							
Authorization Act	H.R. 8629	July 1	July 14	Nov. 9	Oct. 19	92-157	Nov. 18.
Appropriation Act [8]	H.R. 10061	July 27	July 30	Aug. 5	Aug. 6	92-80	Aug. 10.

Footnotes at end of table.

EXHIBIT II—Continued

LIST OF AUTHORIZING LEGISLATION REQUIRED PRIOR TO ENACTMENT OF APPROPRIATIONS, AND APPROPRIATIONS ACTS BY SESSION OF CONGRESS
90TH CONG., 2D SESS. TO 92D CONG., 1ST SESS.—Continued

91ST CONG., 2D SESS.

	Bill No.	Date passed [1] House	Date passed [1] Senate	Date conference report agreed to [1] House	Date conference report agreed to [1] Senate	Public Law Number	Public Law Date approved [1]
Office of Education:							
Elementary and Secondary Education (follow through):							
Authorization Act	S. 2007	Oct. 1	Sept. 9	Dec. 7	Dec. 2	([2])	
Appropriation Act	None to date (Feb. 7, 1972).						
Higher Education & Education Professions Development:							
Authorization Act	S. 659	Nov. 4	Aug. 6	Pending			
Appropriation Act	H.R. 7106	Apr. 1	June 10	June 30	June 30	92-48	July 9.
Social and Rehabilitation Service:							
Grants to States:							
Authorization Act	H.R. 8313	June 8	June 30			92-40	July 1.
Appropriation Act	H.R. 10061	July 21	July 30	Aug. 5	Aug. 6	92-80	Aug. 10.
Youth Development:							
Authorization Act	S. 1732	June 20	June 21			92-31	June 30.
Appropriation Act	H.R. 10061	July 27	July 30	Aug. 5	Aug. 6	92-80	Aug. 10.
Office of Child Development (Head Start):							
Authorization Act	S. 2007	Oct. 1	Sept. 9	Dec. 7	Dec. 2	([2])	
Appropriation Act	None to date (Feb. 7, 1972.).						
Department of Housing and Urban Development:							
Comprehensive Planning Grants:							
Authorization Act	S.J. Res. 176	Dec. 6	Nov. 20	Dec. 13	Dec. 13	92-213	Dec. 22.
Appropriation Act	None to date (Feb. 7, 1972).						
Open Space Land Program:							
Authorization Act	S.J. Res. 176	Dec. 6	Nov. 20	Dec. 13	Dec. 13	92-213	Dec. 22.
Appropriation Act	None to date (Feb. 7, 1972).						
Department of the Interior:							
Office of Saline Water:**							
Authorization Act	S. 991	July 8	June 28	July 15	July 14	92-60	July 29.
Appropriation Act	H.R. 9417	June 29	July 16	Aug. 2	Aug. 2	92-76	Aug. 10.
Department of Transportation:							
Coast Guard:**							
Authorization Act	H.R. 5208	Apr. 29	July 22	Aug. 5	Aug. 5	92-118	Aug. 13.[8]
Appropriation Act	H.R. 9667	July 14	July 22	July 29	Aug. 2	92-74	Aug. 10.[8]
Atomic Energy Commission:**							
Authorization Act	H.R. 9388	July 15	July 20	July 27	July 31	92-84	Aug. 11.
Appropriation Act	H.R. 10090	July 29	July 31	Sept. 22	Sept. 22	92-134	Oct. 5.
National Aeronautics and Space Administration:**							
Authorization Act	H.R. 7109	June 3	June 29	July 27	July 28	92-68	Aug. 6.
Appropriation Act	H.R. 9382	June 30	July 20	July 29	Aug. 2	92-78	Aug. 10.
Cabinet Committee on Opportunities for Spanish-Speaking People:							
Authorization Act	H.R. 7586	June 21	Aug. 3			92-122	Aug. 16.
Appropriation Act (supplemental)	H.R. 11955	Dec. 2	Dec. 3	Dec. 9	Dec. 10	91-184	Dec. 15.
Commission on Civil Rights:							
Authorization Act	H.R. 7271	May 17	July 24			92-64	Aug. 4.
Appropriation Act (supplemental)	H.R. 11955	Dec. 2	Dec. 3	Dec. 9	Dec. 10	92-184	Dec. 15.
National Science Foundation:**							
Authorization Act	H.R. 7960	June 7	June 28	Aug. 3	July 28	92-86	Aug. 11.[8]
Appropriation Act	H.R. 9382	June 30	July 20	July 29	Aug. 2	92-78	Aug. 10.[8]
Renegotiation Board:							
Authorization Act	H.R. 8311	June 8	June 30			92-41	July 1.
Appropriation Act	H.R. 9382	June 30	July 20	July 29	Aug. 2	92-78	Aug. 10.
Water Resources Council:							
Authorization Act	H.R. 6359	May 17	June 7			92-27	June 17.
Appropriation Act	H.R. 10090	July 29	July 31	Sept. 22	Sept. 22	92-134	Oct. 5.

[1] All dates are 1971 unless otherwise indicated.
[2] Senate agreed to House amendment(s).
[3] Vetoed Dec. 9, 1971. Senate sustained Presidential veto Dec. 10, 1971. Subsequent bills were introduced in the Senate (S. 3010) on Dec. 13, 1971 and in the House (H.R. 12350) on Dec. 15, 1971. No action to date (Feb. 8, 1972) has been taken on the Senate bill. The House bill was filed on Feb. 4, 1972. No other action to date has been taken on the bill.
[4] Public Law 92-35 (H.J. Res. 744), approved on June 30, 1971, appropriated an additional $17,000,000 for summer programs.
[5] Public Law 92-80 provides that any health manpower projects or activities "which were conducted during the fiscal year 1971 but for which legislature authorization has expired, may be continued at a rate for operations not to exceed the current rate or the rate provided for in the budget estimate, whichever is lower, until the date specified in section 102(c) of Public Law 92-38, approved July 1, 1971, as hereafter amended; and expenditures made pursuant to this proviso shall be charged to the applicable appropriation whenever a bill containing such applicable appropriation is enacted into law."
[6] House agreed to Senate amendment(s).
[7] Authorization automatically extended for 1-year under provisions of sec. 402, Public Law 91-230.
[8] Both the House and Senate passed originally the legislative authorization bill prior to action on the appropriation bill.
**Programs or activities that require annual authorizations.

GROWING COST OF LITTON SHIPS FOR U.S. NAVY

Mrs. SMITH. Mr. President, the revelation about the serious situation on the failures and growing cost of Litton on ships for the U.S. Navy comes as no surprise to me. I foresaw and predicted this trouble nearly 2 years ago in my Senate speech on June 29, 1970. I invite a close rereading of that speech.

Again on October 6, 1971, I warned in a Senate speech that Litton was in deep trouble not only on the LHA's but on merchant marine ships. The response from Litton officials was to scoff at my statements, but they failed to refute a single statement I had made.

Now it is revealed that they are at least 2 years behind on the production schedule on the LHA's and are in deep financial trouble. It is clear that there is a very real threat that the impact of this will be a resulting 2-year delay on the DD-963 destroyers.

It is no solace and consolation to me to be able to say "I told you so" 2 years ago. For the damage has been done—and the truth that I stated then that the award should go to the Bath Iron Works, or at least a part of the award, on the DD-963's cannot now rectify this grave damage.

What concerns me most about the continuing Litton failure is its effect on our national security. Because we desperately need to get the new destroyers into our fleet. Added to this is the huge cost to the American taxpayers from the Litton failures.

My ultimate question is—How long, oh how long, will the Department of the Navy and the Department of Defense fail to face up to the Litton deficiency and lack of capability and continue to carry Litton at great damage to our national security and great unnecessary cost to the American taxpayers?

The hard decision should be made without further delay—for the longer the delay the greater risk to our security and the greater the cost to the American taxpayers—and that decision should be to give the DD-963's to a shipbuilder that can and will produce on schedule and submits realistic bids as did the Bath Iron Works on the DD-963's.

I ask unanimous consent to have printed in the RECORD my letters of April 24,

1970, and May 29, 1970, to the Secretary of the Navy in which I set forth the dangers of awarding the DD–963 contract to Litton and on which time has proved me to be exceptionally accurate and correct.

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

U.S. SENATE,
Washington, D.C., April 24, 1970.

THE SECRETARY OF THE NAVY,
Department of the Navy,
Washington, D.C.

MY DEAR MR. SECRETARY: As the ranking Republican member of the Senate Armed Services Committee, I have been deeply concerned about the problems which we have inherited from the Johnson Administration on major defense contracts, particularly those related to over concentration and cost growth. I am certain you share my feelings that we must avoid recurrences of these problems in this Administration.

However, despite my deep concern about these matters, I have supported the continuation of programs from the prior Administration which I deemed to be vital to our National Defense, including the C–5A, the Nuclear Aircraft Carriers, and others. It is my understanding that the Department of Defense is approaching the immediate award of a contract for the DD963 Class Destroyers on a total package multi-year basis and that there may be a situation developing in connection with this award leading to the very same problems which we have inherited on these earlier programs.

For this reason, I feel it important to assure myself that careful consideration is being given to a number of points bearing upon the decision to make this award.

First, I was surprised to be informed via Congressional sources of an apparent $270,000,000 price difference between the two competitors as a result of the fourth round of proposals, even though their prices were substantially similar in the third round and no technical changes affecting costs had been made by the Navy subsequent to that third round. I enclose a detailed document outlining this apparent discrepancy as I understand it. I must ask that a full analysis be made to assure price credibility if the award is made to the apparent low-offeror so that we are not building a substantial overrun on this program.

Second, as I understand it, the award of 30 ships in the DD963 contract to the present apparent low-offeror will add approximately $1,800,000,000 to their existing backlog of about $1,700,000,000, creating a total backlog of approximately $3,500,000,000, most of which is scheduled to be constructed in an as-yet untested and incomplete facility.

This type of over-concentration carries with it significant risks which have been evidenced by well-publicized and recent difficulties of Lockheed Aircraft Corporation in connection with the C–5A and, specifically in the case of Naval vessels, of General Dynamics Corporation and of the Lockheed Shipbuilding and Construction Company. After these experiences, it is inconceivable to me that we would create a backlog larger than our annual ship-building budget in a single facility.

Third, consideration should be given to the highly probable effect of the award of all these ships to the apparent low bidder on competition for defense business and upon the defense industrial base generally. As you know, throughout the McNamara era, large segments of industry believed that the Government was really interested in awarding its major defense contracts to the huge conglomerate enterprises. Award of all of the DD963 ships to Litton Industries would, in my view, serve to confirm that this policy is being carried over into this Administration. That view would undoubtedly discourage medium-size companies from attempting to compete with these industrial giants for other major defense contracts, thus restricting competition by eliminating some of our most highly qualified contractors, and thereby ultimately increasing the cost of our defense inventory.

Consideration should also be given to the problem of geographic concentration of naval and defense business that would result from an award to the apparent low-offeror in this instance.

Next, I am concerned and must ask that consideration be given to the fact that an award to Litton Industries will destroy one of the major reasons for using the total package multi-year procurement method in this destroyer program. As Secretary of the Navy Chafee and Chief of Naval Operations Adm. Moorer explained to the House Appropriations Subcommittee in February, a principal reason for applying this particular procurement method was to obtain new and modernized shipyard facilities. It appears to me that the award of 30 destroyers to Litton Industries, which is already scheduled to have a new shipbuilding facility, will make entirely unjustifiable the continuation of this risky type of procurement by the current administration.

Finally, consideration should be given to the effect of an award of 30 ships to Litton Industries upon Bath, the finest lead-destroyer shipbuilding yard in the country. During my years in Congress I have followed with great interest Bath's performance on Naval construction work and have heard constantly of the Navy's satisfaction with their ships. Moreover, I understand that they have consistently met schedules at competitive prices.

This company has been in this competition for over two years during which it has diluted its corporate earnings and management capability in order to remain competitive. It is my understanding that Bath and Hughes have met all of the Government's requirements relating to management and technical capability, production plans, facilities plans, and finances. If the Navy fails to award at least some of these ships to Bath-Hughes, in all probability the shipyard's destroyer building capability will be seriously diminished. The loss of this valuable national asset would significantly reduce the Navy's ability to obtain first-line competition for destroyer construction.

Of course, if Bath does not obtain all or part of the DD963 contract, the negative effect will compound the already serious economic difficulties being experienced in the State of Maine.

To conclude, serious consideration must be given to all of these points before an award is made in the DD963 program. As a member of both the Senate Armed Services Committee and the Appropriations Committee, I have strongly supported needed defense programs.

Sincerely yours,
MARGARET CHASE SMITH,
U.S. Senator.

U.S. SENATE,
Washington, D.C., May 29, 1970.

The SECRETARY OF THE NAVY,
Department of the Navy,
Washington, D.C.

MY DEAR MR. SECRETARY: My letter of May 28, 1970 was in error—in that I referred to your letter of May 20 when the accurate date is May 22 and which letter was not delivered to my office until May 25.

Because of the shortness of time in analyzing the contents of your letter of May 22, 1970 from the standpoint of responsiveness to the questions and points that I raised in my letter of April 24, 1970, I confined my observations in my May 28 letter to the issue of should an award of the DD963 magnitude be based on prices developed by reason of business tactics rather than by firm estimates of anticipated costs.

Now that I have had more time to study and analyze your letter of May 22, I wish to express my opinion on additional points.

I do not believe that your letter of May 22 was responsive to my letter of April 24 on these points.

1. Your letter was not responsive to the entire question of potential cost overrun as it relates to the analysis of bidders cost estimates for the procurement.

2. In reference to over-concentration of work in a single facility, my letter was not really answered. The heart of the problem is created by putting so many dollars *through* a single facility.

As an example, note the problems associated with the procurement of the C5A aircraft from Lockheed Aircraft Corporation, though much of the work was subcontracted around the country. In this connection, also note Lockheed's serious slippage on the DE1052 Program with the DE1065, 1069 and 1073 having been scheduled for delivery last year and yet the keels have not even been laid on any of these three ships scheduled for completion a year to nine months ago.

3. The fact that several large Naval and Merchant contracts are now scheduled for construction by Litton and Litton as yet has an uncompleted and untested shipyard was not addressed.

4. The impact on future destroyer competition of a single award of 30 ships to the *only* new shipyard was not answered.

5. My questions relating to the geographic distribution of the defense contracts was answered only through the explanation of subcontracting when it is perfectly clear that principal benefits run to the prime contractor.

6. The reference to your and the Chief of Naval Operations' statements before the House Armed Services Committee in *February* relating to the desirability of new facilities was answered by a reference to the testimony before the Senate Armed Services Committee in *March*. Thus, the answer referred to testimony given before the wrong committee at the wrong time. Thus, in the "right" testimony, your statement before the House Committee was that the *whole* reason for using this type of procurement was to obtain new facilities.

7. The economic impact on Maine of an award to Litton was not answered.

8. The question of a best and final offer was answered only to the extent that you said that the law permitted such a request and moreover that had always been the Navy's intent. The fact that Bath was never made aware that such a "best and final offer" would be requested was not explained.

9. The entire implication that substantial industrial espionage has taken place was not discussed and particularly the significance of leaked prices as it relates to the possibility that an auction was conducted.

10. Finally, and again, all of the answers in your letter of May 22 referred to target *prices* when, as shown by ASPR, procurement significance attaches to target *costs* rather than to price. Thus, the key is the validity of *cost* estimates.

Again I must stress that the several questions raised deal with basic principles far more important than the economically selfish interests of any one state or any region of our nation.

Sincerely yours,
MARGARET CHASE SMITH,
U.S. Senator.

INCOME TAX PREPARATION ASSISTANCE

Mr. CRANSTON. Mr. President, everyone is thinking about income taxes at this time of the year. For a variety of

reasons millions of Americans turn to others for assistance. The quality of that assistance is anything but consistent.

A need exists to assure the taxpayer that the help he receives is truly competent. Professional organizations do much to control their members, but countless preparers appear with the approach of the filing date each year, then disappear immediately afterwards.

Legislation has been suggested to deal with this problem. The Internal Revenue Service has requested comments from the leading professional groups for means of solving this dilemma.

An editorial published recently in the San Mateo Times has endorsed the proposal announced by the National Society of Public Accountants, which is the only professional group to have responded officially to the IRS.

NSPA is to be commended for taking the lead in presenting some reasonable suggestions for protecting the American taxpayer. I am most grateful to Mr. Irving Rosen of San Francisco, Calif., who is first vice president of NSPA, for bringing this matter to my attention.

Mr. President, I ask unanimous consent that the editorial and the text of the proposal of the National Society of Public Accountants be printed in the RECORD.

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

REGULATIONS TO PROTECT THE INCOME TAXPAYER

Last year's revelations that some firms specializing in the preparation of income tax returns had been revealing the contents of returns prepared for their clients brought a storm of national criticism. It led to action by the Federal Trade Commission, and in Congress, to preserve the confidentiality of tax returns—a practice guaranteed by the Internal Revenue Service in connection with its own handling of returns as is required by law.

Most of the firms engaged in assisting taxpayers with the compilation of their tax forms voluntarily agreed to discontinue any access to their files without the consent of their clients.

Subsequently, the Internal Revenue Service has asked for the views of professional accountants in the tax field with respect to the regulation of Federal tax preparers. In responding the National Society of Public Accountants has offered some eminently sensible recommendations for the protection of the taxpayers. These include:

Requirement that every Federal tax return preparer for a fee be registered with the Internal Revenue Service and be assigned a number which must be placed on each return prepared. Where multiple offices or franchises are involved the individual in charge of each office would also be required to register.

Registrations would have to be renewed every three years and the tax preparer would have to give evidence of continuing technical education in the tax field before the registration could be renewed.

There would be no prohibition against tax return preparers advertising, but they would not be allowed to advertise the fact of their registration in order to prevent any suggestion of indorsement by the IRS.

Preparation of a return for a fee without a valid, current registration would be illegal.

The name as well as the registration number of each preparer would have to be affixed to each return prepared.

Any fraud or gross misconduct by return preparers would be cause for revocation of registration.

These recommendations are both fair and reasonable and, if implemented, should be accepted by taxpayers for their own protection.

We have no doubt that the reputable and responsible firms and individuals in the business of preparing tax returns will be glad to concur in such regulations, just as they have readily agreed to keep their clients' files confidential.

RECOMMENDATIONS BY THE NATIONAL SOCIETY OF PUBLIC ACCOUNTANTS FOR THE PROTECTION OF TAXPAYERS

AMERICAN TAXPAYERS MUST BE PROTECTED FROM INCOMPETENT AND IRRESPONSIBLE TAX RETURN PREPARERS

The main objective of these recommendations is to protect the taxpaying public. It is necessary to begin by identifying preparers so that they can be held accountable for their work. The need for a greater measure of responsibility for the quality of work and the uses made of confidential information in the tax field has long been a concern of the National Society of Public Accountants. The rampant increase of commercial tax preparation operators and heavier reliance upon advertising has led to recent action by the Federal Trade Commission and enactment in Congress of provisions insuring confidentiality in the Revenue Act of 1971. NSPA applauds these steps. Members of NSPA are bound by a strict Code of Professional Ethics and those engaged in tax practice must meet additional provisions specifically applied to that aspect of professional practice. Confidentiality has been the keystone of these Codes. Other professional groups similarly oversee the manner in which their members practice. By requiring the identification of all preparers responsibility to the public is assured. Continuing technical education will do much to insure competence in a constantly changing field. Above all, with mandatory registration the scope of the problem and the troublesome areas can be pinpointed and specific remedies designed in the future.

EVERY FEDERAL TAX RETURN PREPARER WHO ASSISTS TAXPAYERS FOR A FEE MUST REGISTER WITH THE INTERNAL REVENUE SERVICE

Registration at a local IRS District Office would be required of every return preparer who prepares Federal tax returns for a fee on a full-time, part-time or even seasonal basis. Every registrant would be assigned a registration number. For multiple offices or franchise operations, the individual in charge of each of the respective offices would be required to register. No qualifications are set for the initial registration. This disclosure is the heart of the recommendation. Any exceptions from registration will erode the usefulness of the program as a means of identifying the problem areas. The National Society of Public Accountants believes that the simple and inexpensive registration process suggested would cause the true professional no great burden and that administrative costs could be made self-sustaining to a large extent by a minimal fee. While no qualifications are set for initial registration, this would serve to get the program started. It avoids the problems inherent in licensing after examination. The only persons who might be reluctant to register would be the marginal preparers who have something to hide.

CONTINUING TECHNICAL EDUCATION MUST BE SHOWN FOR RENEWAL OF REGISTRATIONS AT 3-YEAR INTERVALS

Registrations would be valid for a period of three years (or some other reasonable period). In order to renew a registration, an individual would have to show that he has received continuing technical education in the Federal tax field. The standards for continuing education would be set by the IRS. An affidavit filed with the local District office would be required of the registrant. Appropriate penalties should be imposed for filing of a false affidavit concerning participation in approved continuing technical education programs. Qualifying continuing education could include correspondence courses, conferences and seminars sponsored by professional and technical organizations, formal courses at educational institutions, participation in courses or seminars that could be sponsored by the Internal Revenue Service, inhouse training in firms with a set number of persons in attendance and by other means prescribed by the IRS. NSPA believes that the field of tax practice is so complex and that technical regulations, interpretations and court decisions bring change so frequently that some proof of continuing education is highly desirable. A key element here is that methods of compliance are flexible enough to permit a variety of means be available to the practitioner to meet the requirements. The National Society and affiliated state societies already offer a wide range of seminars, materials and services to assist members in keeping up-to-date on changes in tax law and procedures.

ADVERTISING THE FACT OF REGISTRATION WOULD BE PROHIBITED TO PREVENT ANY APPARENT ENDORSEMENT BY IRS

By prohibiting the registrant from advertising his registration, the danger of misleading the public into thinking any given registrant is endorsed by the Federal Government is removed. The registration number would have to be made available to a client upon request (so that he was assured the preparer possesses a registration) but a commercial preparer could not benefit from the fact of registration in his promotional practices. This would eliminate to the maximum extent possible the misuse of a registration program by an unscrupulous operator to further deceive the public about his qualifications. To avoid any loopholes, the prohibition against promotional use of the fact of registration should extend to stationery, signs, cards and listings. Since registration would be mandatory for all who prepare Federal tax returns for a fee, everyone doing so would presumably possess a registration. Penalties for practice without a registration are provided.

NO PROHIBITIONS ON ADVERTISING OTHER THAN THOSE NOW IN EFFECT WOULD BE IMPOSED

Professional ethical codes would continue to operate on attorneys, certified public accountants, independent public accountants and enrolled agents (who are licensed after examination to practice before the IRS on tax matters). Misleading advertising, false and erroneous claims should continue to be prosecuted under present laws by the Federal Trade Commission and other entities. A complete ban on advertising, while considered desirable and adhered to by NSPA members along with other professional organizations, would be subject to attack on legal grounds.

PREPARATION FOR A FEE WITHOUT A CURRENT REGISTRATION WOULD BE ILLEGAL

Preparation of a Federal tax return for another for a fee without a registration, or with an invalid registration, should be a misdemeanor subject to fine and imprisonment upon conviction. This is vital if the recommended program is to succeed in identifying preparers, holding them to a measure of responsibility for their work and bringing all preparers under the requirements of continuing technical education. Enforcement of this provision will be aided by reports from fellow practitioners and commercial competitors as well as the public. As the program is implemented, taxpayers will learn to check the registration of their prospective return preparers to see that he is registered and has a current registration (which will in the future demand continued technical education).

EVERY RETURN UNDER A REGISTRANT'S RESPONSIBILITY MUST BEAR HIS NAME AND REGISTRATION NUMBER

All returns prepared in whole or in part under a registrant's responsibility for compensation must be signed by him and include his registration number. The identification of preparers will enable the IRS to determine, when a pattern of returns shows a problem, the source. This will be true even if the preparer has moved around geographically.

REVOCATION OR SUSPENSION OF A REGISTRANT BY IRS WOULD BE FOR GROSS MISCONDUCT, FRAUD, ETC.

The IRS should have the right to suspend or revoke a registration for cause under procedures that afford the registrant his rights of due process, administratively and constitutionally. Reasons for suspension or revocation could include gross incompetence, unethical advertising, fraud, willful misconduct, filing a false report and similar activities. It may be expected that some unqualified or unethical persons may not seek the registration at all since it makes them identifiable for their work. Those who are not willing to meet some continuing technical education requirements probably should not be in practice anyway. The program is designed not as one of exclusion, although it may have that effect to a degree, but rather as one of inclusion. By bringing the wide variety of preparers under the umbrella of coverage, the public will be better served in this important area. With disclosure comes responsibility; with renewal comes continued education and with these combined, the American taxpayer will be better protected. The National Society of Public Accountants stands ready to help to realize this goal.

TRIBUTE TO EDWARD RAYMOND JOHNSTON ON HIS 90TH BIRTHDAY

Mr. PERCY. Mr. President, on the occasion of the 20th anniversary of the founding of the section on antitrust law of the American Bar Association, I invite the attention of Senators to the presence in Washington today of the first chairman of the ABA antitrust law section, Edward Raymond Johnston, of Illinois. It is also Mr. Johnston's 90th birthday.

During his 65 years as an active practitioner of the law, Mr. Johnston has been appointed to both the American Bar Foundation and the board of managers of the Chicago Bar Association. He is presently a fellow of the American College of Trial Lawyers and is dean of the Antitrust Bar. At one time he served on the Attorney General's Committee on Antitrust Laws, and he is a past president of the Chicago Law Club.

Mr. Johnston has distinguished himself as a scholar, is a member of Phi Beta Kappa, has a law degree from Harvard, and holds an honorary doctorate in law from the John Marshall Law School. He has argued many important cases before the U.S. Supreme Court, including the landmark United States against Maple Flooring.

Mr. Johnston's contributions to Chicago, Ill., and the Nation in the field of antitrust law are immense. It is with great pleasure that I welcome him to Washington on his 90th birthday.

LOS ANGELES ENDORSES PROXMIRE BAN ON DES

Mr. PROXMIRE. Mr. President, on November 8 of last year I introduced a bill, S. 2818, which would ban the use of Diethylstilbestrol (DES) in livestock feed throughout the United States. DES is a proven cause of cancer and cardiovascular problems. Many European nations have banned the use of DES in raising livestock. The Food and Drug Administration has even banned the use of DES in poultry feed. But it is still allowed in cattle feed and the drug continues to be found as a residue in slaughtered animals.

On March 2, 1972, the city council of Los Angeles received a report from its State, county, and Federal affairs committee which recommended that the council go on record as opposed to the use of DES in livestock feed. The city council accepted this report and passed two resolutions. One resolution called upon the Secretary of Health, Education, and Welfare and the California Director of Agriculture to adopt regulations prohibiting the use of DES in livestock feed. The other expressed support for my bill, S. 2818.

Enactment of S. 2818 will help protect the American consumer from this dangerous drug. I hope that the members of the Committee on Labor and Public Welfare and the rest of the Senate will give serious consideration to this matter.

Mr. President, I ask unanimous consent that the report of the State, county, and Federal affairs committee and the two resolutions of the Los Angeles City Council be printed at this point in the RECORD.

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

REPORT

Your Committee considered the subject resolutions which call for a prohibition of the hormone substance diethylstilbestrol (DES) as a food additive for animals raised for food purposes. The first resolution urges the City to support federal legislation to prohibit the use of this substance as an additive for livestock feed. The second resolution encourages appropriate state and federal officials to adopt regulations prohibiting the use of DES. It was reported to your Committee that it has been found that large concentrations of DES can cause cancer. It was also indicated that the Food and Drug Administration has previously banned the use of DES as an additive in poultry feed. However, in the case of other animals raised for human consumption the Department of Health, Education and Welfare has through other controls attempted to alleviate the problem created by the use of DES. These regulations currently in force require the withdrawal of any feed containing DES for at least 7 days prior to slaughter.

Opponents to the use of diethylstilbestrol feel that the Food and Drug Administration's regulations are not entirely adequate in terms of actual compliance and in terms of reliability in determining the presence of a DES residue in the carcass of a slaughtered animal.

Inasmuch as there appears to be no feasible means of testing for complete compliance with the FDA regulations nor a completely adequate method of evaluating the reliability of these regulations, your Committee RECOMMENDS that the subject resolutions be adopted thereby placing within the City's Federal Legislative Program support for HR 11646 (92nd Congress) and S. 2818 (92nd Congress) or similar legislation which would prohibit the introduction of DES into any animal or animal food product and to encourage the Secretary of Health, Education and Welfare and the California Director of Agriculture to adopt regulations prohibiting the use of DES as a food additive.

RESOLUTION

Whereas, federal law and the 1970 California Meat and Poultry Inspection Act prohibit the use of food additives for feeding poultry or livestock whose residues induce cancer; and,

Whereas, this prohibition does not apply when the additive substance is used in feed for animals which are raised for food production if the Secretary of Health, Education and Welfare finds that it will not adversely affect the animal, and that no residue of the substance is found after slaughter in any edible portion of the animal; and,

Whereas, the federal government has by order of the Secretary of Health, Education, and Welfare prohibited the use of the hormone substance named diethylstilbestrol (DES) as a food additive for poultry because certain poultry treated with DES retained residues of the carcinogen; and,

Whereas, DES can still be used as a food additive for other animals raised for food production, and it has not been shown in every case that such animals, when fed DES are free of carcinogents; and,

Whereas, there are no mandatory tests to insure that all animals sold to the public for food are free of DES residues which are carcinogenic; and,

Whereas, California has no regulation prohibiting the use of animals for food that have been fed DES; and,

Whereas, the California Director of Agriculture adopts federal regulations pertaining to commercial food additives, but in the absence of a corresponding federal regulation the State Director is reluctant to promulgate new regulations because the State Legislature has determined that state regulations are to conform, so far as possible, to federal regulations,

Now therefore be it resolved, that the City Council go on record as encouraging the Secretary of Health, Education, and Welfare and the California Director of Agriculture to adopt regulations prohibiting the use of DES as a food additive for animals raised for food purposes, and to further prohibit the use for food of any animals or food product thereof that have been fed DES; and,

Be it further resolved, that the City Clerk, with the assistance of the Chief Legislative Analyst, provide the City's Chief Legislative Representative and Federal Legislative Representative with sufficient certified copies of this action.

RESOLUTION

Whereas, federal and state law prohibit the use of food additives that induce cancer in animals or man for feeding animals raised for food production; and

Whereas, the hormone food additive diethylstilbestrol (DES) which has been found to be carcinogenic, is prohibited from use as a food additive for poultry because certain poultry treated with DES retain residues of the carcinogenic substance; and

Whereas, DES can still be used as a food additive for other animals raised for food production and it has not been shown in every case that such animals fed DES will not retain carcinogenic residues and there are no mandatory tests to insure that all livestock sold to the public for food have no DES residues which are carcinogenic;

Now therefore be it resolved, that by adoption of this resolution the Los Angeles City Council expresses its support of H.R. 11646 and S. 2818 (as introduced in the 92nd United States Congress) or similar legislation which would prohibit the introduction of DES into any animal or food product thereof; and,

Be it further resolved, that the City Clerk, with the assistance of the Chief Legislative Analyst, provide the City's Federal Legisla-

tive Representative with sufficient certified copies of this action.

HOUSE INACTION ON STRIKE LEGISLATION

Mr. PACKWOOD. Mr. President, on March 2, 1972, a House Commerce Subcommittee voted 6 to 5 against reporting to the full committee a bill sponsored by Representative JAMES HARVEY of Michigan which would have eased the impact of transportation strikes. One of the unions most strongly opposed to the bill is the United Transportation Union which represents many of the employees in the railway industry.

All six of the members of the House Commerce Subcommittee who voted against reporting that bill have been the recent beneficiaries of contributions from the United Transportation Union's Transportation Political Education League. The Representatives and the amounts they received from the Transportation Political League are:

Representative BROCK ADAMS, Democrat, of Washington, $1,000, January 12, 1972; $1,000, January 17, 1972.

Representative BERTRAM PODELL, Democrat, of New York, $500, January 31, 1972.

Representative HENRY HELSTOSKI, Democrat, of New Jersey, $500, January 31, 1972.

Representative RALPH METCALFE, Democrat, of Illinois, $500, January 31, 1972.

Representative JOHN DINGELL, Democrat, of Michigan, $500, January 31, 1972.

Representative JOHN M. MURPHY, Democrat, of New York, $1,000, January 31, 1972.

TODAY'S CHARADE IN PARIS

Mr. KENNEDY. Mr. President, at this critical time in the war, America ought to be at the peace table in Paris. Today is the day of the regularly scheduled public weekly meetings, but again the American seat is empty. Instead of attending the session, instead of ending the American boycott, instead of making every possible effort to stop the killing, all the administration does is set up the crude smokescreen of a secret initiative, with the result that Ambassador Porter and the administration's spokesman in Paris are engaged today in a devious and unseemly charade over whether or not the Vietcong received a private invitation to resume the talks.

If the administration were serious about returning to the peace table, there is a way so easy that it defies common sense for the administration not to use it. Why does not Ambassador Porter simply go back to the table, fill the American seat, and show the world that we really want to negotiate?

AMTRAK PASSENGER SERVICE FOR TRINIDAD, COLO.

Mr. ALLOTT. Mr. President, I ask unanimous consent to have printed in the RECORD the following item which is a matter of great urgency for the sake of the people of Trinidad, Colo.

It has been of great concern to me to try to secure an Amtrak stop for the people of Trinidad. Thus far Amtrak has not listened to the very urgent case which the officials of Trinidad, and I have tried to put forth.

Therfefore, I am using this forum in still another attempt to focus attention on this very pressing problem.

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

HOUSE JOINT RESOLUTION No. 1010

Whereas, The City of Trinidad, Colorado, currently has no rail, bus, airline, or other means of public transportation going east from said city; and

Whereas, Trinidad has a large number of people, including elderly persons, who would utilize rail service if it were available to them; and

Whereas, The nearest rail stop is twenty-five miles away at Raton, New Mexico; and

Whereas, The trip to Raton, New Mexico, from Trinidad necessitates going over Raton Pass which is extremely hazardous during the winter months; and

Whereas, Trinidad is the site of a junior college and students from various parts of the country would find rail transportation one of the most convenient ways to travel to and from Trinidad; and

Whereas, A railroad passenger stop at Trinidad would be used by persons from the Colorado cities of Walsenburg, Aguilar, La Veta, and Alamosa; and

Whereas, The federal government has a policy to relocate people from larger urban areas to less populated areas; and

Whereas, This policy will not be effective unless better transportation is provided to less populated areas; now, therefore,

Be It Resolved by the House of Representatives of the Forty-eighth General Assembly of the State of Colorado, the Senate Concurring herein:

That the general assembly hereby requests that the National Railroad Passenger Corporation have the railroad service under its jurisdiction make daily scheduled stops at the city of Trinidad, Colorado, in order to afford the area much needed railroad passenger service.

Be It Further Resolved, That copies of this Resolution be transmitted to the National Railroad Passenger Corporation, the Secretary of the United States Department of Transportation, and each member of Congress from the State of Colorado.

EULOGY BY GEN. LUCIUS D. CLAY, USA, RETIRED, AND THE PRAYERS AND TRIBUTE BY THE REVEREND BILLY GRAHAM FOR JAMES F. BYRNES

Mr. THURMOND. Mr. President, the eulogy for James F. Byrnes who died Sunday, April 9 was delivered in Columbia yesterday by Gen. Lucius D. Clay, USA (retired), and prayers and a tribute were offered by the Reverend Billy Graham. The service was held in the rotunda of the State Capitol just prior to the funeral services for Governor Byrnes at Trinity Episcopal Church across the street from the Capitol.

General Clay had served as deputy when Mr. Byrnes was director of War Mobilization in World War II and as deputy military governor in Germany when Mr. Byrnes was Secretary of State. His remarks yesterday provided a keen insight into the wisdom of leadership provided by Governor Byrnes over a public career of nearly a half century.

Dr. Graham has known Mr. and Mrs. Byrnes since bringing his first crusade to Columbia 25 years ago, during Mr. Byrnes term as Governor. His prayers and his tribute yesterday recounted the religious inspiration which guided this great man and the principles which he practiced in his life.

Mr. President, their words about Governor Byrnes serve to remind us of the true greatness of his life and service and the source of his convictions and strengths.

These words are an inspiration for all of us, Mr. President, and I ask unanimous consent that they be printed in the CONGRESSIONAL RECORD at the conclusion of my remarks.

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

PRAYERS AND TRIBUTE BY THE REVEREND BILLY GRAHAM AT EULOGY FOR JAMES F. BYRNES, STATE HOUSE, COLUMBIA, S.C., APRIL 12, 1972

INVOCATION

Shall we pray: Our Father and our God, we thank Thee that in the generations of American history Thou has seen fit to raise up men that exemplified all that was best in America to lead us in times of peace and in times of war and we thank Thee for the life of the one that we come to pay tribute and to honor today. We thank Thee that this man with his integrity, his sense of honor, and his deep religious faith was one of those men that Thou didst choose to lead America in times of crisis, but he never forgot the soil from which he came and the people to whom he owed so much—the people of South Carolina. We thank Thee for his memory today. He was a part of all of our lives, and we pray that we may remember him by accepting the torch that he hands to us today to make America a better nation and South Carolina a better state because both are better because he walked here. We thank Thee that his faith went beyond his life because he believed in the future life and the Apostle Paul said "to die is gain" and we know that he has gained and that he's in Heaven because of the personal faith that he had in Jesus Christ as his Lord, Master and Savior, and we pray that his life will challenge us to have that same faith, for we ask it in the name of Jesus Christ our Lord. Amen.

REMARKS

I am sure that every person here could pay a tribute to this man. We all knew him in different ways. Nearly a quarter of a century ago, a young preacher came to Columbia to hold what was then called in South Carolina a revival meeting. It was controversial. The preacher was virtually unknown but Mr. and Mrs. Byrnes cancelled their plans for a vacation in order to sit on the platform with that young preacher to add his name and his prestige behind what he believed was needed in America—a religious renaissance. That was the kind of man he was and that's the kind of woman he had at his side.

BENEDICTION

Shall we pray: Our Father, we thank Thee again for what this man meant to a state, to a nation and to a world. We thank Thee again for his deep and abiding religious faith and we do not say goodbye to him today, but we say "till we meet again" because certainly we shall see him again in that City whose streets are paved with gold and, now, unto Him who loved us and washed us from our sins in His own blood and hath made us Kings and Priests under God, to Him be the

glory and the dominion and the power for ever and ever. Amen.

EULOGY BY GEN. LUCIUS D. CLAY, USA, RET., COLUMBIA, S.C., APRIL 12, 1972

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 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 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 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 some hope of success. Although the interim coalition governments formed under these peace treaties were not to survive, there was no other way short of our 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 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 President, 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 Europeans—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 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 utimate 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 Vanderberg 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 knew 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 stopped, 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, only to find Justice Byrnes standing on the back platform 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 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 when it was most difficult not to be angry. Yet, 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 managed to improve the Foreign Service as a career service by securing the enactment of leigslation 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 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, after I became 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, also gone, protected the privacy of our meetings. We were a part of 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 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, 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, 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 ever 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 share this pride while we are ever grateful for the additional privilege of having known and loved Mrs. Byrnes and Justice Byrnes. May God be with us all.

GENOCIDE: VIOLENCE BREEDS VIOLENCE

Mr. PROXMIRE. Mr. President, recently my office was visited by a member of the Bangladesh Information Agency. There was some concern in regard to a recent RECORD statement of mine on Bengali mistreatment of the Biharis. I was informed that although during the first few days of independence for Bangladesh there were some unfortunate acts of violence, they were hardly comparable to the brutality used by the West Pakistanis during their occupation of the East.

I have no dispute with the Bengali argument. News accounts at the time vividly depicted the bloody suppression of the East and the acts of atrocity that became commonplace. Yet, the fact that violence and brutality are the inevitable components of war is not a justification for further acts of this sort.

War teaches us nothing new but rather reaffirmed the old and tired truth that violence breeds violence. Those who are mercilessly suppressed shall show no mercy when fortunes have changed. Vengeance strikes with a passion.

Such was the case in Bangladesh. The Pakistani troops certainly committed countless acts of needless brutality, and when vanquished, Pakistanti sympathizers felt the wrath of the bloodied Bengalis. There is no finger assigning guilt or innocent. But neither is either side absolved of the responsibility for unprovoked acts of violence.

The recent confrontation on the Asian subcontinent indicates that now, more than ever before, there is a pressing need for international agreements which resolutely condemn acts of violence. Although the treaty for the prevention and punishment of genocide was not applicable in the Pakistan crisis, it does represent a declaration of international moral opposition to genocide specifically, and violence in general. Such a declaration is long overdue, and I urge my colleagues to swiftly ratify the genocide treaty.

THREAT TO EDUCATION

Mr. KENNEDY. Mr. President, I invite attention to testimony yesterday by Acting Attorney General Kleindienst in the House Judiciary Committee which represents a blatant admission by this administration that it will countenance chaos in the school districts of the South in exchange for political gains next fall.

The testimony of Mr. Kleindienst is noteworthy first in what it admits and second in what it omits.

Mr. Kleindienst acknowledged to the committee that the President's proposed legislation will permit every school district which has desegregated unwillingly to file for reopening.

That admission represents the frantic scrambling of the administration to meet southern objections that the moratorium on busing he has proposed would only affect northern school districts and would not affect a single existing busing order in the South.

Now the Acting Attorney General comes before the House Judiciary Committee to argue that while the moratorium will not apply to them, southern districts under the Equal Educational Opportunity Act could all ask the courts to reopen their cases.

But what he forgot to mention—and what Secretary of Health, Education, and Welfare Elliot Richardson already has admitted—is that all but 100 of those districts would lose.

Secretary Richardson testified 3 weeks ago to the Senate Education Subcommittee that only 100 districts had any chance of having the courts decide in their favor under the Nixon administration proposals—in the dubious eventuality that the proposals are declared constitutional.

That is the pity and the tragedy of the administration proposals. Because they would combine to undo every local agreement in the South for ending dual school systems. To all those decent and concerned parents, teachers, and administrators of southern districts who have agreed on compliance with the law, and better education for both black and white children, these proposals by the administration open the way to endless discord and frustration.

Because, as Mr. Kleindienst stated they permit every one of those districts to demand new hearings but in all but a mere fraction of the school districts, that hope is illusory. It is a fraud that is being perpetrated and it is a fraud that will make it more difficult for these schools to get on with the job of education.

And it is even made more illusory by the recognition by the Acting Attorney General that the proposals carry the most basic challenges to the constitutional system of government in this land, challenges which are of doubtful constitutionality.

Thus, the impact of these proposals is merely to gain time, to give the appearance of action, to obtain the political benefit of fervent declarations against a myth of "forced busing to achieve racial balance," with the result being disruption of the process of education throughout the land.

DEATH OF FORMER GOV. JOHN STEWART BATTLE OF VIRGINIA

Mr. SPONG. Mr. President, the death of former Gov. John Stewart Battle of Virginia, has ended the career of one of my State's most distinguished public servants. Governor Battle, I am proud to say, was my good friend for many years. He was a man who gave calm and sensible leadership to Virginia during trying times. He was a gentleman of charm—kind and thoughtful with an impressive dignity. He was a man of honor.

Now, after a long illness, Governor Battle has passed away to take his place in the pantheon of the great men of Virginia. On Monday, John Battle was laid to rest in the shadow of Jefferson's Monticello and overlooking his beloved alma mater, the University of Virginia. The newspapers of Virginia have come forth with a series of editorials that note the great loss to the State, and their praise of Governor Battle as a man and as a public servant bespeak the sentiments of the millions of the State which he so nobly served.

I ask unanimous consent that the following editorials from the Roanoke Times, the Richmond Times-Dispatch, the Newport News Daily Press, the Richmond News Leader, the Norfolk Ledger-Star, and the Virginian-Pilot be printed in the RECORD.

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

[From the Roanoke Times, Apr. 11, 1972]

JOHN S. BATTLE

Former Virginia Gov. John Stewart Battle, who died Sunday at age 81, is remembered most for a massive infusion of funds into public education during his term, 1950–1954. There is more to the story than that. Governor Battle might also be remembered as the candidate who fought off one of the strongest challenges to the Byrd Democratic Organization in 1949—a challenge posed by Francis Pickens Miller.

Mr. Miller's advocacy of more money for schools was winning him prospects in the restless post-war years when the Byrd people, exercising their peculiar genius for finding money when it had to be found, came up with the hidden treasure which was promptly pledged by campaigner Battle.

Even at that, Colonel Miller might have won had not a Republican of standing advised Republicans to enter the Democratic primary, which they probably did.

Those days seem to be long, long ago, yet there is continuity with them. One of Governor Battle's sons, William C. Battle, would have become governor with a little luck—or, more accurately, with a little of that party loyalty organization opponents used to brag about. If he had won, who would be at the Capitol with him today? None other than a son of Francis Pickens Miller, Virginia's present able Attorney General, Andrew Pickens Miller. A poet would have liked that, particularly if he were a just poet.

Governor Battle was a man of integrity, character and sincerity. The latter characteristic enabled him—singlehanded, it seemed at the time—to turn around the Democratic National Convention of 1952 and persuade it to seat the Virginia and other Southern delegations without a loyalty oath then regarded as degrading. These historical remunerations were not in the minds of those who attended the funeral service yesterday in Charlottesville. They remembered a good man and an excellent governor.

[From the Richmond Times-Dispatch, Apr. 11, 1972]

JOHN S. BATTLE

Former Governor John Stewart Battle, buried yesterday in Charlottesville, symbolized the dignified and quietly competent leadership that flourished in Virginia under the Democratic party's conservative Byrd organization, leadership that could respect tradition without worshipping the status quo and encourage innovation without promoting social upheaval.

Even in the most heated times, Gov. Battle—courtly, tall and ruggedly handsome—remained a monument to calm. In the tight gubernatorial race of 1949, Battle's demeanor contrasted favorably with the red-faced oratory often heard on the hustings. During Virginia's massive resistance to school integration, John Battle never once stooped to racial slander. In the emotionally charged Democratic national convention of 1952, the then Governor Battle delivered a speech that was a masterpiece of composed thinking.

Many considered that speech to be Gov. Battle's finest hour. The convention had threatened to eject the Virginia, South Carolina, and Louisiana delegations for their refusal to sign a controversial loyalty oath to support in advance all its actions and nominees. Said Gov. Battle in opposing the oath: "We are simply reserving to ourselves the freedom enunciated by Thomas Jefferson—in whose county I happen to live—the great patron saint of this party . . . who believed in freedom of thought and freedom of action, and we are not going to sign any oath which will abridge that freedom which we claim for ourselves and believe you would like for yourselves." The convention, visibly moved by Gov. Battle's utterances, voted to seat the Virginia delegation, and the loyalty oath remained unsigned.

Within the spectrum of the Byrd organization's leadership, Gov. Battle was a moderate. At election time, he supported Democratic presidential nominees, such as Adlai Stevenson and John Kennedy, while his more conservative friends remained scrupulously silent. Throughout the massive resistance, Battle was a firm believer in public schools and opposed closing them to prevent integration. Finally, Gov. Battle was able to perceive one of the Byrd organization's most serious shortcomings: "that it has treated its younger men horribly."

As Virginia's chief executive (1950–1954), Gov. Battle's most significant achievement was to push through an appropriation of an extra $75 million for school construction. Known as the Battle plan, these funds, which for the first time went to localities without strings attached, provided the impetus for the building of 400 new schools for Virginia, the renovation of 500 more.

The most anguished moment of Gov. Battle's administration involved the "Martinsville Seven"—seven Negro men sentenced to death for the rape-assault of a Martinsville white woman. Their pleas for executive clemency found the Governor torn between the compassion for those awaiting the death sentence and his desire that justice be done. "I tried," he said, "to figure out a way to keep a couple of those younger men from being electrocuted. But they were as guilty as the rest." The law had spoken; there had been judicial review all the way to the U.S. Supreme Court. I could not intervene, I did not intervene . . . I've slept with a clear conscience; the law had spoken."

Virginians will miss him. One remembers his eyes, full of warm humor, with the drooping eyelids which cartoonists made so much of and which he himself laughed off as a "family idiosyncracy." One remembers, also, the basic human tolerance which stopped him from extremist rantings, either right or left. Finally one remembers John Battle for his "intangibles"—his quiet integrity, his humane statesmanship, his healing and conciliatory eloquence, and his profound faith in and affection for his fellow man.

[From the Newport News (Va.) Daily Press, Apr. 11, 1972]

JOHN STEWART BATTLE

Of John Stewart Battle it can truly be said that his stature as a man and as a public servant should stand the test of time. Already nearly 18 years have passed since he left public life, and those years have seen John Battle grow in the regard of his fellow-Virginians, even beyond the height reached as one of the Commonwealth's best governors.

Governor Battle's record of accomplishment speaks for itself, not only in Richmond but during many years as a superior state legislator. His most lasting contribution was in public education, with a program whereby construction of new schools received, for the first time, a top priority in allocation of funds. The Battle School Plan was the foundation stone on which Virginia has since then been building, an acceptance of responsibility that, if further delayed, would have led to the most serious consequences. And advances were made under Governor Battle's leadership in other vital areas of public services as well.

Responsibility was above all else, what John Battle represented; it was the key note of his administration as governor and was typical of every aspect of his long life. He was flexible too when his principles and the occasion merged in demanding it, and no one ever questioned his integrity.

Governor Battle entered the national limelight in the 1952 Democratic convention, when he stood forth successfully as leader of the Virginia delegation to prevent imposition of a loyalty oath that would have split the party apart. Few who witnessed that convention, in person or on television, can have forgotten his eloquent plea on that occasion in behalf of the principles of Thomas Jefferson.

That Governor Battle was also a courtly gentleman, as beloved as he was respected, makes his passing the more to be mourned. Hopefully there will never be a time when such men are denied the opportunity to offer the best of public service to the electorate.

[From the Richmond News Leader, Apr. 10, 1972]

JOHN STEWART BATTLE

In the great hall reserved for noble men, they have been holding a prominent place for John Stewart Battle. He died early yesterday at 81—the ultimate loser in an unequal battle that no one ever wins. But in almost everything that he undertook, he prevailed. Yet he nourished an abiding ability to prevail with goodness and grace. Reminiscing several years ago, he said that of all the nation's politicians, he admired Woodrow Wilson most: Wilson—he said—had "humor, integrity, and intelligence." John Battle might have been describing himself.

A moderate conservative who had served 20 years in Virginia's General Assembly, he emerged victorious from a tough and sometimes mean Democratic primary, and went on to become Governor of Virginia from 1950 to 1954. This was the beginning of a new era in Virginia politics: Since the gubernatorial race won by Harry F. Byrd, Sr., John Battle was the first gubernatorial candidate of the organization to encounter significant liberal opposition. Politically, the election of 1949 marked the beginning of the end of conservative dominance in Virginia politics.

Perhaps the essential long-term achievement of his administration was the allocation—for the first time—of direct State aid to the localities for the construction of public schools. In four years, $75 million went to the localities for that purpose: The money built or renovated 900 schools. It was a mammoth achievement.

But John Battle probably will be remembered longest for a speech he gave July 24, 1952, at the Democratic convention in Chicago. The delegations from Virginia and two other Southern States were being denied accreditation to the convention because they refused to sign the Democratic loyalty oath. A credentials fight raged until Governor Battle, chairman of the Virginia delegation, rose to address the delegates from a jammed convention aisle. There he stood—roughly handsome, his face a collection of Blue Ridge crags, his eagle eyes peering sharply from behind those famous droopy lids. He stood defiantly, uncompromisingly, unswervingly on his concept of personal honor; in an older day, seconds would have been called, and pistols would have been made ready for a dawn engagement under the oaks.

Governor Battle said his delegation would not pledge itself to candidates and doctrines that it could not accept. Here was a Virginian speaking extemporaneously of a Virginian's standard of honor. With the sheer eloquence of his voice and the manifest strength of his character, he captured an unruly and hostile audience. The next day, the Virginia delegation was seated. "We can go back to Virginia with our heads up in good conscience," he told the Virginia delegation. For his part, the Governor went back to Virginia and ultimately supported Adlai Stevenson.

Honor is an intangible thing, and in politics honor is little known. John Battle became a suddenly national figure to a generation that still understood a Virginian's concept of honor. Virginia grieves his death. Throughout his life, he did what he had to do: He did it superbly, he did it with dignity. He knew no compromise with intellectual integrity. He exemplified all that was human in Virginia, all that was fine, all that was good. Now he is gone. But his example lives. It persists in his State's new day, and—as he did—it prevails.

[From the Norfolk Ledger Star, Apr. 10, 1972]

JOHN BATTLE AND JAMES BYRNES

John S. Battle and James F. Byrnes, distinguished Americans whose deaths came coincidentally on the same day—Sunday—had much in common, though they were linked in no significantly direct way.

Both were Southerners, both were former governors of the states where they made their homes, both were courtly in bearing and attitude. Each wrote an important record of accomplishment and achieved eminence beyond his region. Each had strong ties to the traditions of the South, but without being hamstrung by the past; there was great breadth and progressiveness in both men. It was the courses of their lives which were quite different.

Though born in New Bern, N.C., Mr. Battle imbedded himself deeply in Virginia life and was responsible for great strides in this state's advancement. This was most particularly true in the area of education, where a vast construction program, undertaken at his urging as governor, became well known through the designation "Battle funds." While governor and earlier in his legislative role, Mr. Battle, overall, gave this state the best kind of solid, yet forward-looking leadership.

His reputation outside the state derived from a quiet force and integrity, combined with that dignity of manner which led to those descriptions of him as most people's idea of a Virginia governor. This force was displayed dramatically at the 1952 Democratic convention, when a few words from him turned aside an effort to impose a loyalty pledge on the delegations.

Mr. Byrnes, of course, attained an even larger degree of national—and international—recognition owing to circumstances and a different set of talents. As a Supreme Court justice for a short time, then a Roosevelt appointee in crucial jobs relating to the war effort, and ultimately as secretary of state and United Nations delegate, he was very much in the forefront of momentous events, building on a national career earlier as representative and senator from South Carolina.

Mr. Byrnes moved easily at all these levels, a man of candid judgments as well as large skills. He was one of the first to recognize that dealing with the Soviet Union could not forever be a matter of unremitting hostility. Comparing Russia to an unpleasant neighbor, he said, "You don't get a gun and declare war on your neighbor. You finally take him to court and you continue to pray that he will mend his ways."

Each of these men, in somewhat divergent ways, gave to his section of the nation as well as to the whole of it a fine blend of restraint and imagination. There was statesmanship and true substance in their long lives. They made themselves a proud, constructive part of history.

[From the Norfolk Virginian-Pilot, Apr. 11, 1972]

JOHN S. BATTLE

Governor John S. Battle's Administration, together with those of Governors Darden and Tuck, formed the Democratic Organization's golden age before it lost its grip, and, more telling, its vision. As was true with his two predecessors, Mr. Battle had a streak of independence that showed especially in his support of Democratic Presidential candidates. When other leaders withdrew with the boss, Senator Harry F. Byrd, into golden silence or whispered their "support of the Democratic nominees" without naming them, Mr. Battle, a straight-ticket Democrat, spoke clearly and emphatically. Indeed, his speeches to the 1952 Democratic convention helped prevent the party's splitting before Adlai Stevenson could begin campaigning. And in 1960, introducing and commending John F. Kennedy, he quieted a restless crowd in Roanoke by crying, "Do you think that as the shadows lengthen I would deceive you?"

At his death this week Virginians remarked that gray-haired, craggy-featured Mr. Battle *looked* like a Governor, the implication being that, unlike some others, he *acted* like one as well; but not until his term's second half did he impress himself so vividly on their imaginations.

During the 1949 four-way primary campaign for Governor, the tall, sleepy-eyed Senator from Albemarle nearly drove Senator Byrd to distraction by rambling at his own pace against energetic, progressive-minded Francis Pickens Miller. But Senator Battle—Chairman of the Finance Committee and sponsor of bills for unemployment compensation, a probation and parole system, and abolition of the fee system for sheriffs—proved a credible, forceful candidate. He won the primary with 43 per cent of the vote to Mr. Miller's 35 per cent, Horace Edwards' 15 per cent, and Remmie Arnold's 7 per cent, and then in November defeated Republican Walter Johnson nearly 3 to 1.

His program recorded modest gains at several points and a bold advance in public education by issuing $75 million to localities for construction of schools.

In 1952 he came into national prominence at the Chicago convention. The Virginia delegates were ready to walk out rather than sign a loyalty oath and the party's liberal wing was inclined to throw them out. Governor Battle, jaw outthrust, made his way through the tumult to the rostrum. The shadowy-eyed face, the resonant drawl, and the reasoned tone—"We are simply reserving to ourselves the freedom enunciated by Thomas Jefferson"—persuaded the convention to admit Virginia to full participation and then to take in South Carolina and Louisiana after his second plea: "I want to tell you that when I am at home and look out on the eastern hills at the sunrise, I can see the glistening rays of the rising sun reflected from the shrine of our patron saint. Is there any reason I should not be heard in this Democratic convention? . . . I shall never betray your confidence."

The trust he inspired enabled him to help settle differences on the national scene—burying the loyalty oath in 1956 and drafting a civil rights plank acceptable to North and South—and to serve Virginia with distinction.

YELLOWSTONE NATIONAL PARK

Mr. McGEE. Mr. President, the National Geographic for May contains a four-part series on Yellowstone National Park. The series was written in connection with the 100th anniversary of the country's first national park—the commemoration of which is taking place this year.

This series of articles, appearing on pages 579–637, poignantly illustrates the endless natural wonders of this unique area of northwestern Wyoming which has made Yellowstone one of the major tourist attractions in this country.

We in Wyoming and our neighboring States of Montana and Idaho are extremely fortunate to live in such close proximity to the park, thereby putting us in a better position to enjoy its many outstanding qualities.

I ask unanimous consent that the series of articles be printed in the RECORD.

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

YELLOWSTONE AT 100: A WALK THROUGH THE WILDERNESS—I

(By Karen and Derek Craighead)

A footfall awakens me in my sleeping bag in the small hours of a starbright August night. Fearfully I search the dark. A bulky hump-shouldered animal moves ominously toward me.

We are camped deep in grizzly bear country, exploring Yellowstone National Park's primeval back of beyond. My brothers—Derek, 22, and John, 17—and I have spent many summers and winters roaming this uninhabited wilderness, helping our father and uncle on wildlife research projects. Attack by grizzly, we know, is very unlikely. But it can happen, and I do not care for this moment.

Then I hear an indignant snort, and our visitor ambles up the trail. I see him better, silhouetted on the ridge. His antlers blank out the stars and release the tension in me.

"I'm glad it's you, Mr. Bull Moose," I whisper, and drift back to sleep.

My seven companions and I are visitors here, but we share a partnership with nature, and a curiosity too. Our trek aims to make a wide circuit of Yellowstone's vast, little-known backcountry. What values and obligations, we want to know, does this great preserve hold for today's young people, its inheritors?

At dawn I rouse to the crack of splintering wood; Derek is laying the breakfast fire. John walks into camp with our food, cached last night several hundred yards away as part of what we term "bear discipline." The other part is to sleep under a good climbing tree.

"Did you see the moose last night?" I ask.

My brothers laugh. They lead me and our fellow backpackers to the trail. There, superimposed on the moose's hoofprints, are the tracks of a grizzly.

Despite my earlier apprehension, I enjoy the sight. It makes me feel a growing oneness with this wild and unspoiled land.

Our trek began at Gardiner, Montana, the park's northern gate. Completing our wilderness circuit will take more than a month of all-weather, all terrain hiking. We'll come off the trail only briefly to renew our food supply.

We shall meet few people in the vast area of backcountry we must circle: a handful of other backpackers, perhaps half a dozen horseback trains. Yet there are people, thousands of them. Miles away, locked in traffic jams in the "civilized" part of the park, they thrill to glimpses of bear, moose, and elk and marvel at Old Faithful's eruptions.

This motorized cavalcade of humanity visits less than 5 percent of Yellowstone. Few have ever seen the rest; to do so one must walk. I am both sorry and glad.

We are hiking nearly 250 miles to view the part nearly everyone misses. All of us already have discovered this much: Each mile will test the body and broaden the mind. Yellowstone's wilderness is an adventure of the soul as well.

No adventure gets far, however, on an empty stomach. "Breakfast," shouts husky Bob Cole, 16, a friend and neighbor from Missoula, Montana. We turn away from the bear tracks to gather around the campfire.

Bob carries water from a creek in fire-blackened pots. Seventeen-year-old Mary Berthrong, a hardy 100-pounder from Colorado, boils cereal and dried fruit. She stirs this lumpy mush and ladles it out. We add brown sugar and set to.

Morning and night, our diet consists mostly of freeze-dried food reconstituted with water.

At lunch we snack on jerky (dry beef), cheese, kippers, sardines, gingersnaps. Along the trail, we munch candy bars or "gorp"—a mixture of raisins, nuts, and sweets. We drink hot tea, chocolate, and coffee, and take our water where we find it.

Most of us rate this fare tolerable-to-good. You can't be choosy in the wild. A tenderfoot from Maryland, tousle-headed Robbie Jordan, only 14, always scowls at the breakfast mush with its globs of raisins, apples, and apricots. He won't be a tenderfoot long, but he'll never like this porridge.

HIKERS GREW UP IN A HUGE BACKYARD

We eat breakfast perched on logs around the fire. Then we douse the fire, police the area thoroughly, fold our three tents, divide the food, and reload our packs.

Each of us carries a sleeping bag and pad, a change of clothing and long underwear, rain gear, medical supplies, and insect repellant. And there are hunting knives, cameras, fishing rods, binoculars, and flashlights. We each had to haul 30 to 40 pounds on our backs. Happily, the burden lightens with every meal, and we toughen with every step.

Derek, our guide and manager, wants to step off at least a dozen miles today. It is seven o'clock. "Let's go," he yells.

We sling packs. In minutes we string out single file and take up the rhythm of the trail.

Derek ranges ahead. Now a senior at the University of Montana majoring in wildlife biology, he has hiked over much of Yellowstone doing research on grizzly bears.

Our perky friend Mary paces near him; she can keep up with—or outdo—almost any one. Bob Cole and John follow; both are high school athletes. Off to one side, camera cocked, strides photographer Sam Abell, 26, an experienced backpacker from Virginia. Sam and Derek are recording our trek on film. Young Robbie walks in front of me.

I have just turned 24, a University of Montana graduate in zoology. I have known Yellowstone in many moods and all seasons; to me and my brothers, it has been a 2¼-million-acre backyard. I too am physically fit, except for one thing. You might think, with all the hiking I've done, that I'd be immune to blisters. Not so. My feet are killing me.

Actually, blisters beset all of us but one, and he bears other woes. Robbie's father, Robert Paul Jordan, who is more than twice my age and accustomed to sea level, stretches his lungs painfully to obtain the oxygen his muscles demand. Bob will acclimatize.

"JOYS" OF THE TRAIL INCLUDE MOSQUITOES

I survey the bobbing line of hikers; it moves well, morning-fresh and aggressive. My mind slips into private thoughts and the solitude that binds hiker and wilderness.

The early hours are best, I decide. Fields of wild flowers glisten with dew, the sun paints with pastels, water makes lovely talk in the rills, the very air blesses us. For fleeting seconds a band of elk stands motionless on the skyline, fixed against flowing clouds.

We are hiking where Indians once walked. Parties of Crows and Bannocks moved through this mountain-rimmed bowl of meadows and forests, and saw streams flowing forever east here, west there. They called the region the "top of the world."

Mountain men also walked this way, and looked at the region differently. They goggled at what the earliest of them had described: earth trembling and rumbling, seething infernos, boiling waters fractionating into millions of tiny cascading diamonds.

An inferno it can be, at times. All too soon the day's heat arrives, and the mosquitoes. We ache with the discovery of new muscles. We grow thirsty, then cotton mouthed; that snow patch high on the flank of Amethyst Mountain will be our first water.

We strike upward. Footing is treacherous. Break a bone, and help will be long hours in coming. We carry no radio; one of us would have to walk out for aid.

Survival of the fittest rules here. The other day, in the Black Canyon of the Yellowstone, we found elk antlers and bones. Hundreds of elk had wintered here on dry grass and shrubs. There wasn't enough for all. Starvation cut down the old and weak.

Later, slogging up a dusty, sagebrush-dotted stretch of Specimen Ridge, we contemplated the boneyard of antiquity itself. We stood in the midst of 40 square miles of fossil forests. Petrified wood lay everywhere, scattered remains of ancient redwood, sycamore, hickory, oak, magnolia, walnut, pine.

The most dramatic display of all waited not far off the trail. Partially exposed by cliffs, 27 buried fossil forests rest one atop the other in about 2,000 feet of compressed volcanic ash and mud.

WILDERNESS SPEAKS WITH A GENTLE VOICE

An eerie slice of 50-million-year-old earth, Specimen Ridge. Sam Abell cheered us by recalling the jaunty words of Jim Bridger, famed trapper of the early 1800's:

"Yes, siree, thar's miles o' peetrefied hills, covered with layer's o' peetrefied trees, and on 'em trees air peetrefied birds a singin' peetrefied songs."

How nice, I thought. Songs for forever. And then I snap out of my reverie.

My ear picks up the forever sounds of Yellowstone, all about us. We have crossed Amethyst Mountain and left the trail, plotting our way by topographic map and compass through dense forests of lodgepole pine. Forests cover four-fifths of Yellowstone. We scramble over the silvery jackstraws of long-fallen trees; in a delicate balancing act on their trunks, we bridge gurgling streams.

Overhead, slim green pines creak in the soft breeze. Our presence alerts a great horned owl; he hoots with a resonant baritone and flies away. Soon a nameless waterfall offers both music and welcome water therapy—bathing, drinking, playing.

The next day, rested, we cross Mirror Plateau. Golden eagles and goshawks command its skies, scanning earth for grouse, squirrels, chipmunks, small birds, gophers, and snowshoe hares. "There's a porcupine," Mary announces. We watch him waddle into a thicket. He will go unchallenged unless by a hungry grizzly bear or coyote, which occasionally accept a mouthful of quills as the price of a full belly.

In the distance we see an old bull bison; he limps across the meadow, alone, no longer able to keep up with the herd. Badly crippled, he will not live out the winter. When he dies, coyotes and ravens will feed on the carcass. It is nature's way.

Maintaining such natural balance is a principal goal of park management. Yet changes in the wilderness ecology take place, and the system falls out of balance.

Most of Yellowstone's large carnivores long ago were trapped, shot, or poisoned. The wolf is all but extinct in the park, mountain lions so rare that it is doubtful if a self-sustaining population exists.

Of other wildlife, however, the park holds more than most people realize. Some 16,000 elk, 600 bighorn sheep, 600 bison, 1,000 moose, 300 to 500 black bears, and perhaps 200 grizzlies inhabit Yellowstone, moving in and out from national forests and private lands in Idaho, Montana, and Wyoming.

The elk, in recent times, have posed the greatest problem. Herds grown too large for available winter range have had to be reduced to prevent overgrazing and extensive starvation. Until 1967, the National Park Service accomplished this by periodically driving elk into corral traps with helicopters and transplanting them by truck to areas where they once were more abundant. Now, however, park policy is to rely on natural controls—chiefly weather and the availability of foods—as well as migration and hunting outside park boundaries; to keep the size of the herds in check.

SKULL RETURNED AMID GHOSTLY HOWLS

In spite of serious game management problems, Yellowstone remains an invaluable outdoor laboratory. New studies in many fields of science can provide information the Park Service needs to protect the land and wildlife. Here lies a challenge young people can help meet.

My companions and I talk about these things around the campfire. We are now a week into our trip. Our small tents are pitched at the head of Pelican Valley, a land of pungent sage sweeping to the distant Absarokas. Out of the cloud-blackened north a coyote howls, then another, and another.

"Eight years ago," says Derek, "I heard a lot more howling in this same valley in broad daylight, when my cousin Charles Craighead and I met the great spirit god of the coyotes."

Robbie is incredulous. "The *what?*"

"In a water hole not far from here," Derek goes on, "we found a bleached bison skull. We started down the valley with it.

"We hadn't gone 50 yards when coyotes began howling everywhere. It was spooky. They were talking to us. We returned the skull to the hole. The howling stopped. Then I knew that we had disturbed their spirit god."

Bob Cole tosses a handful of sticks on the fire. It blazes up, and the thin chorus of the night fades away.

SUPPLY STOP—THEN SERENITY AGAIN

The new day brings us to Lake Butte, on the highway leading in from Yellowstone's east entrance. Civilization I resent the sound of speeding vehicles even before we sight them. But we must pick up supplies. This chore takes until after dark.

Our spirits are as restless as the moving moon. At last we shoulder our packs, heavy once again, and step into the coolness of the summer night. Beside the road waits the forest, a curtain we draw behind us.

Thick tree roots and rocks vanish and appear along the trail as the moon plays in the clouds. Bob Jordan plunges from a slick log waist-deep into a chilly creek. We laugh; it is part of the game.

A light rain distills forest fragrances. Our noses tell us of pine needles, ripe huckleberries, meadow hay, and bedded elk. In the dark, we feel our way down the path to Park Point and camp beside Yellowstone Lake.

I sit there counting shooting stars. To the west, sheet lightning silhouettes mountains. Serenity reigns—a peace of mind we all feel and enjoy in our own way. I gaze over the vastness that stretches forever and forever before me, hoping that this wilderness will be here always for people to enjoy.

Morning. The turquoise waters of 139-square-mile Yellowstone Lake spread before us, rimmed by forests and fed by runoff from snow-clad mountains; at 7,733 feet, it is among the highest lakes of its size in the world.

Casting dry flies, Derek, John, Bob Cole, and Robbie Jordan take a dozen cutthroat trout in minutes. That night we feast like mountain men and, tired from a day on the lake, go to our sleeping bags sated.

A good night's rest involves precautions. You try to find a level spot. Your bag should lie beneath a tree, not only for bear security but also to protect you from a heavy dew. You rake the site with your fingers, removing twigs, branches, pebbles, pinecones, and the ever-present elk pellets. You brush the ants away and trust that the mosquito repellent works.

This done, you crawl into your bag, adjust a sweater or whatever you wish for a pillow (one of us uses his moccasins), and contemplate the star-popping blue-black vault of the universe.

Tomorrow arrives like a reward. Southward we hike, and two days later leave Yellowstone, crossing into Teton National Forest. Here we sample foods the Indians once enjoyed. Derek digs yampa; Robbie bites into a crunchy root and announces, "I hate parsnips."

Sam spies white sego lilies, Utah's state flower, brightening a hillside. "Indians ground the bulbs and made bread," Derek tells us. "The Mormons," he adds, "ate the bulbs during their first lean years in Utah."

Mary points to a silvery-green thistle towering above the other vegetation. "I'll bet nobody ever ate that."

Our flora expert calmly cuts, peels, and hands her a section of the stem. "It tastes like celery," Mary observes. Elk thistle was eaten by early explorers of the region and perhaps by the 150 or so Sheep Eater Indians who lived here before white men came. Like the old-timers, we also find that chopped wild onions greatly improve the diet—in this case, reconstituted ground beef.

TWO OCEAN PLATEAU RIDES THE CONTINENTAL CREST

In Yellowstone, most people cross and recross the Continental Divide swiftly in cars. We negotiate it on foot just south of the park. Here a stream splits into two branches; we kneel and drink from adjacent creeks named Atlantic and Pacific, and watch their waters dash toward the opposite sides of a continent.

More hard climbing. We take a narrow, winding trail, steep and dangerous with yielding rocks. Past a thunderous waterfall our procession files, into slanting meadows vibrant with purple asters and pink monkey flowers, around cliffs, beneath snow patches, through forests.

At noon we stand atop Two Ocean Plateau. I feel a humbleness of spirit as we gaze from the top of the world at Yellowstone Lake to the north, the Absaroka Range sweeping the eastern horizon, and the Wind River and Teton Ranges thrusting southeast and southwest.

Toward evening we reenter Yellowstone. With food running low, we make for the park's south entrance. We wade the meandering Snake River more than a dozen times, squishing the miles away. Three days later, we ford a swift, full-scale river at the south entrance.

All of us anticipate civilization's amenities: a malted milk or two, a hot bath, a rare steak, a bed with a mattress. These provided, and food supply replenished, we can't wait to get back on the trail.

Our team alters, Bob Cole has returned to Missoula for early football practice. Influenza levels Robbie Jordan; he and his father will rejoin us after several days. I consult a doctor about my badly blistered, aching feet. "Stay off them," he advises. The group goes on without me. I meet it by a car a day later at the Pitchstone Plateau trail head, sorry to have missed even eight miles.

The path up Pitchstone is a joy, padded with pine needles and vegetation. Beside Phantom Fumarole, we eat our lunch on a thick mat of steam-heated moss. Pitchstone Plateau at 8,700 feet seems a moonscape with frozen waves of black sand and gullies jumbled with gigantic boulders, oddly graced by fields of purple elephant-head flowers. Beneath the plateau, steep-walled Bechler Canyon provides a warm-water pool to soak in. It feeds into an icy creek.

Warm water? Suddenly it feels scalding hot, and Mary and I bolt from our improvised tub. "You could cook a trout in that," she exclaims. There are, in fact, several places in the park where on other trips we have caught fish and then cooked them in pools only a few feet away.

FROST SIGNALS CHANGE OF SEASON

September draws near. Frost sometimes rimes our sleeping bags these mornings; mosquitoes and other biting pests have gone. They are not missed.

We push on through trackless country near Shoshone Lake. Shoshone Geyser Basin is a major backcountry thermal area. We examine finely formed miniature terraces and cones the waters have deposited as they cooled and evaporated.

"I feel as if we're the first to discover this place," Sam remarks thoughtfully. "Nobody has tossed pennies into these pools, or left any candy wrappers or cigarette butts."

By afternoon we reach Old Faithful, where man and raw nature meet head on. It is rewarding to see the wonder on the faces of a thousand people as the world's best-known geyser erupts. I only wish they could see the rest of Yellowstone as we have seen it.

When the new day arrives, we restock our depleted larder and continue north—Robbie and Bob Jordan again with us—on the last rugged leg of our journey.

Derek leads us along the Firehole River through the Upper, Midway, and Lower Geyser Basins, finally cutting east across a marshy flat to camp on Nez Perce Creek. The chill breath of an approaching storm envelops us.

I welcome it. In a month of backpacking, the weather has been ideal—too ideal, for that is not the true Yellowstone. We fall asleep to steady pattering, and wake to it.

Walking in the rain is fun; it exhilarates—but only after you resign yourself to being soaked. Then you enjoy the feel of rain matting your hair, filling your eyes, dripping off your nose, running down your neck.

I don't talk much about my fondness for the rain; certain mutterings indicate that not everyone sees it my way. Starting the dinner fire proves agonizingly difficult. Spending the night in a soaked sleeping bag is better only than trying to sleep in the rain without one.

HIKERS "CROWD" A MOUNTAINTOP EYRIE

We now have walked up to the foot of the Gallatin Range, and the drizzle has ended. Mount Holmes looms over us, an ancient, bald, crumbling pile of rock 10,336 feet high. I note that Bob and Robbie climb steadily. Both are in top shape; for father and son there is a new awareness of what their bodies can do, a pride in knowing that they can take the mountain.

On top, the cold wind lashes us with gusts up to 40 miles an hour. We put it to great use. Our wet bags dry out in minutes.

The Mount Holmes fire-control aide, Kevin Hoofnagle, invites us into his snug eyrie. An old iron stove warms the room; a 360-degree panorama of Yellowstone spreads before us. "There are about as many people here now," the slim young lookout tell us, "as I've seen all summer."

He has seen few bears, too, we learn; only two grizzlies and four blacks. We have spotted none in the more than 200 miles we have covered. This is the one disappointment of our trip.

And yet we make discoveries to compensate. We scramble down Mount Holmes's west ridge buffeted by gusts, slipping and sliding along a tricky talus slope—let no one tell you that descending such a mountain is easier than climbing it. At a gem of an unnamed lake, we find the charcoal of long-dead fires. We have come upon an old Indian camp.

"Walk over here," Sam directs me. "Sit on this rock. Now—look beside your feet."

My eyes fasten on a neat pile of black stone chips. I let my imagination work: A small band of Bannocks finds shelter here. An Indian sits in this place, chipping obsidian into an arrowhead. Other braves fashion projectile points and tools while squaws cook yampa roots and stir an elk stew.

Sam hands me a chip. I turn it in my fingers. It may be well over a hundred years old. These people, I reflect, lived in harmony with nature and left it unmarred.

Another day, and I wake with a pang. Our time grows short. The winds of yesterday return to pummel us anew. We angle upward into Bighorn Pass; a prairie falcon soars above us, knight of the sky. Derek decides that the most direct route to Bannock Peak requires us to follow the spiny ridge. We do—and spy two tiny figures far above.

On the summit, my father and Jay Sumner, his research associate, greet us. They have searched this high country for several days, looking for grizzlies but seeing none. I tell them about the Indian camp we found. Dad tells of a perfect arrowhead he had seen the night before; he and Jay found the camp too.

TO BE A VOICE FOR WILDERNESS

Northward we hike, climbing Quadrant Mountain and camping in a steep-walled hollow called the Pocket. On this last night of our little expedition, I think back.

Yellowstone, we have learned, challenges the body, stimulates the mind, fulfills the soul. It is a dynamic but intricately fragile world. Those who need wilderness such as Yellowstone must help to spell out its meaning. To be a voice for Wilderness, I feel, is a responsibility of today's youth.

Warm rain falls as I grow drowsy. It turns to snow as the temperature drops; at dawn we emerge into a world encased in white. This early warning signals the elk that soon they must make for their winter ranges. It triggers the movement of bears to their den sites.

We, too, heed the warning. We head down snow-muted slopes to the valley below.

YELLOWSTONE AT 100: AGELESS SPLENDORS OF OUR OLDEST NATIONAL PARK—II

The valley floor is quiet. Wisps of vapor from scattered fumaroles flutter in the breeze. Suddenly, rumbling and burbling and spewing water and steam, the geyser erupts.

For millenniums Yelowstone showed such wonders in a lonely theater, with only an occasional bear, an elk, or an eagle as audience. Today many of its star performers lie near roads and walkways. What was it like in those long-ago days before the visitors came? In the following portfolio, the camera recaptures that pristine spectacle.

Dawn silhouettes a crenellated tower. Vapor rises from its center like an early-morning cook fire. Then, with an explosion, water shoots 90 feet into the air and plays erratically for 20 minutes, followed by an hour's display or billowing steam that almost obscures the risen sun. Slowly the exhibition ends, and Castle Geyser sleeps again.

Nearby, 370-foot-wide Grand Prismatic Spring steams incessantly at a temperature near 150° F. The blue-green spring wears a raveled collar of yellow, red, and brown algae in this eagle's-eye view. An empty boardwalk rimming the pool is the only mark of man's presence.

Like sugar frosting, limestone encrustations decorate Minerva Terrace at Mammoth Hot Springs (pages 608–9). Mineral-bearing water bubbles up from the depths and trickles from terrace to terrace, shimmering in the sunlight.

As darkness settles over Biscuit Basin, only the hoot of an owl or the yelp of a coyote disturbs the silence. Then the moon rises, to

burst through the boughs of a spruce and cast a broad shadow on golden mist.

The Grand Canyon of the Yellowstone is never silent. Thundering day and night, the Lower Falls plunges 308 feet to beat itself to spray upon the rocks below.

Spectral fog haunts Norris Geyser Basin when the moon highlights the steaming pools. Gaunt skeletons of trees killed by ever-changing thermal activity point at the wheeling stars above.

And so the drama is played every hour, every season, year upon year. It will never lack an audience again.

YELLOWSTONE AT 100: THE PITFALLS OF SUCCESS—III

(By William S. Ellis)

The land itself is raw and timeless, a wilderness realm seemingly set aside at the creation. But as a national park—the oldest and largest in the Nation—Yellowstone measures its age, and 1972 marks a century.

During these hundred years, more than 48 million persons have visited the vast federal preserve in northwest Wyoming. For millions of others, the name alone has offered a sense of identity with America. No matter that, among all the national parks, attendance is higher at Great Smoky Mountains, and that the scenery, many claim, is more spectacular at Glacier. Yellowstone continues to stand as the doyen of national parks in this country and, indeed, in the world.

As I drove through the west entrance of the park on a day stifled by August heat, my thoughts were of a time, years ago, when an aunt returned from a vacation and, as aunts are given to do, distributed souvenirs of places she had visited. For me there was a coin bank in the shape of a moose, with the name "Yellowstone" burned into its wooden base. The bank is still among my belongings, having become, like bronzed baby shoes, one of those possessions kept through sentiment.

Such mementos of the park are found in homes across the country; pictures of Old Faithful erupting and black bears panhandling for food along the roadside; lamps with trick shades that depict the flow of the Lower Falls of the Yellowstone River; samplers with embroidered sketches of trumpeter swans treading through the shallows of a park lake.

That is one legacy of the first hundred years. A more significant one is the runaway success of the national parks concept. But there is now concern that this success may be defeating itself.

HIGHWAY CLOGS AT SIGHT OF A BEAR

"Campgrounds all full," the ranger informed me, though I had not intended to camp. Unfolding a map, he directed me to the nearest commercial accommodations within the park. Ahead lay Yellowstone's famed Grand Loop Road, with many of its 142 miles laced through forests of lodgepole pine. At some points the road skirts geyser basins where the earth steams and belches with infernal indigestion. It straddles mountains, crosses the Continental Divide twice within a few miles, and snaps like a taut string across gentle meadows.

There are two lanes and a speed limit. Traffic signs and the flashing red eyes of patrol cars, wrecks and wreckers, breakdowns and tie-ups and rush-hour frustrations—these too are present.

Thirty-nine miles to Canyon Village.

I drove slowly, savoring the feast of scenery spread all around. The Madison River ran beside the road, whipped to froth in some places, and, in others, placid and sequined with reflected sunlight. A fisherman stood waist-deep in the waters, his arm a blur of action in putting a fly on target.

Several miles along, the road passed through the shadows of cinnamon-colored cliffs. Then, by a patch of forest where tall, shallow-rooted pines rose from a floor of rotting snags, I came upon dozens of vehicles, all stopped in a road-blocking tangle.

I asked one of the motorists what the problem was. "Bear," he replied. He pointed, and I saw the animal lumbering along from car to car, accepting all handouts.

"Crazy, ain't it, all this fuss to see something you can see in a zoo anytime." He paused to watch the bear vacuum up a plug of bologna. "I'll tell you something else you can see without coming to Yellowstone. Traffic jams. So who needs this?"

Thus is Yellowstone beset by its own popularity. Established in March 1872 as a "pleasuring-ground for the benefit and enjoyment of the people," the park has fulfilled its mandate. But it was also set forth that provisions would be made for "the preservation, from injury or spoliation, of all timber, mineral deposits, natural curiosities, or wonders within said park, and their retention in their natural condition."

The two aims—providing enjoyment for the people, and preserving the environment—are now in conflict because of the record-setting number of visitors. They come now in winter as well as in summer. They come from large cities many hundreds of miles away, eager to escape the press of urban living. Often they come prepared to stay not just for a night, but for several days at least.

And, alas, they come in cars.

"In July and August, between 600 and 800 cars come into the Old Faithful area every hour between 11 and 3," said James Brady, who is in charge of the rangers at the famous geyser. "We spend much of our time with traffic matters."

TALLYHOS TO TRAFFIC JAMS IN 50 YEARS

Covering 3,472 square miles, Yellowstone, of course, has room for many more millions of visitors than the 2,126,346 who registered at the five park entrances during 1971. But not for their cars.

In the early years of this century, most visitors to the park traveled in horse-drawn carriages. Those arriving by train were transported from the station at Gardiner, Montana, in six-horse, double-deck coaches, locally called tallyhos.

The first engine-driven vehicle officially permitted in the park was a Model-T Ford. The year was 1915. In the summer of 1917 some 5,000 cars entered. The number rose until in 1971 it was 573,742.

Accidents on the 22-foot-wide loop road are now commonplace, averaging three or four a day in summer.

To many park purists, one of the most distressing aspects of cars in Yellowstone is the assault on the aesthetics of the setting, such as exhaust smoke wafting over grassy roadside meadows that once knew nothing more noxious than the bad breath of buffalo. Or the headlights that scar a Yellowstone night like a knife slash in a priceless painting.

Yellow dust filtered through the screen door of Park Ranger Brady's office. Outside, great swirls filled the air as heavy machinery leveled a large area for parking lots. At a nearby intersection a ranger entreated a driver please to move his bungalow-size camper back a few yards so pedestrians could cross. A frisky Airedale broke his leash and raced off, as the owner took up the chase with a cry of "Heel, boy, heel!" An ice chest fell from the roof rack of a car, sending cans of soft drinks rolling along the road.

Jim Brady finds a challenge in all of that. "We need to know more about what people want, what they expect when they come to a park," he told me. "And in that regard, rangers today must have a feeling not only for nature, but also for people. We must be able to communicate."

Raised in an urban environment, Brady has an understanding of the problems that have arisen in Yellowstone and most of the other national parks. He is, at 32 and with ten years of service as a ranger, a man of many skills and wide knowledge. He knows why and when a bull elk sheds the velvet on its antlers. He also knows how to investigate matters as sensitive as drug use in the park.

Rangers are now given such specialized training as narcotics control, because many of the social and environmental ills of the city have spread into the national parks. There is crime in the campgrounds and the threat of pollution in the forests.

"The rate of increase of crime in the parks now exceeds the national average," I was told by Lawrence C. Hadley, an assistant director of the Park Service. "There are assaults and robberies, but mostly they're crimes against property, such as vandalism and theft."

Within the past year, Hadley said, the Park Service has developed a program of highly sophisticated training in law enforcement for rangers. The 12-week courses are held in Washington, D.C., and cover such tactics as judo and karate. In addition, there is a special force of U.S. Park Police ready to be flown from the Nation's Capital anywhere in the country; they can help regain control of situations such as the one that occurred in Yosemite on July 4, 1970, when 500 youths battled with rangers—and won, until reinforcements arrived and arrests were made the following day.

YOUNG WANDERERS FLOCK TO YELLOWSTONE

Unlike Yosemite, Yellowstone is too far removed from urban centers to be plagued by motorcycle gangs on weekend outings. Also, troublemakers seem drawn to parks in areas blessed with more sun and warmth. Thus has Yellowstone been spared some of the more serious problems.

"A lot of footloose youngsters come to Yellowstone, but relatively few give us trouble," Brady said. "Unfortunately, many of the young people in the park expect to be harassed when they see a ranger. That's why he must know how to communicate to let the kids know they'll be treated fairly."

The surge of young people into Yellowstone began several years ago. Some arrive by motorcycle, others in anything from old hearses to stand-up-drive vans once used for milk and mail delivery. But many hitchhike. On almost any summer day, the roads of Yellowstone are fringed with uplifted thumbs.

I talked with many men and women of college age there and found that, with few exceptions, they share a keen appreciation of the gifts offered by this giant among national parks. Shouldering packs, they strike out along the more than 1,000 miles of trails with the exuberance of frontiersmen. And seldom does a summer night pass without a guitar plunking somewhere in the hinterland.

BACKGROUND BECKONS TO ONLY A FEW

Except for these young people, not many visitors venture away from the roads and established campgrounds. Rather, they concentrate activities within an area covering no more than 5 percent of the park. In conversations with dozens of people who entered Yellowstone in the summer of 1971, I came to realize that the great majority prefer the company of others. The choice is for a campsite in the midst of 200 other campsites instead of a sleeping bag back where nothing stirs save sweet grasses ruffled by the wind.

"You hear it all the time now, that the crowds have ruined the park," said a middle-aged Californian with whom I shared a table in the dining room of the venerable Old Faithful Inn. "But the people who say that forget one thing: It's not ruined for those who like crowds."

Still, Park Superintendent Jack K. Anderson is making great efforts to disperse the visitors over a larger area of the preserve. In 1971 some 7,000 visitors hiked off the main roads to camp out at least one night. "The number is increasing," he said, "and that, really, is what the future of Yellowstone is all about." One-way and bypass roads have been created to ease congestion around such attractions as Old Faithful, where more than 2,000 persons may gather in summer to watch an eruption. For motorists passing but not wishing to stop, delays are now reduced.

"And when the three new parking lots are completed," he told me, "the situation will be even more improved. I think we're getting to the core of the traffic problem."

A tall, chesty man with a leathery voice, Jack Anderson became superintendent of Yellowstone five years ago. He oversees the park with firmness, but without forgetting the words of the founding Congress: ". . . for the benefit and enjoyment of the people."

The task is rarely easy, especially with budgetary restrictions that limit the staff of permanent rangers to 25. There were more stationed in Yellowstone 3 years ago. In 1961 there were 135 permanent Park Service employees in the park. Today there are 100.

This handicap, I found, does not prevent a marvel of housekeeping from being performed. No traces of the nearly 6,000 tons of garbage generated by the crowds each summer are found along the roadway. A candy wrapper in a field draws attention to itself. Animals that scavenge in the night greet the dawn with empty stomachs.

Garbage dumps are no longer open to bears, for the Park Service wants the animals to live under totally natural conditions. It wants to wean them from the artificial feeding which generations of Yellowstone bears have enjoyed.

Some authorities claim that the denial of food should be gradual rather than sudden. Glen F. Cole, Yellowstone's chief research biologist, does not agree, arguing, "Bears have been here for thousands of years. They got along very well before there was a tourist in the park. There's lots of food in the wild."

Baited culvert traps are placed in areas of heavy use. When a bear is caught, it is tranquilized and then transported by truck or helicopter to the backcountry. If it persists in returning (and some make it back with startling speed), it is either sent to a zoo or, in some cases, shot. Since 1968, rangers have reluctantly destroyed 33 grizzlies and 45 black bears.

The results are now apparent; Yellowstone's bears are vanishing from view. Not every visitor is happy with this development. I sat for a full afternoon in a ranger station and recorded some of the comments:

"Do you realize I came all the way from New Jersey to see two things—Old Faithful and a real live bear in the open? I mean, look, buddy, seeing a bear running free may not mean much to you, but when you live in Weehawken, it can be a big thing in your life."

When I raised this matter with Superintendent Anderson, he told me, "Of course it's great to see a bear, but in his natural habitat, not under conditions where this noble animal is degraded by being fed scraps along the road. We were averaging 75 to 100 injuries a year to people trying to feed bears. In 1971 we had only nine."

Naturalists estimate that 175 to 200 grizzlies, and from 300 to 500 black bears, live in Yellowstone today. In the past century, however, only two persons have actually been killed there by grizzlies. Provocation of the animal was involved in both cases, as it usually is when a bear does bodily harm. Stressing that the grizzly is basically shy, Anderson said, "If he *enjoyed* conflict we'd lose a lot more people."

"We used to have names for a lot of the grizzlies," Ranger Wayne Replogle told me. "There was Caesar, King Henry VIII and one that we named Ickes, for the Secretary of the Interior at that time. And Old Scarface—he must have weighed 1,000 pounds—ruled the park for a long time."

Replogle has seen many changes during the 42 years he has served in Yellowstone as a seasonal ranger. "When I first came here," he told me, "there were so few visitors that we'd hail down a car just to say 'Hello!'"

Wayne Replogle comes alone to Yellowstone now. His wife, who accompanied him to the park each season for 34 years, died last spring. So he takes walks by himself in late evening, when the hush breathes life into happy remembrances.

Wayne doesn't have to walk far to be where no change has come, where the awesome bigness of the land overwhelms the visitor as it did Jim Bridger more than a century ago.

Jim Bridger. Liar! That's what they called him when he told of seeing wondrous things in the region that would become the park, thing such as a column of water as big around as his body spouting 60 feet in the air.

"TALL TALES" WERE TRUE—AT FIRST

Born in Richmond, Virginia, Bridger made his way to Indian country in the West before his twentieth birthday. He could neither read nor write, but he was shrewd and wise, an expert guide and trapper who knew the Rocky Mountains as well as anyone of his time.

Jim Bridger was also a man who liked to embellish his stories. At first, however, his reports of Yellowstone were accurate. He did see "a mountain of transparent glass"—we know it today as Obsidian Cliff, a mass of black volcanic glass—and bodies of water that were "boiling hot." But since few believed him anyway, he lent his imagination to the Yellowstone tales, until the truth was stretched almost to the vanishing point.

Another fur trapper, John Colter, is believed to have been the first white man to see the Yellowstone country. He, too, told of the marvelous and eerie features of the land, and he too was ridiculed.

With civilization moving closer, and with prospectors verifying at least some of Colter's and Bridger's early reports, expeditions were dispatched to explore the area. The first set out in 1869, but it was not until 1870 that national interest was stirred by the findings of a party headed by Henry D. Washburn, surveyor-general of the Territory of Montana. One member, Judge Cornelius Hedges, is credited with being among the first to propose that the region be made a national park.

In 1871 an expedition under Dr. Ferdinand V. Hayden of the U.S. Geological Survey visited Yellowstone. A photographer named William H. Jackson was along, and the pictures he made have survived as classics that captured both the splendor of the country and the drama of its exploration.

Members of the Congress found Jackson's pictures on their desks when they assembled to debate the proposal to establish Yellowstone as a park. The impact of the brilliant studies in black and white no doubt helped the proposal pass.

At first, Yellowstone was a park in name only. Trappers and hunters continued to operate there. The Army assumed control in 1886, but in 1916, with the establishment of the National Park Service, Yellowstone was placed under its administration.

I spent many hours in the library at park headquarters, browsing through superintendents' annual reports and uncovering such morsels as, "On September 7, 1927, Col. Charles A. Lindbergh was seen circling over the Upper Geyser Basin in the *Spirit of St. Louis*, at about 2:30 p.m." He was barnstorming the country after his historic transatlantic flight that May.

To my surprise I also discovered that Yellowstone's thermal pools have accounted for as many serious injuries as have its bears.

In August of 1927, for example:

A doctor from Oklahoma was seriously burned when he backed into a pool. He remained in critical condition for ten days.

A woman from Brooklyn stepped into a pool and received first-degree burns.

A man from Salt Lake City died after falling into a pool near Firehole Lake.

With more than 10,000 thermal features, Yellowstone is indeed hazardous country. Two years ago a 9-year-old boy died when he fell into the bubbling waters of Crested Pool in the Upper Geyser Basin, not far from Old Faithful. Following this tragedy, a railing was built along the pool, where temperatures reach close to 200°.

STUDY PROBES FUTURE OF ALL THE PARKS

There are similar pools scattered over a large area of the park. Are all to be enclosed in barriers? Or are the thermal pools to be left as they are, without alterations to their settings, but with rigidly controlled access? When does providing for "the benefit and enjoyment of the people" have to stop because of the heavy burden it places on preserving the environment?

The answers to such questions are being sought during this Yellowstone centennial year. Members of the National Parks Centennial Commission, an advisory body, have been charged to use the anniversary to evaluate and make recommendations for the next century of national parks.

Meanwhile, Yellowstone is geared as best it can to handle what may be an all-time high number of visitors during this, its hundredth summer. And once again, Old Faithful will occupy the center ring of attractions.

I first saw Old Faithful perform on a Sunday afternoon. Two thousand other persons watched that eruption, too. As the tower of hot water surged out of the earth, I looked around and saw wonder reflected in nearly every face. Yet I heard only one voice—a rasping whisper urging the geyser to "Go, boy, go." An elderly couple next to me held hands, as if the hissing waters were pronouncing a benediction of happiness and good health for their late years.

Eruptions occur on the average of once every 65 minutes. Geyser experts concede that the complicated system of subterranean plumbing may one day cease to function. Chances are, however, that when Yellowstone's second century rolls to a close, Old Faithful will be working its sorcery as usual.

The Grand Canyon and falls of the Yellowstone River are also favorite attractions. Viewed from the rim of the canyon, where the depth varies from 800 to 1,200 feet, the river flows like a swirl of frothy confection.

I walked along a trail that descended 600 feet in less than half a mile to reach the Lower Falls. There the water tumbled 300 feet to crash and then move on through a screen of spray.

"FAIREST DREAM WHICH EVER CAME"

Of all the stretches of water in the park, the one holding the most appeal for me is Yellowstone Lake. Sitting at an altitude of 7,733 feet, the lake takes snowmelt from the serried peaks of the Absaroka Range pressing in from the east. Far to the southwest, but still visible, rise the Tetons.

Of this lake with a shoreline of more than 100 miles, a member of the Washburn expedition wrote: "It was like the fairest dream which ever came to bless the slumbers of a child. How still it was! Was silence reigned! How lovingly it laid its hush upon you!"

That same hush was laid upon me one afternoon when I took a small boat out on those jadelike waters, and sat for hours while cut throat trout played soccer with the lure on my line. Silence in our time, however, can be perishable even in the remote reaches of Yellowstone. High overhead, a military jet sent down a sonic boom that fell on the lake like a burst of divine rage.

THE NEXT 100 YEARS: A MASTER PLAN FOR YELLOWSTONE—IV

(By George B. Hartzog, Jr.)

The mountain men—trappers and guides—saw it first, this country called Yellowstone, but their reports were quickly put down as just so many tall tales. William Henry Jackson, however, took his cameras along on the 1871 Hayden expedition, and his clear and beautiful photographs were accepted as proof that this vast garden of nature's wonders did indeed exist.

Certainly, members of the Senate and House of Representatives, when voting to make Yellowstone our first national park, must have been impressed by the pictures.

Equally impressive was the official report of 2nd Lt. Gustavus C. Doane of the 2nd U.S. Cavalry, who accompanied the Washburn expedition of 1870. Yellowstone, he wrote, "is probably the greatest laboratory that nature furnishes on the surface of the globe."

One hundred years later, we face the grim realization that without prudent planning the future of Yellowstone is in jeopardy. The problem, ironically, is an outgrowth of the park's success—the threat of overuse.

If this great natural resource is to be protected from destruction over the centuries to come, we must base our plans on the realities of today and the potential of the future. For example, the park road system and facilities for overnight accommodations were built to meet the requirements of the horse-and-wagon era. Neither is sufficient today.

ENJOYMENT WITHOUT RISK OF DESTRUCTION

What can we do to ensure that Yellowstone will continue its service to mankind—service, that is, to meet the demands of the times?

Yellowstone must be preserved and protected, but it also must be used. We cannot seal off its borders, any more than we can open the park to all comers without regulation. The park exists to serve the public, but the public cannot be allowed to damage or destroy it. Unlimited development would mean the eventual end of Yellowstone. And that destruction would mark the absolute failure of what the National Park System stands for.

Thus we must strike a new balance, providing maximum enjoyment of the park's many treasures without contributing to their destruction.

To do this, the National Park Service has drafted a new "master plan." This is not a set of rigid blueprints and precise specifications. Rather, it is a philosophical statement on how we can recognize and overcome the challenges to the future of Yellowstone. It contains suggestions to be implemented according to the realities of time, population, the state of scientific knowledge and technological developments, and, of course, the availability of public and private funds.

The plan recognizes that one of the most serious threats to Yellowstone—and to most other parks as well—is the automobile or recreational vehicle. There will be an emphasis, then, on getting people out of their cars and into actual contact with nature.

This does not mean that everyone will be expected to shoulder a pack and cross the park on foot. Rather, it means that much of the transportation inside the park should be by unobtrusive mass transportation. This would allow the visitor to get easily from place to place, spending as much time as he desires in any one area.

The visitor of the future could approach Yellowstone on any of the highways serving the preserve. At the "gateway," where the highway meets the park border, he would find a complete service complex with food and lodging according to his budget, parking lots, a bus staging area, and a visitor center where he could plan his trip.

Overnight accommodations retained inside the park would be changed in character from traditional lodge or hotel atmosphere to wilderness threshold communities. Here the visitor could make the transition from urban dweller to naturalist, learning from and enjoying close contact with the natural world.

PARK VISITORS WOULD TRAVEL BY "PEOPLE MOVERS"

The master plan would change one of the most famous of Yellowstone's lodges—Old Faithful Inn—to a daytime visitor center.

Facilities at West Thumb, which encroach on significant natural features, would be phased out and the area returned to a natural state.

At Old Faithful and other areas of visitor concentration there would be shuttle buses to take visitors to points of interest. At Canyon Village, cars would be barred from the drive along the rim of the Grand Canyon of the Yellowstone. Buses or other means of mass transit would allow visitors either a look or a longer stay, and then return them to the visitor center, where another people-mover system could take them on to the next destination within the park.

The combination of mass transit and gateway centers for parking and lodging would allow the National Park Service to concentrate within Yellowstone on interpretive services to help people get the most out of their visits.

Many of our interpretive services—visitor centers, exhibits, displays, and ranger talks around the campfire—could be performed very well in a gateway area. The vistor would be better prepared to enjoy his visit once he gets into the park, and less likely to miss something simply because he didn't know where or how to look.

With fewer cars and roads and less construction within the boundaries of Yellowstone, there would be a better chance for nature to restore a natural ecosystem—a major objective of the master plan.

Lieutenant Doane reported that his 1870 party was serenaded by "the melancholy voices" of mountain lions. I hope that before the end of Yellowstone's second century this serenade can be heard again.

Yet Yellowstone cannot stand alone. It will share the fate of its region. Planning must involve the park's neighbors, which, happily, include Grand Teton National Park, five adjacent national forests administered by the U.S. Forest Service, and a number of towns and ranches.

There is already much significant cooperative planning being done through the Joint National Park Service and U.S. Forest Service Coordination Committee. This cooperative work must be increased, for our success will depend upon the cooperation and the contributions of all concerned, both in government and in private enterprise.

MAN MUST LEAVE NATURE IN CONTROL

For the centuries to come, we hope to make Yellowstone National Park a peerless example of wilderness preservation: an area controlled by the basic forces of nature, yet available to all the people.

At Yellowstone we shall be able to see and understand the beauty of those forces and how our lives—in any environment—depend upon them. A major attraction will always be the natural phenomena of geysers, hot springs, and bubbling paint pots—pools of mineral-colored mud—which amazed the first explorers to see them.

Further, Yellowstone will effectively demonstrate the best of man's efforts to sustain his natural heritage and will be a living tribute to the origins of the worldwide national park monument.

In a nation with a life-style of transience and mobility, Yellowstone can be a permanent symbol of conservation that will enrich and sustain all who visit there.

With creative development and management, Yellowstone—the world's first national park—can become the exemplar of an environmental ethic in action.

VIETNAM WAR DAMAGE

Mr. NELSON. Mr. President, on April 12, I had the pleasure of hosting a briefing sponsored by the Council for a Livable World. Two professional ecologists and former Marines, Dr. Arthur Westing, chairman of biology, Windham College, Vt., and Dr. E. W. Pfeiffer, professor of zoology, University of Montana, discussed the environmental disruption of Indochina.

These two distinguished scientists had conducted in-depth studies of the effects of the defoliation program in Vietnam, which was very valuable for discussion of this matter about 3 years ago in the Senate.

Drs. Westing and Pfeiffer have recently from another study mission to Vietnam. Their latest slides and films of the environmental effects of the widespread use of defoliants, Rome plows, pattern bombing, and 15,000-pound Commando Vault bomb and their detailed presentation respecting these tactics of war are highly informative.

Dr. Westing prepared a written commentary on the visual evidence which was presented. I cannot convey in words the impact of those pictures, but I can at least request that Dr. Westing's paper be entered in the RECORD at the end of my statement. A picture is worth a thousand words, they say. But just one paragraph from Dr. Westing's report packs quite a punch:

> Munitions expenditures during the seven-year period 1965–71 were 26 billion pounds, twice U.S. expenditures throughout World War II in all its theaters. During this time span the U.S. thus expended munitions in Indochina with an explosive energy equivalent to 450 Hiroshima bombs (i.e., the explosive equivalent of one Hiroshima drop every 5½ days). In terms of the peoples of all Indochina, the total represents 584 pounds per person; in terms of its land, 142 pounds per acre. In terms of frequency, this sum represents 118 pounds per second throughout this entire seven-year period.

On January 28, I introduced a bill, S. 3084, the Vietnam war ecological damage assessment bill, which called for a full-scale study of the situation which Drs. Westing and Pfeiffer have described. At that time, I said to the Senate:

> If Congress knew and understood, we would not appropriate the money.
>
> If the President of the United States knew and understood, he would stop it in 30 minutes.
>
> If the people of America knew and understood, they would remove from office those responsible for it, if they could ever find out who is responsible. But they will never know because nobody knows.

Mr. President, I ask unanimous consent that the paper of Dr. Westing be printed in the RECORD.

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

THE ENVIRONMENTAL DISRUPTION OF INDOCHINA

The land and people of Indochina (287 thousand square miles and 45 million inhabitants—the size of Texas, but with four

times its population) have been under continuous, large-scale attack since 1965. The largely overlooked and presumably incidental impact of the Second Indochina War on the land and indigenous populations of that region has been of monumental proportions. One of the few factual summaries of this disruption was published last year by the Senate Foreign Relations Committee (under the title "Impact of the Vietnam War"). From the data presented we can approximate that as a result of this war, one out of every 35 inhabitants of all Indochina has so far been killed, one in 15 wounded, and one in six made a refugee. The social disruption implied by these figures is difficult to grasp; the proportionate impact on the United States, with its population of 200 million would be: 5,700,000 killed, 13,300,000 wounded, and 33 million displaced.

A WAR AGAINST THE ENVIRONMENT

However, the Second Indochina War has been waged against the land as much as against the people. It is in the light of the intimate association with and direct dependence upon the resources of the land by largely primitive peoples, and in the further light of our new awareness of all mankind's dependence on his natural environment that a growing number of scientists throughout the nation and the world, have become appalled by the long-range ecological impact of so-called limited counterinsurgency warfare. A further major concern has been the renewed dependence by the United States in this frustrating conflict on chemical weapons. This latter approach, with its serious public health and ecological implications, is a form of warfare which the civilized world had hoped was put to rest with the end of World War I.

Dr. Pfeiffer (a wildlife zoologist) and I (a forest botanist) have made several tours of Indochina during the past three years to assess the extent of ecological disruption caused by the weapons and techniques employed by the United States. We were limited in our studies by the obvious difficulties associated with working in an active theater of war and by the paucity of pertinent information that has been released by our government. What follows then is an attempt at conservatively summarizing the extent of environmental disruption caused by (1) the chemical warfare program with plant poisons (herbicides), (2) the land-clearing program with Rome-plow equipped tractors, (3) the massive bombing and shelling program, and (4) the 15,000-pound land-clearing bombs. This preliminary synopsis is based on a combination of personal observations, interviews, and information released by the Department of Defense. I report the environmental impact with the realization that it is dwarfed by the direct impact of the war on the peoples of Indochina, but with the further realization that these two dimensions of the war are intertwined—and will continue to be long after the war will have finally ended.

THE HERBICIDE PROGRAM

Chemical anti-plant warfare, restricted largely to South Vietnam, began on a small scale in November 1961, became a large-scale effort in 1966, and essentially ended in May 1971. In its *cover denial program* the United States aerially dispensed 17 million gallons (109 million pounds) of herbicides on 4.7 million acres of forest lands. In its *food denial program* it similarly dispensed 2 million gallons (7 million pounds) on 0.7 million acres of crop lands. Major herbicides used against forests were 2,4-D (57 million pounds), 2,4,5-T (48 million pounds), and picloram (3 million pounds); and against agricultural fields, dimethylarsinic acid (7 million pounds). About 15% of South Vietnam's forests have been sprayed once and an additional 4% repeatedly; about 8% of the nation's crop lands (primarily those in the Central Highlands) have been sprayed. All told, one acre in eight of South Vietnam was sprayed, representing an area the size of Massachusetts in a country the size of New England.

In the areas sprayed there has been an alteration and simplification of the plant and animal communities, a loss of mineral nutrients, acceleration of erosion in hilly terrain, and reduction in ecosystem productivity. Restoration time in the once sprayed areas is expected to exceed one decade and in the multiple sprayed areas at least several decades. Approximately one million acres have been utterly devastated by herbicides (two-thirds of these being upland forest, one-third coastal mangrove forest). It is estimated that over the years food was intentionally destroyed sufficient to supply the total diets for one full year of approximately three-quarter million Vietnamese (largely civilian, primarily Montagnard); additional amounts were destroyed as a concomitant of forest spraying. The herbicides seem to have directly and indirectly resulted in medical and veterinary problems. Timber losses have been estimated to total 6.5 billion board feet, sufficient to supply South Vietnam's timber needs for three decades.

The herbicide program seems to have ended, but its effects will long be felt, both in terms of the environment and in terms of the erosion of international arms control.

THE ROME-PLOW PROGRAM

Landclearing with tractors, a program restricted to South Vietnam, began on a small scale in 1965, became a large-scale effort in 1968, and is apparently continuing undiminished to this day. This little known operation, devoted at first to the clearing of roadsides and other lines of communication in order to discourage ambushes, has for the past several years now been used on a massive scale to literally obliterate forested areas of possible use to the other side. In its mission of denying cover and sanctuary the method appears to be without equal. The basic tool is a 20-ton tractor fitted out with a 2½-ton "Rome plow" and 14 tons of added armor. At least five companies of more than thirty tractors each are in continuous operation. As of last August about 750,000 acres of land of South Vietnam had been scraped bare by this means (an area the size of Rhode Island); and clearing progresses at the rate of more than 1,000 acres per day.

Plowing results in severe site degradation, weed invasion (often by the tenacious cogon grass), utter destruction of wildlife habitat, and major erosion and exacerbated flood damage in hilly terrain. The South Vietnamese forest service has estimated as of last summer that more than 20 million board feet of readily accessible hardwood timber on 126 thousand acres had been destroyed in this program; and French rubber officials have determined that 2,500 acres of rubber plantations had similarly fallen to the plow.

In short, "pacifying" an area with Rome plows rather than with herbicides seems at once more efficient militarily and more destructive environmentally.

BOMBING AND SHELLING

Conventional bombing and shelling, the former throughout Indochina and the latter mostly in South Vietnam, have become the major means of "landscape management" in this war. The one lasting impression that remains after flying over the country is of an endless number of craters. A conservative estimate of the actual number of these giant pox on the landscape is over 26 million—currently being added to at the rate of at least several thousand per day.

Munitions expenditures during the seven-year period 1965–1971 were 26 billion pounds, twice U.S. expenditures throughout World War II in all its theaters. During this time span the U.S. thus expended munitions in Indochina with an explosive energy equivalent to 450 Hiroshima bombs (i.e., the explosive equivalent of one Hiroshima drop every 5½ days). In terms of the peoples of all Indochina, the total represents 584 pounds per person; in terms of its land, 142 pounds per acre. In terms of frequency, this sum represents 118 pounds per second throughout this entire seven-year period.

Estimating the average crater to be 30 feet in diameter and 15 feet deep, the combined surface area to the holes alone created between 1965 and 1971 comes to almost ½ million acres, and the earth displaced by the explosions to a staggering 3.4 billion cubic yards.

More than 90% of all bombing and shelling in Indochina have been harassing and interdiction missions, in effect directed against forests and fields. The bombs and shells have torn up countless trees; and the shrapnel has been propelled over some 30 million acres hitting additional endless trees and thereby inviting fungal infection and wood rot. The craters have also disrupted extensive agricultural areas, both directly and indirectly. Irrigation systems have been disrupted and near the coast saltwater encroachment has resulted. The craters have exposed lateritic soil to the atmosphere permitting it to harden irreversibly. Millions of new breeding ponds have been created for disease-carrying mosquitoes. In hilly terrain, erosion has been accelerated. Finally, since 1%–2% of the bombs and shells expended are duds, there are now ¼ million of these scattered about, many of which are apt to explode if bumped into, for example, during plowing.

All in all, the effects of the truly massive bombing and shelling may well prove to be the least recognized and most permanently disruptive legacy of this war.

THE COMMANDO VAULT BOMB

The 15,000-pound BLU–82/B "Commando Vault" bomb can be dropped into dense, triple-canopy jungle to create an instant helicopter landing zone which averages 3.3 acres in size (an area larger than a football field). This bizarre item of ordnance became operational in 1970, although experimental drops may have begun as early as 1967. By rough estimate about 200 have been expended, and now seem to be dropped at the rate of several per week. The Commando Vault, a concussion bomb filled with a slurry of ammonium nitrate and aluminum powder, is detonated just above the ground and leaves no crater; much of its blast is directed in the horizontal direction. The tremendous blast wave required to shear off large trees and blow them 106 feet or more away in every direction from the epicenter continues outward for at least 1,300 feet (according to a recent Pentagon release) with a sufficient overpressure to kill or injure all exposed humans and wildlife. The average casualty zone per bomb is thus 122 acres (seven times the size of the White House grounds) and perhaps greater. The Commando Vault bomb is a totally indiscriminate, wide-area weapon which results in the complete local ecological disruption of the strike area.

RECOMMENDATION

It becomes vital in this time of a rapidly degrading world environment that man seek the knowledge of all the ecological ramifications of his current and potential activities.

On 7 October 1970 the Congress through Public Law 91–441 [Sect. 506(c)(1)] authorized a study by the National Academy of Sciences of the ecological impact of the herbicide program, an investigation now in progress [cf. Congressional Record, vol. 117, pt. 27, pp. 35274–35280; 6 October 1971]. However, since the herbicides seem to be dwarfed in their ecological impact by this war's other assaults on the environment, this investigation is clearly too limited in its scope. It is important now that serious consideration be given to the Vietnam War Ecological Damage

Assessment Act of 1972 recently introduced by Senator Nelson [S. 3084; cf. Congressional Record 1634–1635; 28 January 1972] and the companion bill introduced by Representative Guide [H.R. 13010; cf. Congressional Record 2968; 7 February 1972].

CBS "60 MINUTES:" THE UNREALIZED PROMISE OF OBJECTIVE JOURNALISM

Mr. HRUSKA. Mr. President, this past weekend was the occasion of two related—and not coincidental—events which bear directly on the national effort to reduce the rate of crime and delinquency in America.

One is the curious circumstances in which a television reporter had possession of an official report of the Legal and Monetary Affairs Subcommittee of the House Government Operations Committee—before the Members of Congress had been provided copies of the report. That report, loaded with bias, just happened to be "leaked" to Mike Wallace of CBS in time for his "60 Minutes" television program.

The second event of the weekend was the CBS television program, "60 Minutes." In it, Mr. Wallace seemed to strive valiantly to equal the classic distortions of fact that characterized the celebrated "Selling of the Pentagon" program of a year ago. One of the tools in his effort was the House subcommittee's report so conveniently at his disposal. This time, however, the target of the program was the Law Enforcement Assistance Administration—the Agency created by Congress to assist the States and local units of government in planning and implementing programs to reduce crime and make the streets of America safe once again.

Now the fact that the chairman of the House subcommittee is unable to preserve the traditional courtesy of providing his colleagues with copies of a significant report before it is intentionally "leaked" to a television personality—that is a matter to be resolved among the Members of the other body. My interest arises only because the press accounts clearly indicate that the report in question happens to distort and misrepresent a program in which I strongly believe.

I am particularly distressed because this prematurely publicized House document was used in a nationally televised program which was structured—as was the subcommittee report—in such a way as to present a distorted view of a major Federal program. The result can very well be a serious setback in the effort to reduce crime and improve the criminal justice systems of America.

Strangely enough, CBS has said it would be a week before they could provide a transcript of their broadcast. Consequently, a verbatim transcript was acquired from a commercial transcribing service here in Washington. I also have the unedited transcript of the Mike Wallace interview with Jerris Leonard, Administrator of the Law Enforcement Assistance Administration. I intend to ask that both of these documents be entered in the RECORD.

Mr. President, I am appalled to find that the CBS editors eliminated virtually every reference to the constructive programs funded by LEAA; they cut out Mr. Leonard's description of the complete reorganization of the Agency; they ignored his suggestion that they examine some of the 50,000 crime-fighting projects supported by LEAA; they dismissed strongly supporting comments of Chief Wilson of the District of Columbia Metropolitan Police Department; and they ignored the statistics which clearly show a dramatic drop in the crime rate of 53 of the Nation's major cities.

The original CBS transcript of the full interview of Mr. Leonard conducted by Mike Wallace is quite revealing. It shows, for example, Mr. Wallace reflecting the not very objective views of Charles Rogovin, who was himself unable to effectively administer LEAA 3 years ago.

On page 25 of the unedited transcript, Mike Wallace is quoted as saying:

> Your predecessor, Mr. Rogovin suggests that you fund projects that don't have any effect on crime, and then you duplicate those projects over and over again throughout the country because you don't really know yet, if those projects are working. That you don't have a proper evaluation program yet.

To which Mr. Leonard replied:

> That's what this agency used to do when he was the administrator. This agency is in business for one thing only—to reduce crime and delinquency in the United States, and we do that by crime specific planning. We're urging everybody who's using an LEAA dollar to ask himself the question, "when I put this project up, when I make application for these funds, what effect is this going to have on reducing crime and delinquency.
>
> Question (Wallace). In other words, partially you are correcting Mr. Rogovin's errors now?
>
> Answer (Leonard). Partially? We have thrown out his whole philosophy of running this agency which was to tinker around with the criminal justice system, and the theory that our goal was to improve the criminal justice system. That isn't our goal. Our goal is to reduce crime and delinquency. Now while we're getting to that goal, we will also improve the system, but that's a fallout benefit. Our main goal is to reduce crime and delinquency.
>
> Question (Wallace). Well then . . . to a moment . . . to the business of whether you are indeed where the statistics prove that you are cutting crime and delinquency. Why is it that after 45 months LEAA is just now establishing a way to set goals for the Agency? And letting out a consulting contract to measure progress or the lack of it in reducing crime? Four years after the thing went into operation. Now you're saying, gee, we ought to find out whether it's working or not.
>
> Answer (Leonard). Mike, I was appointed the administrator of this agency in April and confirmed in May of 1971 less than a year ago. I did an intensive study of this agency, reorganized it, and gave it a new objective. The objective of reducing crime and delinquency. In my view that's what this is all about.

Mr. President, thanks to the distorted editing by CBS, no one who saw the "60 Minutes" program this past weekend would ever have imagined that the foregoing clear and forthright statement of current LEAA policy had been a part of the original interview with Mr. Leonard. Of course, Mr. Leonard had no reason to expect CBS to insert rebuttal statements by Mr. Rogovin or to cut away parts of his—Mr. Leonard's—answers to various questions, nor was the viewing public informed that most of the criticized decisions were made while Mr. Rogovin presided over LEAA. Such deception. The cunning thus displayed would do credit to a burglar.

Mr. President, for the convenience of the Members of the Senate, I ask unanimous consent to place in the RECORD at the conclusion of my remarks the transcript of the complete CBS interview with Mr. Leonard, along with the edited version of that interview as it was televised on April 9. In addition, I ask unanimous consent to place in the RECORD an exchange of correspondence between Mr. Leonard and Bernard Garmire, chief of the Miami Police Department; a letter written by Chief Jerry V. Wilson of the District of Columbia Metropolitan Police Department; and a March 30, 1972, news release of the Federal Bureau of Investigation.

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

Mr. HRUSKA. You will note, Mr. President, that the transcript of the program actually televised includes a comment by Chief Garmire. He is quoted in it as saying that Miami "has never received a dime of action grants or action funds from LEAA."

Oddly enough, an exchange of correspondence between Chief Garmire and Mr. Leonard—dated March 14 and February 29, respectively—shows that Miami was awarded $165,000 in fiscal year 1970 and $432,373 in fiscal year 1971 from discretionary funds. In addition, Miami was awarded $113,949 from State block grant funds in fiscal years 1969–71, and the Florida Governor's Council on Criminal Justice has allocated $341,497 to Miami in the fiscal year 1972 comprehensive plan submitted to LEAA.

Furthermore, Chief Garmire states in his March 14 letter:

> The figures contained in your letter are, for the most part, consistent with our records.

And he says:

> May I hasten to add that we have received considerable assistance through the Discretionary Fund category. We are very appreciative of this and certainly have no complaint. As a matter of fact, we have never been treated arbitrarily nor refused favorable consideration in our application for Discretionary Fund.

I hope someone can explain to the television-viewing public how a presumably responsible public official—the police chief of a major city—can say on March 14:

> Yes, we've received nearly a million dollars from you and we have no complaint.

And then, on April 9 appear on a national television to say:

> So far as this department is concerned, so far as I am concerned, to date LEAA doesn't exist.

Mr. President, such a statement on the part of a major law enforcement officer, assuming it is accurately reported, is shocking. And the carelessness with the truth exhibited by CBS is revolting.

A further example of the biased editing and reporting by CBS is related to that portion of the televised program which shows the sheriff of Brevard County, Fla., as he criticized the law enforcement program. What CBS did not

show was the 2½-hour interview they conducted with Police Chief Clarence N. Kirkland, of Titusville, Fla.

For nearly 3 hours, Chief Kirkland told the CBS crew about the importance of LEAA to the battle against crime in his community. In his interview with CBS, Chief Kirkland had nothing but the highest praise for LEAA, and he talked of the increased capability to deal with crime that has resulted from LEAA assistance. He fully explained and justified the funding that has been provided to his community through the LEAA program, and he described the Florida State law which limits the amount a community may tax its citizens, thereby severely limiting the funds available for local law enforcement. He told how the LEAA has helped reduce crime in his community—which is, after all, what LEAA was created to do.

But did the television viewer see that side of the discussion? No; CBS did not want to present any favorable comments on the LEAA program. Would it not be interesting to find out why?

It is a curious fact that neither CBS nor the House subcommittee report could pause long enough in their criticism of LEAA—justified or unjustified—to comment upon the thousands of successful and promising programs to combat crime and delinquency. Nor did CBS take note of the recent FBI statistics which show a decrease in serious crime in 53 major American cities. That may be understandable in a report by the majority party members of a House subcommittee in an election year—but it is an observation that must be made with great sadness and apprehension where a major television network is concerned.

You will note in the unedited transcript of the Mike Wallace interview that Mr. Leonard urged CBS to talk to Chief Wilson of the District of Columbia. Mr. Wallace said he had talked with Chief Wilson, but was he—Chief Wilson—included in the television broadcast? Certainly not.

Why not? Because Chief Wilson might have mentioned LEAA's success, and Mike Wallace was not interested in anything but criticism of LEAA. CBS did not want to hear—and did not want the public to hear what the Washington, D.C., police have to say about the program. But I think it is important. I think the Members of the Senate and the public should know what Chief Wilson has to say.

Let me quote his letter of March 20 to Mr. Leonard. Chief Wilson wrote:

"As our silent partner, LEAA has underwritten significant police crime-fighting programs for the Metropolitan Police Department:

"A $1,250,000 grant in the spring of 1970 giving us the equivalent of 1000 additional officers until additional men could be recruited. Overnight our force increased 20%, and crime declined with this extended police coverage.

"A $157,000 grant for combatting organized crime. The grant made possible the establishment of an organized crime section.

"$342,000 in three different grants permitting the purchase of three helicopters and the training of nine helicopter pilots. Helicopters have been useful in fresh pursuit and on-scene arrest situations.

"A $153,000 grant for improving police dispatch and control procedures. When completed, a computerized model for testing alternative police dispatching and patrol patterns will be available to police departments throughout the United States.

"A $100,000 grant for developing a Command and Control Master Plan was recently approved. The plan will set forth our command and control needs, including detailed equipment requirements.

"A $135,000 grant is enabling us to update our entire recruit training curriculum. Other grants totaling $76,000 have been used to improve a variety of operational and management areas within the department."

All these grants were received within the past two years; significantly, crime in Washington during the same period stopped spiraling upward and dropped 18 percent.

Our partnership was formed in the face of crisis, at a time when Washington was experiencing some 200 crime index offenses a day. Working together, LEAA and the Metropolitan Police Department helped turn the corner on crime in Washington, D.C. With your continuing help we will finish the job.

Those who watched the "60 Minutes" program would never have imagined that such praise of LEAA would have been forthcoming from a metropolitan police chief. I suggest that a desire for accuracy and balance—not to mention simple honesty—should have compelled CBS to include comments like those of Chief Wilson in their broadcast.

And why did not they, as Mr. Leonard suggested, talk to the police chiefs of some of the other 52 major cities where serious crime actually decreased last year? Did CBS include comments from Fort Worth, where the crime rate decreased 10.9 percent last year? What about Seattle, with a 13.5-percent decrease? Or Hartford, Conn., where the crime rate dropped 11.6 percent?

Did CBS mention South Bend, Ind., 13 percent decrease in serious crime? Or my city of Omaha, with its 4.6-percent decrease? No, these cities, and their dramatically improved crime statistics, and their police officials were ignored.

Permit me to call some others to your attention. Remember, these are actual decreases in serious crimes during 1971 as compared with 1970.

Jacksonville, Fla., a 4.2-percent decrease; Tampa, 1.2 percent; Indianapolis, 9.5 percent; Wichita, Kan., 3.7 percent; Louisville, Ky., 9.5 percent; Baltimore, 12.4 percent; St. Paul Minn., 4.2 percent; Kansas City, Mo., 3.9 percent; St. Louis, Mo., 3.3 percent; Rochester, N.Y., 10.3 percent; Akron, Ohio, 4.4 percent; Tulsa, 1.9 percent; Pittsburgh, 6.8 percent; Dallas, 7.9 percent; Houston, 1.8 percent; San Antonio, 1.9 percent; Seattle, Wash., 13.5 percent; Mobile, Ala., 3.6 percent; Huntsville, Ala., 4.8 percent; Little Rock, Ark., 9.7 percent; Peoria, Ill., 5.9 percent; Rockford, Ill., 15.4 percent; Evansville, Ind., 7.4 percent.

Des Moines, Iowa, 3.8 percent; Topeka, Kans., 3.4 percent; Kansas City, Kans., 6.6 percent; Cambridge, Mass., 5.1 percent; Grand Rapids, Mich., 10.3 percent; Dearborn, Mich., 4.5 percent; Livonia, Mich., 4.7 percent; Greensboro, N.C., 11.4 percent; Charlotte, N.C., 13.2 percent; Parma, Ohio, 4.5 percent; Youngstown, Ohio, 13.5 percent; Dayton, Ohio, 12.2 percent; Chattanooga, Tenn., 2 percent; Knoxville, 3.8 percent; Arlington, Va., 4.4 percent; Newport News, 15.8 percent; Virginia Beach, 5.1 percent; Tacoma, Wash., 1.5 percent; Oakland, Calif., 10.6 percent; New Haven, Conn., 6.4 percent.

All of these and more—major cities with more than 100,000 population—had actual decreases in their serious crime rates last year. But were any of these mentioned in the CBS program? No.

Mr. President, the comprehensive attack on crime in America, which was undertaken at the direction of Congress in 1968, deserves better treatment at the hands of the press and the Congress than the back alley mugging it was subjected to this past week. The inaccurate and incomplete picture of the Law Enforcement Assistance Administration that was presented to the American public must not go unchallenged. The few projects that have been criticized or questioned should not be permitted to loom out of proportion to the 50,000 separate projects that have been funded by States with block grants or directly by LEAA. There is also the broader question raised by efforts to discredit a program so vital to the well-being of our people on the basis of a few examples that grossly fail to reflect the sum of LEAA activity.

It has been suggested that one would conclude from the arguments offered by critics of LEAA that, for consistency's sake, a police department should be disbanded because a few dishonest officers sometimes turn up on its rolls.

One of the particularly galling aspects of the criticisms directed toward LEAA is the impression that program difficulties were uncovered by Congress or the States—or CBS. That is not the case.

The problems in Florida and Alabama, for example, were uncovered by LEAA, which launched a full-scale audit in both States. Where funds have been misused, they will be recovered by LEAA. Where there has been a violation of Federal law, there will be prosecution by the Department of Justice.

One might also conclude from the House subcommittee report or the media accounts that LEAA has failed to correct problems that would arise in the development of any new program. That is far from the truth.

Administrative and program shortcomings in LEAA were not disclosed first by the Congress or CBS. They were publicly disclosed by the LEAA Administrator at a news conference nearly a year ago. Shortly after Jerris Leonard became the Administrator. At that same news conference, Mr. Leonard announced a complete reorganization of LEAA to correct a number of deficiencies that had been discovered. The criticisms so recently voiced and amplified by the CBS network are not new. Many were first raised by LEAA itself a year ago. Other questions were raised in congressional hearings last summer. Now, the criticisms are repeated again—as though they contained some new truths—and despite the strong, affirmative actions already taken to correct past deficiencies: specific steps to improve auditing procedures, to speed the flow of funds, to reduce cash balances in States and locali-

ties, and to prevent and disclose any misuse of grant moneys.

The basic reorganization is now completed. A number of new programs are still being developed. But the key problems have been resolved. Congress corrected some problems with new legislation. The reorganization resolved others. And the States have moved rapidly on needed improvements in their administrative and planning capabilities.

For the first time in our Nation's history, a national crime control and criminal justice improvement program has become a reality. It is operative in every State, from coast to coast.

The LEAA program is basically a State and local government program. Thousands of dedicated men and women are involved—Governors, attorneys general, State legislators, mayors, city and county councilmen, police chiefs, judges, corrections officials, minority and community representatives, civic and business leaders. They are dedicated to the success of the national fight against crime and of the program to improve the criminal justice systems in America. It is apparent that certain members of the other House, in collusion with sensation-seekers at CBS, are equally dedicated to personal, partisan gain at the expense of a program that has made significant progress in an area that is vital to public health, welfare, and safety.

At the same time, the honor and credibility of responsible journalists has been tarnished by the misleading character of the Mike Wallace—CBS program. If their distortion of the facts was intentional, one can only guess at the motivation which led to such dishonesty. If the distortion was not intentional, merely accidental, CBS has defaulted on its responsibility to provide the public with the most accurate and complete information possible. In either case, one must wonder if he can believe anything they see on CBS in the future.

EXHIBIT 1

[From "60 Minutes," Apr. 9, 1972]

AN INTERVIEW WITH JERRIS LEONARD

MIKE WALLACE. The Unrealized Promise of Safe Streets. That is the title of this report of a congressional investigating committee which 60 Minutes got hold of. It has not yet been released to the public.

It tells the tale of a two-year-long inquiry into the operations of LEAA, the Law Enforcement Assistance Administration, which was charged with cutting crime in the United States. LEAA was created by the Democratic controlled Congress back in 1968 when law and order was a hot political issue. It doles out huge amounts of money to cut crime.

Well, the Republicans took up that issue in 1968. They insisted that crime control would be their first priority if they got into the White House.

The Republican nominee said it for them at their convention in Miami Beach.

RICHARD MILHOUS NIXON. Time is running out for the merchants of crime and corruption in American society. The wave of crime is not going to be the wave of the future in the United States of America.

WALLACE. It was inside that building, the Miami Beach Convention Hall that the President declared his war on crime. Since taking office the President has gotten over a billion and a half dollars to give to state and local governments in their fight against crime.

This year alone he is asking for another eight hundred fifty million.

But is all of that federal money having any real effect in cutting crime?

(Sound of siren.)

We who live in the cities or the suburbs or even on the farms know the crime rate is not going down. In fact, the FBI says that crime increased by six percent last year. Well, then what good is all the money doing?

We began just a few miles from the Miami Beach auditorium in the city of Miami.

Miami's serious crime rate was the highest in the nation in 1970. And last year, 1971, murder was up there by another ten percent. Rape increased by more than fifty percent. So obviously that city is still in deep trouble.

But according to Miami's Police Chief, Bernard Garmire, LEAA has given him no help at all.

BERNARD GARMIRE. As a matter of fact, this department which according to crime rates is number one in the nation has never received a dime of action grants or action funds from LEAA. We are in dire need of them. So far as this department is concerned, so far as I am concerned, to date LEAA doesn't exist.

WALLACE. The man who currently heads up LEAA is Jerris Leonard. Appointed a year ago, he is the third man to be saddled with the job in less than four years. And he is convinced, he says, of the effectiveness of his outfit.

JERRIS LEONARD. Oh, Mike, this is one of the greatest programs. We not only know what we're doing, the concept is right, the philosophy is right.

You see, the basic philosophy under which we work is that people at state and local levels of government are smart enough and honest enough by and large to know what their problems are and to be able to find a solution for those problems.

WALLACE. To find out who was right, Chief Germire or Jerris Leonard, 60 Minutes stayed right there in Florida to look at some communities with crime problems, to see what kind of help LEAA is giving them.

We went first two hundred miles north of Miami to Melbourne.

Its seventy-four-man police department got a hundred thousand dollars in LEAA money. And here's what that money bought.

TV equipment, recorders and transcribing machines, a law library, a police legal advisor, and fifty-six thousand dollars a year for the Police Cadets, a program that pays college students to do clerical jobs.

Has the money helped to reduce crime? Police Chief Robert Catrone.

ROBERT CATRONE. There's no—been no reduction of crime. But you know we're growing, we're moving again here. And crime is on an increase. And to say there's been a reduction, I would say no.

LEE WILSON. These are all offers of federal funds. They underline federal funds to entice one into taking these grants which are—to me are superfluous. I don't like them. It's a gravy train that is paid for by the taxpayers of the United States.

WALLACE. Lee Wilson, Sheriff of Bravard County, Florida, a retired New York City detective, he now runs a four-hundred-fifty-man county police department. And he refuses to take a penny in LEAA funds.

He says that two million dollar budget that the county provides him is enough.

Wilson, for a time, was chairman of a seven-county group in his area that okayed applications for LEAA money.

WILSON. I was chairman of region four for about six months. Some of the vouchers I signed, I shuddered; I didn't like it.

WALLACE. For instance?

WILSON. Oh, exotic office equipment, drapes, and that sort of thing that I—I resigned after a few months service. I couldn't bring myself to being associated with it.

WALLACE. As chairman of—as running region four, were you beseiged by equipment peddlers and so forth?

WILSON. Oh, yes. They would come in and say, "I understand you're chairman. This is our wares." And they'd open up a big catalogue and so forth and so on, and never state prices.

It would be something along the lines of "Well, it's here, the money is here. Why don't you get it?"

And I'd say, "Well, I don't need anything."

"Well, do you have a radio system?"

"Well, of course I have a radio system."

"Is it working well?"

"Yes."

"Do you have any interference?"

"Once in a while."

"Ah! That's it. See, just say you have interference and sign here. We'll fill in between."

So I just—it's just a great big padding of funds. And I—it's an exaggeration of something that I'm absolutely disgusted with, having been in law enforcement for thirty-six year. I don't like that.

WALLACE. The man who preceded Jerris Leonard as head of LEAA was Charles Rogovin. President Nixon put him in the job early in his administration. But after sixteen months Rogovin quit in disgust.

Now he is an outspoken critic of the LEAA bonanza.

CHARLES ROGOVIN. The hardware manufacturers and peddlers are making an enormous amount of money. They're selling all kinds of equipment. You can't go to a police meeting of any size in this country today without having the helicopter manufacturers with their display piece out on a landing strip somewhere and a hard sell being given to officers.

This is outrageous. These men are being taken advantage of. And enormous sums of money are going for relatively unproductive, if at all productive, activity.

You characterize it as a bonanza. That's exactly what it is.

WALLACE. The Fort Lauderdale Police Department received a hundred fifty thousand dollars from LEAA last July to buy thirty-four police cars like the one that Officer Davis uses while on duty.

(Sound of police radio.)

And off-duty he and his family use it as their family car. The Police Department pays all gas and maintenance.

Why are the cars used this way? LEAA Chief Jerris Leonard explains.

LEONARD. The intended objective—and incidentally, Fort Lauderdale is not the only city that's doing this; other cities are doing it—is based on the premise that this broadens the police presence on the street. Now, we're not positive that that's true. But we're certainly willing to look at that kind of a project, put the money into it, and evaluate it, because it could well be right.

WALLACE. But former LEAA boss Charles Rogovin says that this squad car experiment has already been tried extensively in Indianapolis and that it has had no impact on the crime rate.

ROGOVIN. Nobody is able, one, to relate that to any significant decrease in crime or even to establish anything with regard to its impact, except officers inevitably are happier because they've got the benefit of about twelve hundred dollars worth of city property, which replaces their need to buy another car.

WALLACE. For two years a Congressional committee headed by Connecticut Congressman John Monigan has been investigating LEAA's effectiveness.

Representative JOHN MONIGAN. In all the states that we have examined, we have found that it is not, in my opinion, living up to the objectives that were set for it at the time the Safe Streets Act was passed.

Funds are being passed out. But they're not getting down on the street. Only twenty-five cents out of every dollar has actually got down to the local community, community.

LEONARD. Because we won't let money, federal money, be spent by simply throwing it

at problems. They have to do adequate planning. They have to set up these projects. They have to be designed properly. And then the money can begin to flow.

Representative MONIGAN. Now, here's an example of the way the funds have been spent in this instance, in this program. In the state of Arkansas, the head of the program in April of 1971, just before the end of the fiscal year, is writing—exhorting—the people, the subordinates "Come in with some proposals."

WALLACE. I wonder if I could take a look at it.

"To: the Crime Commission Staff

"From: Ray Biggerstaff"—this is Arkansas—

"Re: project funding

"We have about four hundred and eighty-four thousand dollars in 1970 funds. We need to spend all these funds, plus a sizable chunk of 1971 funds.

"Please survey your community needs. And then survey your mind for possible ideas.

"Thank you."

So what Biggerstaff is saying is "Look, we can't—we can't find ways to spend all this money. Come up with some ideas. We got the money. We need the ideas."

I have a copy of a memo from a man by the name of Biggerstaff out in Arkansas who says—"Now, fellas," he says to his subordinates, "come up with some ideas so that we can spend this money they're offering."

LEONARD. Let me say this. If there is a state that has too much and can't use it, we have a way and will reallocate that to states that can use it.

WALLACE. Another of the criticisms leveled against LEAA was that it doled out money before knowing just how that money was going to be spent.

Subcommittee Counsel Charles Intriago.

CHARLES INTRIAGO. In one state . . .

WALLACE. What state?

INTRIAGO. Louisiana. Over a period of eleven months amounts of up to 1.9 million dollars in bloc grant funds were invested in federal government securities. So the effect is that the state was loaning back to the federal government the same funds it had received under the bloc grant program.

WALLACE. And getting interest on the money.

INTRIAGO. And getting interest. In this particular case the state made nearly fifty-three thousand dollars over an eleven-month period from these investments.

WALLACE. Have you taken any action to recover either that money or the investment earnings?

LEONARD. Yes, sir. We will recover the investment earnings, just as soon as we can determine what the actual amount was.

That will not occur any more because, again, our—our regulations now require that they not have more than a two-week supply of money.

WALLACE. But if some states put the LEAA money in the bank until they decide how to spend it, other states seem to rush headlong into buying this year.

Polk County, Wisconsin got thirty-nine thousand dollars from LEAA last summer to buy these police radios. They were purchased on the highest bid, from the manufacturer who had planned and designed the system improperly, so the equipment has never been used.

LEAA funds helped buy this twelve thousand dollar riot command post in Des Moines, Iowa. The riot equipment inside cost a good deal more. It has been ready to roll for more than a year. But in spite of several disturbances in Des Moines, it has never seen the smoke of battle.

Winona, Minnesota, called The Family City by its chamber of commerce, got nine thousand dollars for its thirty-seven man police force for riot gear, despite the fact that the nearby Winona National Guard armory had enough gear to outfit three Winona police departments.

The last demonstration The Family City had was a 1967 peace march.

Iowa City got this van from LEAA to be ready for mass arrests in emergencies. At the student demonstrations there last Spring, buses were sent to round up the unruly ones. The van remained in the garage.

One officer told us his men were afraid the van would be unsafe in a riot, too easily turned over. So now it's used to tour the schools and tell the kids about their police force.

And Sprauguville, Iowa, population 119, no police force. But the LEAA gave four hundred dollars for a mobile radio a year ago. The radio has never been used, because they want to remodel the town hall before the radio goes in service.

LEAA has no idea how many projects like these exist says Charles Rogovin.

ROGOVIN. There are in excess of fifty thousand individual projects operating in this country today under this program. Nobody is even inventorying the specifics of over fifty thousand projects.

To the best of my knowledge, LEAA doesn't even have a count of the actual numbers of projects in each of the criminal justice system areas, let alone descriptions of what they're doing.

What this leaves the operating people in the position of doing is guessing that if they initiate a project in Titusville, Florida, it may or may not have been tried in ten, twenty, or no other jurisdictions in this country.

WALLACE. This report says that LEAA does not know how one and a half billion dollars it has given to the states in its four years of existence has been spent. In fact, it says that out of fifty states only three, Florida Maryland, and Alabama, have been completely audited to find out just where the money went.

LEONARD. In the state of Alabama, LEAA's own audit found that approximately six hundred thousand dollars must be refunded to the federal government because of illegal or otherwise improper expenditures.

WALLACE. Have you gotten money back from Alabama?

LEONARD. Not yet, because . . .

WALLACE. Have you gotten money back from Florida?

LEONARD. Oh, oh, wait a minute.

WALLACE. Have you gotten money back from Louisiana?

LEONARD. One question at—one question at a time. Well, we haven't sent Louisiana a bill. We haven't sent Alabama a bill yet. We've sent them a statement which was subject to negotiation.

We sent Florida a bill for some two hundred thousand dollars. We negotiated it down to thirty-three thousand dollars. And we've been paid.

And we'll be paid by the people who misspend this money. So there's three things we can do: get the money back, cut off their funds, or send them to jail. And we'll do any one or all of them in the appropriate circumstances.

WALLACE. Whose funds have you cut off up to now?

LEONARD. Haven't had to cut any funds off.

WALLACE. Who've you sent to jail?

LEONARD Nobody.

WALLACE. How much money have you gotten back?

LEONARD. Oh, maybe fifty, sixty thousand dollars.

WALLACE. Out of how much dispersed?

LEONARD. Out of a billion and a half. But we've sent—understand that's just the point I make. You see . . .

WALLACE. You've gotten . . .

LEONARD. The amount of money that'd be gotten back, Mike, is infinitesimal. And that's the point I'm making. You can't judge a program that's got fifty thousand projects almost all of which are good by one or two bad ones.

WALLACE. One or two?

LEONARD. Three or four.

WALLACE. But if, as Jerris Leonard claims, few programs are bad, then what are the good programs that show how successful LEAA has been in making our streets safer?

LEONARD. I think, Mike, if we take Washington as an example, I think Washington is a fine, safe town today. You look at the crime rate plunging the way it is. It's fifty percent today of what it was just less than—a little over two years ago in November of 1969. It's the lowest rate—the crime rate's the lowest it's been since May of 1967.

So we are having an impact.

ROGOVIN. But that particular department had a two thirds increase in manpower. We have over five thousand police officers in the District of Columbia, as opposed to three thousand a little more than two years ago.

I know of no other city in the country that can create in effect wall to wall policemen.

WALLACE. But no community, except Washington, the special province, the showcase province of Richard Nixon and John Mitchell and J. Edgar Hoover, can afford wall to wall policemen.

In its summary, the committee report has this to say.

"The programs of LEAA have been characterized by inefficiency, waste, maladministration, and in some cases corruption."

And it goes on to say "LEAA has had no visible impact on the incidence of crime in in the United States."

LEAA has spent a billion and a half dollars up to now. They are asking for eight hundred fifty million more this year.

COMPLETE TRANSCRIPT OF "60 MINUTES" INTERVIEW WITH JERRIS LEONARD—"LEAA"

WALLACE QUESTION

Q. Mr. Leonard you've said that from some of the criticism of it one might conclude that the LEAA program was a series of teapot dome scandals engineered by the Brinks mob. Are there no serious faults in the way that your program's been running?

LEONARD. Not serious ones Mike. You can't have a program which now has in operation some 50,000 individual projects and not have some of them go bad. In addition to that, I think that Congress envisioned that many of the projects here would be innovative ones which weren't going to work out. But which needed to be done.

Q. Well now wait a minute. I agree with that analysis and yet, you said, you said back in October—last October "I categorically reject the idea that this program can be properly evaluated by a cursory examination of a few grants and 6 or 7 of the 55 jurisdictions in any program of this magnitude." 3 months later, January '72, Jerris Leonard: "40 states are doing an excellent job. Fifteen are fouling the program." So it would seem from October to January the states with abuses rose from 7 to 15.

LEONARD. Well Mike I think you have to put that in perspective. We have about 15 states because they're small, because they don't get adequate funding in most cases, they just simply aren't able to come up with the adequate staffing, the adequate personnel to really build a first class criminal justice system.

Q. Alabama, Louisiana, Florida, small states without sufficient funding?

LEONARD. No, as a matter of fact I've also said subsequent to the Alabama situation, subsequent to the audit, that I thought Alabama was doing pretty well. And that their 1972 plan would probably be as good as most other states. I think that's true. No I think you had 2 problems: basically 2 problems.

Where the governor of the state does not provide leadership, and I think that happened in Alabama and in Florida. Now, under the previous governors, not the incumbents. You're not going to have the kind of successful program that you really need to have. The governors themselves recognize this. The second area where you run into trouble is where there is insufficient funds to really put up a first class planning, monitoring evaluation operation. And there's about 15 to 20 states that fall in one of those 2 categories.

WALLACE. Now wait a minute. October it was 6 or 7 of the 55 jurisdictions that were in trouble. In January, and these are your—I'm quoting Jerris Leonard—in January 15 states, and now you've just gotten through telling me 15 to 20 states.

LEONARD. Mike, you're trying to compare apples and oranges. What I'm saying is these 15 to 20, because of the combination of one of these two things, don't do as good a job as we'd like to see them do. The other October quote was the 6 or 7 jurisdictions where there have been some really bad program or projects that just haven't come out right. Let me put it in another perspective on this for you. Over 50 millions of dollars will have gone into the state of Florida through this fiscal year from the LEAA program. We send Florida a bill for $33,000 for projects that we felt were improperly funded with our money. Now, note that the audit didn't cover this fiscal year, but it does give you some kind of relationship. The other in the key point is this: states can't run away; they don't go bankrupt. If they mis-spend federal money, we'll get the money back.

Q. Have you gotten money back from Alabama?

LEONARD. Not yet, because——

Q. Have you gotten money back from Florida?

LEONARD. Wait a minute . . . one question——

Q. Have you gotten money back from Louisiana?

LEONARD. . . . at a time. Well we haven't sent Louisiana a bill. We haven't sent Alabama a bill yet. We sent them a statement which was subject to negotiation. We sent Florida a bill for some $200,000 we negotiated it down to $33,000 and we've been paid and will be paid by the people who mis-spend this money. So there's 3 things we can do. Get the money back, cut off their funds or send them to jail, and we'll do any one or all 3 of them in the appropriate circumstances.

Q. Whose funds have you cut off up to now?

LEONARD. I haven't had to cut any funds (cross talk).

Q. Who've you sent to jail?

LEONARD. Nobody.

Q. How much money have you gotten back?

LEONARD. Oh, maybe 50, $60,000.

Q. How much dispersed?

LEONARD. Out of a billion and a half, but we haven't sent understand that's just the point I make, you see. The amount of money to be gotten back Mike is infinitesimal, and that's the point I'm making. You can't judge a program that's got 50,000 projects almost all of which are good by one or two bad ones.

Q. 1 or 2?

LEONARD. 3 or 4. Here, I present to you. Take a look at some of these. This is a book full of good projects. Now if you want to look at some of these and take your cameras—take your cameras and see these projects—they're excellent projects.

Q. Alright.

LEONARD. Don't take your camera up to the back woods in northern Wisconsin to look at a radio antenna or a radio tower that has to do with one project that may or may not be bad. That's putting it out of perspective.

Q. But by your own admission, you've hardly done it yourself. By your own admission Mr. Leonard you say that somewhere between 6 and 20 jurisdictions, and that means states really, have faulty programs.

LEONARD. No, I didn't say that. I said they don't have the best programs. They don't have a first class program. And for varying reasons. When you don't have a first class program, you run the risk that specific projects within that program are going to go bad on you.

Q. You said it doesn't do any good to throw a lot of money in a problem unless there's been adequate preparation for the cost effective use of those funds, right?

LEONARD. Cost effectiveness is a key work.

Q. OK. Yet January, just 2 months ago, you suddenly award 160 million dollars to 8 cities; yet many of the mayors of those cities were surprised at 2 days notice that they were given and confessed that they hadn't created any specific programs to use the money.

LEONARD. Well Mike in the first place we didn't award 160 million dollars. We said that over a 3 year period, we would make available up to 160 million dollars provided that those cities could come in with a plan to reduce street crime and buglary that would warrant the expenditures of those kinds of funds.

Q. Why would you choose this number of cities, these specific cities, why would you fund 160 million dollars and then having announced that program, after you announced that program, then you sent out something called impact program questionnaire source document 2 days after you announced the program you send out this thick thing to cities and say, OK, here's 160 million dollars now. You want it? Answer that questionnaire.

LEONARD. Well, let's put that in perspective for you. The first place, the name of the game, the reason we're in business is to reduce crime and delinquency. What we're trying to do through the impact cities program is to by impacting in these cities on street crime and burglary we're trying to do 2 things. No. 1, reduce serious crime. No. 2, to show to others the way the specific techniques, the specific projects that need to be engaged in at the city level, in order to reduce street crime and burglary. Now we know that with proper projects, good techniques, we know we can reduce street crime and burglary in those 8 cities because they have very high levels of street crime and burglary. All this document is going to help them do is to see to it that they have all the facts in order that they can do good planning to achieve the objective of reducing street and burglary by 5% in 2 years and 20% in 5 years.

Q. Let me ask you just about one of those cities. Cleveland one of the cities included in the grant has spent just $50,000 of the 650,000 awarded to it in the last 2 years. They've only been able to come up with programs to spend 50,000 out of 650,000 already awarded. Now you're talking about 160 million more, and still asking them 2 years later to come up with a program.

LEONARD. I'm not talking about 160 million more, I'm talking about 20 million more for the city of Cleveland over 3 years. Mike, first of all I don't know what the source of your figures are, I obviously don't have the figures going to every city and every state at (cross talk)

Q. They're accurate believe me.

LEONARD. . . . fingers. I can't tell you that Cleveland has had difficulty meeting the match requirements. I personally have met with the mayor of Cleveland, he assures me that they will be able to meet the match requirements for this program. He's excited about the program. I was out there not too long ago when he and I appeared on television before the press. He extolled the virtues of the program, and he said this is the kind of leadership that the Nixon Administration is providing to reduce street crime and burglary to reduce serious crime, to make our streets safer. See?

Q. But LEAA had granted, had awarded $650,000 to Cleveland under Stokes, $50,000 was all that they could find ways to spend, and now you're giving ⅛ of a 160 million dollars more.

LEONARD. Maybe they needed a new mayor to do a better job. I don't know what the answer to that is.

Q. Miami, Florida, according to my understanding has the highest crime rate of any major city. Miami didn't get a penny under this 160 million dollars that you're talking about for the next 3 years.

LEONARD. Where'd you get those figures, cause they're wrong.

Q. Correct me.

LEONARD. Alright.

Q. Mr. Leonard, Miami, Florida has the highest serious crime rate of any major city in the United States, and yet it didn't get one penny—it has not been awarded one penny of this 160 million dollars awarded to 8 cities over the next 3 years.

LEONARD. Well, I don't know where you got your figures, but they're wrong. In the first place the impact program aims at street crime and burglary, and there are about 18 cities in the United States that have very high street crime and burglary ratios.

Q. Miami is among those cities.

LEONARD. Miami is among them but there are other cities that also did not get any of the impact funding that are among them. The second major error in your statement Mike is the fact that they didn't get any—that they didn't get any other monies. They have received better than $700,000 in the city of Miami—

Q. For what?

LEONARD. For various projects that they applied for through the ( ) process and through discretionary funding from LEAA. But just a minute let me finish. We had to pick 8 cities out of the 18. It was difficult to do because they were all really entitled to it, but we had to have enough funds going into the program to see to it that we actually had an impact. Now we had to use some criteria. One of the criteria was that we could only have one per LEAA region. Atlanta was chosen over Miami because of the fact that it also has very high street crime and burglary rates and for other reasons—statistical reasons.

Q. Well you talk about $700,000 to Miami; according to Chief Garmeyer, he says that they got $15,000 through Claude Kirk, then governor of Florida, for real police assistance. And the rest went to things—detoxification centers and things of that nature that really had nothing to do with crime—specific, crime related problems in the city of Miami.

LEONARD. Well does Chief Garmeyer, did he tell you that with LEAA funds that he's been able to hire a police psychiatrist for instance? That he's been able to hire a police legal advisor; that we funded an organized crime fighting team; that we provided $89,000 for Miami police patrolman area resident dialogue programs? These are all applications which have his signature on them and which we funded.

Q. Let's go back and find out from Garmeyer what he says. Some specifics. In your audit of Alabama.——

LEONARD. Incidentally, let me interrupt. Let me provide you with these so that when you go back you can ask him about (cross talk). Now incidentally if he didn't get the money, we'd like to know about it. It was publicly announced. I'm sure in the Miami papers which he ought to be reading, and if he didn't get those funds, he's never communicated that he didn't get them.

Q. LEAA awarded $395,000 to Miami Beach for law enforcement during the upcoming Democratic convention, right? Originally

you were going to award $920,000 to San Diego for law enforcement during——

LEONARD. That's not true.

Q. The figure was published.

LEONARD. No, it wasn't published. If it was published, it wasn't published by LEAA, let's put it that way.

Q. The figures (cross talk) down to $537,-000 is that true?

LEONARD. Mike those are not the facts. The facts are these: We went to both cities and we said that we could put about a half a million dollars into each city, they should file their plans, their applications, we would review them, and fund them up to that amount of money to the best of our ability. That we would further review the applications after they had come in, and if in fact we could put a little bit more in, we would do that. We're not going to put $900,000 into San Diego. And we put 450 some I believe, thousand, into the city of Miami, San Diego's will be fairly close to that.

Q. The police chief down there, Rocky Pomerance in Miami Beach told us he needed that grant money early because of the lead time he needed to get the special equipment and training for the men to use it. Yet you have not made your grant to San Diego yet, and there are very few months left, it hasn't begun any special training, it hasn't begun any equipment purchases. How come? Because it hasn't gotten its grant from you.

LEONARD. Well that's because we didn't get the grant application until very recently.

Q. How much do they want?

LEONARD. I'm not sure what the application was. As I understand it they've been negotiating and it will be some where around $500,000 maybe a little bit more than that. In any event they have begun the training; they're not going to need to make a great deal of purchases because we intend to use much of the equipment that is that which can be transported, transferred from Miami to San Diego which is all part of our—all of our grant.

Q. It is going to happen? They're going to take that hardware and move it to San Diego after Miami?

LEONARD. That which can be moved, yes.

Q. Well, handcuffs, tear gas, surveillance equipment, mugging cameras, all of that kind of thing.

LEONARD. That can all be moved, yes.

Q. And is going to be moved?

LEONARD. Yes sir.

Q. In the Republican convention in '68 which you remember down in Miami Beach, no disturbances took place on the beach, they all took place in Miami. Yet Miami received no special convention funds.

LEONARD. Well Mike, if we were going to go outside of the convention city, then we would have literally been flooded with applications from all jurisdictions in and around where the convention would be. We went to these communities, months and months ago and told them, look we must fund the program in the city in which the convention is in. We would suggest to you that you get together and consolidate your needs and we have encouraged the city of Miami—encouraged Chief Garmeyer to go to Miami Beach and make his needs known and we've told them that we would consider that. But we're only going to make one grant to one city.

Q. Some of this stuff is going to seem a little bit—I've been at there before, but anyway. In your audit of Alabama, released last November, you found approximately $600,000 in LEAA money was illegally or improperly spent. Have you recovered that money yet?

LEONARD. Alright, now let's put that in perspective. What we sent to Alabama were audit exceptions to the extent of $600,000. That doesn't mean that somebody went—stole the money and went south with it. It doesn't mean that there was illegal spending. It may mean for instance——

Q. I said illegally or improperly.

LEONARD. Alright the improper—I think we ought to put the emphasis there. Because for instance, to an auditor improper may be that they switched from one project to another project and didn't get our regional office consent. So many of the exceptions are technicalities. Now, that audit is now in negotiation; and when the negotiations are over, we will send a bill for whatever the final amount to the state of Alabama, to Gov. Wallace if you please. We will expect Gov. Wallace through whatever process that they have there to pay the money back. Incidentally I want to stress that point again. Nobody is going to get away with any of this money, because we're going to send them a bill for it, and we'll collect the bill if we have to sue them to get it.

Q. In Florida our audit reveal $475,000 in LEAA money not spent in accordance with the Florida state plan. You got $33,000 back.

LEONARD. We finally sent a bill for $33,000 when we were satisfied that that was the amount of money that actually was illegally spent—federal money illegally spent, and we've been paid that money back.

Q. We hear that an audit of Indiana has turned up the improper or illegal use of about $850,000 in LEAA. But this audit has not been made public.

LEONARD. That's because it isn't finished and that figure is hearsay, and I've never heard that figure. I doubt very much if it will run that high.

Q. How many complete state audit reports have you made?

LEONARD. I think we've got about 6 or 7 states completely audited. And incidentally, of those 6 or 7, 4 or 5 of them we've sent no bills to at all. We've made them adjust and correct some things they were doing, but there was no actual mis-spending of federal money.

Q. More than 2 years ago, LEAA promised that it would audit each state each year. To date, 3 audits have been completed, 4 more are in the works. When in the world are you going to able to live up to LEAA's promise to audit each state each year?

LEONARD. Well that promise wasn't made by me, and I would specifically reject it. That's an impossibility unless, and we'll get this done, unless we can get all of the states doing their own auditing which we can do. The governors have unanimously agreed to accept the responsibility for the audit function, through the normal usual state audit procedure. We're training those auditors and I would hope that within at least another year or two, we'd be able to have annual audits

Q. On every state, but not necessarily done out of Washington, or by Washington paid auditors?

LEONARD. I don't think that's material, Mike. State auditors are charged by statute with auditing state programs and all they need to do is to follow federal procedures, and that's an accepted audit practice.

Q. Mr. Leonard, do you, I don't mean you, does LEAA—do you know what you're doing?

LEONARD. Oh, Mike this is one of the greatest programs. We not only know what we're doing, the concept is right, the philosophy is right. You see the basic philosophy under which we work, is that people at state and local levels of government are smart enough and honest enough by and large to know what their own problems are and to be able to find the solutions to those problems. That's why I plead with you Mike, to look at some of the 50,000 projects that have been put under this program. Amazing ones—community relations programs. Programs that help kids. Programs that are reducing crime and delinquency in the street. Programs to improve our correction system, to have better court procedures. They're all over the country; and there's better than 50,000 of them, and they're by and large good. There have been some failures, and there always will be a few. But there (they are) few and far between.

Q. Few and far between.

LEONARD. Yes sir.

Q. Out of 50,000—take a horse back guess.

LEONARD. Oh, I'm sure there's a thousand maybe more, that didn't work out as well as the people who put them up thought they would.

Q. A thousand, maybe more, maybe 2,000, maybe five——

LEONARD. No, not five, a couple thousand. I'm sure you could go out and find a couple thousand projects that didn't just exactly turn out the best. And you find a few, maybe 500 or less where the people involved in the project distorted the project, or didn't carry it out, diverted the money to some other purpose. But we catch those people, and we get that money back.

Q. Well are you saying that under those circumstances that we—are barking up—that we should forget about looking into this whole subject?

LEONARD. Oh, never. I want you to look deeply into this program. But I also want you to show that side of the coin which shows the vast majority of these programs and these projects really coming off well. You see——

Q. Your predecessor, Mr. Rogovin, suggests that you fund projects, that don't have any effect on crime, and then you duplicate those projects over and over again throughout the country because you don't know really yet, if those projects are working. That you don't have a proper evaluation program yet.

LEONARD. That's what this agency used to do when he was the administrator. This agency is in business for one thing and one thing only—to reduce crime and delinquency in the United States, and we do that by crime specific planning. We're urging everybody who's using an LEAA dollar to ask himself the question, when I put this project up, when I make application for these funds, what effect is this going to have on reducing crime and delinquency.

Q. In other words, partially you are correcting Mr. Ragovin's errors now?

LEONARD. Partially? We have thrown out his whole philosophy of running this agency which was to tinker around with the criminal justice system, and the theory that our goal was to improve the criminal justice system. That isn't our goal. Our goal is to reduce crime and delinquency. Now while we're getting to that goal, we will also improve the system, but that's a fallout benefit. Our main goal is to reduce crime and delinquency.

Q. Well then . . . to a moment . . . to the business of whether you are indeed where the statistics prove that you are cutting crime and delinquency. Why is it that after 45 months LEAA is just now establishing a way to set goals for the Agency? And letting out a consulting contract to measure progress or the lack of it in reducing crime? Four years after the thing went into operation. Now you're saying, gee, we ought to find out whether it's working or not.

LEONARD. Mike, I was appointed the administrator of this agency in April and confirmed in May of 1971 less than a year ago. I did an intensive study of this agency, reorganized it, and gave it a new objective. The objective of reducing crime and delinquency. In my view, that's what this is all about.

Q. Have you done it?

LEONARD. I think we are on the road to it to a point where I can say to you today that it may well be that we are right now at ground zero. Where the increasing crime rates. When we came into office in 1968 crime rose 68%. In the last year of the previous administration. It was down to about 12 or 13% in 1969—the increase. The increase was down a little bit better than that in 1970. In the first 9 months of 1971, crime rose only 6%.

Q. Nationwide.

LEONARD. . . . in this country. But at the same time, 50 big cities, had an actual reduction in their crime rates. Washington D.C. in the month of January of this year, had its lowest crime rate since May of 1967. What does Police Chief Jerry Wilson say? Two major factors. No. 1, Pres. Nixon's leadership, No. 2 the LEAA program.

Q. Well now wait a second. How many extra cops were put on the streets of Washington?

LEONARD. Probably a thousand.

Q. How many?

LEONARD. A thousand.

Q. Out of how many altogether?

LEONARD. I think the force went from 4100 to 5100.

Q. So a 20% increase according to your figures, 25% increase according to your figure in cops on the street. Does LEAA pay for that?

LEONARD. Most of the funds for that came from LEAA.

Q. Is it suppose to?

LEONARD. Yes sir, because we have a very special obligation and it's the capitol city.

Q. Alright. Pres. Nixon's leadership and what LEAA did. What did LEAA do besides help pay for a thousand more policemen?

LEONARD. Put up methadon treatment programs in this city. We provided funds for various types and kinds of command and control. Police and command control techniques; we provided funds for the courts; we're providing funds for the correctional system in the District of Columbia. Now admittedly, there are more funds in this city than there probably are in others, but the truth of the matter is, we have a bigger obligation in the capitol city than we do in other places.

Q. Of course there are those who suggest, as was suggested on the front page of the Washington Daily News if we could take a picture of it, do the district police falsify reports to quote, trim the crime rate? And the suggestion is made that indeed, Jerry Wilson's police department has trimmed the crime rate by putting an interesting construction on the crime rate, and you know that police are bound to juggle statistics, and who's to blame then around the country?

LEONARD. Mike I don't think the statistics that I referred to are juggled. As a matter of fact, the statistics in the District of Columbia are audited. If you'll read that newspaper article carefully, you'll note that it talks about the $50 thefts. We're talking about the serious crimes of burglary, of robbery, of aggravated assaults, of muggings, of rapes, of murders. This is what LEAA is all about. This is a—that refers to theft. In addition, Mike, you really ought to get Jerry Wilson on this camera and ask him about what he thinks relative to the impact that LEAA and its program has had on the crime rates in this city.

Q. Well,—yes, I have talked to him.

LEONARD. I'm not telling you how to run your show——

Q. No, I've talked to him about it, and anybody's going to be grateful for more dough to help him look good.

LEONARD. That's not the issue. The issue is whether or not this man is a professional—ties up the funds with the results that we're after. The reduction of crime and deliquency.

Q. By how much has the budget of the Washington DC Police department gone up since Jerry Wilson has been police chief here?

LEONARD. Nobody ever said this didn't take that.

Q. I think it'd be very instructive. Don't you think so?

LEONARD. Nobody ever said this didn't take money. That's why this agency that I head has a 700 million dollar budget this year, and we've requested 850 million next year.

Q. You told the government operations sub-committee that LEAA doesn't know how many airplanes and helicopters and radio and fire arms and so forth have been purchased with your money. Why don't you know?

LEONARD. Cause I don't think it's our business to count every radio that's purchased, or every piece of equipment that's purchased.

Q. Some equipment such as the airplane in Indiana—the famous one. Radios and police vans, in the state of Iowa, bought with your money have not been used according to the needs stated in your application. Now if you people don't control the mis-use, who's going to do it? The airplane was used to transport (?) was it, from Washington back to Indianapolis?

LEONARD. Well Mike I would challenge your statement that these things are not being used for their intended purpose. They may also be used for other purposes. But let's put the Indiana airplane in perspective 40% of the purchase price of the airplane was state of Indiana money. The pilot, the gasoline, daily maintenance, all of the other costs are paid for by the state of Indiana. Now that grant application said that the plane would be used to move prisoners. It is not antithetical to use the airplane for some other purpose in addition to the stated purpose in the grant application, provided it doesn't thwart the grant application. Nobody would buy anything with federal money if they couldn't use it for another legitimate purpose. Now are you contending that it was illegal for the state of Indiana to send the airplane out to Washington, to pick up the moon rocks? Hardly, you wouldn't do that.

Q. I'm not contending that. What I'm curious is—why would an airplane be needed to transport prisoners? How was this going to cut the crime rate?

LEONARD. It will help because it will reduce the time that police officers need to spend transporting prisoners by automobile.

Q. Within the state of Indiana.

LEONARD. And make more policemen available to be on the street, and that's a typical project that LEAA funds is very interested in. Trying to get policemen out of doing non-police type duties, and keep them on the street, keep them in the crime fighting business. We'll pour money out for any kind of a project that will do that.

Q. How big a plane is this?

LEONARD. I don't know. It's a twin engine airplane. (cross talk) Oh, c'mon Mike, (indistinct) 700 million dollars, you're really nit picking aren't you?

Q. City of Ft. Lauderdale, Mr. Leonard bought somewhere between 2 and 3 dozen police cars. So that they could let the policemen take them home at night. And the policeman's wife, I gather, take the police car out to the supermarket with the policemen, the family, there's a presence of police cars throughout the city of Ft. Lauderdale as a result of this. Good idea?

LEONARD. Well I think your facts may be a little wrong. I don't think the family is allowed to drive the automobile. I think that only the officer is.

Q. . . . he can take it to the supermarket if he wants to.

LEONARD. Well he can take her to the supermarket. He can use the car for any purpose. . . .

Q. Family purposes.

LEONARD. Right. The intended objective, (and incidentally Ft. Lauderdale is not the only city that's doing this. Other cities are doing it.) is based on the premise that this broadens the police presence on the street. Now, we're not positive that that's true, but we're certainly willing to look at that kind of a project, put some money into it, and evaluate it. Because it could well be right. It's another example of the kind of thing that LEAA funds should be used for, to try to determine if these new innovative techniques are in fact effective. But they need to be evaluated, and we will evaluate whether or not they have an effect on the crime rate.

Q. Well again, Rogovin says, you don't have a proper process for evaluating what you're doing. You sort of throw these projects into the air and they land who knows where.

LEONARD. Well we didn't use to, but since I got—head this agency, Mike, we do have an evaluation process and we do evaluate. Not enough now, because that's expensive. You have to have people and it takes time to evaluate the cost effectiveness of a project. But we're doing a lot—at least we're doing it now.

Q. Doing more than Rogovin did.

LEONARD. He did none—we're at least doing it.

Q. The subcommittee's investigation found examples of investment of LEAA funds by state and local governments, in US and other securities. For instance in the state of Louisiana. Louisiana didn't know what to do with the money you gave them; they didn't have a plan to spend the money, so they simply put it into securities and made interest of it. Have you taken any action to recover either that money, or the investment earnings?

LEONARD. Yes, sir, we will recover the investment earnings just as soon as we can determine what the actual amount was, that will not occur any more, because again our regulations now require that they not have more than a 2 weeks supply of money.

Q. You claim that police radio communications are a very high priority. And yet the international association of chiefs of police says that by and large police communications are adequate. And even you people are funding research to get some communications that are innovative—different from what's offered on the market. Why do you want so much money to go into police radio?

LEONARD. Well Mike that isn't our priority, every crime commission that's ever reported has found that the police communication network throughout the United States is very weak and inadequate. And therefore, they have all called the Johnson Crime Commission and crime commissions before that have called for improvement in police communications. There's a very good reason for that. Because if you have a good communications system, you reduce the response time from the time that a call comes into the central police department and time you're able to dispatch help to that call. You do something else. You save police man hours. In the city of Dallas for instance, that great chief of police down there Frank Dyson, had such a project. He was able to reduce the response time from I believe 18 minutes to 6 minutes, and at the same time, he saved something like 17 or 18,000 hours of police time. So it's cost effective plus hopefully will save some lives or save some bodily injury or property.

Q. LEAA had evidently not known about alleged closed specifications written by Motorola. Non-competitive bidding practices in the purchase of police radios. Are you aware of that?

LEONARD. I did know about it shortly after I became administrator of this agency, and began to take steps to get uniform specifications. And we will have those.

Q. You will have those, you do not yet. You asked the justice department to undertake an anti-trust investigation of Motorola. What has happened to that investigation?

LEONARD. I'm not sure, I do know that it's under investigation by the anti-trust division. I don't know what the status of it is.

Q. It's under investigation.

LEONARD. By the anti-trust division.

Q. With a view to—finding out what?

LEONARD. Finding out first of all what the facts are and whether or not there have been any violations of federal laws.

Q. When was that investigation undertaken?

LEONARD. I believe that I called for that right after the first of the year.

Q. And you don't know the status of it yet?

LEONARD. I do not.

Q. Your critics claim that—

Your critics claim that LEAA programs are using consultants with no expertise in criminal justice, or law enforcement. For instance, what in the world does Ernst and Ernst an accounting firm know about law enforcement, or Westinghouse, a defense contractor, know about law enforcement? The suggestion being made of course that they got into it, when federal money suddenly became available.

LEONARD. Well Mike our critics claim a lot of things, but I'm a lawyer, and I like to deal in facts. And unfortunately too many of our critics deal more in the political spectrum with a lot of things they'd like to think are facts as opposed to what the real facts are. It is obvious that contractors will be attracted to any program, whether our program (?) to hire contractors. We are very careful in screening the types and kinds of people who are using LEAA funds, or where LEAA funds are used to pay these contractors and consultants to see to it that they are in fact capable. And many firms, accounting firms as an example, do an excellent job in aiding criminal justice planners because they know what a system's approach to a problem is. And that's really the basic element that's necessary for criminal justice planning. You don't have to be an expert in all phases of the intricacies of—of the criminal justice system to know how to plan on a system's approach basis.

Q. You know that some accounting firms for instance, undertake research or planning projects for police departments, and you find that manuals that they turn out, some of them, turn up language that is—comes straight out of the federal statute. All you've got to do is get a xerox machine to get some of this stuff on paper. And they sell it to one community for, let's say $20,000, and they go across the state line, and sell it to another community for the same amount of money.

LEONARD. I don't want to interrupt. I've only seen that happen in one situation. That happened in Alabama, where the consultant xeroxed the state statutes and passed that off as being a handbook for deputy sheriffs. You're going to have a little bit of that, but we'll get the money back. We'll get that money back. The federal taxpayer doesn't have to be concerned; as long as I head this agency, and fiscal responsibility is not subject to compromise. That federal monies that are mis-spent are going to be recovered, cause they're going to be recovered and maybe funds will be cut off, and maybe some people will go to jail.

Q. Can you point us in the direction of those people?

LEONARD. No sir, I can't.

Q. Because you're not ready, or because . . .

LEONARD. Because we're not ready to do that.

Q. But you are looking forward to the possibility of prosecutions?

LEONARD. I think if people are going to take these federal funds and literally steal them, there's a very high positive correlation between that activity and their eventually winding up in jail, and we will not compromise on fiscal responsibility and integrity.

Q. And are you . . . without naming names at this moment, are you led to believe that perhaps some prosecutions are being contemplated?

LEONARD. I can honestly answer that by telling you that there are investigations now going on, that could lead to federal criminal prosecution.

Q. Because of what potential crime?

LEONARD. Because (cross talk) but basically revolving around the mis-handling or mis-spending of federal money. Now incidentally I don't make that decision. That decision is made by the US (United States) attorney at the local level and the department of justice. That is the legal division within the department of justice.

Q. But there is that possibility in what states? Alabama?

LEONARD. Well as I said, there are investigations going on, and I think . . .

Q. Well just tell us the states.

LEONARD. Well, that would be inappropriate for me would it not to even identify where those investigations are going because it's not my business to reveal that information. All I can tell you is we have asked for, we are cooperating in such investigations.

Q. The government operations subcommittee says that about 25¢ of every dollar received by the states, has gotten down to the local law enforcement level, in the first 3 years of LEAA. Why doesn't the money get down faster, where it's actually going to go to work in the fight (cross talk).

LEONARD. Cause we won't let, federal monies be spent by simply throwing it at problems. They have to do adequate planning, they have to set up these projects, they have to be designed properly, and then the money can begin to flow. That's one part of the answer. The other part of the answer is the more sophisticated the project, is, the slower the fund flow. For instance, if you want to reduce street crime and burglary in a particular geographic area of a city, the main thrust of that is to increase foot patrol. Well now if we give a grant on January 1st for the full year, the money isn't fully spent until the year is over. (indistinct), Mike, the testimony presented to the monetary affairs sub-committee of the house government operations committee clearly shows that that claim is just nonsense.

Q. Well now wait—fiscal year '69.

Q. I wonder if you'd explain this cause I frankly don't understand it. Fiscal year '69—25 million dollars appropriated, 23½ million dollars spent—almost a hundred percent. Fiscal year '70; 184 million allocated—only 90 million spent. Fiscal '71, 342 million allocated, 24 million spent. In other words the money is being allocated, but it seems perfectly obvious that you just don't know what to do with the money that's been allocated.

LEONARD. Well that's not true Mike.

Q. Well you haven't spent the money.

LEONARD. We are not going to allow this program to turn into one in which federal money is just thrown at problems. In order to properly and judiciously spend money, you need to plan for the spending of the money, so that in fact it is—it reaches the objective of reducing crime and delinquency. That's what's important to the federal taxpayer, is that the money is spent wisely. Now if that means that there is a lag in the fund flow, and incidentally the figures that you have I think can be shown to be badly distorted. Because in the first place, the congress doesn't appropriate at the beginning of the fiscal year. That's one thing. Secondly, you're using '69 figures, this program didn't get going until well after the fiscal year started. So you're talking about a new program, and you have to look at it from the perspective of the time frame in which the programs been (cross talk).

Q. How long you been in operation? In LEAA?

LEONARD. 3½ years.

Q. During that time, 25 cents of every dollar received by the states is gotten down to the local law enforcement level.

LEONARD. Well in the first place that's figures from last year. That's one thing that's wrong with those figures, and secondly, again, it does not take into consideration the fact that there was no—there wasn't any planning period, before the money began to flow. So the money flow and the planning took place at the same time. The money has been allocated by this agency, by LEAA to the states and local units of government. Now because the money isn't all out in the street working, doesn't mean that there aren't good projects that are beginning funding—that are in the middle of funding with this money. Like I said earlier, if you put a police street patrol project that goes over a 12 month period, it takes you 12 full months to spend all the money allocated to it. As a matter of fact I think those figures are unique in the sense it shows that we're spending the federal taxpayers money wisely and that's what the federal taxpayer wants.

Q. I have a copy of a memo from a man by the name of Biggerstaff out in Arkansas who says, he tells his staff, he's head of the state planning agency out there. And he says, look, come up with some ideas fellows, because we're being offered something over half a million dollars—I have no ideas how to spend this money, but by golly it's there. So please fellows come up with some ideas. And that indeed is what this seems to be. You've talked about 160 million dollars for 8 cities, high impact, and then after you come up with a 160 million dollars, which you're going to make available over the next 3 years, then you send out a 90 page questionnaire saying, well—how can we spend this money?

LEONARD. Now which question do you want me to answer first?

Q. They're one in the same question, Mr. Leonard.

LEONARD. No, I don't think they are. Mike, I don't think they are at all. Let me say this: if there is a state that has too much money and can't use it, we have a way and will reallocate that to states that can use it. As far as this questionnaire is concerned, let me repeat: this questionnaire is designed to aid these 8 impact cities to do the proper kind of planning so the money is spent cost effectively.

Q. Wouldn't the questionnaire come before the money is allocated?

LEONARD. It did. All we allocated was planning money.

Q. Yeah, but I don't understand. I really—please explain this to me. You've been here since April. That questionnaire, it would seem to me, might be sent out to these 8 cities in September. Then you get the questionnaires back, and then you decide, well we need 160 or we need 90, and maybe these 8 cities are not the right cities. Maybe some other cities like Miami is a better city.

LEONARD. Well, we chose the city based on street crime and buglary. As I said, there were some 18 that had high street crime and buglary rates. Now, as far as this questionnaire is concerned, and that relationship to the money, we said we would make up to 20 millions of dollars available for each one of the 8 cities, provided they did the right kind of planning. Provided they could come up with cost effective programs and projects. Now we're not committed to spend the 20 million dollars to send it to this city, unless they do that. And we're not going to give anybody any money unless they can spend the money wisely, and with the objective of reducing crime and delinquency.

Q. I suppose I am naive about the ways of government, Mr. Leonard. But one gets the impression that in the 45 months of the existence of LEAA and you've only been here less than a year, something less than admirable planning has gone in. There have been 3 administrators in that time. During 10 months of that time, LEAA had no administrator. During the Nixon administration—a time when serious problems were arising. And now the rumor is, and I don't know that it's true, is that you're going to leave LEAA and join the campaign staff for the '72 campaign. Whether or not you leave, isn't this turn over of administrators harmful to the whole effort toward law and order?

LEONARD. Well, let me try to put that in the proper perspective. First of all you'll remember that this agency had a very strange statute which created a troika system to operate it. The truth of the matter is that after Mr. Rogovan left, no one would take his job under those circumstances. The federal congress amended the law effective January 1971, it was within 30 days that Mr. Mitchell told me privately that he was sending me over to LEAA as the administrator. Now, secondly, when I came in here, the first thing I did was to do an intensive introspection of this agency. Completely reorganized it including its philosophy; its direction, its objective. Prior to my coming here, my predecessors had a theory that they were supposed to improve the criminal justice system—tinker around with it.

Q. You said let's forget this nonsense about improving the criminal justice system, let's concentrate on crime specific programs and we'll find that the criminal justice system will improve at the same time.

LEONARD. Exactly. Let's remember that our objective is to reduce crime and delinquency. As a fallout benefit the system will have to improve if we do that. Now that whole new thrust for this agency is the excitement that's taking place and we're going to be effective. We're going to make the streets and playgrounds and public places safer with this program. Not we LEAA, but local police departments, corrections agencies, courts, with this massive federal funding—it's going to take federal massive funding to get that job done.

Q. Then you say that your job is to work yourselves out of business, so that eventually according to Jerris Leonard, LEAA will consist of no more than an administrator, a check writer, and 100 auditors.

LEONARD. And if we do our job right, we won't even need the auditors, because the states will have the capacity to do their own auditing. That is our objective.

Q. When are our streets going to be safe to walk on?

LEONARD. I think Mike, if we take Washington as an example, I think Washington is a fine safe town today. Look at the crime rate plunging the way it is, it's 50% today of what it was just less—a little over 2 years ago in November of 1969. It's the lowest rate—crime rate's the lowest it's been since May of 1967. So we are having an impact. This program is a good program, and the vast majority of projects that are being carried out, under the program, are effective.

Q. A cab driver on the way over, told me that 3 cops were killed in Washington last week, is that true?

LEONARD. I don't know if there were 3 last week, but there are many policemen being killed in ambushes. Now these are—these are planned murders. It's pretty difficult to protect policemen, although we're doing something about that. Because we're identifying the kinds and types of situations that would give the appearance of being an ambush for a policeman. But if somebody wants to take a gun Mike, and walk up to you or I and pull the trigger, there's little that law enforcement can do to stop the crime. All we can do then, is to see to it, that the criminal is punished to a degree that we hope will deter others from doing it.

Q. The fault finding by the Monigan committee—Charlie Rogovin—pure politics?

LEONARD. No, I think that the Monigan committee aided us in many ways. It helped us to have a perspective, but I think to damn the whole program because there are a few problems, a few bad projects, that I think is to totally twist and distort the perspective of the good that's coming from the program.

Q. The crime rate is really coming down across the country?

LEONARD. I think we're at ground zero or very close to it, which means that instead of having a steady escalation, even though the escalation is not going up; so fast, I think we may be at the plateau where we can look to the crime rate actually dipping, and that's a pretty amazing accomplishment for the Nixon Administration in three short years when we had a continuous ten year steady increase in the crime rate, the ten years of the lawless sixties, the hundred and forty-eight percent increase in the crime rate.

Q. And you don't want to say a few words about the fact that it was put into operation, this was a creature of the Lyndon Johnson Administration and all of LEAA?

LEONARD. Oh, I don't deny the fact that it was created in the final year of the Johnson Administration. It has authors such as John Tower of Texas; Roman Hruska of Nebraska,——

Q. Who were well known LBJ fans.

LEONARD. Well known republicans including Senator—the late Senator Dirksen of Illinois.

Q. Mr. Leonard, you've said from some of the criticisms of LEAA, one might conclude that your program is a series of Teapot Dome Scandals engineered by the Brinks mob.

You've said from a couple of criticisms of LEAA one might conclude that your program is a series of Teapot Dome scandals engineered by the Brinks mob.

Mr. Leonard, you said back in October of '71, I categorically reject the idea that this program can be properly evaluated by a cursory evaluation of a few grants in six or seven of the fifty-five jurisdictions of this magnitude. Yet, in January, of '72, you said forty-states are doing an excellent job, fifteen are filing the program. It would seem that from October to January, the states with abuses rose from seven to fifteen.

Have you gotten your money back from Florida, Alabama, or Louisiana?

In your audit of Alabama, released last November, it was found that approximately six hundred thousand LEAA funds was either illegally or improperly spent. Have you recovered those funds yet?

In Florida, your audit revealed that four hundred seventy-five thousand in LEAA funds was not spent in accordance with the Florida State Plan. You've gotten thirty-three thousand of that back?

We hear that an audit of the State of Indiana has turned up improper or illegal use of about eight hundred and fifty thousand dollars in LEAA funds. Why haven't you made that audit public?

Mr. Leonard, you've said that it doesn't do any good to throw a lot of money at a problem unless there's been adequate preparation for the cost effective use of those funds, right.

Cleveland, one of the cities, one of the eight major cities included in this allocation of a hundred and sixty million dollars, Cleveland has only spent fifty thousand dollars of the six hundred and fifty thousand awarded to it in the last two years?

Cleveland is one of the eight cities that you say needs special treatment and one of the eight cities that's going to get twenty million dollars each over the next three years. And yet, Cleveland has only spent fifty thousand dollars of the six hundred and fifty thousand awarded to that city in the last two years.

Why wasn't Miami, Florida, the city in the United States with the highest crime rate, why wasn't Miami, Florida given some of this hundred and sixty million dollars in special money for high crime cities?

The Government Operations Subcommittee says that only twenty-five cents out of every dollar received by the states has gotten down to the local law enforcement levels in the first three years of operation of LEAA . . .

I've seen a memo from a fellow by the name of Biggerstaff out in Arkansas, he heads the State Planning Agency for you out there, who says, look, there're offering us something over half a million dollars and we don't have plans. Now, fellows he says to his subordinates, come up with some ideas so we can spend this money that they're offering?

You people awarded three hundred and ninety-five thousand dollars to Miami Beach, for law enforcement during the Democratic convention, this coming July, originally, my understand is that LEAA was going to award nine hundred and twenty thousand dollars to San Diego for law enforcement during the GOP convention, that figure was scaled down recently to five hundred and thirty-seven thousand.

The police chief in Miami Beach said that he needed that three hundred and ninety thousand dollars early so he could get a training program started and train his men how to use the funds and so forth, yet San Diego, here we are in March, San Diego hasn't gotten its money yet, hasn't gotten its grant, how can it start training for what might happen out here this summer?

Some of your critics say your fund projects that don't have any effect on crime and then you just duplicate those projects over and over again around the country because you just don't know if your projects are any good or not?

Major criticism levelled at LEAA is that you have no proper evaluation program, in other words, you just don't know if any of these fifty thousand programs are working because you have no way of telling if they're good or bad?

Why, after forty-five months, is LEAA just now establishing a way to set goals for the agency and letting out a contract to—

Why after forty-five months, Mr. Leonard, is LEAA just now establishing a way to set goals for the agency and letting out a contract to measure progress on how LEAA have been doing?

The Subcommittee investigation for instances down in Louisiana where you gave money to the state of Louisiana and they either put it in the bank or invested it in U.S. securities or other securities, made interest off it and let the money lay there, didn't use it. Are you going to get that either the money or the interest back from Louisiana?

You've said this I believe, let's forget this nonsense about improving the criminal justice system. Let's concentrate upon crime, specific programs and we'll find that the criminal justice system will improve at the same time.

Your critics complain that your programs have hired and paid consultants with no expertise whatsoever, in law enforcement; Ernest and Ernst an accounting firm; Westinghouse Electric, a defense contracting firm . . .

I'm told that some of your consultants have been simply—

I'm told that at least one of your consultants has been simply xeroxing—

I'm told that at least one of your consultants simply xeroxed state statutes and put them in a booklet and handed them out and that was helping, that was consultation in law enforcement.

Has crime been reduced because of the help of LEAA?

Is LEAA working? Is crime being reduced in the United States?

When are our streets going to be a good deal safer to walk on?

How recently have you been mugged, Mr. Leonard?

In forty-five months of the existence of LEAA, it's had three administrators. During ten months of that time while the Nixon Administration was in office, LEAA had no administrator during that time when serious problems were arising, now the rumor is that you're about to leave LEAA and join the Nixon Campaign staff.

I suppose the question is, Mr. Leonard, does LEAA really know what it's doing?

Well, talking about Washington crime statistics, the suggestion has been made, and

I hope we can take a picture of this, Washington Daily News, August 25——

Talking about crime statistics, here in the city of Washington, the suggestion was made by the Washington Daily News back in August of '71, here is a headline, Do District Police Falsify Reports "To Trim the Crime Rate"? how does it feel having a budget twice as big as J. Edgar Hoover?

What does J. Edgar Hoover think of LEAA?

Fort Lauderdale with LEAA funds has bought—Fort Lauderdale, Florida, with LEAA funds has bought someplace between two dozen and three dozen police cars. These cars can be used by the policemen, they take them home, they can drive their wife to the supermarket or their kids to schools, a good idea?

Miami, Florida, has one of the highest—Miami, Florida, has the highest serious crime rate in the country. And yet, didn't get one penny of that hundred and sixty million dollars that you people allocated for eight crime ridden cities of America, how come?

Miami, Florida, has the highest serious crime rate in America, and yet, didn't get a penny of the hundred and sixty million dollars that you people allocated for the eight top crime ridden cities in America.

You say that you've got to plan to make the money that you're got to spend cost effective, and yet, two days after, you allocated a hundred and sixty million dollars to eight crime ridden cities two days afterward you sent the mayors of those cities questionnaires . . . as to what they needed and what they wanted within their cities——

You've allocated a hundred and sixty million dollars for eight of the most crime ridden cities in America to help them, twenty million dollars a piece. Yet, some of these mayors said that two days before you allocated that money, they didn't know it was coming, you talked about the necessity of cost effective plannings . . . in setting up your programs——

Two days after you made that one hundred and sixty million dollars you allocated that hundred and sixty million for these eight cities. Two days later you sent out this impact program questionnaire to the mayors of these cities, what kind of planning is that, Mr. Leonard?

METROPOLITAN POLICE DEPARTMENT,
Washington, D.C., March 20, 1972.

Mr. JERRIS LEONARD,
LEAA Administrator,
U.S. Department of Justice,
Washington, D.C.

DEAR MR. LEONARD: The Metropolitan Police Department's role in reducing Washington's crime rate has received nationwide attention. While we are proud of our accomplishments, we realize other agencies, playing less visible roles have also contributed toward this reduction. Prominent among this group is your agency, The Law Enforcement Assistance Administration.

As our silent partner, LEAA has underwritten significant police crime-fighting programs for the Metropolitan Police Department:

A $1,250,000 grant in the spring of 1970 giving us the equivalent of 1000 additional officers until additional men could be recruited. Overnight our force increased 20%, and crime declined with this extended police coverage.

A $157,000 grant for combatting organized crime. The grant made possible the establishment of an organized crime section.

$342,000 in three different grants permitting the purchase of three helicopters and the training of nine helicopter pilots. Helicopters have been useful in fresh pursuit and on-scene arrest situations.

A $153,000 grant for improving police dispatch and control procedures. When completed, a computerized model for testing alternative police dispatching and patrol patterns will be available to police departments throughout the United States.

A $100,000 grant for developing a Command and Control Master Plan was recently approved. The plan will set forth our command and control needs, including detailed equipment requirements.

A $135,000 grant is enabling us to update our entire recruit training curriculum. Other grants totaling $76,000 have been used to improve a variety of operational and management areas within the department.

All these grants were received within the past two years; significantly, crime in Washington during this same period stopped spiraling upward and dropped 18 percent.

Yet much remains to be done. Our department's goal is to reduce crime to its 1966 level, and the decreasing number of monthly crime index offenses indicates this goal is within reach. With a concerted effort and your continued assistance, we can even drive crime down below that 1966 level.

Your "impact cities" program is a bold, crime-fighting initiative, which could help us achieve our goal. At the same time, it could make Washington a "casebook study" of LEAA assistance. Funds from the program could upgrade our communications, make our crime information processing more efficient, and implement a modern, up-to-date command and control system.

Our partnership was formed in the face of crisis, at a time when Washington was experiencing some 200 crime index offenses a day. Working together, LEAA and the Metropolitan Police Department helped turn the corner on crime in Washington, D.C. With your continuing help we will finish the job.

Sincerely,

JERRY V. WILSON,
Chief of Police.

FEBRUARY 29, 1972.

Chief BERNARD L. GARMIRE,
Police Department,
Miami, Fla.

DEAR CHIEF GARMIRE: After a thorough study of the Law Enforcement Assistance Administration's program in Florida, I have concluded that the funding picture for Miami is considerably better than as reflected by your remarks in the statement of the U.S. Conference of Mayors before the House Government Operations Subcommittee of Legal and Monetary Affairs.

In that testimony you are quoted as saying, "During the entire three and one-half years that the Safe Streets Act has been in operation, Miami has not received so much as a dime of either planning or action monies from the State of Florida's block grant program." A check with our Atlanta Regional Office and the Florida Governor's Council on Criminal Justice revealed that Miami was awarded $165,000 in FY 1970 and $432,873 in FY 1971 from discretionary funds. Miami was awarded $118,949 from state block grant funds in fiscal years 1969–71. In addition, the Governor's Council has allocated $741,497 to Miami in the FY 1972 Comprehensive Plan submitted to this agency.

It should be noted that all of the programs with the exception of the two detoxification projects listed are police efforts. This is because courts and corrections programs in Florida are usually under the jurisdiction of the state or county level of government. In addition to the direct grants to Miami, I believe you will agree the city receives indirect benefit from many courts and corrections grants awarded to Dade County.

I would appreciate it very much if you would see if these figures can be confirmed by the City of Miami.

With kind regards,

Sincerely,

JERRIS LEONARD,
Administrator.

CITY OF MIAMI

PART C BLOCK

1969: Riot equipment and community relations	$15,000
1970: Alcoholic detoxification project	30,000
1971: Alcoholic detoxification center	73,949
Total	118,949

PROPOSED FISCAL YEAR 1972 BLOCK AWARDS

1972:	
Surveillance operations project	$50,847
City of Miami project to suppress fencing activities	142,750
Miami police manpower and evaluation project	48,900

PART C DISCRETIONARY

1969:	0
1970: Police legal advisor (70DF–088)	$15,000
Organized crime fighting team (70DF–129)	150,000
1971: Miami police patrolmen area area resident dialog program (71DF–601)	89,130
Organized crime fighting team (cont.) (71DF–827)	124,900
Police/community resource pool (71DF–914)	59,952
Police psychiatric consultant (71DF–1006)	10,000
Police-robbery control project (71DF–1061)	148,891
Total	597,873
1972: Police Legal Advisor (72DF–04–0010	11,250

MIAMI POLICE DEPARTMENT,
Miami, Fla., March 14, 1972.

Mr. JERRIS LEONARD,
Administrator, U.S. Department of Justice, Law Enforcement Assistance Administration, Washington, D.C.

DEAR MR. LEONARD: I am in receipt of your letter of 29 February wherein you refer to Miami's receipt of certain Federal Grants awarded through the Law Enforcement Assistance Administration. The figures contained in your letter are, for the most part, consistent with our records.

On 27 March 1969, the City of Miami police received a check for $15,000. It was presented to a representative of this Department by the then Governor, as a "gift" to assist in financing a recent riot within the City of Miami. This may have come from the Action Grant Category. Aside from this, the City of Miami Police Department has never receivd "so much as a dime" from either Planning or Action Grant monies.

May I hasten to add that we have received considerable assistance through the Discretionary Fund category. We are very appreciative of this and certainly have no complaint. As a matter of fact, we have never been treated arbitrarily nor refused favorable consideration in our application for Discretionary Funds. Incidentally our records concur with your account reference fiscal years of 1970 and 1971 as they apply to the Discretionary Fund category. We have no knowledge of the $118,949 of State Block Grant funds being awarded to Miami. It is entirely possible this could have happened without our knowledge; however, the Police Department did not receive this money.

Barring unforeseen developments, we are scheduled to receive $241,497 of Block Grant funds within the relatively near future. These will be used to fund three badly needed programs. A project designed to suppress fencing activities, a surveillance operations program, and a police manpower allocation and evaluation project. These will be the first in the history of L.E.A.A. to be funded through the State Planning Agency Block Grant program for the City of Miami Police Department.

This Department has no quarrel with the L.E.A.A. Office in Washington, nor with the Atlanta Regional Office under its excellent administrator Mr. George Murphy. Mr. Coster and Mr. Velde, and many others, have been very helpful. Our complaint is against the system which by its very design, makes it impossible to function adequately. As currently constituted, there are seven layers of bureaucracy with which to contend. In addition to this, there is a tendency to equate acreage cattle and polecats with human beings. This results in rural areas and small communities receiving a disproportionate share of attention and consideration. The more potent and persuasive the local politicians, the more consideration given. The net result is simply that vitally needed funds are not getting to where the action is—crime in the central cities.

Moreover, practically all projects considered are of a high visibility, short-term nature. Few long range, low visibility programs designed to improve the police service, are entertained in the Action Grant side of L.E.A.A. Other facets are doing an excellent job in this regard, however there seems to be a very limited amount of coordination. Impact application may produce immediate desirable results, but those results are difficult to maintain over an extended period of time.

Most sincerely,

BERNARD L. GARMIRE,
Chief of Police.

STATEMENT OF POLICE CHIEF BERNARD L. GARMIRE OF MIAMI, FLA., TO THE HOUSE SUBCOMMITTEE ON LEGAL AND MONETARY AFFAIRS, CONGRESSMAN JOHN S. MONAGAN, CHAIRMAN

I'm very appreciative of the opportunity to present some of my thoughts on the Safe Streets program to this body. Miami has a population of 331,553, and is the second largest City in the State of Florida. Miami, together with Dade County, currently has the dubious distinction of having the highest crime rate in the nation, as reported in the 1970 FBI Uniform Crime Reports.

During the entire three and one-half years that the Safe Streets Act has been in operation, Miami has not received so much as a dime of either planning or action monies from the State of Florida's Block Grant program. I have personally committed substantial amounts of my time to meetings; Mayor Kennedy of Miami and I work on the regional planning board; I am the Chairman of the region's subcommittee on police; I have participated on the State Board's Task Force on Police; and I am a member of the Governor's Council on Criminal Justice.

Florida has a new Governor as of January 1, 1971, and Governor Askew has appointed a new staff director for the State Planning Agency. I am sure that these gentlemen intend to change the situation, and I intend to cooperate with them actively to that end. Already, I have the feeling that things are improving.

Nevertheless, the fact remains that we have received no block grant monies under this act, and because the State and regional structure is so bureaucratic and unresponsive I do not expect a rapid change of our situation.

I do not believe that the current problem is in any sense malicious on the part of the state. Rather, Miami has been placed in a four county planning region, and with 10% of the population of that region we have 2 of 17 votes. We are dealing with two new levels of bureaucracy within the State which report through two more federal levels to Washington; all levels are operating without explicit guidelines and without any clear understanding of their proper roles.

LEAA has been reasonably good to us with discretionary monies—the City received about $600,000 in the last year. However, we have no idea what LEAA intends to do this year, and we have received no guidelines for discretionary funding.

If we are to be able to obtain funds to help us with our urgent needs in combatting crime—and our need is now, not in 12 or 18 months then Miami and other cities with massive crime problems are going to have to be assured of a minimum amount of planning and action money, and that money must come through as few bureaucratic layers as possible—if not directly from LEAA in all cases, then at least in the form of an automatic block grant to Miami. Only in this way can we use the Safe Streets Act to plan for and combat crime in our city in a logical, realistic and timely fashion.

Again, thank you for the opportunity to present these thoughts on what is for us, potentially, a very important program.

MEMORANDUM FROM JERRIS LEONARD ON THE LAW ENFORCEMENT ASSISTANCE ADMINISTRATION PROGRAM

I wish to put into perspective the criticism of the Law Enforcement Assistance Administration program reported this week by press and television. In addition, I will provide background on LEAA and the crime control program under the previous national administration and then list some of the steps taken to improve the agency's operations in the past three years.

This week's criticism stems from hearings on LEAA and the LEAA-sponsored program at the state and local level held last summer and fall by the Legal and Monetary Affairs Subcommittee of the House Committee on Government Operations. The Subcommittee is headed by Representative John S. Monagan (Democrat-Connecticut).

The Democratic Majority of the Subcommittee has prepared a report which is scheduled to be submitted to the full Committee on Wednesday of this week. It is this Majority Report—made available to certain press and television reporters by the Subcommittee staff—which formed the basis for both the Associated Press story on Monday of this week and the segment concerning LEAA which was televised last Sunday evening on the 60 Minutes program on CBS Television.

It should be noted that the Majority Report contains little that was not reported by the press and television during the Subcommittee hearings last summer and fall.

Long before the hearings began, I issued a statement at my first news conference as LEAA Administrator in May 1971. It announced my reorganization of LEAA and its programs as well as a number of new efforts to bolster the war on crime and ensure fiscal and program integrity on the part of LEAA grantees.

The critics of the LEAA program have never taken a full or complete look at either the nature of that program or at the wide range of accomplishments made under it. The Monagan Subcommittee's Majority Report was motivated by partisanship and a desire to discredit revenue sharing. They and others like them also appear to be unable to come down hard against crime. Rather, they talk about such academic things as improving the criminal justice system, forgetting that the point of the program is to reduce crime.

The stance of the Democrats can be assessed from many points of view. The last Attorney General under the Democrats was Ramsey Clark, who talked about everything but cracking down on crime and criminals. He even refused to implement a new electronic surveillance law approved by Congress. During a three-year period under the Democrats—in most of which Clark was Attorney General—the Federal government's law enforcement assistance program expended a total of $22 million. In the past three years, under President Nixon's leadership, LEAA aid to the states and localities totals more than $1.5 billion.

When Mr. Nixon took office, LEAA was seven months into its first fiscal year, with a first-year budget of only $63 million. He promptly sought and received steadily larger budgets—and has proposed $850 million for LEAA for the coming fiscal year.

Another yardstick of Democratic inactivity is reflected in the FBI crime statistics over the past decade or more. Crime has been increasing nationally for a long time. Under the Democrats in the 1960s, it grew into a national scandal, as these figures show:

	Percent
1961 over 1960	3
1962 over 1961	6
1963 over 1962	10
1964 over 1963	13
1965 over 1964	6
1966 over 1965	11
1967 over 1966	16
1968 over 1967	17

In the past three years, crime has continued to climb—but the rate of increase has declined steadily. The figures:

	Percent
1969 over 1968	12
1970 over 1969	11
1971 over 1970	6

But even more important, crime rates actually declined last year in 53 of the nation's major cities. That is an unprecedented accomplishment—and one which most critics of LEAA and the National Administration fail to note.

I believe it is very possible that we are quite near to the point where the crime rate will cease to grow nationally—and will begin to drop.

Polls show that the fear of crime still is widespread nationally. But I believe that the bulk of Americans now feel that the permissiveness of the Democrats on the crime issue has long since been ended, under the nonsense programs of the President and former Attorney General Mitchell. People may still feel that crime is too high and that it is a difficult problem to grapple with, but I am confident they feel that the do-nothing attitude of the Democrats has been replaced with a policy of firmly fighting crime and the criminal.

In addition to the national crime statistics, there are some other tangible measurements that can be seen as well. When the President took office, the nation had been scarred by year after year of civil disorders. No major disorders have occurred in the past three years—a point I am certain that is not lost on the public.

LEAA has been an important factor in this new climate of crime control. Large sums of financial assistance have gone to state and local governments to fight all aspects of crime—whether it be disorders, street crime, narcotics abuse, juvenile delinquency, or organized crime.

I believe the changing attitudes on the part of the public are well reflected in the attitudes of elected public officials and law enforcement leaders, who for the most part have been very enthusiastic about the LEAA program.

There was a great deal of confusion and inactivity during the seven months the Democrats operated the LEAA program—from July 1968 to January 1969. The Democrats thought so little of the program that they didn't even appoint Administrators until four months after the agency was created.

In the first two years under the Republicans, substantial progress was made by the LEAA program—but there also were serious difficulties in the operations of the agency. One of the problems was the so-called Troika system of leadership. The agency was headed by an Administrator and two Associate Administrators, and there had to be unanimous agreement among the three before action could be carried out on even the smallest matters.

Charles H. Rogovin, now head of the Police Foundation, was Administrator from January 1969 to June 1970. He failed to exert the proper leadership, failed to give LEAA the proper direction. Even within the constraints of the Troika system, he failed to reach any kind of administrative accords that would have permitted the agency to begin moving in dynamic ways.

After Rogovin's resignation, the agency was without an Administrator for some 10 months. The reason is that an attempt was being made in Congress to alter the Troika system, so that the Administrator could be the clear-cut head of the agency. Until the change occurred, it was impossible to appoint a new Administrator.

When the new legislation was enacted, Attorney General Mitchell sent me to LEAA to solve the problems, get the agency moving, and develop programs which would have a sharp impact on crime.

As my statement on my reorganization of LEAA shows, there were major problems in LEAA. But it is important to realize that those problems have now been solved. The critics of LEAA—including Monagan and Rogovin—have failed to take any of that into account. They prefer to think about the past.

Some critics of the LEAA program—some mayors, for instance—have been genuinely concerned about their cities receiving enough LEAA funds. While the criticisms may exact a toll, they are at least triggered by honest views.

However, there is another group of critics who have not been honest. They include persons like Monagan and Rogovin. Monagan and a number of other Democrats in Congress were opposed from the beginning to the block grant concept of LEAA. They have never given up trying to discredit the program so that block grants could be scrapped in favor of a categorical grant program—where the Federal government dictates the use of every dollar. The original Johnson legislation to set up LEAA called for a categorical grant program.

Rogovin's criticism of LEAA never alludes to the fact that he is responsible for most of the shortcomings I found in the agency when I became Administrator a year ago. When he was Administrator, he had no clear philosophy or plan of action on how to fight crime. He talked then—and now—about the need to reform the criminal justice system. That kind of academic approach solves nothing. Rogovin and those like him seem unable to talk about fighting crime—they tip-toe around it but never come down hard in support of LEAA's only reason for existence. Theirs is the social worker's point of view. It may sound nice in the classroom or on television, but it does nothing to protect people from crime in the streets.

In my year as Administrator, a great deal has been done to reshape and revitalize the LEAA program. Here are some of those things, and I would be happy to supply additional details later if you wish:

1. My first act upon becoming Administrator was to reorganize LEAA to improve its efficiency. It was a major overhaul, affecting every part of the agency.

2. The flow of funds to states and localities has been speeded greatly by ending needless paperwork and multiple reviews.

3. I decentralized LEAA, to place the bulk of the agency's operations at the state and local level. The point is to be more responsive to the needs of state, city, and county criminal justice agencies.

4. I created three new regional offices—making a total of 10—and tripled the overall LEAA field staff.

5. As part of the reorganization, LEAA's research and development office was given a new direction—to concentrate on projects that will be of direct benefit to police and other criminal justice agencies.

6. I have made fiscal integrity an absolute priority, and have greatly increased the LEAA audit staff and placed major new audit responsibilities on the states. Among other things, we are now training state and local auditors.

7. Another priority is civil rights compliance. Like audit integrity, it is not a negotiable matter. When I became Administrator, virtually no compliance program existed. I have increased the staff and set in motion a wide range of new programs.

8. Technical assistance had been ignored in the past. A first-rate technical assistance program now exists—covering the range from drafting state plans to setting up organized crime programs.

9. Juvenile delinquency programs had been fragmented. They have now been intensified, and I serve as chairman of the new Inter-Departmental Council to Coordinate All Federal Juvenile Delinquency Programs.

10. Before I became Administrator, there were problems with several states using funds for political purposes. I have cracked down hard on that practice.

11. Bidding procedures for equipment purchases were lax in some states. I have toughened such bid procedures.

12. Problems were found in purchase of radio equipment in a number of states. I have referred the matter of possible violations of the law by Motorola to the Department of Justice for investigation.

13. Earlier efforts were directed toward improving the criminal justice system. My emphasis is on reducing crime, and the system will be improved as a by-product of that.

14. I have instituted the High Impact Anti-Crime Program—to sharply reduce street crime and burglary in eight major cities and to develop blueprints for such efforts that can be used by every city in the nation.

15. On the use of LEAA's discretionary funds, I have ended the so-called band-aid approach of a little money here, a little there. Discretionary funds are being used for High Impact and other programs that will fight crime—not tinker with the system.

16. Funds that have been misused are being recovered. Every state has been put on notice that all funds improperly used will be recovered and that violations of the law will result in prosecutions.

17. Communications between LEAA and the criminal justice system at the state and local levels has been greatly enhanced—a must if needed improvements are to be made in the crime fight.

18. Coordination with other Federal agencies has been improved, especially in the fields of juvenile delinquency, narcotics, and organized crime.

19. States have been put on notice that all of their efforts must bear on reducing crime and extracting maximum value from every Federal dollar.

20. I have met repeatedly with the National Governors' Conference—and more than half of the governors individually—to drive home the point that in each state the governor has the ultimate responsibility for the LEAA-sponsored program. The Governors' Conference is solidly behind the LEAA program and my reorganization, and has affirmed the position that each of its members must take the most active role possible in the LEAA program in each state. This sort of involvement is essential to the proper functioning of the crime control program, and is a step of enormous significance in our efforts to reduce crime.

I believe that all of these things—and these are only part of the list of LEAA initiatives—have turned the agency and the national program into a solid, effective entity. Crime was reduced last year in 53 major cities, and I believe the LEAA program was part of the reason.

MESSAGES FROM THE PRESIDENT

Messages in writing from the President of the United States were communicated to the Senate by Mr. Leonard, one of his secretaries.

REPORT OF THE NATIONAL SCIENCE BOARD—MESSAGE FROM THE PRESIDENT

The PRESIDING OFFICER (Mr. WEICKER) laid before the Senate the following message from the President of the United States, which, with the accompanying report, was referred to the Committee on Labor and Public Welfare:

To the Congress of the United States:

I am pleased to submit to the Congress this Fourth Annual Report of the National Science Board, "The Role of Engineers and Scientists in a National Policy for Technology." This Report has been prepared in accordance with Section 4 (g) of the National Science Foundation Act, as amended by Public Law 90–407.

Many of the key recommendations in this Report are in close accord with the initiatives I have set forth this year in my address on the State of the Union, my Budget Message, and my recent message to the Congress on science and technology.

The Report stresses that in the field of research and development, a vigorous partnership between private industry, the universities, and the Government can be an important asset for strengthening our economy and spurring new technological solutions to problems of the modern world. The Report also points out that intensive research is needed to refine our understanding of the complexities of contemporary life and to develop better ways of bringing our talents to bear on domestic concerns.

As I have indicated on several occasions, I have great hope that we can realize the full potential of American technology for serving our national purposes. The commitment of this Administration to continued progress toward that goal is clearly reflected in the array of programs which I have detailed in my latest Budget Message.

I am confident that the Congress will find this Report useful.

RICHARD NIXON.

The WHITE HOUSE, *April 13, 1972.*

REPORT OF OFFICE OF ECONOMIC OPPORTUNITY—MESSAGE FROM THE PRESIDENT

The PRESIDING OFFICER (Mr. WEICKER) laid before the Senate the following message from the President of the United States, which, with the accompanying report, was referred to the Committee on Labor and Public Welfare:

To the Congress of the United States:

Pursuant to the Economic Opportunity Act of 1964, as amended, I have the honor to transmit herewith the Annual Report of the Office of Economic Opportunity for Fiscal Year 1971.

RICHARD NIXON.

The WHITE HOUSE, *April 13, 1972.*

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer (Mr. WEICKER) 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.)

LEAVE OF ABSENCE

Mr. SCOTT. Mr. President, since the distinguished majority leader and I have been invited by the Premier of the People's Republic of China to visit that country, and since the invitation comes from an official of such high standing, and since the time frame is such that it is important that we leave at this time because many other matters are contingent upon our adhering to this time frame, it will be necessary to depart this weekend.

Therefore, I ask unanimous consent that, beginning on Monday next, I may have a leave of absence, to be absent from the Senate on official business on which the distinguished majority leader and I will report to the Senate by way of the Committee on Foreign Relations upon our return.

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

Mr. SCOTT. I thank the Chair.

VITIATION OF ORDER FOR SENATE TO CONVENE TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the Senate to convene tomorrow be negated.

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

ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, there will be no further votes today.

My understanding is that the distinguished Senator from Tennessee (Mr. BROCK) has a brief speech he wants to make at this time; that then the delegates to the Mexico-United States Parliamentary Conference will be announced later this afternoon, following which the Senate will adjourn.

It is my further understanding that, as of now, the Senate will convene at 10 a.m. on Monday morning next.

The PRESIDING OFFICER. The Senator from Montana is correct.

LEAVE OF ABSENCE

Mr. MANSFIELD. Mr. President, I ask unanimous consent, beginning on Monday next, that I be granted an official leave of absence from the Senate for approximately 3 weeks.

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

THE DEMOCRATIC PARTY AND THE AMERICAN TELEPHONE & TELEGRAPH CO.

Mr. BROCK. Mr. President, more than 1 month ago, the Senator from Kansas (Mr. DOLE) held a press conference to discuss a matter of great concern to the American people—the influence of business on politics. The business in question was the American Telephone & Telegraph Co. The politics were those of the Democratic Party. At a time when the search for a political issue has led to be a virtually endless pursuit of an illusion of wrongdoing, he offered a matter of substance.

He pointed to the extended loan of at least $1.5 million from the American Telephone & Telegraph Co. to the Democratic National Committee. At the time, A.T. & T. trotted out its well-oiled public relations team to try to persuade us there was nothing amiss. They had one of their lobbyists call the White House to scream imprecations at a staff assistant—which only confirmed that there was plenty amiss.

Larry O'Brien said he would issue a statement that very day explaining the whole matter. But the statement has never been issued—presumably because there is no explanation.

Beyond those predictable responses, the matter was met by the greatest legislative body in the world with absolute silence. While the press flocks and the red herrings fly, and the reputations of decent men are sacrificed to political expediency, some here pursue the dim hope of an issue for the presidential campaign of 1972. There is something tragic about men diligently pretending to seek truth as, with equal diligence, they avert their eyes from the area where they might find it.

There is a reason why the hoax surrounding the present judiciary hearing is permitted to go on. There is reason why the Democrat National Committee and the American Telephone & Telegraph Co. are permitted to persist in flaunting the law. The reason, of course, is a simple fact of political life—the Democrat Party controls the Congress. The Democrat Party is not going to investigate its own wrongdoing.

It is reasonable to ask what protection the American people have in such a case. The answer is that they have virtually none. The Republican Party can raise the question—but the Republican Party does not control the committees.

The Democrat Party does, and it has decreed that the American people will get the answers the Democrat Party wants them to have—and no more. So the matter is at an impasse.

It is reasonable, too, it seems to me, to ask what arrangements have been made between the principals in this matter. Is there a common unspoken agreement that there will be no congressional investigation of any wrongdoing which advances the interests of this party—or are these things decided on a case-by-case basis?

With all the outspoken concern about improper relationships between business and Government, the most blatant example of this problem is ignored. In the unlikely circumstance that the question at hand was not heard above the sound and fury emanating from the Senate Judiciary room, let me restate the matter:

The Democrat National Committee has owed the American Telephone & Telegraph Co. at least $1.5 million since 1968. The Democrat National Committee refuses to pay the debt, and the telephone company refuses to call the debt in. Instead, the company continues to provide full service to the party.

However, if an individual cannot pay his own phone bill, the telephone company very promptly terminates service. It does not matter if the individual is an invalid and the phone is their only link with the world outside. It does not matter if their is a sick child in the home. Nothing matters except that the phone company must have its money. Business, after all, is business.

Except, apparently, in the case of the Democrat National Committee. They do not have to pay. Neither do they lose their service. This is discrimination. Section 202(a) of the Communications Act of 1934 states that telephone companies are forbidden "to make any unjust or unreasonable discrimination in charges." It says they are forbidden to "give any undue or unreasonable preference of advantage to any particular person or class of persons." Despite the facts, and despite the law, and despite both being raised publicly, the Congress makes no response. It is muffled by the majority.

Section 610 of title 18, United States Code, prohibits corporations from making any contributions in connection with a political convention nominating presidential candidates. A contribution is construed to include a "loan."

The use of $1.5 million plus interest for 4 years must be considered, at the least, a loan if, in fact, the refusal to collect the debt does not really make it an outright contribution.

Does it not seem that there is a matter for investigation here? Or has the self-appointed "party of the people" become so cynical of the people's interests that it will ignore even such blatant examples of impropriety, of discrimination against the average phone user who pays his bill or loses his service?

The reason given for nonpayment of the telephone bill is that the Democrat Party has no money. In a year when the Democrat Party is waging one of the costliest primary campaigns in history, does that party really expect the American people to believe the party has no money?

And when the race was finished in 1968, what were the priorities for paying the bills? The telephone company was not paid, but what of the cronies who benefited from the sweetheart deals set up by the Democrat National Chairman?

How much, for example, was spent on advertising? Who placed the ads? And how much was his commission?

Was it on the order of $25 million that was spent? And did not Joe Napolitan place the ads? And on the basis of a standard 15-percent commission plus 2 percent for cash payment, was not Mr. Napolitan's piece of the action nearly $3 million?

And what is the business relationship between Joe Napolitan and Larry O'Brien? Are they not close? Did they not in fact, at one time share the same office? Were they not in fact, partners—however silently? Did not Larry O'Brien make sure he paid himself his nearly $3 million while he told the telephone company there was no money?

There is something for a congressional investigating committee to gnaw on for awhile.

I ask the questions again because they seem not to have been heard before—at least not in the Congress. Some of the American people are beginning to hear—especially the ones who pay their phone bill; and most especially the ones who have ever had their phones cut off for failing to pay a bill. And I suggest a line of questioning, a direction of inquiry, against the possibility that the Congress may be in the dark about where to begin.

Can we now hope to have this matter looked into? Can we now know exactly how much money is owed to the telephone company—or conversely how much they have contributed in services that the rest of us have to pay for?

Can we know what agreements have been made between the Democratic Party and the American Telephone & Telegraph Co., to warrant such generosity toward the Democratic Party? After all, even in this case, business is business.

Can we know how the Democratic Party paid its bills in 1968—how many of the principals in the party benefited, while the debts were passed on to companies like American Telephone & Telegraph to be passed on in turn to consumers who pay their bills or else?

I hope that we can learn the answers to these questions, and others that might be raised in the course of hearings. When the Senator from Kansas (Mr. DOLE) first raised this matter, a spokesman for the Democrat Committee characterized his effort as "pitiful." I admit that any attempt to get at the truth against such odds—against the political interests of the majority party—such an attempt must seem "pitiful."

But the interests of the American people, and the mandate of the American people requires that we try to find the truth in these matters, no matter how apparently "pitiful" the attempt may be.

I would close by merely pointing out that my colleagues in the opposition party ought not to confuse a numerical majority with a moral majority.

QUORUM CALL

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

The PRESIDING OFFICER (Mr. WEICKER). 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.

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, what is the pending business before the Senate?

The PRESIDING OFFICER. There is no business pending before the Senate.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished Presiding Officer.

BLACK LUNG BENEFITS ACT OF 1972

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of calendar No. 712, H.R. 9212, and that it be made the pending business for consideration on Monday next.

The PRESIDING OFFICER. The Clerk will report the bill.

The assistant legislative clerk read as follows:

Calendar No. 712, H.R. 9212, a bill to amend the provisions of the Federal Coal Mine Health and Safety Act of 1969 to extend black lung benefits to orphans whose fathers die of pneumoconiosis, and for other purposes.

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia? The Chair hears none, and it is so ordered.

The Senate proceeded to consider the bill which had been reported by the Committee on Labor and Public Welfare with amendments.

ORDER FOR ADJOURNMENT TO 10:30 A.M. MONDAY, APRIL 17, 1972

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that, when the Senate completes its business today, it stand in adjournment until 10:30 a.m. Monday next.

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

ORDER FOR A PERIOD FOR THE TRANSACTION OF ROUTINE MORNING BUSINESS AND FOR UNFINISHED BUSINESS TO BE LAID BEFORE SENATE ON MONDAY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on Monday next following the remarks of the designees of the two leaders under the standing order, there be a period for the transaction of routine morning business for not to exceed 30 minutes, with statements therein limited to 3 minutes, at the conclusion of which the Chair lay before the Senate the then unfinished business.

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

UNANIMOUS-CONSENT AGREEMENT—TIME LIMITATION ON H.R. 9212

Mr. ROBERT C. BYRD. Mr. President, I have consulted with the distinguished manager of the black lung bill, my senior colleague from West Virginia (Mr. RANDOLPH) and consultations have also been had with the chairman of the Committee on Labor and Public Welfare, the Senator from New Jersey (Mr. WILLIAMS), with the distinguished ranking minority member of that committee, the Senator from New York (Mr. JAVITS), and with other Senators, and I am advised by the distinguished majority leader to propound the following unanimous-consent request which has been discussed with the very able assistant Republican leader:

Mr. President, I ask unanimous consent that time for debate on H.R. 9212 be limited to 3 hours, to be equally divided between and controlled by the distinguished manager of the bill, the Senator from West Virginia (Mr. RANDOLPH) and the distinguished ranking minority member of the committee, the Senator from New York (Mr. JAVITS); providing further that time on any committee amendment be limited to 1 hour, to be equally divided between the aforesaid Senators; provided further that time on any other amendment be limited to 30 minutes, to be equally divided and controlled by the mover of such amendment and the distinguished manager of the bill, and in any case in which the manager of the bill may favor such amendment, that the time in opposition thereto be under the control of the distinguished assistant Republican leader or his designee, that time on any motion or appeal, with the exception of nondebatable motions, be limited to 30 minutes, to be equally divided between the mover of such motion or appeal and the manager of the bill, unless the manager of the bill favors such motion or appeal, in which case the time would be controlled by the mover of the motion and the distinguished assistant Republican leader, or his designee; provided further, that no nongermane amendments may be in order; provided finally, that Senators in control of time on the bill may yield therefrom to any Senator on any amendment, appeal, or motion, except nondebatable motions.

The PRESIDING OFFICER. Is there objection?

Mr. GRIFFIN. Mr. President, reserving the right to object, and I shall not object, I want to indicate, as the distinguished acting majority leader has said, that this matter has been cleared with all Senators on both sides who might have a particular interest so far as we know. In my own case, I have cleared the matter with the distinguished ranking minority member of the committee, with the distinguished Senator from Colorado (Mr. DOMINICK), the distinguished Senator from Ohio (Mr. TAFT), who has taken particular interest in this matter in committee, and also with the distinguished Senator from Maryland (Mr. BEALL). So far as I know, there is no objection to the measure.

Mr. ROBERT C. BYRD. I thank the distinguished Republican whip.

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

The unanimous-consent agreement reads as follows:

Ordered, That, effective on April 17, 1972, during the further consideration of the bill H.R. 9212. An act to amend the provisions of the Federal Coal Mine Health and Safety Act of 1969 to extend black lung benefits to orphans whose fathers die of pneumoconiosis, and for other purposes, debate on any amendment (except committee amendments which shall be limited to one hour each), motion, or appeal, except non-debatable motions, shall be limited to 30 minutes, to be equally divided and controlled by the mover of any such amendment or motion and the Senator from W. Va. (Mr. RANDOLPH): *Provided*, That, in the event Mr. Randolph is in favor of any such amendment or motion, the time in opposition thereto shall be controlled by the assistant minority leader or some Senator designated by him.

Ordered further, That, on the question of the final passage of the said bill, debate shall be limited to 3 hours, to be equally divided and controlled, respectively, by the Senator from West Virginia (Mr. Randolph) and the Senator from New York (Mr. JAVITS): *Provided*, That the said Senators, or either of them, may, from the time under their control on the passage of the said bill, allot additional time to any Senator during the consideration of any amendment, motion or appeal: *Provided further*, That no amendment that is not germane to the provisions of the said bill shall be received.

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 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.

APPOINTMENTS BY THE VICE PRESIDENT

The PRESIDING OFFICER (Mr. WEICKER). The Chair, on behalf of the Vice President, and pursuant to Public Law 86–420, appoints the following Senators to the Mexico-United States Interparliamentary Conference, May 16–21, 1972:

The Senator from Montana (Mr. MANSFIELD).

The Senator from Louisiana (Mr. ELLENDER).

The Senator from Louisiana (Mr. LONG).

The Senator from Rhode Island (Mr. PASTORE).

The Senator from Nevada (Mr. CANNON).

The Senator from Michigan (Mr. HART).

The Senator from Wisconsin (Mr. NELSON).

The Senator from New Mexico (Mr. MONTOYA).

The Senator from South Carolina (Mr. HOLLINGS).

The Senator from Florida (Mr. CHILES).

The Senator from Vermont (Mr. AIKEN).

The Senator from New York (Mr. JAVITS).

The Senator from Arizona (Mr. FANNIN).

The Senator from Kentucky (Mr. COOK), and

The Senator from Connecticut (Mr. WEICKER).

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.

ORDER FOR THE SENATE TO CONVENE AT 9 A.M. ON APRIL 19, 1972

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate convenes on Wednesday next, it convene at 9 a.m.

The PRESIDING OFFICER. Is there objection?

Mr. ROBERT C. BYRD. Mr. President, the distinguished Republican leader is going to reserve the right to object, but I want to say, in further explanation, that I anticipate that at least 12 Senators will ask for 15-minute orders for that day, and that would consume 3 hours' time. That would be our reason for coming in at 9 o'clock on Wednesday. It would mean that we could not start with morning business until 12 o'clock noon.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. ROBERT C. BYRD. I thank the distinguished Republican leader. I thank all Senators for their cooperation in arranging for the agreement on the black lung bill.

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the program for Monday is as follows:

The Senate will convene at 10:30 a.m. After the recognition of the designees of the leaders under the standing order, there will be a period for the transaction of routine morning business for not to exceed 30 minutes, with statements therein limited to 3 minutes, at the conclusion of which the Chair will lay before the Senate the unfinished business, H.R. 9212, an act to amend the provisions of the Federal Coal Mine Health and Safety Act of 1969, to extend black lung benefits to orphans whose fathers die of pneumoconiosis, and for other purposes.

A time agreement has been entered into thereon limiting time on the debate to 3 hours, time on any amendment to 1 hour, and time on any other amendment, motion, or appeal, with the exception of nondebatable motions, to one-half hour, with the proviso that nongermane amendments will not be in order.

Undoubtedly, there will be rollcall votes on Monday. Whether the Senate completes action on the bill will depend in great measure on the number of amendments proposed to the bill.

Mr. President, I think that pretty much sums up the program for Monday. There may be matters on the calendar which will be cleared by that time which can be handled by unanimous consent, so Senators will be alerted to that fact.

I would not anticipate any rollcall vote on Monday prior to 12 noon, and the likelihood could very well be that any rollcall votes would not occur until 12:30 p.m. or 1 p.m., or even that early.

Mr. President, as an addendum to the program which I have already stated, may I say, for the benefit of Senators, that, after the so-called black lung bill is disposed of next week, certain other measures will in all likelihood be ready for consideration by the Senate as of next week, and they are as follows: the USIA-State authorization bill, coastal zone bill, Amtrak bill, and the rural development bill. There may be other bills and resolutions, but, as of now, I see a distinct possibility that the Senate could have these cleared for action at some point, possibly next week.

I am prepared to say, after discussions with the assistant Republican leader and after securing information from the ranking minority member of the Committee on Agriculture and Forestry, that the rural development bill will be brought up on Wednesday next.

ADJOURNMENT UNTIL MONDAY, APRIL 17, 1972, AT 10:30 A.M.

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 adjournment until 10:30 a.m. on Monday next.

The motion was agreed to; and at 2:39 p.m. the Senate adjourned until Monday, April 17, 1972, at 10:30 a.m.

NOMINATIONS

Executive nominations received by the Senate April 13 (legislative day of April 12), 1972:

DEPARTMENT OF DEFENSE

Robert D. Nesen, of California, to be an Assistant Secretary of the Navy, vice Frank P. Sanders.

U.S. DISTRICT COURTS

Norman C. Roettger, Jr., of Florida, to be a U.S. district judge for the southern district of Florida, vice Ted Cabot, deceased.

DISTRICT OF COLUMBIA COUNCIL

John A. Nevius, of the District of Columbia, to be Chairman of the District of Columbia Council for the term expiring February 1, 1975, vice Gilbert Hahn, Jr., term expired.

Sterling Tucker, of the District of Columbia, to be Vice Chairman of the District of Columbia Council for the term expiring February 1, 1975, reappointment.