SENATE—*Tuesday, October 10, 1972*

The Senate met at 9: 30 a.m. and was called to order by the President pro tempore (Mr. EASTLAND).

PRAYER

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

O Thou who said, "Let there be light; and there was light."

"O grant us light, that we may know
The wisdom Thou alone canst give;
That truth may guide where-e'er we go,
And virtue bless where-e'er we live.

"O grant us light, that we may see
Where error lurks in human lore,
And turn our seeking minds to Thee,
And love Thy holy word the more.

"O grant us light, that we may learn
How dead is life from Thee apart,
How sure is joy for all who turn
To Thee an undivided heart."

O God grant us undivided hearts to know and do Thy will that the blessings of justice and peace may permeate this Nation and the whole world.

We pray in His name who is the Light of the World. Amen.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Monday, October 9, 1972, be dispensed with.

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

NOTICE TO TAKE UP NOMINATION OF GEN. CREIGHTON W. ABRAMS TO BE CHIEF OF STAFF, U.S. ARMY

Mr. MANSFIELD. Mr. President, for the information of the Senate, I received notice yesterday that a Member of the Senate wanted 1 day's notice before the Abrams nomination was called up. This will serve as that 1 day's notice. It will not be taken up today, but the Senate will be on notice that anytime after today, beginning tomorrow, the nomination of Gen. Creighton Abrams to be Chief of Staff of the U.S. Army will be called up, and Senators should prepare themselves accordingly.

ORDER OF BUSINESS

The PRESIDENT pro tempore. The acting minority leader is recognized.

Mr. PACKWOOD. Mr. President, I have nothing to say.

The PRESIDENT pro tempore. Under the previous order, the Senator from Virginia (Mr. HARRY F. BYRD, JR.) is recognized for not to exceed 15 minutes.

DISABILITY PAY FOR GENERALS

Mr. HARRY F. BYRD, JR. Mr. President, the case of Gen. John D. Lavelle, recently considered by the Senate Committee on Armed Services, raised a question regarding the retirement policies of the armed services.

General Lavelle, who was relieved of command of the 7th Air Force in Vietnam and demoted, was retired on 70-percent physical disability.

As a result, he will receive $27,000 per year retirement pay, all of which will be tax free.

At my request, the Armed Services Committee queried the Defense Department to ascertain the number of general officers and those of flag rank who have been retired, and how many have been retired with disability, and how many without disability.

The significance of retirement with disability is this: When an officer is retired with disability, much, and in many cases all, of his retirement income is nontaxable.

The committee's request for information on retirement with disability covered the period from January 1, 1964, to the latest practical current date.

I shall summarize the information just received by the committee.

Between January 1, 1964, and September 30, 1972, the Army retired 634 general officers.

Of this total, 387 or 60.9 percent were retired without disability; 247 or 39.1 percent were retired with disability.

For the Navy, between January 1, 1964, and July 31, 1972, 301 officers of flag rank were retired.

Of this total, 210 were retired without disability or 69.8 percent; 91 were retired with disability, or 30.2 percent. Of the 91 who were retired with disability, 36 percent had been drawing flight pay; namely, pay for hazardous duty, within 6 months of retirement.

For the Marine Corps, 87 officers were retired between January 1, 1964, and October 1, 1972. Of this total, 58.6 percent were retired without disability, while 41.4 percent were retired with disability.

For the Air Force, 523 general officers were retired between the period of January 1, 1964, and June 30, 1972.

Of this total, 246 or 47 percent were retired without disability; and 277 or 53 percent were retired with disability.

Of those who were retired with disability, and thus are receiving a substantial tax advantage on retirement pay, 214 or 77 percent had been certified to qualify for flight pay within 6 months of retirement.

To generalize, it would appear that approximately 40 percent of the general officers retiring from the Army and the Marine Corps received disability retirement pay; and 30 percent of the flag officers of the Navy received disability retirement pay.

In the Air Force, more than half—53 percent—of the general officers are retired with disability pay even though 77 percent of those officers had within 6 months of retirement passed a medical examination qualifying them for hazardous duty flight pay.

In the case of any officer retired on disability, there must be a finding by his branch of the service that he is unfit for duty. In addition, the Veterans' Administration must certify the degree of disability after conducting an independent physical examination.

Thus, the findings resulting from the inquiry by the Armed Services Committee suggest that a study should be made of the standards for determining disability both in the Defense Department and the Veterans' Administration.

Although I have no proof, it does appear that there may be considerable abuse of the retirement system.

I submit these facts to the Senate today so that they may be made a part of the public record.

THE LEWIS POWELL MEMORANDUM

Mr. HARRY F. BYRD, JR. Mr. President, in August 1971, Lewis F. Powell, Jr., then a Richmond attorney, prepared a memorandum for the education committee of the U.S. Chamber of Commerce. The subject was "Attack on American Free Enterprise System."

Mr. Powell's basic thesis was that the free enterprise system is under constant assault on campuses, in the media, in the political arena, and in the courts. He suggested that those who believe in the system should mount a counterattack.

In essence, the memorandum is a call to the business community of the United States to exercise its first amendment right of free expression in its own behalf.

The memorandum was prepared at the request of Mr. Powell's friend, Eugene B. Sydnor, Jr., of Richmond, chairman of the chamber's education committee.

I served with Senator Sydnor as a member of the Virginia Senate. He is an outstanding citizen of our State, and he, just as has Lewis Powell, has through the years been a strong advocate of public education, and has been very active in the fight for the public school system and for quality education for all of our citizens.

Two months after the memorandum was given to Mr. Sydnor, Mr. Powell was nominated to the U.S. Supreme Court by President Nixon. He was confirmed by a vote of 89 to 1 in the Senate.

Late last month columnist Jack Anderson, having obtained a copy of the memorandum, published an attack on it. He suggested that Mr. Powell's views raised a question as to his fitness to decide cases "involving business interests."

A dispassionate examination of the memorandum shows otherwise. In contrast to some suggestions one hears from the militants of the left, Mr. Powell's recommendations contain nothing which would violate either American law or the American spirit of fair play.

On the contrary, it is precisely law and fairness which Mr. Powell advocated. I believe he was eminently right to do so.

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

I see no justification for saying that Mr. Powell, because he wrote a memorandum suggesting how the business interests might enter a counterattack against the many attacks made on business, in any way disqualified himself from the Court, or disqualified himself from sitting on cases involving business and labor.

This brings to mind that Mr. Justice Arthur Goldberg, who was appointed to the court by President Kennedy, had been a paid counsel for the AFL–CIO. That in no way disqualified Mr. Goldberg from being on the Court and deciding cases in the labor area.

I supported Mr. Goldberg's appointment, because I felt that he was highly qualified. I am not in agreement with his philosophy, but he was certainly qualified to be a member of the Court.

By the same token, I support Mr. Justice Powell, because he is fully qualified to be a member of the Court. I see no justification for attacking Justice Powell on the basis of a memorandum that he wrote prior to the time that he became a member of the Court. Everyone knew when his name was submitted to the Senate, when the hearings were held before the Senate committee, and when his nomination came before the Senate, that he had had an important legal practice, in which his law firm represented many corporations. I am sure everyone knew that. It was a part of the public record. But no one suggested that that in any way disqualified him from service on the Court, or in any way would prejudice his judgment in cases before the Court. As a matter of fact, of the 100 Senators, only one vote was cast against the confirmation of Mr. Powell's nomination. I do not remember the vote on Mr. Justice Goldberg's confirmation, but I would guess it was probably of a similar nature.

Here were one person, Mr. Powell, who had a corporate practice, and another person, Mr. Goldberg, who was the paid counsel for labor unions. Both of them were highly qualified; both of them were men of sufficient stature to be on the Supreme Court.

I supported the nomination of Lewis Powell to the Supreme Court, knowing him to be a man of singular judgment and dedication to the Constitution. What he wrote in the memorandum on the plight of free enterprise only reinforces my conviction as to his fitness to serve on the Court.

I am glad that this matter was brought out. I had not been aware of the memorandum before, but I think it is important that the memorandum be made available. It is a well-reasoned and well-written memorandum, as all of Lewis Powell's writings are, and I think it is desirable to have it spread upon the RECORD. I hope that the business community and those who are interested in a free enterprise system will read the memorandum.

So, in the interest of placing the facts on the public record, I ask unanimous consent that the text of the memorandum by Mr. Powell—now, happily, Mr. Justice Powell—be included in the RECORD.

I also ask unanimous consent that three commentaries on the memorandum also be included in the RECORD. These are: A letter from Mr. Sydnor to the Richmond Times-Dispatch, published on October 4; an editorial entitled "The Powell Memo," published in that newspaper on the same date; and a column by James J. Kilpatrick published in the Washington Sunday Star and Daily News on October 8.

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

ATTACK ON AMERICAN FREE ENTERPRISE SYSTEM

This memorandum is submitted at your request as a basis for the discussion on August 24 with Mr. Booth and others at the U.S. Chamber of Commerce. The purpose is to identify the problem, and suggest possible avenues of action for further consideration.

DIMENSIONS OF THE ATTACK

No thoughtful person can question that the American economic system is under broad attack.[1] This varies in scope, intensity, in the techniques employed, and in the level of visibility.

There always have been some who opposed the American system, and preferred socialism or some form of statism (communism or fascism). Also, there always have been critics of the system, whose criticism has been wholesome and constructive so long as the objective was to improve rather than to subvert or destroy.

But what now concerns us is quite new in the history of America. We are not dealing with episodic or isolated attacks from a relatively few extremities or even from the minority socialist cadre. Rather, the assault on the enterprise system is broadly based and consistently pursued. It is gaining momentum and converts.

SOURCES OF THE ATTACK

The sources are varied and diffused. They include, not unexpectedly, the Communists, New Leftists and other revolutionaries who would destroy the entire system, both political and economic. These extremists of the left are far more numerous, better financed, and increasingly are more welcomed and encouraged by other elements of society, than ever before in our history. But they remain a small minority, and are not yet the principal cause for concern.

The most disquieting voices joining the chorus of criticism, come from perfectly respectable elements of society: from the college campus, the pulpit, the media, the intellectual and literary journals, the arts and sciences, and from politicians. In most of these groups the movement against the system is participated in only by minorities. Yet, these often are the most articulate, the most vocal, the most prolific in their writing and speaking.

Moreover, much of the media—for varying motives and in varying degrees—either voluntarily accords unique publicity to these "attackers", or at least allows them to exploit the media for their purposes. This is especially true of television, which now plays a predominant role in shaping the thinking, attitudes and emotions of our people.

One of the bewildering paradoxes of our time is the extent to which the enterprise system tolerates, if not participates in, its own destruction.

The campuses from which much of the criticism emanates are supported by (i) tax funds generated largely from American business, and (ii) contributions from capital funds controlled or generated by American business. The Boards of Trustees of our universities overwhelmingly are composed of men and women who are leaders in the system.

Most of the media, including the national TV systems, are owned and theoretically controlled by corporations which depend upon profits, and the enterprise system to survive.

TONE OF THE ATTACK

This memorandum is not the place to document in detail the tone, character, or intensity of the attack. The following quotations will suffice to give one a general idea:

William Kunstler, warmly welcomed on campuses and listed in a recent student poll as the "American lawyer most admired", incites audiences as follows:

"You must learn to fight in the streets, to revolt, to shoot guns. We will learn to do all of the things that property owners fear."[2]

The New Leftists who heed Kunstler's advice increasingly are beginning to act—not just against military recruiting offices and manufacturers of munitions, but against a variety of businesses:

"Since February 1970, branches (of Bank of America) have been attacked 39 times, 22 times with explosive devices and 17 times with fire bombs or by arsonists."[3]

Although New Leftists spokesmen are succeeding in radicalizing thousands of the young, the greater cause for concern is the hostility of respectable liberals and social reformers. It is the sum total of their views and influence which could indeed fatally weaken or destroy the system.

A chilling description of what is being taught on many of our campuses was written by Stewart Alsop:

"Yale, like every other major college, is graduating scores of bright young men who are practitioners of 'the politics of despair.' These young men despise the American political and economic system . . . (their) minds seem to be wholly closed. They live, not by rational discussion, but by mindless slogans."[4]

A recent poll of students on 12 representative campuses reported that:

"Almost half the students favored socialization of basic U.S. industries."[5]

A visiting professor from England at Rockford College gave a series of lectures entitled "The Ideological War Against Western Society," in which he documents the extent to which members of the intellectual community are waging ideological warfare against the enterprise system and the values of western society. In a foreword to these lectures, famed Dr. Milton Friedman of Chicago warned:

"It (is) crystal clear that the foundations of our free society are under wide-ranging and powerful attack—not by Communist or any other conspiracy but by misguided individuals parroting one another and unwittingly serving ends they would never intentionally promote".[6]

Perhaps the single most effective antagonist of American business is Ralph Nader

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[1] Variously called: the "free enterprise system", "capitalism", and the "profit system". The American political system of democracy under the rule of law is also under attack, often by the same individuals and organizations who seek to undermine the enterprise system.

[2] Richmond News-Leader, June 8, 1970. Column of William F. Buckley, Jr.

[3] N.Y. Times Service article, reprinted Richmond Times-Dispatch, May 17, 1971.

[4] Stewart Alsop, Yale and the Deadly Danger, Newsweek, May 18, 1970.

[5] Editorial, Richmond Times-Dispatch, July 7, 1971.

[6] Dr. Milton Friedman, Prof. of Economics, U. of Chicago, writing a Foreword to Dr. Arthur A. Shenfield's Rockford College lectures entitled "The Ideological War Against Western Society", copyrighted 1970 by Rockford College.

who—thanks largely to the media—has become a legend in his own time and an idol of millions of Americans. A recent article in Fortune speaks of Nader as follows:

"The passion that rules in him—and he is a passionate man—is aimed at smashing utterly the target of his hatred, which is corporate power. He thinks, and says quite bluntly, that a great many corporate executives belong in prison—for defrauding the consumer with shoddy merchandise, poisoning the food supply with chemical additives, and willfully manufacturing unsafe products that will maim or kill the buyer. . . . He emphasizes that he is not talking just about 'flying-by-night hucksters' but the top management of blue-chip business".[7]

A frontal assault was made on our government, our system of justice, and the free enterprise system by Yale professor Charles Reich in his widely publicized book: "The Greening of America", published last winter.

The foregoing references illustrate the broad, shotgun attack on the system itself. There are countless examples of rifle shots which undermine confidence and confuse the public. Favorite current targets are proposals for tax incentives through changes in depreciation rates and investment credits. These are usually described in the media as "tax breaks", "loop holes", or "tax benefits" *for the benefit of business*. As viewed by a columnist in the Post, such tax measures would benefit "only the rich, the owners of big companies".[8]

It is dismaying that many politicians make the same argument that tax measures of this kind benefit only "business", without benefit to "the poor". The fact that this is either political demagoguery or economic illiteracy, is of slight comfort. This setting of the "rich" against the "poor", of business against the people, is the cheapest and most dangerous kind of politics.

THE APATHY AND DEFAULT OF BUSINESS

What has been the response of business to this massive assault upon its fundamental economics, upon its philosophy, upon its right to continue to manage its own affairs, and indeed upon its integrity?

The painfully sad truth is that business, including the boards of directors and the top executives of corporations great and small and business organizations at all levels, often have responded—if at all—by appeasement, ineptitude and ignoring the problem. There are, of course, many exceptions to this sweeping generalization. But the net effect of such response as has been made is scarcely visible.

In all fairness, it must be recognized that businessmen have not been trained or equipped to conduct guerilla warfare with those who propagandize against the system, seeking insidiously and constantly to sabotage it. The traditional role of business executives has been to manage, to produce, to sell, to create jobs, to make profits, to improve the standard of living, to be community leaders, to serve on charitable and educational boards, and generally to be good citizens. They have performed these tasks very well indeed.

But they have shown little stomach for hard-nose contest with their critics, and little skill in effective intellectual and philosophical debate.

A column recently carried by the Wall Street Journal was entitled: *"Memo to GM: Why Not Fight Back?"*[9] Although addressed to GM by name, the article was a warning to all American business. Columnist St. John said:

"General Motors, like American business in general, is 'plainly in trouble' because intellectual bromides have been substituted for a sound intellectual exposition of its point of view".

Mr. St. John then commented on the tendency of business leaders to compromise with and appease critics. He cited the concessions which Nader wins from management, and spoke of "the fallacious view many businessmen take toward their critics. He drew a parallel to the mistaken tactics of many college administrators:

"College administrators learned too late that such appeasement serves to destroy free speech, academic freedom and genuine scholarship. One campus radical demand was conceded by university heads only to be followed by a fresh crop which soon escalated to what amounted to a demand for outright surrender".

One need not agree entirely with Mr. St. John's analysis. But most observers of the American scene will agree that the essence of his message is sound. American business "plainly is in trouble"; the response to the wide range of critics has been ineffective, and has included appeasement; the time has come—indeed, it is long overdue—for the wisdom, integrity and resources of American business to be marshaled against those who would destroy it.

RESPONSIBILITY OF BUSINESS EXECUTIVES

What specifically should be done? The first essential—a prerequisite to any effective action—is for businessmen to confront this problem as a primary responsibility of corporate management.

The overriding first need is for businessmen to recognize that the ultimate issue may be *survival*—survival of what we call the free enterprise system, and all that this means for the strength and prosperity of America and the freedom of our people.

The day is long past when the chief executive officer of a major corporation discharges his responsibility by maintaining a satisfactory growth of profits, with due regard to the corporation's public and social responsibilities. If our system is to survive, top management must be equally concerned with protecting and preserving the system itself. This involves far more than an increased emphasis on "public relations" or "governmental affairs"—two areas in which corporations long have invested substantial sums.

A significant first step by individual corporations could well be the designation of an executive vice president (ranking with other executive VP's) whose responsibility is to counter—on the broadest front—the attack on the enterprise system. The public relations department could be one of the foundations assigned to this executive, but his responsibilities should encompass some of the types of activities referred to subsequently in this memorandum. His budget and staff should be adequate to the task.

POSSIBLE ROLE OF THE CHAMBER OF COMMERCE

But independent and uncoordinated activity by individual corporations, as important as this is, will not be sufficient. Strength lies in organization, in careful long-range planning and implementation, in consistency of action over an indefinite period of years, in the scale of financing available only through joint effort, and in the political power available only through united action and national organizations.

Moreover, there is the quite understandable reluctance on the part of any one corporation to get too far out in front and to make itself too visible a target.

The role of the National Chamber of Commerce is therefore vital. Other national organizations (especially those of various industrial and commercial groups) should join in the effort, but no other organizations appears to be as well situated as the Chamber. It enjoys a strategic position, with a fine reputation and a broad base of support. Also—and this is of immeasurable merit—there are hundreds of local Chambers of Commerce which can play a vital supportive role.

It hardly need be said that before embarking upon any program the Chamber should study and analyze possible courses of action and activities, weighing risks against probable effectiveness and feasibility of each. Considerations of cost, the assurance of financial and other support from members, adequacy of staffing and similar problems will all require the most thoughtful consideration.

THE CAMPUS

The assault on the enterprise system was not mounted in a few months. It has gradually evolved over the past two decades, barely perceptible in its origins and benefiting from a graduation that provoked little awareness much less any real reaction.

Although origins, sources and causes are complex and interrelated, and obviously difficult to identify without careful qualification, there is reason to believe that the campus is the single most dynamic source. The social science faculties usually include members who are unsympathetic to the enterprise system. They may range from a Herbert Marcuse, Marxist faculty member at the University of California at San Diego, and convinced socialists, to the ambivalent liberal critic who finds more to condemn than to commend. Such faculty members need not be in a majority. They are often personally attractive and magnetic; they are stimulating teachers, and their controversy attracts student following; they are prolific writers and lecturers; they author many of the textbooks; and they exert enormous influence—far out of proportion to their numbers—on their colleagues and in the academic world.

Social science faculties (the political scientist, economist, sociologist and many of the historians) tend to be liberally oriented, even when leftists are not present. This is not a criticism *per se*, as the need for liberal thought is essential to a balanced viewpoint. The difficulty is that "balance" is conspicuous by its absence of many campuses, with relatively few members being of conservative or moderate persuasion and even the relatively few often being less articulate and aggressive than their crusading colleagues.

This situation extending back many years and with the imbalance gradually worsening, has had an enormous impact on millions of young American students. In an article in Barron's weekly, seeking an answer to why so many young people are disaffected even to the point of being revolutionaries, it was said:

"Because they were *taught* that way".[10]

Or, as noted by columnist Stewart Alsop, writing about his *alma mater*:

"Yale, like every other major college, is graduating scores of bright young men . . . who despise the American political and economic system".

As these "bright young men", from campuses across the country, seek opportunities to change a system which they have been

[7] *Fortune*, May 1971, p. 145. This *Fortune* analysis of the Nader influence includes a reference to Nader's visit to a college where he was paid a lecture fee of $2,500 for "denouncing America's big corporations in venomous language . . . bringing (rousing and spontaneous) bursts of applause" when he was asked when he planned to run for President.

[8] The Washington Post, Column of William Raspberry, June 28, 1971.

[9] Jeffrey St. John, The Wall Street Journal, May 21, 1971.

[10] Barron's National Business and Financial Weekly, "The Total Break with America, The Fifth Annual Conference of Socialist Scholars", Sept. 15, 1969.

taught to distrust—if not, indeed "despise"—they seek employment in the centers of the real power and influence in our country, namely: (i) with the news media, especially television; (ii) in government, as "staffers" and consultants at various levels; (iii) in elective politics; (iv) as lecturers and writers; and (v) on the faculties at various levels of education.

Many do enter the enterprise system—in business and the professions—and for the most part they quickly discover the fallacies of what they have been taught. But those who eschew the mainstream of the system, often remain in key positions of influence where they mold public opinion and often shape governmental action. In many instances, these "intellectuals" end up in regulatory agencies or governmental departments with large authority over the business system they do not believe in.

If the foregoing analysis is approximately sound, a priority task of business—and organizations such as the Chamber—is to address the campus origin of this hostility.

Few things are more sanctified in American life than academic freedom. It would be fatal to attack this as a principle. But if academic freedom is to retain the qualities of "openness", "fairness" and "balance"—which are essential to its intellectual significance—there is a great opportunity for constructive action. The thrust of such action must be to restore the qualities just mentioned to the academic communities.

WHAT CAN BE DONE ABOUT THE CAMPUS

The ultimate responsibility for intellectual integrity on the compus must remain on the administrations and faculties of our colleges and universities. But organizations such as the Chamber can assist and activate constructive change in many ways, including the following:

Staff of scholars

The Chamber should consider establishing a staff of highly qualified scholars in the social sciences who do believe in the system. It should include several of national reputation, whose authorship would be widely respected—even when disagreed with.

Staff of speakers

There also should be a staff of speakers of the highest competency. These might include the scholars, and certainly those who speak for the Chamber would have to articulate the product of the scholars.

Speaker's bureau

In addition to full time staff personnel, the Chamber should have a Speaker's Bureau which should include the ablest and most effective advocates from the top echelons of American business.

Evaluation of textbooks

The staff of scholars (or preferably a panel of independent scholars) should evaluate social science textbooks, especially in economics, political science and sociology. This should be a continuing program.

The objective of such evaluation should be oriented toward restoring the balance essential to genuine academic freedom. This would include assurance of fair and factual treatment of our system of government and our enterprise system, its accomplishments, its basic relationship to individual rights and freedoms, and comparison with the systems of socialism, fascism and communism. Most of the existing textbooks have some sort of comparisons, but many are superficial, biased and unfair.

We have seen the civil rights movement insist on rewriting many of the textbooks in our universities and schools. The labor unions likewise insist that textbooks be fair to the viewpoints of organized labor. Other interested citizens groups have not hesitated to review, analyze and criticize textbooks and teaching materials. In a democratic society, this can be a constructive process and should be regarded as an aid to genuine academic freedom and not as an intrusion upon it.

If the authors, publishers and users of textbooks know that they will be subjected—honestly, fairly and thoroughly—to review and critique by eminent scholars who believe in the American system, a return to a more rational balance can be expected.

Equal time on the campus

The Chamber should insist upon equal time on the college speaking circuit. The FBI publishes each year a list of speeches made on college campuses by avowed Communists. The number in 1970 exceeded 100. There were, of course, many hundreds of appearances by leftists and ultra liberals who urge the types of viewpoints indicated earlier in this memorandum. There was no corresponding representation of American business, or indeed by individuals or organizations who appeared in support of the American system of government and business.

Every campus has its formal and informal groups which invite speakers. Each law school does the same thing. Many universities and college officials sponsor lecture and speaking programs. We all know the inadequacy of the representation of business in the programs.

It will be said that few invitations would be extended to Chamber speakers.[11] This undoubtedly would be true unless the Chamber aggressively insisted upon the right to be heard—in effect, insisted upon "equal time." University administrators and the great majority of student groups and committees would not welcome being put in the position publicly of refusing a forum to diverse views. Indeed, this is the classic excuse for allowing Communists to speak.

The two essential ingredients are (i) to have attractive, articulate and well-informed speakers; and (ii) to exert whatever degree of pressure—publicly and privately—may be necessary to assure opportunities to speak. The objective always must be to inform and enlighten, and not merely to propagandize.

Balancing of faculties

Perhaps the most fundamental problem is the imbalance of many faculties. Correcting this is indeed a long-range and difficult project. Yet, it should be undertaken as a part of an overall program. This would mean the urging of the need for faculty balance upon university administrators and boards of trustees.

The methods to be employed require careful thought, and the obvious pitfalls must be avoided. Improper pressure would be counterproductive. But the basic concepts of balance, fairness and truth are difficult to resist, if properly presented to boards of trustees, by writing and speaking, and by appeals to alumni associations and groups.

This is a long road and not one for the fainthearted. But if pursued with integrity and conviction it could lead to a strengthening of both academic freedom on the campus and of the values which have made America the most productive of all societies.

Graduate schools of business

The Chamber should enjoy a particular repport with the increasingly influential graduate schools of business. Much that has been suggested above applies to such schools.

Should not the Chamber also request specific courses in such schools dealing with the entire scope of the problem addressed by this memorandum? This is now essential training for the executives of the future.

Secondary education

While the first priority should be at the college level, the trends mentioned above are increasingly evidenced in the high schools. Action programs, tailored to the high schools and similar to those mentioned, should be considered. The implementation thereof could become a major program for local chambers of commerce, although the control and direction—especially the quality control—should be retained by the National Chamber.

WHAT CAN BE DONE ABOUT THE PUBLIC?

Reaching the campus and the secondary schools is vital for the long-term. Reaching the public generally may be more important for the shorter term. The first essential is to establish the staffs of eminent scholars, writers and speakers, who will do the thinking, the analysis and the speaking. It will also be essential to have staff personnel who are thoroughly familiar with the media, and how most effectively to communicate with the public. Among the more obvious means are the following:

Television

The national television networks should be monitored in the same way that textbooks should be kept under constant surveillance. This applies not merely to so-called educational programs (such as "Selling of the Pentagon"), but to the daily "news analysis" which so often includes the most insidious type of criticism of the enterprise system.[12] Whether this criticism results from hostility or economic ignorance, the result is the gradual erosion of confidence in "business" and free enterprise.

This monitoring, to be effective would require constant examination of the texts of adequate samples of programs. Complaints—to the media and to the Federal Communications Commission—should be made promptly and strongly when programs are unfair or inaccurate.

Equal time should be demanded when appropriate. Efforts should be made to see that the forum-type programs (the Today show, Meet the Press, etc.) afford at least as much opportunity for supporters of the American system to participate as these programs do for those who attack it.

Other media

Radio and the press are also important, and every available means should be employed to challenge and refute unfair attacks, as well as to present the affirmative case through these media.

The scholarly journals

It is especially important for the Chamber's "faculty of scholars" to publish. One of the keys to the success of the liberal and leftist faculty members has been their passion for "publication" and "lecturing." A similar passion must exist among the Chamber's scholars.

Incentives might be devised to induce more "publishing" by independent scholars who do believe in the system.

There should be a fairly steady flow of scholarly articles presented to a broad spectrum of magazines and periodicals—ranging from the popular magazines (Life, Look, Reader's Digest, etc.) to the more intellectual ones (Atlantic, Harper's, Saturday Review, New York, etc.) [13] and to the various professional journals.

Books, paperbacks, and pamphlets

The newsstands—at airports, drugstores and elsewhere—are filled with paperback and pamphlets advocating everything from revo-

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[11] On many campuses freedom of speech has been denied to all who express moderate or conservative viewpoints.

[12] It has been estimated that the evening half-hour news programs of the networks reach daily some 50,000,000 Americans.

[13] One illustration of the type of article which should not go unanswered appeared in the popular "New York" of July 19, 1971. This was entitled "A Populist Manifesto" by ultra liberal Jack Newfield—who argued that "the root need in our country is 'to redistribute wealth.'"

lution to erotic free love. One finds almost no attractive, well-written paperbacks or pamphlets on "our side." It will be difficult to compete with an Eldridge Cleaver or even a Charles Reich for reader attention, but unless the effort is made—on a large enough scale and with appropriate imagination to assure some success—this opportunity for educating the public will be irretrievably lost.

Paid advertisements

Business pays hundreds of millions of dollars to the media for advertisements. Most of this supports specific products; much of it supports institutional image making; and some fraction of it does support the system. But the latter has meen more or less tangential, and rarely part of a sustained, major effort to inform and enlighten the American people.

If American business devoted only 10% of its total annual advertising budget to this overall purpose, it would be a statesmanlike expenditure.

THE NEGLECTED POLITICAL ARENA

In final analysis, the payoff—short of revolution—is what government does. Business has been the favorite whippingboy of many politicians for many years. But the measure of how far this has gone is perhaps best found in the anti-business views being expressed by several leading candidates for President of the United States.

It is still Marxist doctrine that the "capitalist" countries are controlled by big business. This doctrine, consistently a part of leftist propaganda all over the world, has a wide public following among Americans.

Yet, as every business executive knows, few elements of American society today have as little influence in government as the American businessman, the corporation, or even the millions of corporate stockholders. If one doubts this, let him undertake the role of "lobbyist" for the business point of view before Congressional Committees. The same situation obtains in the legislative halls of most states and major cities. One does not exaggerate to say that, in terms of political influence with respect to the course of legislation and government action, the American business executive is truly the "forgotten man".

Current examples of the impotency of business, and of the near-contempt with which businessmen's views are held, are the stampedes by politicians to support almost any legislation related to "consumerism" or to the "environment."

Politicians reflect what they believe to be majority views of their constituents. It is thus evident that most politicians are making the judgment that the public has little sympathy for the businessman or his viewpoint.

The educational programs suggested above would be designed to enlighten public thinking—not so much about the businessman and his individual role as about the system which he administers, and which provides the goods, services and jobs on which our country depends.

But one should not postpone more direct political action, while awaiting the gradual change in public opinion to be affected through education and information. Business must learn the lesson, long ago learned by Labor and other self-interest groups. This is the lesson that political power is necessary; that such power must be assiduously cultivated; and that when necessary, it must be used aggressively and with determination—without embarrassment and without the reluctance which has been so characteristic of American business.

As unwelcome as it may be to the Chamber, it should consider assuming a broader and more vigorous role in the political arena,

NEGLECTED OPPORTUNITY IN THE COURTS

American business and the enterprise system have been affected as much by the courts as by the executive and legislative branches of government. Under our constitutional system, especially with an activist-minded Supreme Court, the judiciary may be the most important instrument for social, economic and political change.

Other organizations and groups, recognizing this, have been far more astute in exploiting judicial action than American business. Perhaps the most active exploiters of the judicial system have been groups ranging in political orientation from "liberal" to the far left.

The American Civil Liberties Union is one example. It initiates or intervenes in scores of cases each year, and it files briefs *amicus curiae* in the Supreme Court in a number of cases during each term of that court. Labor unions, civil rights groups and now the public interest law firms are extremely active in the judicial arena. Their success, often at business' expense, has not been inconsequential.

This is a vast area of opportunity for the Chamber, if it is willing to undertake the role of spokesman for American business and if, in turn, business is willing to provide the funds.

As with respect to scholars and speakers, the Chamber would need a highly competent staff of lawyers. In special situations it should be authorized to engage, to appear as counsel *amicus* in the Supreme Court, lawyers of national standing and reputation. The greatest care should be exercised in selecting the cases in which to participate, or the suits to institute. But the opportunity merits the necessary effort.

NEGLECTED STOCKHOLDER POWER

The average member of the public thinks of "business" as an impersonal corporate entity, owned by the very rich and managed by over-paid executives. There is an almost total failure to appreciate that "business" actually embraces—in one way or another—most Americans. Those for whom business provides jobs, constitute a fairly obvious class. But the 20 million stockholders—most of whom are of modest means—are the real owners, the real entrepreneurs, the real capitalists under our system. They provide the capital which fuels the economic system which has produced the highest standard of living in all history. Yet, stockholders have been as ineffectual as business executives in promoting a genuine understanding of our system or in exercising political influence.

The question which merits the most thorough examination is how can the weight and influence of stockholders—20 million voters—be mobilized to support (i) an educational program and (ii) a political action program.

Individual corporations are now required to make numerous reports to shareholders. Many corporations also have expensive "news" magazines which go to employees and stockholders. These opportunities to communicate can be used far more effectively as educational media.

The corporation itself must exercise restraint in undertaking political action and must, of course, comply with applicable laws. But is it not feasible—through an affiliate of the Chamber or otherwise—to establish a national organization of American stockholders and give it enough muscle to be influential?

A MORE AGGRESSIVE ATTITUDE

Business interests—especially big business and their national trade organizations—have tried to maintain low profiles, especially with respect to political action.

As suggested in the Wall Street Journal article, it has been fairly characteristic of the average business executive to be tolerant—at least in public—of those who attack his corporation and the system. Very few businessmen or business organizations respond in kind. There has been a disposition to appease; to regard the opposition as willing to compromise, or as likely to fade away in due time.

Business has shunted confrontation politics. Business, quite understandably, has been repelled by the multiplicity of nonnegotiable "demands" made constantly by self-interest groups of all kinds.

While neither responsible business interests, nor the United States Chamber of Commerce, would engage in the irresponsible tactics of some pressure groups, it is essential that spokesmen for the enterprise system—at all levels and at every opportunity—be far more aggressive than in the past.

There should be no hesitation to attack the Naders, the Marcuses and others who openly seek destruction of the system. There should be not the slightest hesitation to press vigorously in all political arenas for support of the enterprise system. Nor should there be reluctance to penalize politically those who oppose it.

Lessons can be learned from organized labor in this respect. The head of the AFL-CIO may not appeal to businessmen as the most endearing or public-minded of citizens. Yet, over many years the heads of national labor organizations have done what they were paid to do very effectively. They may not have been beloved, but they have been respected—where it counts the most—by politicians, on the campus, and among the media.

It is time for American business—which has demonstrated the greatest capacity in all history to produce and to influence consumer decisions—to apply their great talents vigorously to the preservation of the system itself.

THE COST

The type of program described above (which includes a broadly based combination of education and political action), if undertaken long term and adequately staffed, would require far more generous financial support from American corporations than the Chamber has ever received in the past. High level management participation in Chamber affairs also would be required.

The staff of the Chamber would have to be significantly increased, with the highest quality established and maintained. Salaries would have to be at levels fully comparable to those paid key business executives and the most prestigious faculty members. Professionals of the great skill in advertising and in working with the media, speakers, lawyers and other specialists would have to be recruited.

It is possible that the organization of the Chamber itself would benefit from restructuring. For example, as suggested by union experience, the office of President of the Chamber might well be a full-time career position. To assure maximum effectiveness and continuity, the chief executive officer of the Chamber should not be changed each year. The functions now largely performed by the President could be transferred to a Chairman of the Board, annually elected by the membership. The Board, of course, would continue to exercise policy control.

QUALITY CONTROL IS ESSENTIAL

Essential ingredients of the entire program must be responsibility and "quality control". The publications, the articles, the speeches, the media programs, the advertising, the briefs filed in courts, and the appearances before legislative committees—all must meet the most exacting standards of accuracy and professional excellence. They

must merit respect for their level of public responsibility and scholarship, whether one agrees with the viewpoint expressed or not.

RELATIONSHIP TO FREEDOM

The threat to the enterprise system is not merely a matter of economics. It also is a threat to individual freedom.

It is this great truth—now so submerged by the rhetoric of the New Left and of many liberals—that must be reaffirmed if this program is to be meaningful.

There seems to be little awareness that the only alternatives to free enterprise are varying degrees of bureaucratic regulation of individual freedom—ranging from that under moderate socialism to the iron heel of the leftist or rightist dictatorship.

We in America already have moved very far indeed toward some aspects of state socialism, as the needs and complexities of a vast urban society require types of regulation and control that were quite unnecessary in earlier times. In some areas, such regulation and control already have seriously impaired the freedom of both business and labor, and indeed of the public generally. But most of the essential freedoms remain: private ownership, private profit, labor unions, collective bargaining, consumer choice, and a market economy in which competition largely determines price, quality and variety of the goods and services provided the consumer.

In addition to the ideological attack on the system itself (discussed in this memorandum), its essentials also are threatened by inequitable taxation, and—more recently—by an inflation which has seemed uncontrollable.[14] But whatever the causes of diminishing economic freedom may be, the truth is that freedom as a concept is indivisible. As the experience of the socialist and totalitarian states demonstrates, the contraction and denial of economic freedom is followed inevitably by governmental restrictions on other cherished rights. It is this message, above all others, that must be carried home to the American people.

CONCLUSION

It hardly need be said that the views expressed above are tentative and suggestive. The first step should be a thorough study. But this would be an exercise in futility unless the Board of Directors of the Chamber accepts the fundamental premise of this paper, namely, that business and the enterprise system are in deep trouble, and the hour is late.

[From the Sunday Star and Daily News, Oct. 8, 1972]

CITIZEN POWELL HANDED DOWN A GOOD OPINION

(By James J. Kilpatrick)

The saying goes, straight out of Shakespeare, that sweet are the uses of adversity. Here in Washington, getting smeared by Jack Anderson ranks high on the adversity scale, but Anderson's recent attack on Supreme Court Justice Lewis F. Powell is turning into a stroke of good fortune for the nation's business community.

The story goes back to the summer of 1971, when Powell was simply Citizen Powell, a highly respected corporation lawyer in Richmond, Va. He lunched with an old friend, Eugene B. Sydnor Jr., who was then chairman of the education committee of the U.S. Chamber of Commerce.

Sydnor was to meet in a few days with Arch Booth and other executives of the U.S. Chamber. He asked Powell to let him have a memorandum as a basis for discussion of certain steps that might be taken by American business in defense of the enterprise system. Powell was agreeable. He went to his office over the weekend and, in his usual methodical way, put together a neatly footnoted 33-page memorandum. On Monday, Aug. 23, he gave the paper to Sydnor, who took it on to Washington the next day.

Two months later, on Oct. 21, President Nixon nominated Powell for the Supreme Court. Now, nearly a year later, the memorandum to Sydnor has surfaced: Someone sent a copy to Jack Anderson; and Anderson, in his usual snide way, gave it a sinister reading. Powell's views were so militant, said Anderson, that the memorandum "raises a question about Powell's fitness to decide any case involving business interests."

For the record, Anderson never raised any such question about the fitness of Thurgood Marshall, as to integration, or about Arthur Goldberg, as to labor—but no matter. The effect of Anderson's attack on Powell has been to give the memorandum publicity it never could have achieved in any other way. Businessmen are besieging the Chamber with requests for copies of the text. Quite possibly, thanks to Anderson, something may come of Powell's year-old recommendations after all.

These recommendations are nothing sensational, but they make great good sense. Powell's thesis is that the American economic system is under broad attack, not merely from a handful of extremists but more significantly from "perfectly respectable elements of society—from the college campus, the pulpit, the media, the intellectual and literary journals, the arts and sciences, and from politicians." The statement is undeniably true.

Paradoxically, Powell noted, the business community often tolerates and even participates in its own destruction: Businessmen contribute to foundations that are basically antibusiness, and they support universities dominated by intellectuals who wage war against the enterprise system. Meanwhile, the media glorify such brilliant antagonists as Ralph Nader, and business executives do little but wring their hands.

Writing as a private citizen with long experience in both business and education, Powell offered a string of recommendations. The first essential, he said, is for businessmen "to confront this problem as a primary responsibility of corporate management." Large companies, he said, should appoint a vice president for survival. The U.S. Chamber, for its part, should take the offensive.

Because the campus is "the single most dynamic force" against the enterprise system, efforts should be made to achieve a better balance on college faculties. Highly qualified independent scholars should be asked to review key textbooks, and to criticize their antibusiness bias. Powell suggested that the TV networks be monitored; when their depiction of business is unfair or inaccurate, strong complaints should be registered. In the political arena, and through the courts, businessmen should follow the activist example of their foes: Get in the act.

It is a disservice to Powell thus to condense his memorandum. The paper is a superlative piece of advice to businessmen, and ought to be read in full—read and taken to heart. This was the work of Private Citizen Powell back in Richmond, but Mr. Justice Powell is not likely to write any better opinions on the Court.

[From the Washington Post, Oct. 8, 1972]

POWELL MEMO, ANDERSON DISCUSSED—COLUMNIST'S ATTACK "WHOLLY UNJUSTIFIED"

Your news columns of Sept. 29 carried a story regarding the unauthorized disclosure by syndicated columnist Jack Anderson of a confidential memorandum prepared for the United States Chamber of Commerce in August, 1971 by the distinguished Richmond attorney, Lewis F. Powell, Jr. Several months later Mr. Powell was nominated and confirmed as a justice of the United States Supreme Court.

In this memorandum, Mr. Powell outlined a number of ways in which the American business community could effectively and also ethically and legally defend itself against the increasing attacks by so-called consumer advocates, ultra-liberal college professors, self-serving politicians as well as the even more radical spokesmen of the New Left and other groups advocating far-reaching changes in our government.

Mr. Anderson quoted extensively from this lengthy memorandum prepared for confidential study by the United States Chamber, the largest federation of businessmen, local and state chambers of commerce, and national trade associations. In his attack on Justice Powell, Anderson also attempted to portray the national chamber as the spokesman and conspirator of "Big Business," a favorite whipping-boy of this writer. He did not take the trouble to learn that of the chamber's 44,000 direct business members, 85 per cent have fewer than 25 employes. The chamber can by no stretch of the imagination be fairly pictured as favoring big business; but, rather, it speaks for thousands of grassroots businessmen throughout the country, be they large or small.

Mr. Anderson's Washington Merry-go-Round columns of Sept. 28 and 29 brought two wholly unjustified charges against Justice Powell. First, he implied that Mr. Powell had wrongfully withheld this memorandum from the FBI and the Senate Judiciary Committee in the course of the Senate confirmation proceedings after his appointment to the Supreme Court. However, the facts are that as a leading spokesman for education (as former chairman of the Richmond City School Board and later of the Virginia State Board of Education and also as a former president of the American Bar Association), Mr. Powell had spoken out on many occasions on a number of matters covered in his memorandum to the chamber. The public press not only printed news stories about these speeches, but the Richmond Newspapers library files contain dozens of direct quotas and summaries of Justice Powell's talks to many organizations on a variety of subjects; these were readily available to the FBI and Senate Judiciary Committee members. Therefore, Mr. Powell's views regarding the urgent need for suitable and effective presentation of the American free enterprise system were widely known by anyone who wished to learn of them.

WHAT IS WRONG?

In a second charge Mr. Anderson equates such support of our business economy as reprehensible to the extent that "it raises a question about his (Justice Powell's) fitness to decide any case involving business interests." Proceeding further, Mr. Anderson appeared to question whether "the battle (for the support of the American public) should be waged in the courts, on the campuses and in the media," as Justice Powell had suggested. However, in his own backing of liberal politicians and consumer crusaders, Anderson has applauded their use of the courts, campuses, and media. He therefore begs the question: What is wrong or improper for those with legitimate but differing views using the same methods in approaching the great questions of our day?

Mr. Anderson attempted by his unauthorized publishing of the confidential memorandum intended only for the use of the United States Chamber of Commerce to smear a highly qualified and scrupulously ethical member of the Supreme Court. In my opinion, the overwhelming approval of the Senate last December (only one dissenting vote out of 90 cast on the question of his confirmation) speaks much more loudly than Jack

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[14] The recent "freeze" of prices and wages may well be justified by the current inflationary crisis. But if imposed as a permanent measure the enterprise system will have sustained a near fatal blow.

Anderson about the fitness of Justice Powell for his seat on our most important judicial body.

Furthermore, this memorandum was prepared after Justice Powell and I had discussed on a number of occasions the need for American businessmen, large and small, to wake up and tell their story and that of the free enterprise system in clear and forceful fashion. Unhappily, many attacks upon businessmen and the free enterprise system have come in recent years through some of our schools and colleges. As chairman of the Virginia State Board for Community Colleges for seven years, I found it refreshing to discover that college faculties and students not involved in liberal arts, social and political sciences, etc., have generally a much more realistic appreciation of our free market economy than those in the Ivory Towers of the Ivy League and similar institutions.

The Powell memorandum pointed out the importance of college faculties' being reasonably balanced in their political and ideological views, if their students are to receive impartial views on the great questions facing our nation. There is abundant evidence that unhappily this is not true, as Jeffrey Hart in his syndicated column in The Richmond News Leader of Dec. 17, 1970 pointed out: in 1970 a widespread survey of 60,000 political science faculty members noted "70 per cent approved of the emergence of radical student activism, as against 30 per cent who disapproved". The same proportion held when they were asked to label themselves politically. Left and liberal drew about 70 per cent, middle-of-the-road 20 percent, conservative 10 per cent. At my own alma mater, Princeton, in 1968, 80 per cent of the faculty members supported Hubert Humphrey, while Nixon and Dick Gregory (an ultra-liberal black candidate of minor party) each got 10 per cent. It is not difficult to imagine what the views of such a faculty will be on the often subjective topics of economics, politics, and the interpretation of history.

Mr. Powell's 1971 memorandum was intended for consideration by the Education Committee of the United States Chamber of Commerce (of which I am chairman). The evaluation of his far-reaching ideas has understandably required lengthy consideration, and the chamber in fact has made no decision regarding their implementation. However, there is nothing improper or illegal in any of Justice Powell's suggestions for American business to stand up for our free enterprise economy.

Mr. Anderson's attempt to pillory a great American may well prove a blessing in disguise. Hopefully, the widespread publicity about the memorandum may wake up businessmen all over this country to the pressing need for prompt and effective implementation of these sound suggestions.

EUGENE B. SYDNOR, JR.

RICHMOND.

[From the Richmond Times-Dispatch, Oct. 4, 1972]

THE POWELL MEMO

Columnist Jack Anderson, who specializes in sensational exposes, excitedly informed his readers last week that he had found a document that "raises a question" about the fitness of U.S. Supreme Court Justice Lewis F. Powell Jr. to "decide any case involving business interests." His discovery, Anderson reported, was a Powell "blueprint for an assault by big business on its critics."

In horrified tones, Anderson declared that Justice Powell had advocated use of the nation's courts, its political institutions and its campuses to "champion big business." Indeed, Anderson conveyed the impression that Justice Powell favored dark and devious tactics, including the use of censorship and intimidation, to bludgeon colleges, the media and politicians into becoming more sympathetic to the interests of big business.

Now, people who know Justice Powell, who are familiar with his impressive record as a progressive and sensitive civic leader, will recognize Anderson's implications for what they are: rubbish. Unfortunately, however, the columnist's innuendos may receive currency from some people to whom Justice Powell is only a name. For this reason, Anderson's nonsense ought to be promptly refuted.

Written slightly more than a year ago, a few months before his appointment to the high court, Justice Powell's memorandum was far from being a plan for a selfish and underhanded promotion of the interests of "big business." It was, rather, a lucid and reasoned outline of a possible program to defend the nation's free enterprise system against unfair, unfounded and malicious criticism. In essence, Justice Powell suggested that the business community—which includes the one-man shoe store as well as General Motors—should use all legitimate and fair weapons at its disposal to counter the attacks of its enemies. What could possibly be improper about such a suggestion?

The Powell memorandum—written at the request of Eugene B. Sydnor Jr. of Richmond, chairman of the U.S. Chamber of Commerce's education committee, whose letter is published on this page today—noted, correctly, that "the American economic system is under broad attack," not only from such traditional enemies as the Communists but also from "perfectly respectable elements of society: from the college campus, the pulpit, the media, the intellectual and literary journals, the arts and sciences, and from politicians." Generally, the memorandum observed, the business community has responded "if at all, by appeasement, ineptitude and ignoring the problem."

It was Justice Powell's conclusion that American business should defend itself more vigorously and more effectively. He advised it to seek to influence the policies of government, and indeed it should. He advised it to become "active in the judicial arena," as many other organizations are, and indeed it should. He advised it to complain "promptly and strongly" when television and the other media present "unfair or inaccurate" programs and stories, and indeed it should.

The campus Justice Powell saw as the "single most dynamic source" of criticism against the free enterprise system, primarily because social science faculties "tend to be liberally oriented." He emphasized, however, that this was not "a criticism per se, as the need for liberal thought is essential to a balanced viewpoint." Moreover, he cautioned that the principle of academic freedom must not be attacked and that college administrations and faculties must retain responsibility for their "intellectual integrity." But the truth, the Powell memorandum noted, is that on many campuses there is no such thing as a "balanced viewpoint" because there is a dearth of conservative and moderate faculty members.

This lamentable imbalance the Chamber of Commerce could partially offset, Justice Powell concluded, by establishing its own staff of scholars who would write and speak on the free enterprise system and by insisting that social science textbooks used in the nation's colleges and secondary schools offer "fair and factual treatment of our system of government and our enterprise system, its accomplishments, its basic relationship to individual rights and freedoms and comparisons with the systems of socialism, fascism and communism."

Anderson's melodramatic suggestions notwithstanding, Justice Powell advocated nothing revolutionary, shocking, improper or, for that matter, very dramatic. All he did, in effect, was to urge business to stop behaving like the Caspar Milquetoast of the American society and to recognize the nation's legal, political and educational institutions as legitimate and effective weapons to use in a counterattack against those who would destroy the free enterprise system.

TRANSACTION OF ROUTINE MORNING BUSINESS

The PRESIDING OFFICER (Mr. GAMBRELL). Under the previous order, there will now be a period for the transaction of routine morning business not to extend beyond 10 a.m., with statements therein limited to 3 minutes each.

Mr. HARRY F. BYRD, JR. 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.

ORDER FOR RECOGNITION OF SENATOR HARRY F. BYRD, JR., TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that tomorrow, immediately following the remarks of the distinguished Senator from Maryland (Mr. MATHIAS), the distinguished senior Senator from Virginia (Mr. HARRY F. BYRD, JR.) be recognized for not to exceed 15 minutes, after which the six 10-minute orders entered previously for Wednesday begin to run.

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

TIME FOR DEBATE ON CLOTURE MOTION TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that if the motion to invoke cloture today is not agreed to, the 1 hour of debate under rule XXII on the motion to invoke cloture on tomorrow begin running immediately following the conclusion of the orders for the recognition of various Senators.

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

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. HARRY F. BYRD, JR. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

EQUAL EDUCATIONAL OPPORTUNITIES ACT, 1972

Mr. HARRY F. BYRD, JR. Mr. President, the pending measure, which seeks to give some protection to the American people and their children against compulsory busing to achieve an artificial racial balance in the schools, is a very important piece of legislation. It is a matter that deserves full consideration. It is a matter which has been considered

over a long period of time and has had a great deal of consideration.

I think most Senators know how they stand on this issue. Within the next hour or so—a little more than an hour—a vote will be taken as to whether there shall be cloture on debate. If that motion should prevail, 100 hours of further debate would be available. I think that is a reasonable amount of time under the circumstances and in view of the fact that most Senators—probably all of them—have made their own determination as to how they will vote on the matter of busing.

If I had any qualms, so to speak, about voting for cloture today, those qualms were dissipated when yesterday the Senate, because of the lack of interest or lack of speakers to oppose the busing measure, adjourned at 4:36 p.m.

I suggested last week that this is a very important matter to the people of the United States; that there should be full discussion; and that if the opposition to the measure desired to do so, I, as one Senator, would welcome sessions continuing until midnight every night, so that there could be active discussion. But apparently there is no need for that.

As I say, the RECORD shows that yesterday the Senate adjourned at 4:36 in the afternoon.

COMMITTEE MEETINGS DURING SENATE SESSION TODAY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Foreign Relations and the Committee on Armed Services be authorized to meet during the session of the Senate today.

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

ORDER OF BUSINESS

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.

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

The PRESIDENT pro tempore laid before the Senate the following letters, which were referred as indicated:

PROPOSED SUPPLEMENTAL APPROPRIATIONS FOR DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE AND THE MARITIME ADMINISTRATION (S. Doc. No. 92-91)

A communication from the President of the United States, transmitting proposed supplemental appropriations for fiscal year 1973, in the amount of $1,382,214,000, for the Department of Health, Education, and Welfare and the Maritime Administration (with accompanying papers); to the Committee on Appropriations, and ordered to be printed.

PROPOSED AMENDMENT TO TITLE 49, UNITED STATES CODE

A letter from the Secretary of Transportation, transmitting a draft of proposed legislation to amend title 49, United States Code, to provide for criminal penalties for all who knowingly and willfully refuse or fail to file required reports, keep required data or falsify records; provide criminal penalties for unlawful carriage of persons for compensation or hire; to increase the civil penalty limits; and for other purposes (with accompanying papers); to the Committee on Commerce.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HARTKE, from the Committee on Veterans' Affairs, with amendments:

S. 3070. 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 (Rept. No. 92-1283).

By Mr. MOSS (for Mr. METCALF), from the Committee on Interior and Insular Affairs:

S. Res. 377. An original resolution to provide a temporary moratorium on Federal coal leasing in the State of Montana, and for other purposes (Rept. No. 92-1284). (Minority views filed.)

By Mr. MANSFIELD (for Mr. FULBRIGHT), from the Committee on Foreign Relations, with an amendment:

H.R. 15461. An act to facilitate compliance with the treaty between the United States of America and the United Mexican States, signed November 23, 1970, and for other purposes (Rept. No. 92-1285).

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

H.R. 10556. An act to authorize the Secretary of the Interior to sell reserved mineral interests of the United States in certain land in Georgia to Thomas A. Buiso, the record owner of the surface thereof (Rept. No. 92-1286).

EXECUTIVE REPORTS OF COMMITTEES

As in executive session, the following favorable reports of nominations were submitted:

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

George H. Gallup, of New Jersey, to be a member of the U.S. Advisory Commission on Information;

Joseph A. Greenwald, of Illinois, a Foreign Service officer of the class of career minister, to be the Representative of the United States of America to the European Communities, with the rank and status of Ambassador Extraordinary and Plenipotentiary;

Edward W. Mulcahy, of Arizona, a Foreign Service officer of class 1, to be Ambassador Extraordinary and Plenipotentiary to the Republic of Chad;

William R. Crawford, Jr., of Pennsylvania, a Foreign Service officer of class 2, to be Ambassador Extraordinary and Plenipotentiary to the Yemen Arab Republic;

William B. Jones, of California, R. Miller Upton, of Wisconsin, Louise Gore, of Maryland, Jaquelin H. Hume, of California, and Benjamin F. Marsh, of Ohio, to be Representatives of the United States of America to the 17th session of the General Conference of the United Nations Educational, Scientific, and Cultural Organization; and

E. Dorothy Dann Bullock, of Pennsylvania, Henry David, of the District of Columbia, Pierre R. Graham, of Illinois, James C. Haahr, of Minnesota, and Chauncy D. Harris, of Illinois, to be Alternate Representatives of the United States of America to the 17th session of the General Conference of the United Nations Educational, Scientific, and Cultural Organization.

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. HRUSKA:

S. 4074. A bill for the relief of Masumi Danzuka. Referred to the Committee on the Judiciary.

By Mr. HATFIELD:

S. 4075. A bill to incorporate in the District of Columbia the American Ex-Prisoners of War. Referred to the Committee on the District of Columbia.

By Mr. JORDAN of North Carolina:

S. 4076. A bill for the relief of Sergei Kourdakov. Referred to the Committee on the Judiciary.

By Mr. THURMOND:

S. 4077. A bill for the relief of the heirs of William K. Bradley. Referred to the Committee on the Judiciary.

By Mr. HANSEN:

S. 4078. A bill for the relief of Luis Mendoza, Aurelia Mendoza, Elena Mendoza, Secundino Mendoza, and Sijifredo Mendoza. Referred to the Committee on the Judiciary.

By Mr. HART:

S. 4079. A bill to amend the Internal Revenue Code of 1954 to remove tax incentives to plant closings. Referred to the Committee on Finance.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HART:

S. 4079. A bill to amend the Internal Revenue Code of 1954 to remove tax incentives to plant closings. Referred to the Committee on Finance.

NO TAX BREAKS FOR PLANT CLOSINGS

Mr. HART. Mr. President, the closing of a plant imposes cost on employees and on a community.

Workers lose jobs, pension plans often disappear, some families may have to move, local tax revenues decrease, and remaining businesses lose customers and sales.

Perhaps the impact can be better appreciated by an estimate made of the number of years of employee seniority involved in a plant closing announced in Detroit last year.

In this particular plant, the employees who will lose jobs because of the closing have accumulated more than 34,800 years of seniority.

The impact of this closing then is not only from the immediate loss of jobs, but of the difficulty older workers may have in finding new work and in the loss of accrued seniority in a pension program.

These effects are even more severe in communities already afflicted with high unemployment rates.

For that reason the Federal tax system should not give a "bonus" to firms moving plants from high unemployment

areas; rather it should encourage creation of new jobs in such areas.

Also experience has shown that mergers involving the purchase of a small company by a large out-of-town corporation too often result in the closing of the acquired firm or a funneling of expansion funds to other plants of the corporation.

Because the out-of-town corporation has no close ties with the community, such decisions may be based on considerations other than the economic viability of the operation.

The fact is that many large corporations view management responsibilities and plant operations not in terms of people but, as expressed by one company official, in terms of that "of a portfolio manager."

Under such an approach, the question of closing a plant is not so much one of people or community, but rather one of adding and subtracting stocks to a portfolio.

Certainly, some mergers make sense, but the "sense" should be added efficiences and not the desire to take advantage of some tax loopholes.

At a minimum the Federal tax code should be neutral on the question of encouraging mergers involving large corporations and at best should tilt the balance in favor of mergers between small businesses.

For those reasons I introduce today a bill to remove tax loopholes which might encourage plant closings.

The bill would close these "bonuses" for moving a plant from a high unemployment area.

The 7-percent investment tax credit would be denied firms moving a plant from a high unemployment area and would apply only to the acquisition of property which would increase the number of jobs in such areas. A company merely moving operations from one high unemployment area to another would not be entitled to the investment credit on the new plant and equipment.

The provision granting tax-free interest on industrial development bonds would be denied if revenue from the bonds were used to attract a plant from a high unemployment area.

A "high unemployment area" is defined as a State, metropolitan area or other geographic labor market designated by the Secretary of Labor in which the jobless rate averaged more than 6 percent over the preceding 12 months. Counties in Michigan's Upper Peninsula, for example, could be included in the third category.

The bill would close these "merger loopholes."

Mergers can be accomplished through the exchange of stocks between the buying and the selling firms. In certain circumstances under present provisions of the tax code, profits on such transfers are not taxed. This bill would end such an exemption.

Corporations do not have to pay taxes on profits from the sale of assets carried out within 1 year of its announced decision to liquidate the company. The bill would repeal that loophole.

Even when the sale of a business is taxable, if the price of acquisition is paid in installments, the seller can spread tax payments on profits from the sale over the period of the transaction. This proposal would make the full tax bill payable at the time of the transfer.

These loophole closings would apply only to mergers involving firms with combined assets totaling more than $10 billion. The bill provides a safeguard against a large company using a controlled "independent" firm in an attempt to make the $10 million cutoff.

Also mergers between small businesses would remain tax free even if the exchange of assets involved some type of guaranteed debt as well as stock.

If the tax code were completely neutral on the question of mergers, large companies would continue to dominate the purchase of business assets if for no other reason than financial risks often are less for the seller if he ends up with a share of stocks in a large company rather than with stock of a smaller business. Thus, the owner of a small company could sell to another independent company and receive secured notes as well as stock without losing tax-free status for the exchange.

By continuing and expanding tax preferences for small business mergers, we can encourage such transactions and still provide a safe way for an owner to dispose of his business.

I am introducing the bill now and ask appropriate assignment in hopes that the concept will be discussed in the campaign and the candidates might commit themselves to supporting it. I will introduce the bill again shortly after Congress convenes in January and hope hearings will sharpen understanding for all of us.

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 3070

At the request of Mr. HARTKE, the Senator from Montana (Mr. METCALF) was added as a cosponsor of S. 3070, 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.

S. 4069

At the request of Mr. HATFIELD, the Senator from Oregon (Mr. PACKWOOD) was added as a cosponsor of S. 4069, a bill for the relief of Alemitu Feleke.

SENATE RESOLUTION 377—ORIGINAL RESOLUTION REPORTED PROVIDING A MORATORIUM ON COAL LEASING IN MONTANA

(Ordered to be placed on the calendar.)

Mr. MOSS (for Mr. METCALF), from the Committee on Interior and Insular Affairs, reported the following original resolution:

S. RES. 377

Resolved, That it is the sense of the Senate that the Secretary of the Interior exercise his authority under existing law and withdraw temporarily from prospecting and exploration, lease or other disposal subject to valid existing rights, deposits of coal owned by the United States in the State of Montana which can only be mined by surface mining methods, suspend pending applications for coal permits and, in accordance with the provisions of the Mineral Leasing Act of 1920 (30 U.S.C. 209), suspend all coal leases for surface mine operations not in actual production, or in diligent prosecution leading toward production, for a period of one year from the effective date hereof, or until Congress enacts legislation for the control of surface mining prior to the expiration of such one year period.

EQUAL EDUCATIONAL OPPORTUNITIES ACT—AMENDMENTS

AMENDMENTS NOS. 1724 THROUGH 1729

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

Mr. JAVITS submitted six amendments intended to be proposed by him to the bill (H.R. 13915) to further the achievement of equal educational opportunities.

AMENDMENT NO. 1730

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

Mr. SCOTT submitted an amendment intended to be proposed by him to the bill (H.R. 13915), supra.

AMENDMENTS NOS. 1731 AND 1732

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

Mr. BROOKE submitted two amendments intended to be proposed by him to the bill (H.R. 13915), supra.

AMENDMENT NO. 1733

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

Mr. HART submitted an amendment intended to be proposed by him to the bill (H.R. 13915), supra.

AMENDMENTS NOS. 1734 THROUGH 1738

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

Mr. ERVIN submitted five amendments intended to be proposed by him to amendment No. 1714 intended to be proposed to the bill (H.R. 13915), supra.

TEMPORARY INCREASE IN DEBT LIMIT—AMENDMENT

AMENDMENT NO. 1739

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

Mr. HUMPHREY submitted an amendment intended to be proposed by him to the bill (H.R. 16810) to extend the debt limit and provide for a 1973 spending limitation of $250 billion.

AMENDMENT NO. 1741

(Ordered to be printed and referred to the Committee on Finance.)

Mr. SCHWEIKER. Mr. President, I send an amendment to the desk to H.R. 16810, a bill to provide for a temporary increase in the public debt limit and to place a limitation on expenditures and net lending for the fiscal year ending June 30, 1973, and ask that it be printed.

Mr. President, this amendment to the debt ceiling bill would have the effect of preserving a $250 billion spending ceiling, but would at the same time provide that spending cutbacks must be made proportionately to all programs in accordance with congressional appropriations with the exception of so-called uncontrollable items.

I strongly support the President's efforts to impose a spending ceiling. President Nixon indicated very clearly in his speech to the American people of October 7 that if we do not hold down spending, tax increases could be necessary. The American people are already bearing a heavy burden of taxation, and I commend the leadership of the President in taking the initiative to avoid tax increases.

However, I also strongly believe that the Congress must preserve its authority over priorities. My amendment permits a spending ceiling, but preserves congressional authority over priorities. The President would not be permitted to make major cutbacks in only a few specific programs to meet the spending ceiling. He would have to take a look at the level of appropriations for each program, including supplement and continuing appropriations, and make across-the-board cuts for all programs proportionately. Spending would therefore continue at the same relative rate for every program.

The only exception would be expenditures which are uncontrollable within the Federal budget such as interest on the national debt, social security payments, medicare payments, veterans' pensions, and so forth.

Estimates are that uncontrollable items amount to about $100 billion. Thus, remaining expenditures of approximately $150 billion must be reduced proportionately in order to meet the $250 billion spending ceiling.

There are three major features of my amendment:

First, it retains the authority of Congress over spending priorities and the distribution of funds within the Federal budget. It therefore avoids giving the President direct item veto authority.

Second, it permits the establishment of a spending ceiling for fiscal year 1973 of $250 billion.

Third, it decreases the possibility of a tax increase.

The distinguished Senator from Idaho (Mr. JORDAN) has introduced a similar amendment to this legislation. Since I have been working on my amendment for some time, and since the language of my amendment is somewhat different from that of the other amendment, I have decided to introduce my amendment. However, in concept the amendments are identical, and I want to make it clear that I fully intend to support Senator JORDAN's amendment when it is offered on the floor.

These amendments offer a reasonable and practical solution to the spending problem. They retain congressional authority over the distribution of expenditures while at the same time limit spending so that an undesirable tax increase can be avoided.

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

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

AMENDMENT No. 1741

Strike out subsection (b) of section 201 of the bill and in lieu thereof insert the following:

(b) (1) Notwithstanding the provisions of any other law, the President shall, in accordance with paragraph (2), reserve from expenditure and net lending, from appropriations or other obligational authority heretofore or hereafter made available, such amounts as may be necessary to effectuate the provisions of subsection (a).

(2) In carrying out the provisions of paragraph (1), the President shall reserve amounts proportionately from appropriations or other obligational authority available for all programs and activities of the Government (other than programs and activities expenditures for which, within the meaning of the Budget, are not controllable).

ENVIRONMENTAL NOISE CONTROL ACT—AMENDMENT

AMENDMENT NO. 1740

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

Mr. MUSKIE. Mr. President, in the near future, the Senate may consider S. 3342, the Environmental Noise Control Act of 1972. In addition to amendments which I may propose to those sections of the bill related to aircraft noise, I will offer an amendment, which I am submitting today, to section 408(e)(2) to assure that States and localities will not be preempted from controlling environmental noise at the source through limitation on sale of noisy products which exceed local standards. This amendment to protect the right of States and localities to set and enforce stricter controls is cosponsored by Mr. BUCKLEY, Mr. BROOKE, Mr. CASE, Mr. HATFIELD, Mr. MCGOVERN, Mr. MCINTYRE, Mr. PELL, and Mr. STEVENSON.

I am advised that State and local officials who have examined the pending bill believe that such an amendment is essential. They contend that, without authority to regulate sale for use, current State and local noise control laws and ordinances will be impossible to enforce. If States and localities only have authority to control noise at the time of use, the administrative burden on State and local enforcement agencies will be overwhelming. The capacity of States and localities to enforce stricter noise pollution controls must be maintained.

There is no objection to a preemption provision which protects the manufacturer against conflicting State standards and enforcement actions where such conflicting standards are demonstrated to be an unreasonable burden on commerce. At the same time, a State or local government should have authority to restrict the sale for use of any product which will emit unacceptable noise levels. The only burden this will place on the manufacturer is the limitation of not selling products in States or communities which have banned the sale of such products—a legitimate exercise of State police power.

BALD EAGLE PROTECTION ACT—AMENDMENT

AMENDMENT NO. 1742

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

Mr. HANSEN. Mr. President, I send to the desk an amendment to H.R. 12186, an act to strengthen the penalties imposed for violation of the Bald Eagle Protection Act, and ask that it be printed in the RECORD following my statement.

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

(See exhibit 1.)

Mr. HANSEN. Mr. President, the report of the Department of the Interior indicates that the increased penalties in H.R. 12186 would serve to deter individuals who would unlawfully kill American or Golden Eagles. I certainly concur in this objective. It is my feeling that penalties should be made as strong as is necessary to deter any potential violator of the Bald Eagle Protection Act.

However, there is one provision of the bill as reported by the Commerce Committee with which I am very concerned.

Section 2(c) of the bill would authorize the Secretary of Agriculture or the head of any other department or agency to terminate any grazing contract, license, permit, or agreement in the event of a lessee's conviction under this act.

Mr. President, I feel that this language is grossly unfair and is completely discriminatory. It implies that because an individual grazes livestock on the public land, he should be singled out and made to suffer an additional penalty for any transgression of this act. Further, this section seems to imply that the livestock permittee is the major violator of this act. I resent this implication. It is not substantiated by the facts, and I do not feel it should be included in this bill.

Let me emphasize again that I have no sympathy for anyone convicted under the act, but the point is that just because an individual owns a grazing permit on public land, he should not be subject to any greater penalty than anyone else.

Mr. President, I think I understand the rationale of the Commerce Committee in including this provision within its reported legislation. Undoubtedly, it is the feeling of the committee that someone who transgresses this particular law should not be allowed to use the public land.

However, if the committee feels that the grazing permittee should lose his license to use public land, this provision should extend as equally as possible to all public land users.

Of course, for most users of the public lands, loss of use is not as critical as it is for the grazing permittee. The loss of the grazing permittee's right to use public land could mean the loss of livelihood, home, job, and could mean the addition of another name onto the welfare roles.

However, the amendment I am submitting today would amend subsection (c) of the committee approved H.R. 12186 so that any person convicted under this act would not be able to purchase any permit or obtain any license involving the use of National Forest lands, Bureau of Land

Management lands, Park Service lands, or other lands administered by the Bureau of Outdoor Recreation and the Department of the Interior.

If the Commerce Committee is going to tack another penalty onto grazing permittees, I feel that this restriction of use should apply as equally as possible to all who use the public lands. My amendment would do that—my amendment takes some of the discrimination out of H.R. 12186.

If adopted, it would deny the use of public lands for grazing by permittees and would also eliminate anyone else from using public lands through permit or license if convicted under this act.

This amendment does not take all of the discrimination from the act, but it would serve as an equalizing force for all who choose to use the public lands.

EXHIBIT 1

AMENDMENT No. 1742

On page 3, line 22, immediately after "(c)", insert "(1)".

On page 4, line 6, strike out the quotation marks.

On page 4, between lines 6 and 7, insert the following:

"(2) The Secretary of the Interior is authorized to deny to any person convicted of a violation of this Act or any permit or regulation issued pursuant thereto admission to any lands administered by the National Park Service. The Secretary of Agriculture is authorized to deny to any such person so convicted the right to purchase any permit or obtain any license involving the use of National Forest lands. The Secretary of the Interior is authorized to deny to any such person so convicted the right to purchase or obtain any license involving the use of lands administered by the Bureau of Outdoor Recreation or the Bureau of Land Management.

ANNOUNCEMENT OF HEALTH SUBCOMMITTEE HEARINGS ON HUMAN EXPERIMENTATION

Mr. KENNEDY. Mr. President, in recent weeks Americans have been shocked by the disclosure that poor, uneducated patients have been the subjects of life-threatening medical experiments. The Tuskegee study, in which 200 black men were denied treatment in order to study the effects of syphilis on the human body, has been universally condemned. The Cincinnati General Hospital study, in which total body irradiation was given to 111 poor, uneducated charity cases with terminal cancer, raised similarly profound ethical questions. In this case, the care of the patient was secondary to the experiment with total body irradiation.

Recently, a third example of a human experiment which raises important ethical issues was brought to my attention by an advance copy of an article to be published in World magazine, written by Geoffrey Cowan of UCLA.

In 1958, researchers in the newborn unit at Los Angeles County Hospital conducted an experiment to see if prophylactic antibiotic treatment would reduce the high mortality rate of premature infants. All of the infants came from the same socioeconomic group—generally poor, uneducated Americans. The experiment set up four treatment groups:

One group received no antibiotics;

One group received penicillin and streptomycin;

One group received chloramphenicol;

One group received chloramphenicol, penicillin, and streptomycin.

The parents did not give what would today be called "informed consent." A "blanket permission" form was signed upon the mother's admission to the hospital. Mothers whose babies were to receive no antibiotics were talked to; other mothers were not.

The extent of knowledge about chloramphenicol at the time of the experiment was this:

First, it was introduced in 1949 by Parke Davis and became commonly used as a "broad spectrum" antibiotic;

Second, by 1951 there were numerous reports of bone marrow depression and deaths associated with use of the drug;

Third, in 1952 the Journal of the American Medical Association ran an editorial cautioning physicians about the potental dangers of the drug;

Fourth, in 1952 the FDA, having 177 cases of serious blood disorders on record associated with chloramphenicol—61 cases were fatal—referred the case histories to the National Research Council and discontinued certification for the drug. The council issued a warning about the drug urging restrictions on its use. FDA recertified it, but required warnings on package inserts;

Fifth, McGehee Harvey, M.D., at Johns Hopkins, issued a formal memorandum to his staff warning against using chloramphenicol for any but seriously ill patients;

Sixth, sales of chloramphenicol dropped precipitously in 1952–53, but recovered fully by the late 1950's; and

Seventh, the drug continued to be in common use in the medical profession;

Eighth, there were no studies of the drug on newborn animals. Human infants were the first newborns to receive the drug.

None of these facts were discussed with the parents. The results of the study were:

First, 19 percent of those with no treatment died.

Second, 18 percent of those with penicillin and streptomycin died.

Third, 60 percent of infants receiving chloramphenicol died.

Fourth, 68 percent of those receiving chloramphenicol, penicillin, and streptomycin died.

In all, 39 infants receiving chloramphenicol, either alone or in combination, died.

This study was followed by a second study to see if a safe dose of chloramphenicol could be arrived at. The same patient population was used and again there was no informed consent—not even a discussion of the first experiment. Much lower doses of the drug were used in this second study. Of the six babies who died as a result of the second study, one died of a birth defect; one of infection; one of a cerebral hemorrhage; one of a pulmonary hemorrhage; and two apparently due to chloramphenicol. Other infants had symptoms of chloramphenicol toxicity, but these proved reversible.

Partially as a result of these studies, chloramphenicol use was drastically cut back in nurseries.

At the same time as these experiments were conducted, other similar studies with newborns and chloramphenicol were being done with similar results—high mortality among the newborn.

Many issues are raised by these studies. Some have been dealt with; though informed consent is now required for such studies, the issue of whether there can be truly informed consent by nonprofessionals in such matters is still not clear.

Other issues remain:

First. Why do experiments such as these seem to be on poor, uneducated Americans, primarily members of minority groups?

Second. What is there about the practice of medicine that would permit widespread usage of a drug many years after its dangers were known to the academic community? Can it be that Parke, Davis detail men had a greater impact on the pattern of practice with regard to chloramphenicol than the experts in the academic community?

Third. Do we have adequate controls now to assure that human experimentation takes place in a controlled and monitored environment?

Fourth. Can the testing of new drugs be left exclusively to the drug companies?

As chairman of the Health Subcommittee, I pledge to thoroughly investigate these matters early next year. I have directed my staff to search out and uncover as many examples of abuses in the human experimentation field as possible. I ask any American aware of such abuses to write to me with the details.

ADDITIONAL STATEMENTS

PRESERVATION OF HISTORIC BUILDINGS

Mr. HARTKE. Mr. President, our Nation is young, but with each passing year it becomes more important for us to remember our heritage and to preserve those objects—both material and ideological—which formed the foundation of our country.

Today I received a new release announcing that the Treasury Building in Washington would be declared a national historic site. This is welcome news because the Main Treasury Building is an outstanding example of Greek revival civil architecture in our Nation's Capital.

In this time when we build by destroying, the wrecker's ball becomes the major tool of construction. We are too prone to tear down—too ready to replace those structures which have meaning with lifeless, sterile structures.

As we approach the 200th anniversary of our Independence, we should strive to make Washington, D.C., a showcase for the Nation. No doubt there are blighted structures which must be destroyed, but there are also old buildings which must be preserved because they embody the very history of this great country.

The Main Treasury Building is in no danger of succumbing to the wrecker's ball, but other adjacent buildings such

as the Old Post Office and the Willard Hotel are in imminent danger. We can serve as an outstanding example for the rest of the Nation by preserving these and other historic buildings rather than by destroying them.

FIRST INTERNATIONAL BANK OF ISRAEL

Mr. SCOTT. Mr. President, I am privileged to advise the Senate that the First Pennsylvania Corp., owner of the First Pennsylvania Bank, has made the largest initial investment by an American firm in the 25-year history of the State of Israel. The corporation has invested $16.2 million or 41.6 percent of the funds in a new bank in Israel, a merger of two existing banks: The Foreign Trade Bank and the Export Bank. The new facility is known as the First International Bank of Israel. Mr. President, this investment demonstrates the faith we have in the people of this gallant country. I ask unanimous consent that two attachments concerning the new bank be printed in the RECORD.

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

ISRAEL FACT SHEET

1. First International Bank of Israel, a merger of two existing Israeli banks—Foreign Trade Bank of Israel and the Export Bank of Israel—will open for business October 1, 1972, with 34 branches.

2. FPC will be the largest shareholder with a 41.6% interest and an option to increase that interest to 51% (option runs from 1976–78). The second largest shareholder is the government of Israel (26%).

3. We will pay $16.2 million for our interest over a period of years (the bulk in the first 2 years, however).

4. Our interest is in the holding company of the Bank—FIBI Holding Co. Ltd.

5. Other parties with an interest in the venture are:

Government of Israel.
Triumph Investment Trust of U.K.
Israel Investors Corp.
Baldwin Securities.
Mayer Investment Corp. Ltd., Israel.
Private individuals from Israel and the United States.

6. The Bank will be the fourth largest bank in Israel in terms of deposits and the largest in terms of capital base ($76 million or 321 million IL compared to 193 million IL which is the capital base of the now largest bank in Israel—Bank Leumi).

7. FPC's investment is the largest single *initial* outside private investment in Israel's history.

8. Israel has a surplus of managerial talent because its managerial class came into Israel from across the continent during and after World War II.

9. Our purpose there is primarily to provide working capital loans for commercial businesses. The economy of Israel offers businesses a great opportunity to grow.

FIRST INTERNATIONAL BANK OF ISRAEL FORMED BY PENNSYLVANIA BANK, U.K., U.S., ISRAELI INVESTORS AND GOVERNMENT

TEL AVIV.—The first joint American-Israel banking organization, the First Israel International Bank Ltd., will begin operations in Israel on October 1, it was announced here. The bank is owned by a consortium consisting of a major U.S. bank, U.S., European and Israeli investment groups and the government of Israel. It takes over the facilities of two existing Israeli banks.

Largest shareholders (41.6 per cent) in the new banking institution is the First Pennsylvania Corporation, owner of the First Pennsylvania Bank, the nation's oldest and 19th largest bank. Its partners in the First International Bank of Israel are a subsidiary of the Triumph Investment Trust Ltd., an English investment group, participating with 13.7 per cent of the share capital, American and local investors. The government of Israel is also a participant to the extent of providing 26 per cent of the share capital.

Total capitalization of the new bank will be IL 320 million, (IL 4.2 per $1) largest of any savings/commercial bank in Israel.

The newly-formed bank will become the fourth largest in Israel in total assets, with 900 employees, 34 existing branches replacing the Foreign Trade Bank and Export Bank, and assets anticipated for the first year of operation of more than IL 1.5 billion. Mr. David Golan, formerly director general of the Ministry of Commerce & Industry and managing director of the Foreign Trade Bank, has been named chief executive officer of the new international bank.

The First International Bank of Israel, Mr. Golan stated, will offer full savings and commercial banking services, and especially provide an important new source of working capital for Israel's rapidly growing industry. At the same time, it is said, through offices of the First Pennsylvania Bank it will provide American individual's and firms an effective banking channel for investments and other activity in the Israel economy.

Founded in 1954, the Foreign Trade Bank operated 29 branches in Israel, and the Export Bank, owned by the Mayer Brothers group, five branches. The Mayer Investment Corp. is participating in 4.4 per cent ownership of the new bank. Other participators include: the Baldwin Securities Corporation, U.S., headed by Ira Guilden of New York, the Israel Investors Corporation and Samuel Rothberg of Peoria, Ill.

The First Pennsylvania Banking and Trust Company maintains more than 81 branches in Pennsylvania and the Caribbean with representative offices in London, Frankfurt, Mexico City and Singapore. Its assets exceed $4 billion and was listed as one of America's most profit-making banks in 1971.

The investment in the First Israel International Bank, amounting to $16 million, is said to be the largest single investment in an Israeli enterprise by an overseas financial institution.

SAN DIEGO TAKES LEAD IN LAND USE PLANNING

Mr. TUNNEY. Mr. President, I wish to comment today on an action taken by the city of San Diego, Calif., which I find particularly commendable. The city of San Diego recently published its preliminary planning concept for the Tia Juana River Valley. Their report, a review of the city's border area plan, was initiated following the findings of Army Corps of Engineers and California State resources agency environmental impact studies of the proposed Tia Juana River flood control project. After preliminary study, the report recommends a reevaluation of the development-oriented border area plan of 1967, to consider alternative land uses for the Tia Juana River Valley. Its goal is to determine the best balance between conservation of the valley's natural environment, and the long-range need potential of the South Bay area.

I am personally grateful for this action, because I feel it is a positive measure toward preservation of the natural environment and wildlife habitat of the Tia Juana River flood plain. Such study makes possible a cooperative solution to the issue of estuary wildelife protection, which I seek in my bill, S. 4027, to establish the Tia Juana Estuary National Wildlife Refuge.

In addition, I think it is commendable that the city of San Diego has the flexibility to reassess its plans for regional land use in view of new information and changing priorities: While at one time maximum development of the flood plain was an unquestioned possibility, the city is now attempting to assess what impact this would have on the many aspects of San Diego life. I hope that governmental bodies across the country will follow the lead of San Diego in being open to the changing needs of our urbanized areas.

DISTRICT OF COLUMBIA IMPLIED CONSENT LAW FOR DRIVERS

Mr. PERCY. Mr. President, I am most pleased that yesterday the Senate passed S. 4059 which provides that drivers in the District of Columbia shall be deemed to have consented to a chemical test for the purpose of determining blood alcohol content if a driver is stopped on suspicion of drunken driving. The bill is an outgrowth of legislation which I introduced almost a year ago on October 19, 1971. As I have pointed out in the past when discussing S. 2715, the original bill, Illinois was the last State to adopt an implied consent law, doing so only in January of this year after a long debate in the State legislature. Since then, the District of Columbia has been the only political jurisdiction remaining without such a law.

The bill will give the District of Columbia an effective, workable implied consent law, using the standard of 0.10 percent blood alcohol level as a determination of intoxication. This law has proved to be objective, constitutional, and a valid means of taking evidence on which to document a charge of driving while under the influence of alcohol.

An implied consent law basically states that a licensed driver is deemed to have given his consent to a chemical test of his blood, breath, or urine upon arrest for a violation of the law if the arresting officer determines that there is reasonable grounds to believe the person has been driving under the influence of an intoxicating liquor. The Department of Transportation established as one of its national uniform standards for State highway safety programs the requirement that each State approve an implied consent law. Failure to do so can result in the withholding of Federal aid highway funds, as was the case in Illinois last year.

The District of Columbia government stated in a February letter to the Congress that the lack of an implied consent law has seriously hampered control of the drinking driver problem in the District of Columbia. Reports on highway fatalities for the District show that in 1968, 54 of the 127 motor vehicle fatalities involved a drinking driver.

Nationwide, the impact that the drinking driver has on highway accidents and

fatalities is significant. Conservative estimates are that at least 50 percent of the deaths occur as a result of intoxicated or drunk driving.

In 1969, the death toll from alcohol-related accidents was 28,000. In addition, four out of every five drivers involved in an accident while under the influence of alcohol is the occasional or social drinker, not the chronic drunk. There is reason to believe that an implied consent law can have some psychological effect on the social drinker. If he faces the possibility of a license revocation for 6 months and court action, he may think twice before he climbs behind the wheel of a motor vehicle in an intoxicated condition.

Furthermore, the drinking driver imposes an economc burden on society. Alcohol problems cost citizens $5 to $7 for every tax dollar from sales of alcoholic beverages and the drunk driver adds $240 to every driver's cost of living. The nationwide estimate of economic loss attributable to highway accidents is $8 billion.

Examination of the current District of Columbia Code reveals that it is clearly inadequate with respect to drinking drivers. Present law does not require that a person submit to the taking of an appropriate specimen for testing. He may refuse, although refusal will not result in any sanctions against him. Without a chemical test as documentation of intoxification, it is extremely difficult for the courts to hand down a conviction for that charge.

Having served on the District of Columbia Appropriations Subcommittee, I am aware of the tremendous difficulties that the District of Columbia Police Department faces in the adequate enforcement of the law. To deny it this additional method of checking the drinking driver problem amounts to tying the hands of law enforcement. In my opinion, every reasonable, constitutionally valid means should be undertaken to control the drinking driver.

Deaths on the highway are a senseless result of caution and public safety thrown to the wind. The citizens of the District deserve greater safety on the streets, whether they be drivers themselves or pedestrians. We can no longer tolerate the irresponsible driver who, by operating a motor vehicle on the public roads, endangers the lives and safety of innocent people. He must be stopped and when he cannot be stopped he must be dealt with responsibly by the courts.

Mr. President, with the action that the Senate has taken, every political jurisdiction in the country will have implied consent laws. With this uniformity, an important step has been taken toward reducing the number of highway deaths related to alcohol. The streets of the District of Columbia will be that much safer by the action that we have taken.

MARCIA MacNAUGHTON, A FIGHTER FOR PRIVACY

Mr. ERVIN. Mr. President, the Federal Times for September 27, 1972, carried an article entitled "Marcia MacNaughton Hailed as Privacy Fight Leader." Miss MacNaughton has been one of the ablest and most diligent members of the staff of the Senate Subcommittee on Constitutional Rights, and has done work of the greatest merit in assisting the subcommittee and me in our fight to preserve the basic nights of American citizens.

She recently left the subcommittee in order to attend Columbia University and pursue courses leading to law and graduate degrees. What the Federal Times says about her fine work in connection with the fight for a bill of rights for Federal employees is fully merited, and she deserves the thanks of all those who believes in equality of right for Federal employees.

I ask unanimous consent that the article from the Federal Times be printed in the RECORD.

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

MARCIA MacNAUGHTON HAILED AS PRIVACY FIGHT LEADER

(By Dick Ritter)

WASHINGTON.—If Congress, in all its wisdom, ever enacts legislation to protect the privacy of federal employes, the credit will belong to a quiet spoken, almost shy but very determined young woman from Mississippi.

Marcia MacNaughton, the object of this lavish praise, recently resigned as professional staff member on the Senate constitutional rights subcommitee headed by Sen. Sam Ervin, Jr., D-N.C. On the staff since its inception in the summer of 1955, Ms. MacNaughton has returned to the academic field. She will seek a Ph. D. in public law and government at Barnard College in Columbia University.

"There should be a way to take the lid off complaints by law, not just by administrative action," Ms. MacNaughton said in explaining her ardent support for the privacy bill which the Senate has approved overwhelmingly four times. She believes that federal employes should have the right to speak up, even if management disagrees.

Her guideline during her years of devoted work for federal employes was best expressed by Senator Ervin in 1954, she declared.

"Our forefathers did not establish this government to promote efficiency," the former judge said.

Talking quietly while seated behind a desk overflowing with books and papers. Ms. MacNaughton said she fully believes in that principle to defend liberty and protect it from government. "A little bit of money for investigations that protect employes' rights is well spent," she continued.

Protecting those rights may be more difficult if the present Hatch Act is amended to provide more political freedom to federal employes. "Opening up the Hatch Act leaves federal employes open to all the whims of the executive branch," Marcia said. "Employes should have the right to participate, but they must be protected against pressure from officials."

The Ervin bill, S. 1438 which supporters hope will someday pass the House, is a safeguard to those employe rights, she said. Such devotion to the legislation is no surprise to those who know Ms. MacNaughton.

"Most of all, credit must go to Marcia MacNaughton, who, as the subcommittee's professional staff member in charge of our work on privacy, has done the most to shepherd this legislation through Congress," Senator Ervin declared last December after the Senate approved his bill.

"Miss MacNaughton has labored many long days and nights and even weekends in the cause of individual privacy and the right of government employes. By right, this bill should be known as the 'MacNaughton employe rights bill.'

"The millions of Americans whose rights this legislation seeks to protect owe the success of the bill to her. When it finally becomes law, as I hope it soon will, it will be due in immeasurable degree to her dedication and efforts."

How did she get into this field? "I just gravitated to it," Marcia explained. "It seemed the best place to be able to do some good toward protecting the principles of good government and for human rights."

A native of a small community near Jackson, Miss., she studied at the University of London and other schools before joining the personal staff of the late Sen. Estes Kefauver. The Democrat from Tennessee was a leading television personality in the 1950s with his investigations of crime syndicates, and was a vice-presidential candidate.

In joining the new constitutional rights subcommittee of Senator Ervin's. Ms. MacNaughton found that its jurisdiction extended into areas of special concern to her. They include those of the American Indians, the mentally ill, servicemen, poor people appearing in federal court, and the basic rights of all citizens.

Observing that all laws are the result of compromise, Ms. MacNaughton said that Senator Ervin has wanted all opinions to be brought before his subcommittee. "He insisted that all views be presented before legislation is drafted," she added.

Turning again to the right of privacy, she noted that federal agencies are becoming sensitized. Privacy rights have become a factor in personnel debate and decisions.

"The extent of the privacy fight depends upon individuals who are willing to speak up to their supervisors," Marcia said. She praised the role of the press in reporting complaints of federal employes, and said its effect has spilled over into the state and local government fields.

In New York City, for example the chairman of the city's civil service commission has incorporated features of the Ervin bill into his own measure. And a number of private firms have changed their personnel practices to reflect the same philosophy.

"Employes are using the pending Ervin bill as a peg for justice," Ms. MacNaughton said.

What about the opposition from security-conscious agencies such as the FBI, CIA and National Defense Agency?

"There is no way in the world that the bill can affect security," Ms. MacNaughton emphatically declared. She noted that Senator Ervin had met with critics many times and had amended the bill to specifically meet objections from these security agencies. "Of course, there is a well-established principle that Congress doesn't interfere with the President's employes," she said. But why should employes be pressured to support bond drives or harassed in other ways? she added.

Since efficiency and economy may be the only guidelines that the Civil Service Commission is concerned about in federal agencies, Ms. MacNaughton feels it is "terribly important that union become aware" of other issues that affect federal workers. "The government needs some nuisance values to keep it alert and responsive," she said smilingly.

While federal employee rights are dear to Ms. MacNaughton, she is concerned about the basic rights of all citizens. During her years with the constitutional rights subcommittee, she has done research to support the freedom of information law, and has made a study of computers and data banks. Another field of interest is safeguarding the rights of the mentally ill, which is found in a bill

of rights for patients in Saint Elizabeth Hospital in Washington.

A daughter of federal employes, Marcia emphasized that she never received any "leaks" or tips about employee conditions from them. Her father, Victor B. MacNaughton retired in early September after 40 years with the Forest Service in Mississippi. A brother, J. V. "Jim" MacNaughton, also with the Forestry Service, transferred recently to Atlanta. And her mother, Dorothy Pond Simpson, is with the Defense Department at Charlottesville, Va.

Her concern for human rights was underscored during a recent invitation to visit her father in Jackson and address to some fellow employes. He turned over the podium without a qualm.

On her return to Washington, Ms. MacNaughton received a nice note from her father's secretary. She had written a little poem describing how peaceful everything had been in the office, until the boss' daughter had informed them of their rights!

PREDICTIONS OF THINGS TO COME: CHARLES SCHULTZE'S SPEECH TO ECONOMIC CLUB OF DETROIT

Mr. PROXMIRE. Mr. President, one of the ablest economists in the United States is Charles Schultze, former Budget Director and at present senior fellow at Brookings Institution.

In a speech before the Economic Club of Detroit, Mr. Schultze outlined in considerable analytical detail the differences as he saw them between a Nixon and a McGovern administration in the area of economic and budgetary policy.

He compares where they stand on unemployment and inflation, on economic controls, on tax policy, and on expenditure policies, including both military and civilian spending.

I think his projections and predictions are highly persuasive. While economic prediction is a very inaccurate art, it is not difficult to predict the general thrust of policies under either Mr. Nixon or Mr. McGovern.

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

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

THE REAL ECONOMIC ISSUES OF THE PRESIDENTIAL ELECTION

On the basis of the heat and volume of campaign rhetoric, one would list the major domestic issues which now divide President Nixon and Senator McGovern as school busing, the break-in and bugging of Democratic Party headquarters, the $1,000 welfare reform proposal long since abandoned by Senator McGovern, and the behind-the-scenes maneuvers which went with the Russian grain deal. But if one were trying to forecast the most critical differences between a McGovern and a Nixon administration, none of these matters would figure high on the list. Campaign rhetoric is a notoriously poor predictor of the future performance of Presidential candidates. Each candidate is trying to establish a particular image of himself with the voters, and to destroy the favorable image which his opponent is simultaneously trying to create. And the rhetoric which creates images often has little relationship to concrete policies. A Richard Nixon, who introduces the first peacetime wage and price controls stresses, in a Labor Day speech, the importance of economic freedom and the danger of the government "butting into the free collective bargaining system." And a George McGovern, who decries the recent rise in food prices, promises farmers 90 percent of parity. Yet, image making is important. Because the future is uncertain and specific policies must necessarily be adapted to changing circumstances, others rightly want to get some "feel" for what makes a candidate tick, where his sympathies lie, and how he reacts to crises.

But, after all is said and done, differences on the specifics of public policy are important. While one must dig beneath the rhetoric to get at them, it is not an impossible task. From George McGovern's speeches and public statements one can put together a fairly good prediction of precisely what he would try to do in most areas of economic policy. After some initial false starts, he has been explicit and generally consistent. The task of predicting the future is much harder in the case of the incumbent Administration. With the mantle of the Presidency already on his shoulders, and running far ahead in the polls, Richard Nixon has tried to stand above the battle. Pronouncements on specifics by the candidate himself are hard to come by. But there is a four year record. And his subordinates have been busy speaking for him. There is a basis on which to hazard predictions about another four years of the Nixon Administration.

Identifying the specific policies of the two candidates, is only part of the task. To appreciate how the nation might fare under each candidate one must also test his policies against hard realities. To what extent can the proposed policies actually be carried out; to what extent will promises be modified by experience?

I propose to hazard an assessment of how the things would be different as between a Nixon and a McGovern Administration in two major areas of concern: *first*, the overall state of the economy, as evidenced by unemployment, inflation, income and profits; and second, federal tax and expenditure policies.

THE INFLATION-UNEMPLOYMENT DILEMMA

The most vexing problem of our times for the economic policy maker is the unfortunate relationship between economic prosperity and inflation. If inflation occurred only when the economy had been pushed into a superheated boom, when the unemployment rate had been driven down below the frictional two or three percent which is inevitable in a mobile society, and if once started inflation could be halted by a brief and modest slowdown in the pace of growth, then the task of economic policy would be relatively easy. Fiscal and monetary policy could support a reasonably low rate of unemployment with little risk of inflation, correcting excessess with relatively small adjustments.

But in the American economy of today, as we approach levels of unemployment in the 3½ to 4½ percent range—levels which are still unconscionably high by the standards of other industrial nations—prices begin to rise at rates significantly greater than the one to two percent a year which seems to be politically tolerable. And, if recent experience is any guide, once price and wage increases have accelerated to larger magnitudes they cannot be brought down quickly by modest doses of economic restraint. We have just undergone three years of subpar economic performance and one year of price and wage controls to get the rate of inflation down from five to three percent a year—at a cost of $160 billion in lost output, $45 billion in lost profits and seven to eight million man years of lost work.

This unpleasant, but very real fact of life raises two kinds of questions for a President. *First*, when faced with the cruel choice between keeping unemployment high or risking substantial inflation, how will he choose? And *second*, what policies, including wage and price controls, will be adapt to lessen the inflationary consequences of prosperity?

No politician and no Administration can openly state that it is choosing higher unemployment to bring down inflation or, conversely is accepting more inflation as the cost of lowering unemployment. But in the day-to-day business of devising economic policy the choice must be faced. Through its past actions, and in between the lines of its speeches and policy pronouncements, the Nixon Administration has given a fairly clear indication of how it is likely to choose in the future. In 1969, faced with substantial and accelerating inflation, it pursued and strengthened a policy of cooling off the economy, a policy which had been initiated in the final year of the Johnson Administration. And in the early stages of this policy, the choice was supported by businessmen and economists of all political hues. At first, the Administration hoped that unemployment, then at 3½ percent, would not have to be pushed above 4¼ or 4½ percent to do the trick. But the subsequent two and one-half years of "sticking to the game plan", of watching the unemployment rate climb past 4½ percent to 5, and then to 6 percent, and of holding it there for still another year before the famous reversal of August 15 last year, provides a good basis for forecasting how the Administration will choose in the future.

This evidence is bolstered by the last Report of the Council of Economic Advisors which took great pains to note that there is nothing magic about an unemployment level as low as 4 percent. It is reinforced by speeches of Administration officials emphasizing that a large proportion of the current unemployment is concentrated among teenagers and women rather than among married males. And fresh evidence is also at hand in the fact that, with the unemployment rate still at 5½ percent and the recovery still young, the Administration has already switched its attention to preventing the current economic expansion from "going too far".

Senator McGovern has been quite explicit about how he would choose—again with care not to point out that there is a choice. In his major economic speech to the security analysts last month, and in his more recent speech on wage and price controls, he emphasized the overriding importance of full employment. "I have said before that our highest economic priority is the lowest possible unemployment . . . Whatever it takes, we will create a decent job opportunity for every man and woman in America who is able to work." Fiscal policy would, on the average, be more stimulative in a McGovern Administration. It would move more slowly to halt a boom and more quickly to promote a recovery. And, fiscal policy to stimulate the creation of jobs in the private economy would be supplemented by a large public service employment program principally directed at the hard core unemployed.

In the volatile American economy, the state of prosperity, the level of unemployment, and the rate of price change will not be steady under either Administration. But, over four years as a whole, I think it is safe to predict that the cautioin of the Nixon Administration would lead to higher average unemployment, a lower average rate of capacity utilization and less profits than would characterize a McGovern Administration. Conversely, however, there would be longer periods of significant inflationary pressure under a McGovern Administration than under a reelected Richard Nixon. And while the Federal Reserve Board does read the election results with interest, it is likely to lean against the inflationary pressure with tighter money and higher interest rates.

When we turn to the question of policies designed to reduce the inflationary pressure which accompany a high employment economy, it is much more difficult to make firm predictions about the alternative course of events under the two candidates.

Let us start with the future of wage and price controls. As background, bear in mind that it is much easier to use controls to prevent an inflation from starting than it is to stop one already underway. After several years of rapid inflation, wages in various industries, occupations, and locations get out of line with each other. So too, prices of finished goods, intermediate products and raw materials depart from their normal relationships. Cutting into this jungle of distorted patterns at any one moment of time raises serious questions of both equity and rational economic balance. Those who want large wage increases can point to earlier settlements in related bargaining units, and those seeking large price increases can point to earlier cost advances. But once inflation has moderated, and more normal relationships have been approximated, the task of controls—particularly on the wage side—is easier. Out-of-line increases can more readily be spotted and prevented since they cannot be justified as responses to other wage and price increases in the immediate past. The success of alternative approaches to the use of wage and price controls will depend in part, therefore, on whether the controls are imposed early in an inflationary period or only as a last resort after substantial inflation has already occurred.

It is not easy to predict the future of wage and price controls under an Administration which came into office inveighing against the relatively mild "jawbone" efforts of its predecessor, abandoned those efforts with a fanfare, and two years later initiated the nation's first set of peacetime wage and price controls. Two things can probably be said. The Administration still hopes to reach a point where controls can be removed. If the rate of inflation continues to diminish, the Nixon Administration will probably begin to dismantle controls, partially at first and perhaps even fully. But it will, I am convinced, seek to keep standby control powers. And if, despite a relatively cautious fiscal policy, inflation should get out of hand again a re-elected Nixon Administration would have no compunctions about reinstating mandatory controls.

Senator McGovern has criticized the Nixon wage and price controls on various grounds. But he has not proposed to abandon them. Rather he has offered an alternative mechanism. So far, his substitute approach has been presented only in broad outline, and many of the specifics necessary for judgment are still lacking. In essence, however, he would do two things: *first*, he would concentrate the control efforts on a narrower spectrum of key wage and price decisions; and *second*, he would rely on voluntary adherence to price and wage standards backed up by power to impose mandatory restraints where voluntary compliance is not forthcoming. In my own view, such controls would be voluntary in name only, given the club of mandatory restraints which would still loom over those who failed to abide by the standards. There is a virtue in such an arrangement, however. If controls are nominally voluntary, then neither the price controller nor the businessman has to worry about nit picks, the formal legal niceties, and the endless questions of detail which the lawyer necessarily requires under mandatory controls, precisely because a violation of mandatory controls is grounds for the imposition of judicial penalties. Under the so-called voluntary standards, both controllers and controlled could concentrate on complying with the basic spirit of the standards, since failure to comply would bring not legal punishment but imposition of mandatory controls.

There are other policies besides wage and price controls whch could be adopted to lessen the price increases associated with high employment and thereby to minimize the painful choice between unemployment and inflation. Most of these policies, however, would strike at various protective arrangements which are dear to the hearts of powerful groups: Reducing barriers to imports; eliminating minimum rate regulation and restrictive entry provisions in the field of transportation; lowering farm price supports; modernizing building codes; strengthening anti-trust laws—these are illustrative of the kinds of policies required. But the mere listing of the actions required itself suggests why they are unlikely to be taken. Neither political party is willing to incur the political costs involved. In this area, there is little to choose among the two candidates.

How do all of the differences balance out in terms of predicting the future of the economy under each of the two candidates? I think it is clear that employment, output and before tax profits, will, on the average be lower under a Nixon than a McGovern Administration. But inevitably inflationary pressures will be greater under McGovern than Nixon. Would the McGovern approach to wage and price controls be sufficiently effective to offset the greater inflationary pressures which his higher employment policies are likely to engender? Frankly, I do not know. He is less likely to abandon controls and is more likely to have an active control mechanism in place early in an inflationary surge than is Nixon. And, in my own view, his concentrated approach is likely to be slightly more effective in limiting wage and price increases. But the difference in control policy may be marginal, and since the underlying pressure of inflation will almost surely be greater under McGovern, a betting man would have to give a slight edge to the probability of somewhat larger wage and price increases under a McGovern Administration as the price for a clearly higher level of employment.

FEDERAL TAX AND EXPENDITURE POLICY

There are two central issues at stake in this election, with respect to federal taxes and expenditures:

First, what kind of a tax increase are we likely to get, and

Second, will the tax increase principally finance an expansion in military spending or in domestic social programs.

Note carefully that I said "what kind of a tax increase," *not* "will there be a tax increase." I think the probabilities are very high that whoever is elected, and despite any pledges made during the election campaign, an increase in federal taxes will be forthcoming within the next two years.

In May of this year, several of us at the Brookings Institution published a projection of federal expenditures and revenues covering the next four years. That projection showed that expenditures under current programs and the new ones already officially proposed by the Nixon Administration, will grow more rapidly than federal revenues at existing tax rates, even when revenues are calculated on the assumption of full employment conditions. Taking into account developments which have occurred since that projection was published, principally the enactment of large increases in social security benefits, expenditures will exceed the revenues generated in a full employment economy by $20 to $25 billion in fiscal 1975, and by a substantial though smaller amount in 1977. Similar projections released this week by the American Enterprise Institute show almost identical results. And the Administration itself does not quarrel with these projections, although it is now promising to cut expenditures by an amount sufficient to avoid a tax increase.

Given current defense policies and Nixon Administration plans for new weapons procurement, military spending will rise dramatically. The Brookings projection estimates military spending at $100 billion in fiscal 1977, compared to approximately $76 billion this year. The American Enterprise Institute's forecast matches this estimate very closely. And a defense department spokesman has recently predicted military spending at $112 billion by 1980, an estimate consistent with the rate of increase projected in the other studies. Large increases in military pay and a surge in the procurement of very expensive new weapons systems are the chief factors behind the rise.

Even with no new programs, beyond those already officially proposed by the Nixon Administration, spending on civilian programs will rise sharply. Social security and Medicare benefits will grow by at least $25 billion over the next four years, reflecting recently enacted benefit liberalizations, prospective increases now about to pass the Congress, and growing numbers of beneficiaries. Expenditures on many programs will rise simply to provide the expanded services which accompany rising population and income. Outlays for pollution control and mass transit will grow. And the newly enacted revenue sharing program will add to budgetary costs. Federal revenues will also increase substantially but they will not cover the rise in expenditures.

While it is not inconceivable that a modest full employment deficit will be necessary to promote economic prosperity in the next several years, deficits of the magnitude foreseen by the projections will certainly not be appropriate. The projected gap between revenues and expenditures will have to be reduced by at least $15 to $20 billion, calling for either a tax increase or substantial cuts in expenditures.

The President and his subordinates have repeatedly pledged not to raise taxes, and to eliminate the gap by expenditure cuts. Two special press conferences have been called solely to provide White House staff the opportunity to reiterate this pledge. And, at the moment, the President is strongly pushing a bill to limit federal expenditures to $250 billion in fiscal 1973, as the first step in cutting back federal outlays.

A closer examination of the $250 billion expenditure limit will give some idea of the implications of cutting expenditures. In the first place, the $250 billion limit already exceeds by $6 billion the estimate of 1973 expenditures made in the President's January budget message. Without the limit, expenditures are likely to be in the range of $257 to $260 billion even after taking into account cuts in the military budget now being made by the Congress. To keep within the limit, therefore, some $7 to $10 billion will have to be cut from 1973 projected outlays. By the time the expenditure limit is enacted and the necessary administrative steps gotten underway, five months of the fiscal year will have passed. As a consequence the annual rate of outlays will have to be cut by $12 to $15 billion during the remaining seven months of the year to reach the $250 billion target. And the areas where cuts can be made quickly are very limited.

The President and the Secretary of Defense have been vigoriously supporting the Administration's military budget proposals in the face of attempts by liberal Congressmen and Senators to cut it. Since the Congress is already in the process of cutting some $4 billion in funds from the military budget, it is unlikely that the Administration will cut that budget much further. Another large area of spending cannot be touched for legal or practical reasons; social security and veterans benefits, interest on the debt, public assistance, unemployment compensation, and the newly enacted revenue sharing programs are principal examples. There remains only about $75 billion in programs from which expenditures can be readily cut. To reduce such programs by an annual rate of $12 to $15 billion—which would be necessary to reach the $250 billion ceiling—represents a cut approaching twenty percent. And most of the programs which can be subject to cuts repre-

sent grants-in-aid to state and local governments for education, manpower training, health, pollution control, urban mass transit, and similar purposes.

Some part of the reductions in budget outlays may not represent real program cuts but simply financial transactions which reduce the apparent size of the budget without affecting its real magnitude. Sales of mortgages from government owned portfolios, or proceeds from the disposal of the government-owned Alaska railroad are examples. But the 1973 budget already includes an unprecedented allowance for such devices, and it is hard to imagine how they could be increased—although one should not underestimate the ingenuity of determined accountants and budget experts.

Difficult as it may be to achieve the $7–$10 billion cuts needed to reach the proposed $250 billion ceiling this year, it will be even more difficult over the next several years to cut the $20 billion required to bring the full employment budget into near balance in the mid 1970's without a tax increase. So long as the Nixon Administration holds to its current military programs and policies, the reductions would again have to be concentrated on civilian programs, and within those programs, the political or legal inviolability of social security and similar items would continue to force the cuts to be made principally in grants-in-aid to state and local governments, which as I pointed out earlier, are chiefly devoted to education, health, manpower training, urban rehabilitation, and environmental control.

There are, I believe, three things which can be said about a policy of cutting back civilian expenditures by sufficient amounts to avoid a tax increase.

First, since most of the cuts would in practice have to be concentrated on grant-in-aid programs to state and local governments, these governments would find it necessary to raise taxes to offset at least some of the losses. A federal tax increase would then have been avoided at the price of driving up state and local taxes, which on balance are less rational and less equitable, than federal taxes. Moreover, it would indeed be ironic if an Administration which quite properly takes credit for having pushed through Congress a general revenue sharing bill to aid state and local governments should take back with its left hand several times as much as it has given with its right. *Second,* the cut in civilian expenditures needed to avoid a tax increase is approximately equal to the increase in military expenditures now implied by current defense policies. When the chips are down, I doubt if an Administration which justly prides itself on reducing tensions with the nation's chief adversaries, can simultaneously support a budgetary policy of transferring some $20 billion from social programs to increased military spending. *Finally,* the policy of avoiding a tax increase by large cuts in civilian outlays just will not work. Even a Congress with an enlarged Republican membership is not likely to stand by idly while its favorite children are being massacred. And the President cannot, in practice, veto virtually every appropriation bill which comes across his desk.

None of the above considerations take into account the fiscal implications of President Nixon's pledge in this year's State of the Union Message to devise and propose a program of federal support for education as a means of reducing local property taxes. The Administration has asked the Advisory Commission on Intergovernmental Relations to study and make recommendations on several alternative proposals to achieve this result. While it has previously made favorable noises about the imposition of a national sales tax, in the form of a value added tax, as a means of financing the new program, the Administration has not yet committed itself to such a solution.

Imposing a federal tax whose proceeds are then used by local governments to reduce or eliminate the property taxes now devoted to education would not at first glance seem to constitute a net tax increase, but merely a substitution of one tax for another. A little reflection, however, shows that a simple substitution of federal taxes for local property taxes is not possible. Residential property taxes used to support schools now total about $13 billion. A federal program which provided $13 billion in funds to local governments, to be used solely as a replacement for residential property taxes, would necessarily be a distributional monstrosity. Great Neck, Long Island spends from local property taxes about $1500 per school child on education. A typical rural school district in North Carolina spends from property taxes about $75 per child, in part because it is poor and in part because in North Carolina, and some other states, the state government provides the bulk of financing for local schools. Clearly no proposal which would give federal funds of $1500 per school child to wealthy suburbs and $75 per child to poor rural district is morally tenable or politically feasible. Indeed, any program of aid is most likely to contain an equalization feature, under which poorer districts would get proportionally more funds than rich districts in relationship to their property taxes. A growing number of court decisions in various states have called for equalization of educational expenditures within states. In any event, no federal aid program can simply mandate local property tax relief and replace the lost revenues with federal dollars. Whatever distribution formula is adopted—and many alternative versions are conceivable—not all of the federal dollar will go toward property tax relief. Some will be devoted to increases in education outlays particularly in poorer school districts. As a consequence, a federal tax increase whose proceeds were devoted to aid to education, will not be offset by equal reductions in property taxes. Some net tax increase will occur.

My own forecast is that a re-elected Nixon Administration will end up with some mixture of three policies. It will seek to reduce civilian programs below what they would be under current policies, but will have only small success, in the face of the real difficulties and Congressional opposition. It also will be forced to scale back a bit its projected military outlays. But since the combined magnitude of these efforts will not close the gap between revenues and expenditures, a tax increase will be needed. If the President keeps his pledge to devise a federal aid to education program, the needed tax increase will be much larger. But quite frankly, there is no basis on which to forecast what kind or kinds of tax increase will be proposed, much less what kind will be enacted. Administration spokesmen have expressed some disenchantment with the value added tax without explicitly rejecting it. On the basis of the past record, and statements to date from the Administration, it is most unlikely that they will propose closing tax loopholes as the principal means of raising large sums. I suspect that, right now, they principally hope to get by the election without having to make any decision about this most vexing matter.

In the case of George McGovern, the prognosis is much more certain, and whether you like them or not he has made some very explicit proposals as to how he would handle the fiscal problem. He has explicitly recommended that, over a three year period, $32 billion be cut from the military budget which would otherwise be forthcoming under the Nixon Administration defense policies. And he has also laid out a specific set of tax reform proposals designed to raise $22 billion in additional taxes by 1975. I think you are familiar with the major elements for those tax proposals. Capital gains would be included fully in taxable income, and unrealized gains would be taxed at death. These two changes alone would yield $12 billion. At the same time, however, the maximum rate on top bracket income would be reduced to 48 percent from the current 50 percent on earned income and 70 percent on other income. Repeal of percentage depletion and capabilization of intangible oil drilling expenses would yield $2 billion. Repeal of accelerated depreciation, revision of depreciation guidelines, and amendment of the investment credit to apply to *net* investment only would add $6½ billion. While numerous other changes would be made, most of the $22 billion in revenue gain would come from the three major reforms I have mentioned.

The combination of $32 billion in defense cuts and $22 billion in tax reform would provide $54 billion in additional resources. Of this amount some $15 to $20 billion might be needed, at a minimum, to bring revenues and expenditures closer together by the mid 1970's. This would leave $35 to $40 billion available to finance new programs. The three major areas in which Senator McGovern has pledged to devote additional resources are: aid to education; welfare reform and public service employment. Some part, but by no means all of the aid to education funds are likely to be used by state and local governments for property tax relief, just as would likely be the case with any aid to education program ultimately proposed by the Nixon Administration.

Proposals, however, are not the same as accomplished facts. Should Senator McGovern be elected, and begin to carry out his pledges, how is he likely to fare?

In the first place, a number of outside observers have estimated that the specific defense cuts which Senator McGovern has suggested, even if carried out, would not save as much as the $32 billion he has projected. The American Enterprise Institute, in the projection to which I referred earlier, has estimated that the McGovern cuts would yield about $24 billion. The Pentagon—which is admittedly not an impartial observer—has estimated that he may have overstated the budgetary saving from his cuts by about $10 billion. In my own view the Senator may have overestimated the budgetary results of his defense proposals by perhaps $7 to $8 billion. Moreover, it is not likely that the Congress, even with considerable prodding, would fully accept all of his defense cutbacks. Taking into account both the estimating problem and some resistance from Congress, a McGovern Administration, with a vigorous and sustained effort, might be able to obtain a defense cut which at the end of three years amounted to a maximum of $18–$20 billion. Major changes in the international environment, such as a significant breakthrough with the Soviets on the limitation of conventional arms, could provide a framework for larger cuts. But it would hardly be prudent to count on this at the present time.

In the case of tax reform, there is no reason to question the estimated revenue yield from the McGovern proposals. I also think it quite likely that a McGovern Administration could, after much wrangling, get the Congress to enact a significant package of tax reforms. I seriously doubt, however, that they would go all the way with him. Moreover, the Congress has a strong propensity to add tax relief provisions, which cost revenue, to tax reform bills. As a consequence, with a combination of luck, skill, and persistence a McGovern Administration has a fighting chance of securing perhaps $10 to $15 billion in net tax yield from a tax reform bill.

Combining the realistic estimates of the savings likely from defense cuts, and the added revenues gained from tax reforms, and allowing for the fact that some of these resources must be used to narrow the forecasted gap between revenues and expenditures, perhaps $15 billion will remain which can be devoted to major new federal initiatives in

the areas of aid to education, welfare reform, and public service employment. Senator McGovern has recognized that the future of his new program proposals depends on how successful he is in securing tax reform and defense budget economies. In his security analysts' speech last month he pointed out that "only with new revenues and different priorities can we and should we move forward with these new programs."

If my analysis has been reasonably accurate, the major differences between a Nixon and a McGovern Administration in the areas of economic and budgetary policy can briefly be summarized as follows:

Employment, income and profits would, on the average, be lower during the next four years under a Nixon Administration.

Price and wage controls of some kind will remain as a tool for checking inflation under both Administrations, although in different form.

The higher average employment under McGovern would also be accompanied by greater inflationary pressure; despite controls, wage and price increases might be somewhat greater.

Under the Nixon Administration military spending would rise substantially (although a bit less than now planned); some civilian expenditure cutbacks would be made, chiefly in grant-in-aid programs, after much wrangling with the Congress; but some form of tax increase would almost surely be needed. There is no basis from the record or from campaign speeches to predict what kind of a tax increase would be forthcoming.

Under a McGovern Administration, defense expenditures would be cut, significant tax reforms would be achieved yielding additional revenue, and several new social programs launched, though in substantially smaller magnitude than currently proposed by the candidate.

The world would indeed be a different place under each alternative future, although not as different as the campaign rhetoric would suggest.

Having attempted to lay out the major economic issues of the campaign in a relatively dispassionate manner, I beg your indulgence for just a few moments while I state my own preferences.

First, I believe that securing and maintaining high levels of employment and income is absolutely critical for our society. While it is true that a much greater proportion of the unemployed in recent years have been teenagers, young adults and women than was true fifteen years ago, this does not lessen the tremendous importance of full employment. We too easily tend to think of employment for women as something in the nature of a luxury, and not terribly important. But many women are heads of families and the jobs of many others make the difference between poverty and a decent living standard for the family. This is particularly true for black families. Much of the rapid gain in the income of black families relative to white families in the past decade has been due to the increase in the employment and earnings of black wives. The proportion of black wives who work is much greater than that of white wives, and for them employment is much more likely to be absolutely necessary to provide a decent family income. When the average unemployment rate increases, a disproportionate part of it falls on black women as well as black men. As a consequence, continued improvement in the status of black families is particularly dependent upon the existence of a high employment economy. In a related vein, making speeches about the "work ethic" in contrast to the "welfare ethic" comes ill at a time of high unemployment, when job opportunities have been severely reduced precisely for those groups in the population who make up the great bulk of the welfare caseload.

Similarly, high unemployment among teenagers and young adults is a major social problem, even if those youngsters are not yet family breadwinners. Many of the social ills, the crime, the violence, and the disillusionment in our central cities are related to the scarcity of stable jobs for young people. Their high unemployment rates do not stem so much from steady long term unemployment as from the short term casual unemployment which occurs as they shift from one dead end job to another. Casual jobs as dishwashers, porters, deliverymen, and the like exist even in recessions. But it is only in periods of healthy prosperity that the needed volume of steady, decent paying, and relatively secure jobs is forthcoming.

Without suggesting that full employment is a panacea, I would rate it first among the nation's social priorities. Achieving it is worth, in my view, the irritations and inefficiencies which accompany price controls, and also worth the modest additional inflation it is likely to bring.

As far as tax and expenditure policy is concerned, I see absolutely no need for the large increase in defense expenditures which now appear likely. The added expenditures for complex new weapons systems purchased at fantastic unit costs will not fundamentally improve the nation's security, will likely set off matching increases by our adversaries, and end up providing less security for everyone.

I also think there are areas where cuts should be made in federal civilian spending—farm price supports, expensive maritime subsidy programs, subsidized provision of facilities for private planes, pork barrel water resource projects, loans to bail out failing aerospace companies, space shuttles to reduce the cost of manned space missions which themselves have little ultimate purpose, two percent federal loans for rural electric co-ops, continued subsidies for junk mail, veterans compensation payments for those with no discernible disability, and so on down a long list. But these are precisely the area of spending which will not be touched. I cannot see the merit in attempts to cut back more important social programs in a futile effort to stave off the tax increase required by a large expansion in military spending.

And finally, with respect to tax reform, I find much merit in a program of closing tax loopholes while simultaneously reducing the top bracket rates by substantial amounts. Equal taxation of equal income is both equitable and economically sensible. I would myself prefer to see the changes in capital gains provisions suggested by Senator McGovern phased in more gradually than he proposes in order to minimize the shock to equity values which changing the taxation of capital gains entails. But on balance the McGovern reform proposals, particularly as they are likely to be modified in their enactment, seem clearly to move in the right direction.

I would also remind you that the higher level of economic activity which is likely to occur under a Democratic Administration will generate more additions to corporate profits than will be taken away by the changes in corporate taxation proposed by Senator McGovern.

As to whether the economic future under George McGovern, as I have painted it, is far better or worse than the economic world under Richard Nixon, reasonable men can and will differ. But as I have been at pains to point out, George McGovern has a consistent and reasonable alternative to offer. It is neither radical nor irresponsible. In the process of evolving his position he has, over the past year, changed some of his earlier views. I do not believe that changing one's position is itself a sign of weakness or inconsistency. Indeed, if keeping one's position on matters of public policy unchanged is a virtue to be sought in a President, George McGovern surely stands out as a beacon of constancy after a year which has seen a Republican Administration impose wage and price controls, devalue the dollar, and support the admission of Red China to the U.N.

DEATH OF FORMER SENATOR PRESCOTT BUSH, OF CONNECTICUT

Mr. SCOTT. Mr. President, the Senate was saddened yesterday to learn of the passing of a former colleague, Senator Prescott Bush, of Connecticut.

I had the pleasure of serving for 4 years with Senator Bush from 1958 to 1962, and I shall always remember his wise counsel and advice on matters of national import.

Pres Bush was every inch a gentleman. He had a courtly manner and a great feeling for people and their problems. We missed him when he left the Senate. We miss him more now that he has passed on to his just reward.

Marian and I extend our deepest sympathy to his wife, Dorothy, and to his family.

GOVERNMENT AND TELEVISION

Mr. HARTKE. Mr. President, the relationship of mass media and Government has become one of the most controversial issues on the American scene during the past few years. In both public and private sectors of communications, the concern has been voiced that Government is exercising too much control and too much influence.

Recently, in advertisements published throughout the Nation, that concern was voiced by Mr. Eugene C. Pulliam, publisher of the Indianapolis Star and News and the Phoenix Republic and Gazette.

Mr. President, because I believe that Mr. Pulliam's comments are of interest to all Americans, I ask unanimous consent that they be printed in the RECORD.

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

WE CAN'T TOLERATE GOVERNMENT CONTROL OF TV

Unless the Congress of the United States takes decisive action to halt it, the total takeover of U.S. radio and television by the government will be finalized within the next few years. There will be but one radio and TV system. It will be operated, censored, programmed—in short, completely dominated—by an elite group of Washington bureaucrats.

Television cannot fight this battle alone because it has one hand tied already by severe governmental restrictions and the power to put TV completely out of business. So it is up to the newspapers to lead this fight and to make every American realize that his own individual freedom is in danger as it never has been before. Do we want a dictatorship of TV or do we want to preserve our system of free enterprise in the communications industry?

A spate of government rulings is eroding the economic base of American journalism. The American communications industry is struggling for its very survival in a web of government regulations. None of these regulations is a decree. None has ever been presented to Congress. Nevertheless they have the full force and effect of law.

In a recent ruling by the District of Columbia Court of Appeals the judge's decision

said that commercials for big automobiles can be answered by anti-big automobile advertising lamblasting the big ones for creating pollution; and the station to which the complaint is made must carry the "anti" comment free of charge, giving it the same amount of time as was used in the paid advertisement of the big car. The same court ruled that no TV station can refuse to accept free controversial advertising. These rulings are part of the so-called "fairness doctrine."

The Federal Communications Commission is now deliberating a plan to require all TV outlets to spend two hours a day broadcasting programs, specifically for children, without charge. It is obvious that if this idea is put into effect there will be virtually no limit to the demands of special interests insisting on free TV time.

Pressure groups are demanding that licenses be taken away from stations that don't match up with their ideological position. Nation's Business reports that "petitions to deny license renewals are being filed with the FCC in behalf of Negroes, Mexican Americans, Puerto Ricans, Indians, Orientals, Gay Liberation, Women's Lib and various other groups and causes." Nation's Business predicted that TV probably is a dying industry because of FCC restrictions.

The results of all this will be the destruction of the American system of television. It will automatically pave the way for government operation of all TV and radio stations. This is exactly what the bureaucrats in Washington are hell-bent on accomplishing.

Dean Burch is chairman of the Federal Communications Commission. He believes in the Constitution and free enterprise but is outvoted by the holdover members of the Commission who have become ambitious bureaucrats.

One member of the FCC has suggested that the media be made legally liable for alleged harmful effects from the use of products advertised on a TV station. It was suggested that the same rule should apply to newspapers, should there be any harmful effects from the use of products advertised by them.

Probably the most inconsistent of all FCC rulings is that which concerns cigarette advertising. The Federal government spends between 600 and 800 million dollars a year to promote and sell tobacco. It subsidizes tobacco growers to the tune of at least 400 million dollars a year. Yet the government prohibits the advertising on TV of cigarettes. If tobacco is harmful, then the growth and manufacture of tobacco should be prohibited by law. But so long as the government itself encourages the growth and development and sale of tobacco, it certainly has no business telling manufacturers and TV stations they cannot advertise tobacco. This is only one more instance of how powerful the Washington bureaucrats have become.

The so-called "fairness doctrine" has nothing whatever to do with fairness, but it has everything to do with the power of government to harass people whose opinions the bureaucrats don't like.

Compounding the problem of bureaucratic bias is the history of "public broadcasting" which operates by virtue of millions of dollars of taxpayers' money but which regularly tends to favor the radical, the socialist, the activist element in this country. President Nixon has wisely vetoed a request for a large increase for "public broadcasting," but this is only a partial answer. The real issue here is that the taxpayer should not be obliged to subsidize any sort of one-sided opinion. The "public broadcasting" system to which you listen is financed by government subsidies. Hundreds of programs have been broadcast which not only assailed the administration but were actually anti-American in content. Yet you, the taxpayers, are paying the bill for this.

To be sure there are thousands of capable, honest and dedicated men and women in government service, but they are dominated by the ambitious bureaucratic leaders who can make life miserable for any one of them who opposes the bureaucratic line. These men and women cannot be fired, but they can be shunted from department to department and be passed over for promotion. Consequently they remain silent and "go along."

Concerned Americans who oppose government ownership of the communications system should demand corrective action by Congress. All efforts to impose government controls on American TV and the American press should be resisted. There is absolutely no excuse for anti-business and anti-freedom bureaucrats to be allowed to use the medium of "public broadcasting"—paid for by the public—as a weapon to destroy TV and the free press. One of the wisest of American statesmen long ago said, "Government is always the enemy of the people, never the friend."

What is happening to TV and the American press is chilling proof that property rights and human rights cannot be separated and that where bureaucrats control the first they have the power to destroy the second.

If freedom and liberty are to survive in this country the Federal bureaucrats must be deprived of their self-assumed power over the economy. The Congress should deny bureaucrats the right of tenure which gives them a lifetime job. They never run for office. They are never elected. They never can be fired—even by the President of the United States—except for moral misconduct. Every country which has ever succumbed to the dictates of a Federal bureaucracy has either perished or been taken over by tyrannical dictators.

What can you do? You can write your candidate for Congress immediately and ask him to pledge himself to vote against any further intrusion by the FCC into the American economy. Under no circumstances should the rules and regulations of the FCC be given the force of law without the consent of Congress.

The American people must understand that their individual freedom—and especially their right of free expression, which is the fundamental right of all liberty—is at stake and only affirmative action by the Congress will stop the bureaucrats.

The United States is the greatest and best country in the world and she is the greatest and the best only because she is free.

INTERNATIONAL DECLARATION OF PRINCIPLE ON COMPUTERS AND PRIVACY

Mr. ERVIN. Mr. President, for many years the Constitutional Rights Subcommittee has been studying the impact of computers and Government data collection on individual rights and privacy. The subcommittee's studies have resulted in a series of hearings, recently published, entitled "Federal Data Banks, Computers, and the Bill of Rights." It was at those hearings that the subcommittee, among other issues, investigated the Army surveillance program.

The hearings attracted an extraordinary amount of public interest. Since that time it is clear that the public is beginning to focus on the potential dangers to individual privacy posed by the introduction of new technologies to aid Government in its insatiable curiosity for information about citizens. It is illustrative of this public concern that the platforms of both major parties this year take stands which recognize the issue and promise steps to prevent unwarranted invasions of privacy by Government data banking.

"Computers and privacy" is not only an issue to Americans. Other Western countries also see that computers can have a profound impact on economic, social, and political conditions, and that they can disturb the existing relationship between Government and citizen to the detriment of individual freedom.

In recognition of these potential consequences, a French foundation, L'Institut De La Vie—or, the Institute of Life—scheduled a conference on "Man and the Computer" last month in Bordeaux, France. The institute is dedicated to insuring that the science and technology are used for the benefit of mankind.

The institute's Conference on Man and the Computer, its second, was particularly concerned with the impact of computers on individuals. The Conference brought together over 150 experts in medicine, law, sociology, government, law enforcement, industry, communications, education, and other fields from over 22 countries, including 14 nations from Western Europe, plus Turkey, Algeria, Mexico, Israel, Canada, and even Yugoslavia, Japan, and the Soviet Union. Five special reports were prepared—on education, medicine, urban affairs, planning, and on individual life. Among the noteworthy results of the Conference was a declaration of principle on fundamental human rights. The declaration of principle stresses first of all the individual's right to privacy. In its words:

The Right to Privacy, We believe that there is an interest shared by all people to have some control over the information that is collected, stored, and circulated about them. We believe it essential that consideration of this issue be an integral part of the creation of any information system.

A second right, and one which is not underlined in the United States as often as it should be, is the right to information. Since information can be considered a resource, the monopolization of information is to be avoided just as we prohibit monopolization of any other natural resource.

The declaration outlines a series of operating principles which should be observed in the creation of every computer data bank. These six principles are:

The need to determine whether information to be collected is relevant to the purpose for which it is sought and whether it is required to be collected at all;

The need to give the individual notice of and access to information stored about him;

The need to limit information systems to specific uses;

The need to regulate the use and transfer of information in such systems;

The need to check and update information contained in these systems, supervise operation of the systems, and monitor their expansion into new areas or enlarged data-sharing operations; and

The need for sanctions to enforce the safeguards established.

Finally, the declaration recognizes that in order to effectuate these principles, there must be first, acceptance on the part of those who operate data banks of the rights to privacy and to informa-

tion; second, full public knowledge and review of all important aspects of every record system by a public authority charged especially with protecting individual rights; and third, the creation of a forum for the resolution of individual complaints arising from these systems.

This declaration of principle is unique not only because it states in clear, simple and moving terms the rights which are clear to every American, but because it demonstrates the universality of the concern for privacy. It is noteworthy that this declaration of principle was drafted by a group with widely divergent cultural and political traditions. Yet the result is one which can serve as a guide for the United States in its treatment of the problems of computers and privacy.

I ask unanimous consent that the declaration of principle adopted by the Institute De La Vie at its Conference on Man and Computer be printed in the RECORD.

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

CONCLUSIONS AND RECOMMENDATIONS

Presented at the final session of La Conference Internationale, "L'Homme et L'Informatique", L'Institut de la Vie, Bordeaux, France, 16 September, 1972

DECLARATION OF PRINCIPLE

We believe that there are fundamental human rights which deserve reaffirmation in the computer age. It is not that threats to human rights are new in the computer age but rather that the computer is changing the economics and nature of the information processing systems of society in ways that could lead to increased encroachments on these rights. In reaffirming these rights, we do so with the hope that by making the possible opportunities and dangers more visible, the use of computer technology will result in the enhancement of these rights rather than their diminution.

Among these rights are the following:

The Right to Privacy. We believe that there is an interest shared by all people to have some control over the information that is collected, stored, and circulated about them. We believe it essential that consideration of this issue be an integral part of the creation of any information system.

The Right to Information. We believe that information gathered and stored in computers will become as important a resource as any man has sought to employ. In each country there needs to be an integrated national policy on the availability of this resource. We believe that the individual has a fundamental human right to have access to information, not only about himself, but about his community and government and other things that impact upon his life.

At the same time, we recognize that the individual's right to privacy can conflict with society's right to know and use information. Similarly, the right to informaton of one individual can conflict with the right to privacy of another. The balance to be struck between these conflicting interests will depend on the setting, the nature of the information, and the use to be made of it. The ultimate accommodation of interests will vary from culture to culture and country to country as values differ.

In developing information systems, we believe the following principles should be among those considered:

The need to determine whether information to be collected is relevant to the purpose for which it is sought and whether it is required to be collected at all

The need to give the individual notice of and access to information stored about him

The need to limit information systems to specific uses

The need to regulate the use and transfer of information in such systems

The need to check and update information contained in these systems, supervise operation of the systems, and monitor their expansion into new areas or enlarged data-sharing operations

The need for sanctions to enforce the safeguards established.

To transform these principles into operation requires

The creation of a consciousness on the part of managers of record systems about the rights of privacy and access to information

A process of public review of the goals, organization, procedures, and safeguards of record systems, preferably by a legislative body or administrative authority charged with insuring full consideration of the issues of individual rights

An appropriate forum, judicial or administrative, before which individuals can bring complaints in particular cases.

We believe that the capabilities of computer technology can and should be taken full advantage of in the design of the protective mechanisms we have recommended. Once these measures have been taken, we look toward the fruitful use of information systems to help governments and private organizations carry out the responsibilities for public policy and social progress with which they are charged. The principles we recommend should lead to the growth of greater public trust in the use of properly controlled information systems. Without this trust, the benefits of information systems cannot be realized in democratic societies.

We view the evolution of legally enforceable rights and effective remedies as being as important for the future application of computer technology as the successful development of the technology itself.

U.S. DIRECT INVESTMENT ABROAD

Mr. JAVITS. Mr. President, I invite the attention of the Senate to an excellent speech dealing with U.S. direct investment abroad given by Henry J. Heinz II, chairman of the board of the H. J. Heinz Co., before the annual meeting of the company on September 13, 1972. The speech is particularly germane because of the Burke-Hartke legislation which is at present before this Congress and is likely to be a matter of major legislative concern in the next Congress.

Mr. Heinz sets forth a particularly impressive record for his own company. He said:

Because of the nature of our businesses, we export very little from the U.S. We sell in foreign markets by operating there. In doing so, we have not exported a single job and our foreign earnings make a healthy contribution to the income side of the U.S. balance of payments ledger. If we had no foreign operations, we would be reporting sales here today of $627 million rather than $1.1 billion and earnings of $22 million rather than $42 million. In fact, without our international businesses, our domestic operations would likely be less successful than they are, for, as the ECAT survey indicates, international companies are more dynamic than strictly domestic firms.

Earlier in his speech Mr. Heinz noted that in 1971, 46 percent of sales and 47 percent of earnings were realized abroad and that Heinz affiliates overseas have paid more than $76 million in gross dividends to their U.S. parent over the last 10 years.

I ask Senators to consider how many companies similar to the Heinz company are found in the United States and to reflect on the disastrous effect that the passage of the Burke-Hartke legislation would have on such companies and in turn on the American economy. I ask unanimous consent that Mr. Heinz' excellent speech be printed in the RECORD.

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

REMARKS BY HENRY J. HEINZ II, CHAIRMAN OF THE BOARD, H. J. HEINZ CO., BEFORE THE ANNUAL MEETING SEPTEMBER 13, 1972

I would like to address myself today to a theme which has attracted considerable attention in the past year and one which we are likely to hear a great deal more about in coming months—United States direct investment abroad.

I know you, as shareholders of the H. J. Heinz Company, are well-informed about the domestic benefits which accrue to companies with extensive international business. We made our first overseas investment in 1905 when we established our subsidiary in England. Since that time we have extended our direct investments to 19 other countries, and we market products in some 150 countries and territories throughout the world. In 1971, 46 percent of sales and 47 percent of earnings were realized abroad.

You know that by our investing abroad we have been able to enhance our growth, pay higher dividends and provide you with a more attractive investment than if we had restricted our activities to the United States. In fact, growth through exports alone would be modest indeed. Furthermore, the markets we serve would be supplied by other companies, most likely of foreign ownership, if we were not there.

Overseas investments have many positive effects on our domestic economy. The public-at-large, however, seems not to understand these matters and is vulnerable to over-exemplified explanations which are a threat to the future of U.S. foreign investment.

During the past year we have witnessed a substantial and persistent effort in the Congress to place severe limits on foreign imports and direct U.S. investments abroad. Our largest labor federation—traditionally a strong supporter of liberal trade and investment policies—has become the prime mover behind this effort. Their state of mind was aptly illustrated in a recent political cartoon. Two hapless workers are standing on a dock piled high with goods labeled "imports." The workers, dwarfed by the towering imports next to them, look out at an enormous ship steaming out to sea whose decks are loaded with large crates labeled "jobs." The message is threatening—we buy foreign goods and in exchange cheap foreign labor takes our jobs.

In any period of sustained unemployment typically there will be those who look for scapegoats, especially when there is a trade deficit running concurrently. Overseas investment and liberal trade policies are the current targets even though both are demonstrably creators of domestic income. Employment in the U.S. is dependent primarily on the performance of the domestic economy and government fiscal and monetary policies, not on the level of our overseas investments or our imports, both of which are small compared with the size of U.S. domestic investment.

The workings of the extremely complex mechanisms of the U.S. economy and its benefits from a free international flow of goods, capital and technology are, however,

difficult to understand and harder to explain. The protectionist forces, who have put forth their views in the now pending Burke/Hartke Bill, are trying to reduce the problem to the simple equation of imports plus overseas investment means less jobs for U.S. workers.

This is a false equation. It assumes that only the other fellow benefits from our overseas purchases and foreign investments. In reality, trade and investment are two-way streets, with benefits for both parties to a transaction. Imports provide the foreign exchange that other countries need to buy our products. They help finance, in other words, our exports. Exports, in turn, are powerful generators of employment. Approximately 60,000 jobs are created by every $1 billion we export. Imports also help the consumer. They give him a wider choice of products at competitive prices. Tariffs and quotas tend to restrict choice, increase prices, and feed inflation. In the longer term, they also lower exports. Protective legislation, in short, rewards the few it protects while penalizing everyone else.

Our foreign investments return over $8 billion a year in earnings, royalties and fees. This income is one of the largest positive items in our precarious balance of payments. Foreign investment limitations would, in effect, be earnings limitations and would make our already difficult balance of payments picture worse. Heinz foreign affiliates, for example, have paid more than $76 million in gross dividends to their U.S. parent over the last ten years.

Some proponents of foreign investment restrictions have claimed that U.S.-owned companies abroad export heavily to the U.S. This is not true. Imports from subsidiaries of U.S. companies remain a small part of aggregate U.S. imports.

Our foreign investments also reward us in many less obvious ways. A recent survey of 74 multinational corporations conducted by the Emergency Committee for American Trade, a group known as ECAT, of which our company is a member, pointed up a number of these more obscure benefits of foreign investment. Among other facts, the ECAT survey revealed that in the 1960–1970 period the corporations examined:

Increased their total sales from facilities in the U.S. from $58 billion to $113 billion, a gain of $55 billion;

Increased their exports from the United States from $4.3 billion to $12.2 billion, a gain of $7.9 billion. Their rate of exports to production in 1970 was 10.8 percent or double the national average for manufacturing firms;

Increased their domestic payrolls from $2.4 million to $3.3 million, a 37.5 percent gain. By comparison, the national average rate of increase for the same period was only 10.3 percent.

The ECAT survey suggests, in short, that our most vigorous companies abroad are also our most dynamic at home. Efforts to restrict these companies overseas in order to try to force them to invest more at home would be clearly counter-productive. These restrictions would reduce the vitality of our multinational companies both overseas and domestically by reducing their revenues, income and opportunities. It is difficult to understand how any one could believe that we would be more prosperous if our major corporations sold less and earned less.

The supporters of the Burke-Hartke Bill assume that U.S. business goes abroad primarily in search of cheap labor. This premise is fundamentally incorrect. The principal motive to operate in other countries is to gain access to foreign markets. Trade restrictions, transportation costs, local content requirements—that is, regulations requiring the local manufacture of the component parts of an industrial product, such as an automobile—combine to restrict export opportunities to many countries. If a company has a product line that would do well in a particular country, more often than not a direct investment will be required to take full advantage of the opportunity.

The H. J. Heinz Company is a good example. Because of the nature of our businesses, we export very little from the U.S. We sell in foreign markets by operating there. In so doing, we have not exported a single job and our foreign earnings make a healthy contribution to the income side of U.S. balance of payments ledger. If we had no foreign operations, we would be reporting sales here today of $627 million rather than $1.1 billion and earnings of $22 million rather than $42 million. In fact, without our international businesses, our domestic operations would likely be less successful than they are, for, as the ECAT survey indicates, international companies are more dynamic than strictly domestic firms.

The Burke-Hartke Bill proposes to curb international investment by imposing taxes on overseas earnings so severe as to discourage such investment. Among other things, the Burke-Hartke Bill proposes the repeal of the foreign tax credit. This credit prevents double taxation and has been part of the income tax law since its enactment in 1913. It simply allows companies to deduct foreign income taxes from their U.S. tax bill. The effective tax rate abroad averages more than 50 percent. The repeal of this tax credit would mean that a company with operations abroad would be subject to total foreign and domestic taxes amounting to between 75 and 80 percent of income. No company can survive in foreign markets paying that kind of tax, especially when its foreign competition doesn't. Shareholders, of course, would then have to pay income tax on the dividends they receive and this truly confiscatory tax would make a reasonable return on capital impossible to achieve.

The drafters and supporters of the Burke-Hartke Bill are so suspicious of international commerce that they even propose controlling the export of technology. Section 602 of the bill authorizes the President to prohibit owners of patents to either produce the patented product or license its production abroad if such prohibition will contribute to increased employment in the United States.

The section betrays a woeful ignorance of the modern world and its reliance on a free flow of technology. The United States is not the only innovative nation on earth. We depend on the rest of the world for technology as much as they depend on us. Foreign technology has in recent years provided us with such important new developments as the Wankel engine, disc brakes, radial tires, the soft lens, scores of life-saving pharmaceuticals, the basic oxygen furnace—which revolutionized steel manufacturing—and many other products and processes. In addition, at a recent United Nations Investment Conference in Tokyo, in which I was honored to participate as a U.S. representative, experts pointed out that the transfer of technology is most effective when linked to supporting private investment.

We need new technology developed at home and abroad. This section of the Burke-Hartke Bill would discharge both the exchange of technology and further investment in research. Research is expensive and risky. What electronics company, to cite an example, would be willing to invest large sums in research if it could not take full and worldwide advantage of manufacturing the new products emerging from its research? It is not reasonable to expect innovative companies to risk money on technological development if the production and marketing of that new technology is going to be subjected to arbitrary controls.

There is another side of overseas investment which rebounds to the benefit of the United States. American business abroad is a substantial contributor to the economic growth of both developed and developing nations. It promotes a healthier, more vigorous world economy which the U.S. needs to prosper at home. It helps raise living standards in developing nations by creating jobs, transferring technology, improving labor, technical and managerial skills and modernizing production. Private investment also supplements our government foreign assistance programs and the development efforts of international agencies such as the World Bank, the Inter-American Development Bank and the United Nations Development Program. American private investment abroad improves international communications and breaks down barriers between countries. As Henry Ford II forcefully stated in a recent speech in Montreal, the search for profits of the multinational corporations "requires them to become potentially very effective instruments both of economic development and of international cooperation."

Attempts to restrict American investment abroad and to limit foreign trade are ill conceived and short-sighted. I agree with a leading United States senator who labeled the Burke-Hartke Bill "a prescription for economic disaster."

I have devoted so much time today to this theme because I believe it to be critically important to all of us here and, indeed, to all Americans. There is an unfortunate tendency in America today toward disengagement from foreign involvement. Given our problems, the isolationist trend is explicable, but it must not be allowed to prevail. We cannot turn our back on the world and expect to solve our problems alone. In the world of business and commerce, we are inextricably tied to others. Restricting our international activities may bring short-term advantage to a few, but inevitably it will mean long-term economic and social hardship for the majority, both here at home and abroad.

American companies investing and operating overseas are serving the interests and objectives of the nation increasing employment and income at home, in promoting economic development abroad and in practicing cooperation.

GENOCIDE CONVENTION—THE CONSTITUTIONALITY OF INTERNATIONAL AGREEMENTS ON HUMAN RIGHTS

Mr. PROXMIRE. Mr. President, the Genocide Convention is one of the most important of all international treaties on human rights, specifically the right to existence. One of the principle objections of such treaties has centered on the question of their constitutionality. A recent article in the Santa Clara Lawyer by Bruno V. Bitker offers an enlightening discussion of this issue. Mr. Bitker is well qualified to explore this question. An attorney in Milwaukee, Wis., he has a distinguished record of service to the United States in the field of international relations. In 1968 he served as the U.S. representative to the U.N. International Conference on Human Rights held in Teheran, Iran. He has served as chairman of the American Bar Association Section Committee on International Courts and as a member of the U.S. National Commission for UNESCO, the President's Commission for Human Rights Year, and the Wisconsin Governor's Commission on the U.N.

I therefore ask unanimous consent that Mr. Bitker's article be printed in the RECORD.

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

THE CONSTITUTIONALITY OF INTERNATIONAL AGREEMENTS ON HUMAN RIGHTS

(By Bruno V. Bitker*)

"I feel more strongly than ever that the worth of the individual human being is the most unique and precious of all our assets and must be the beginning and the end of all of our efforts. Governments, systems, ideologies and institutions come and go, but humanity remains. The nature and value of this most precious asset is increasingly appreciated as we see how empty organized life becomes when we remove or suppress the infinite variety and vitality of the individual." [1]

It is unbelievable, in light of American history that anyone could question the right of the United States to enter into international agreements to protect human rights. However, there continues to exist a belief by some lawyers that under the United States Constitution human rights generally are not a proper subject for agreement between nations.[2]

This paper approaches the issue from three viewpoints: One, that the constitutional treaty power does not bar such agreements; Two, that historically the power to enter into such international agreements has been exercised by the United States since the earliest days of the Republic; and, Three, that by contract (treaty) the United States is obligated internationally to protect human rights. Within the limitations of the length of this paper, reference will also be made to questions raised as to the constitutionality of some specific provisions of certain treaties.

HISTORICAL POSITION OF THE UNITED STATES

Entering into treaties for the protection of human rights is not uniquely American. International concern for human rights has existed for centuries.[3] In fact, the very first treaty entered into by the United States recognized protection of the rights of individuals: the Definitive Treaty of Peace with Great Britain, concluded at Paris, 1783.[4] Article VI provided, *inter alia*, that because of participation in the Revolutionary war "no person shall, on that account, suffer any future loss or damage, either in his person, liberty or property. . . ." [5] Even the rights of foreign persons to go to any part of the United States for a specified period to regain assets were specifically recognized.[6] And, in the Jay Treaty of 1794,[7] which was the final formalized treaty, there are other provisions protecting individual rights.

In 1795, the United States entered into a treaty with Algiers [8] which related to rights of Americans in Algiers, and *inter alia*, provided that the Consul of the United States "shall have liberty to exercise his religion in his own house." [9] This was an early recognition by the United States of certain rights of privacy and freedom of religion as proper subjects for an international treaty. While the phrase "human rights" may not have been in common usage in the 18th century, the individual rights then recognized would now come under the broad umbrella of human rights.

Many of these early 18th century treaties dealt with the rights of American persons abroad. They clearly demonstrate that individual rights are proper subjects for international agreements. The more modern treaties on human rights are logical developments in the protection of these rights. These developments are in keeping not only with American ideals but also with the early historical practice of the United States. Thus it may be said that concern for human rights by treaty is traditionally American.

Subsequent American history bears this out as indicated by a sampling of 19th century treaties. The treaty with Austria-Hungary of 1848 covers the right to dispose of property upon death,[10] a matter usually considered controlled by municipal law. The 1868 treaty with Belgium [11] covered matters relating to naturalization, also customarily considered sacrosanct to national sovereignty. In an 1858 treaty with Bolivia,[12] there is what might be called an equal protection clause as well as protection against "arbitrary visits or search" of dwellings and warehouses. This sounds as if the Fourth Amendment had moved into international law.

Besides Fourth Amendment rights, the Sixth Amendment right to counsel was included in the 1828 treaty with Brazil.[13] This treaty also assumed equal treatment in the burial of the dead. The Protocol of 1872 to the treaty of 1871 with Germany, specified with respect to the estate of a deceased citizen, "[t]hat, according to the laws and the Constitution of the United States, Article X (of the treaty) applies, not only to persons of the male sex, but also to persons of the female sex." [14]

An interesting corollary to individual rights, is the individual responsibility covered in the 1842 treaty with Colombia. Article XXXV, provides that if "citizens of either party shall infringe any of the articles of this treaty, such citizens shall be held personally responsible for the same, . . . each party engaging in no way to protect the offender, or sanction such violation." [15] Even the phrase "international right" is used in the Colombia treaty of 1946.[16] It is interesting to note that the treaty of 1842 also recognizes the individual responsibility rule which was basic to the Nuremberg judgment more than a century later.[17] A similar provision appear in the 1828 treaty with Brazil [18] and in other treaties.

Under the 1803 treaty with France for the Cession of Louisiana, the United States undertook, in Article II, to incorporate the inhabitants' territory as soon as possible and "in the meantime they shall be maintained in the free enjoyment of their liberty, property and the Religion which they profess." [19] The treaty of 1831 with Mexico, Article XV, guarantees that the citizens of Mexico residing in the United States "shall be allowed the free exercise of their religion, in public or in private." [20]

Although not a party to the Berlin Treaty of July 13, 1878,[21] the United States, in 1902, on the strength of that treaty, asserted the right of diplomatic intervention on behalf of citizens of another country who were asserting their rights within that other country. The Berlin Treaty had provided that no person should be discriminated against because of religious differences. In these instances, the United States was specifically protesting the treatment of Rumanian Jews by the Government of Rumania.[22]

In the 20th century, a similarly wide variety of matters has been deemed proper for treaty ratification by the United States. These include the Convention on Drugs of 1912,[23] the Slavery Convention of 1926,[24] World Health Organization regulations,[25] the Protection and Preservation of Wild Life Convention of 1940,[26] and the Road Traffic Convention of 1949.[27] A classic example is the treaty protecting migratory birds flying over Canada and the United States.[28] The Supreme Court held the subject matter justified the exercise of the treaty-making power and federal legislation thereunder. It is almost ludicrous to assert that lives of migratory birds can be protected by a treaty, but that the lives of human beings cannot, as is contemplated under the Genocide Convention.[29]

As Professor Henkin commented:

"The argument that the United States is without power under the Constitution to adhere to such treaties has no basis whatsoever—in the language of the Constitution, in its *travaux préparatoires*, in the institutions it established, in its principles of federalism or of separation of powers, in almost two centuries of constitutional history, or in any other consideration relevant to constitutional interpretation." [30]

In referring to the U.N. Covenants and the Protocol on Human Rights, which have not yet been sent to the U.S. Senate by the President, Professor Brunson MacChesney observes that:

"The complex and important issues involved in the decision as to whether the United States should ratify the Convenants and the Protocol in their present form should not be obscured by the interjection of constitutional objections that are lacking in substance. . . . It would not be worthy of our heritage and our responsibilities to abstain on spurious constitutional grounds." [31]

In the light of these brief historical references to United States treaties and the observations of scholars, it is easy to understand the comment of the Clark Committee as to the constitutionality of human rights treaties: "It may seem almost anachronistic that this question continues to be raised." [32]

THE CONSTITUTIONAL POWER

The consitutionality of human rights treaties has been the subject of innumerable treatises, law review articles, and books ever since the U.N. Charter came into force on October 24, 1945.[33]

Under the Constitution, the power to enter into treaties and the subject matters that may be covered appear almost unlimited. The Constitution provides that the President "shall have Power, by and with the Advice and Consent of the Senate to make Treaties, provided two-thirds of the Senators present concur." [34] Emphasis is given to the importance of treaties because the Constitution declares that treaties "shall be the supreme Law of the Land," [35] and Congress is empowered to define and punish "Offenses against the Law of Nations." [36]

As early as 1796, the Supreme Court recognized the Supremacy Clause as it related to the peace treaty with England which prevented a state from eliminating debts due to British subjects.[37] Certainly, no one today would claim the right of states to avoid treaty obligations.

Power to enact a treaty has long been acknowledged by the Supreme Court. In *Geofroy v. Riggs*,[38] the Court said:

"It would not be contended that it (the treaty-making power) extends so far as to authorize what the constitution forbids, or a change in the character of the government or in that of one of the states, or a cession of any portion of the territory of the latter, without its consent. [Citation omitted] But with these exceptions, it is not perceived that there is any limit to the questions which can be adjusted touching on any matter which is properly the subject of negotiations with a foreign country." [39]

Despite the almost limitless powers envisioned by the *Riggs* decision, the treaty-making power does not rise *above* the Constitution. It is rather a vital element *within* the Constitution.[40]

It is difficult to interpret any of the principal human rights treaties approved by the United Nations, or its specialized agencies, as requiring something to be done which is contrary to the Constitution. For example, treaties declaring mass murder an international crime,[41] or preventing forced labor,[42] or securing the political rights of women,[43] or opposing racial discrimination,[44] or minimizing discrimination in education [45] do not authorize something which the Constitution forbids.

In 1969, a Special Committee of Lawyers of the President's Commission for the Observance of Human Rights Year, of which Justice Tom C. Clark, *retired*, was chairman, issued its report.[46] In his letter of transmittal, Justice Clark said:

Footnotes at end of article.

"I would like to reiterate here, however, our finding, after a thorough review of judicial, Congressional and diplomatic precedents, that human rights are matters of international concern, and the President, with the United States Senate concurring, may, on behalf of the United States, under the treaty power of the Constitution, ratify or adhere to any international human rights convention that does not contravene a specific Constitutional prohibition." [47]

WHY THE UNITED STATES IS CONCERNED INTERNATIONALLY

From its very beginning, the United States has been the great believer in, and advocate of, the rights of the individual. This is expressed in the Declaration of Independence, the Constitution, and the Bill of Rights. Thus, it is natural for the United States to be a leader in the world community in promoting rights so well recognized in this country. Practical reasons for such advocacy are also involved.

"Although such conventions (human rights) generally specify standards already observed in the United States, it has an interest in seeing that they are observed by as many states as possible, not merely to protect its own standards, but to promote conditions abroad that will foster economic development and democratic institutions that are conducive to prosperity in the United States, and achievement of its foreign policy objectives. It cannot effectively urge other states to adhere to such conventions without doing so itself." [48]

During the debates before the General Assembly which, in 1948, preceded the adoption of the Genocide Convention, Secretary of State George C. Marshall said:

"Governments which systematically disregard the rights of their own people are not likely to respect the rights of other nations and other people, and are likely to seek their objectives by coercion and force in the international field." [49]

President Kennedy summarized the United States position in his address at American University on June 10, 1963: "And is not peace, in the last analysis, basically a matter of human rights." [50]

POSSIBLE OBJECTIONS TO SPECIFIC PROVISIONS

Particular objections on constitutional grounds to specific provisions of some treaties have been raised from time to time. Occasionally, these go to the phraseology of certain clauses. For example, with respect to the Genocide Convention, it was asserted that the use of the phrase "as such" in referring to the destruction of specifically named groups created an ambiguity. The use of the phrase "in whole or in part" was asserted to be so broad that the killing of only a few members of a religious body would constitute genocide. Two American Bar Association committees considered these and similar objections and found them without substance.[51a] As one report concluded, they were "not of a dimension sufficient singly or together, to warrant nonratification." [51b]

The U.N. International Convention on the Elimination of All Forms of Racial Discrimination has also been questioned. Although the United States on September 26, 1966, signed the U.N. International Convention on the Elimination of All Forms of Racial Discrimination, it has not yet been sent to the Senate for its advice and consent. Objections have been made to it including the usual arguments raised against other human rights treaties. One of these relates to the provision for referring disputes over the interpretation or application of the Convention to the International Court of Justice. A similar provision in the Genocide Convention was characterized as "a stock provision not substantially unlike that found in many multipartite instruments." [52]

One of the frequently repeated objections to most human rights treaties is that a subject for a treaty, to be a proper one, must be essentially international and not one that might be dealt with domestically.[53] For example, it is asserted, genocide would not be a proper matter for international agreement because murder is a domestic crime. This attempt to exclude subjects which might be of both international and domestic concern would be contrary to United States history and practice. It would also deny the ruling of *Missouri v. Holland*,[54] upholding an international treaty on a subject which could be dealt with domestically, wherein the Court said:

"No doubt it is true that as between a State and its inhabitants the State may regulate the killing and sale of such (migratory) birds, but it does not follow that its authority is exclusive of paramount powers." [55]

Other domestic and international conflicts are found in the area of descent and distribution of real estate. In *Zschernig v. Miller*,[56] concerning probate law, the Supreme Court declared: "Where these laws conflict with a treaty, they must bow to the superior federal policy." [57] Personal property, protection of creditors' rights, prevention of discrimination on grounds of citizenship in business opportunities, and the right to purchase and hold land are also treaty subjects both of international and of domestic concern.[58]

The latest in the series of treaties covering subjects of domestic concern but also of international interest is the Supplementary Convention of the Abolition of Slavery, etc., ratified by the U.S. in 1967.[59] *Inter alia*, this treaty obligates the U.S. to take measures to abolish debt bondage, serfdom, involuntary marriage or transfer of women for money, and the transfer of widows as inherited property. It requires the parties to the treaty to prescribe, where appropriate, suitable minimum ages of marriage and encourages free consent to marriages. These are matters which have long been thought of as being essentially of domestic concern, but neither the United States President nor the Senate had any trouble in approving the treaty. The American Bar Association also recommended ratification.[60]

The rule is also expressed in the Restatement on the Law of the United States Foreign Relations:

"Matters of international concern are not confined to matters exclusively concerned with foreign relations. Usually, matters of international concern have both international and domestic effects, and the existence of the latter does not remove the matter from international concern." [61]

UNDERSTANDINGS AND RESERVATIONS

There can be little doubt of the constitutional power of the United States to enter into human rights treaties. It does not, however, mean that the power "extends so far as to authorize what the Constitution forbids." [62] It is conceivable that a particular treaty may include a provision anathema to constitutional requirements. If so, it is possible to ratify the treaty with a reservation which would exclude or modify the effect of that specific treaty provision.[63] It is also possible to ratify with an understanding which one party to a treaty attaches to a particular provision without changing its legal significance.[64]

A reservation which changes any provision of a treaty may require formal acceptance by other parties to the agreement. Some treaties contain detailed provisions as to reservations.[65] In contrast, an understanding is simply a unilateral statement by one party as to what it believes the treaty to mean. For example, with respect to the Racial Discrimination Convention,[66] a question was raised as to whether Article 4 of that treaty was in contravention to the free speech protection of the U.S. Constitution. Accordingly, when the U.S. Representative to the U.N. signed the Race Convention on September 28, 1966, he stated the understanding of the United States to be that:

"The Constitution of the United States contains provisions for the protection of individual rights, such as the right of free speech, and nothing in the Convention shall be deemed to require or to authorize legislation or other action by the United States of America incompatible with the provision of the Constitution of the United States of America." [67]

In the ratification process by the President and the Senate, such an understanding can be included if necessary.

EXISTING UNITED STATES OBLIGATIONS

Again and again the U.N. Charter speaks of human rights. Article 1 of Chapter I asserts that the United Nations is created to promote "respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion." [68] The General Assembly, under Article 13, is required to assist in the "realization of human rights and fundamental freedoms for all" [69] and by Articles 55 and 56, each member nation is required to promote "universal respect for, and observance" of these rights and freedoms.[70] The Economic and Social Council is empowered, under Article 62, to recommend ways and means for the observance of human rights.[71] Under Article 68, the Council is further directed to set up appropriate commissions "for the promotion of human rights" [72] It would be difficult for any member to assert that it is unaware of its obligations as to human rights under the Charter.

Phillip C. Jessup, formerly a member of the International Court of Justice, succinctly stated the existing law:

"It is already law for members of the United Nations, that respect for human dignity and fundamental human rights is obligatory. The duty is imposed by the Charter, a treaty to which they are parties." [73]

In 1945, the United States Senate, by an overwhelming vote, 89 to 2, gave its advice and consent to ratification of the United Nations' Charter. This clearly indicated the positive recognition which the United States accorded to human rights. It is now late in the game to doubt this country's legal obligations under the Charter.

In a concurring opinion in *Oyama v. California*,[74] Justice Black recognized the U.S. obligations under the U.N. Charter as follows:

"There are additional reasons now why that law stands as an obstacle to the free accomplishment of our policy in the international field. One of these reasons is we have recently pledged ourselves to cooperate with the United Nations 'to promote . . . universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.' How can this nation be faithful to this international pledge if State laws which bar land ownership and occupancy by aliens on account of race are permitted to be enforced?" [75]

Obligations of the United States and all members of the United Nations respecting Charter provisions on human rights, are also recognized in the recent Advisory Opinion of the International Court of Justice in the Namibia (South West Africa) case, rendered June 21, 1971. The Court said:

"Under the Charter of the United Nations, the former Mandatory had pledged itself to observe and respect, in a Territory having an international status, human rights and fundamental freedoms for all without distinction as to race. To establish instead, and to enforce, distinctions, exclusions, restrictions and limitations exclusively based on grounds of race, colour, descent or na-

Footnotes at end of article.

tional or ethnic origin which constitute a denial of fundamental human rights is a flagrant violation of the purposes and the principles of the Charter." [76]

Although the Advisory Opinion dealt with "a territory having an international status," it is clear that the pledge (meaning Charter Articles 55 and 56) referred to by the Court covers human rights and fundamental freedoms for all. As Professor Egon Schwelb concludes in analyzing the Advisory Opinion:

"What is a flagrant violation of the purposes and principles of the Charter when committed in Namibia, is also such a violation when committed in South Africa proper or, for that matter, in any other sovereign Member State or in a Non-Self-Governing or Trust Territory." [77]

One of the universally recognized scholars in this field, H. Lauterpacht, put it this way:

"The Charter of the United Nations is a legal document; its language is the language of law, or international law. In affirming repeatedly the fundamental human rights of the individual it must of necessity be deemed to refer to legal rights—to legal rights recognized by international law and independent of the law of the state. Moreover, irrespective of the question of enforcement, there ought to be no doubt that the provisions of the Charter in the matter of human rights impose upon the members of the United Nations the legal duty to respect them. In particular, it is clear that a Member of the United Nations who is guilty of a violation of these rights commits a breach of the Charter." [78]

THE POLICY OF THE UNITED STATES

United States policy toward international human rights has not been wholly consistent. From the time of the drafting of the U.N. Charter and throughout the preparation of various pertinent treaties adopted by the U.N., the United States has taken a leading part in the drafting of instruments protecting human rights. Although Americans sometimes take more credit than seems warranted, it is fair to say that the United States was frequently the moving spirit in the favorable action on these documents. The opening session of the U.N. International Conference on Human Rights in Tehran in 1968, was dominated by the memory of Mrs. Eleanor Roosevelt in advancing international recognition of human rights. [79]

Unhappily, however, the United States has been one of the laggards in ratifying the very treaties which it supported in the U.N. [80a] At this writing, except for the favorable Report of the Senate Committee on Foreign Relations on the Genocide Convention, [80b] no changes have occurred since Justice Earl Warren's statement of December 4, 1968:

"How far have we come in developing this international law of human rights? Over 20 major human rights conventions have been adopted by the United Nations, the International Labor Organization, and UNESCO. A few of them are in force among the parties which have acceded to them. Unfortunately, the United States is a party to only two of them, and this status has been reached only in the last year. We are still not a party to such major conventions as the Convention on the Abolition of Forced Labor, the Convention on the Political Rights of Women, the Convention on the Prevention and Punishment of the Crime of Genocide, and the Convention on the Elimination of all Forms of Racial Discrimination. Nor have we as yet even signed, no less ratified, the two conventions on Civil and Political Rights and Economic, Social, and Cultural Rights, which grew directly out of the Universal Declaration." [81]

Undoubtedly, the attitude of the organized bar has had its effect on the failure of the United States Senate to act. Many state and local bar associations as well as individual lawyers have taken public positions supporting those human rights treaties on which the U.S. Senate has held hearings. [82] The attitude of the American Bar Association, however, has generally been negative. In 1949, the ABA opposed the Genocide Convention [83] and in 1970, by a close vote of 130 to 126, declined to reverse its original opposition. [84]

The Association at its annual meeting in August, 1967, declared that "it supports fully, promotion by the United States, through the United Nations, of 'universal respect for, and observance of, human rights and fundamental freedoms,' for all people within all countries." At the same time, however, it declined to take action with regard to the Convention on Abolition of Forced Labor and it opposed accession to the treaty on the Political Rights of Women. Nevertheless, in the same resolution, it favored ratification of the Supplementary Slavery Convention. [85] The latter covers some matters usually deemed wholly domestic, such as the right of a woman to refuse to be given in marriage for a consideration. The Senate approved ratification of this treaty, but has not yet acted on Forced Labor or on Women's Political Rights. [86]

Attorney General Mitchell on January 26, 1970, stated his support of the constitutionality of the Genocide Convention. [87] Two subsequent statements of U.S. official organs, indicated the desirability of ratifying such treaties. The Report of the President's Commission for the Observance of the 25th Anniversary of the UN commented that:

"The United States would be in a far stronger position to play its historic role as champion of individual rights and to take a leading part in consideration of alleged violations of international standards if it ratified he instruments it has helped to developed." [88]

In a similar vein, the House of Representatives Sub-Committee on Foreign Affairs, in its report on the 25th anniversary of the U.N. stated that:

"We would like to see the United Nations use the occasion of its 25th anniversary to begin a new chapter in the history of the civilized community's concern with the protection of basic human rights. To this end we recommend . . . that the United States at long last move to adhere to the major pending human rights conventions." [89]

CONCLUSION

It is long past the time for the United States to carry forward its own pronounced principles in support of human rights. There are no valid, basic constitutional objections to ratification of human rights treaties. If there are specific provisions of particular treaties which need explanation through understandings, or require reservations, then understandings or reservations can be made a condition of ratification.

The need is for the United States to be true to its own ideals and to join with other nations in recognizing and protecting individual rights. In the national interest as well as in the interest of men everywhere, the United States should act promptly in ratifying those human rights treaties which it has supported in the United Nations and its affiliated agencies. The problem of how much the United States can in fact do to protect human rights through international agreements requires at least that we become a party to them. We thereby not only add impetus to what other countries do, but we are in a stronger position to exert our influence in promoting goals of the human rights conventions in the world community.

FOOTNOTES

* LL.B. Cornell; attorney, Milwaukee, Wisconsin; U.S. Representative to U.N. International Conference on Human Rights, Teheran, 1968; Member, President's Commission for Human Rights Year, 1968; Member, U.S. National Commission for UNESCO, 1965–71; Chairman, Wis. Governor's Commission on the U.N.; Chairman, ABA Section Committee International Courts.

[1] INTRODUCTION TO THE REPORT OF THE SECRETARY GENERAL, U.N. Doc. A/8401/Add. 1 at 55 (1971).

[2] For the principle objections by certain lawyers *see* Holman, *International Proposals Affecting So-Called Human Rights*, 14 LAW & CONTEMP. PROB. 479 (1949). *Hearings on Exec. O, 81st Cong. 1st Sess. before a Subcom. of the Senate Comm. on Foreign Relations*, 92d Cong. 1st Sess., at 23 (1971); *Hearings on Execs. J, K, and L, before a Subcom. of the Senate Comm. on Foreign Relations*, 90th Cong., 1st Sess. 2, 40 (1967); *Hearings on Exec. O, before a Subcom. of the Senate Comm. on Foreign Relations*, 81st Cong., 2d Sess., at 154, 206, 221 (1950).

[3] *See* L. SOHN & T. BURGENTHAL, INTERNATIONAL PROTECTION OF HUMAN RIGHTS (Prelim. ed. 1972). [hereinafter cited as SOHN & BURGENTHAL].

[4] W. MALLOY, TREATIES, CONVENTIONS, ETC., BETWEEN THE UNITED STATES OF AMERICA AND OTHER POWERS 586 (1910) [hereinafter cited as W. MALLOY]; S. Doc. No. 357, 61st Cong., 2d Sess. (1910).

[5] W. MALLOY, *supra* note 4, at 589.

[6] *Id.* at 588.

[7] *Id.* at 590.

[8] *Id.* at 1.

[9] *Id.* at 4.

[10] *Id.* at 34 (clauses I and II).

[11] *Id.* at 80.

[12] *Id.* at 114 (art. III).

[13] *Id.* at 137 art. XII).

[14] *Id.* at 553.

[15] *Id.* at 313 (para. 4).

[16] *Id.*

[17] Nuremberg Judgment, 1 TRIAL OF THE MAJOR WAR CRIMINALS BEFORE THE INTERNATIONAL MILITARY TRIBUNAL 171, 223 (Nuremberg 1947); 6 R.F.D. 69, 110 (1947). On December 11, 1946, the General Assembly, by resolution (U.N. Doc. A/C 6/9 (1946)) affirmed the principles of the Nuremberg Tribunal and directed that the laws be codified. Subsequently, the International Law Commission adopted the principles of the Charter and Judgment which includes:

Principle I. Any person who commits an act which constitutes a crime under international law is responsible therefore and liable to punishment.

Principle IV. The fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible. II Y.B. INT'L L. COMM. 374, U.N. Doc. A/136 (1950).

[18] W. MALLOY, *supra* note 4, at 143.

[19] *Id.* at 509.

[20] *Id.* at 1089.

[21] SOHN & BURGENTHAL at 194.

[22] *Id.* at 199–200.

[23] 38 Stat. 1912, 1937, T.S. No. 612 (1913).

[24] 46 Stat. 2183, T.S. No. 778 (1926).

[25] 7 U.S.T., T.I.A.S. No. 3482 (1948); 18 U.S.T. 3003, T.I.A.S. 6393 (1967); *Hearings on Execs. J, K, and L, before a Subcom. of the Senate Comm. on Foreign Relations*, 90th Cong., 1st Sess. at 89 (Part 2) (1967).

[26] 56 Stat. 1354, T.S. No. 981 (1940).

[27] 3 U.S.T., 3008, T.I.A.S. No. 2487 (1949); *Hearings on Execs. J, K, and L, before a Subcom. of the Comm. on Foreign Relations*, 90th Cong., 1st Sess. at 89 (Part 2) (1967).

[28] Missouri v. Holland, 252 U.S. 416 (1920).

[29] Convention on the Prevention and Punishment of the Crime of Genocide, 78 U.N.T.S. 277. The text of the Convention may be found in S. Exec. Doc. No. B, 91st Cong., 2d Sess. (1970).

[30] *See* Henkin, *The Constitution, Treaties, and International Human Rights*, 116 PA. L. REV. 1012, 1014–15 (1968).

[31] 62 AM. J. INT'L L. 917 (1968).

[32] PRESIDENT'S COMMISSION FOR THE OBSERVANCE OF HUMAN RIGHTS YEAR, REPORT OF THE COMMISSION (1969) [hereinafter cited as CLARK REPORT].

[33] *See*, among other treatises, H. LAUTERPACHT, INTERNATIONAL LAW AND HUMAN RIGHTS (1950). *See also* McDougal & Leighton, *The Rights of Man in the World Community: Constitutional Illusions versus Rational Action*, 14 LAW & CONTEMP. PROB. 490 (1949); Chafee, *Federal and State Powers Under the U.N. Covenant on Human Rights*, 26 WIS. L. REV. 391 (1951); Senate Staff Study on U.N. Charter, S. Doc. No. 164, 83d Cong., 2d Sess., at 303 (1954); *Hearings on Exec. O, before a Subcom. of the Senate Comm. on Foreign Relations*, 81st Cong., 2d Sess., (1950).

[34] U.S. CONST. art. II, § 2.

[35] *Id.* art. VI, § 2.

[36] *Id.* art. I, § 8 (10).

[37] Ware v. Hylton, 3 Dall. 199 (1796).

[38] Geofroy v. Riggs, 133 U.S. 258 (1889).

[39] *Id.* at 267.

[40] *See* Henkin, *"International Concern" and the Treaty Power of the United States*, 63 AM. J. INT'L L. 272 (1969); Henkin, *The Constitution, Treaties, and International Human Rights*, 116 PA. L. REV. 1012 (1968).

[41] 78 U.N.T.S. 1021 (1951).

[42] 320 U.N.T.S. 4648 (1959).

[43] 193 U.N.T.S. 2613 (1954).

[44] G.A. Res. 2106 (1965) contained in Human Rights: A Compilation of International Instruments of the United Nations, U.N. Doc. A/CONF. 32/4 (1967).

[45] 429 U.N.T.S. 6193 (1962).

[46] CLARK REPORT.

[47] *Id.*

[48] RESTATEMENT (SECOND) OF U.S. FOREIGN RELATIONS § 118 at 375 (1965) (Reporter's note).

[49] Dept. of State Publication No. 3643 (1949).

[50] Address by President Kennedy, American University, June 30, 1963.

[51a] *See* REPORT OF U.S. SENATE FOREIGN RELATIONS COMMITTEE, 92d Cong., 1st Sess. (Exec. Report No. 92–6 1971); *Hearings on Exec. O, 81st Cong., 1st Sess. before a Subcom. of the Senate Comm. on Foreign Relations*, 92 Cong., 1st Sess. at 147, 196 (1971) (Reports of ABA Section of Individual Rights and Responsibilities and the Standing Committee on World Order under Law); Bitker, *Genocide Revisited*, 56 A.B.A.J. 71 (1970) *corrected in* 56 A.B.A.J. 296 (1970); Goldberg & Gardner, *Time To Act on Genocide Convention*, 58 A.B.A.J. 141 (1972).

[51b] *Hearings on Exec. O, 81st Cong. 1st Sess. before a Subcom. of the Senate Comm. on Foreign Relations*, 92d Cong. 1st Sess. at 178 (1971).

[53] 11 WHITEMAN, DIGEST OF INTERNATIONAL LAW 857 (1968). *See Hearings on Execs. J. K, and L, before a Subcom. of the Senate Comm. on Foreign Relations*, 90th Cong., 1st Sess. at 50–51 (1967) (letter of M. G. Torbert, Jr., Deputy Asst Sec. of State). For other specific objections *see* Bitker, *International Treaty against Racial Discrimination*, 53 MARQUETTE L. REV. 68 (1970); Reisman, *Responses to Crimes of Discrimination and Genocide: An Appraisal of the Convention on the Elimination of Racial Discrimination*, 1 DENVER J. INT'L L. 29 (1971). For background analysis, *see* Schwelb, *The International Convention on the Elimination of All Forms of Racial Discrimination*, 15 INT'L & COMP. L.Q. 996 (1966).

[53] *Hearings on Execs. J, K, and L, before a Subcom. of the Senate Comm. on Foreign Relations*, 90th Cong., 1st Sess. at 21, 31, 33, 37 (Part 2) (1967).

[54] 252 U.S. 416 (1920).

[55] *Id.* at 434.

[56] 389 U.S. 429 (1968).

[57] *Id.* at 441.

[58] *Hearings on Exec. O, before a Subcom. of the Senate Comm. on Foreign Relations*, 81st Cong., 2d Sess., (1950) (testimony of Solicitor General, Philip B. Perlman).

[59] 18 U.S.T. 3201, T.I.A.S. No. 6418 (1967).

[60] *Hearings on Execs. J, K, and L, before a Subcom. of the Senate Comm. on Foreign Relations*, 90th Cong., 1st Sess. at 9 (Part 2) (1967).

[61] RESTATEMENT (SECOND) OF U.S. FOREIGN RELATIONS § 117 (1965) (Comment b).

[62] Geofroy v. Riggs, 133 U.S. 258, 267 (1889).

[63] *See* note 52, *supra*.

[64] *Hearings on Exec. O, 81st Cong. 1st Sess. before a Subcom. of the Senate Comm. on Foreign Relations*, 91st Cong. 2d Sess. at 163 (1970) (letter of then Ass't Att'y General, now Justice, Wm. M. Rehnquist); *Vienna Convention on the Law of Treaties*, 63 AM. J. INT'L L. 875, 881 (1969) (art. 19). See *also* SENATE FOREIGN RELATIONS COMMITTEE, BACKGROUND INFORMATION 28 (2d rev. ed. 1971).

[65] *See* U.N. Convention on the Eliminations of all Forms of Racial Discrimination, G.A. Res. 2106A (1965) contained in Human Rights: A Compilation of International Instruments of the United Nations, U.N. Doc. A/CONF. 32/4 (1967) (art. 20).

[66] *Id.*

[67] U.S. Mission to the U.N., Press Release No. 4920, Sept. 26, 1966.

[68] U.N. CHARTER art. 1.

[69] *Id.* art. 13.

[70] *Id.* arts. 55–56

[71] *Id.* art. 62.

[72] *Id.* art. 68. *See also* Survey of International Law by Secretary General, U.N. Doc. No. A/CN 4/245, at 195–204 (April 23, 1971).

[73] P. JESSUP, A. MODERN LAW OF NATIONS 91 (1952).

[74] 332 U.S. 633, 649–50 (1947).

[75] *Id.* at 649–50.

[76] [1971] I.C.J. at para. 131.

[77] Schwelb, *The International Court of Justice and Human Rights Clauses*, 66 AM. J. INT'L L. 337, 349 (1972).

[78] H. LAUTERPACHT INTERNATIONAL LAW AND HUMAN RIGHTS 34 (1950).

[79] Bitker, *International Conference on Human Rights, Dept. of State Bull.* 255 (Sept. 3, 1968).

[80a] *See* Bitker, *Some Remarks on U.S. Policy on the Ratification of the International Human Rights Conventions*, 11 HUMAN RIGHTS JOURNAL 653 (1969).

[80b] REPORT OF U.S. SENATE FOREIGN RELATIONS COMMITTEE ON GENOCIDE, 92d Cong., 1st Sess. (1971) (Exec. Report No. 92–6 on Exec. O).

[81] E. Warren, Conference on Continuing Action for Human Rights, Dept. of State Publication No. 8463 (1968).

[82] *See Hearings on Exec. O, 81st Cong. 1st Sess. before a Subcom. of the Senate Comm. on Foreign Relations*, 91st Cong. 2d Sess. (1970); *Hearings on Execs. J, K, and L, before a Subcom. of the Sentae Comm. on Foreign Relations*, 90th Cong., 1st Sess. (1967); *Hearings on Exec. O, before a Subcom. of the Senate Comm. on Foreign Relations*, 81st Cong., 2d Sess., (1950).

[83] 74 A.B.A. REP. 146 (1949).

[84] *Hearings on Exec. O, 81st Cong. 1st Sess. before a Subcom. of the Senate Comm. on Foreign Relations*, 92d Cong. 1st Sess. at 16 (1971).

[85] *See* note 60, *supra*.

[86] S. Comm. on Foreign Relations, Legislative Calendar 7 (April 11, 1968.)

[87] *Hearings on Exec. O, 81st Cong. 1st Sess. before a Subcom. of the Senate Comm. on Foreign Relations*, 91st Cong. 2d Sess. at 165 (1970).

[88] PRESIDENT'S COMMISSION FOR THE OBSERVANCE OF THE 25TH ANNIVERSARY OF THE UNITED NATIONS, REPORT OF COMMISSION 23 (1971) (U.S. Gov't Printing Office, Doc. No. 4000–0261).

[89] HOUSE OF REPRESENTATIVES SUBCOMMITTEE ON FOREIGN AFFAIRS, REPORT ON THE 25TH U.N. ANNIVERSARY 8 (1970).

THE NEED FOR A NEW INTERNATIONALISM

Mr. HUMPHREY. Mr. President, there is a need in this country for a renewed spirit of internationalism as the foundation of American foreign policies. Senator MCGOVERN rightly recognized this need in his October 6 foreign policy address, delivered in Cleveland, Ohio. It is a commendable statement, in my opinion, because it offers a philosophical base for a new American foreign policy. It provides specific guidelines for what a McGovern foreign policy would provide for this Nation and for the larger international commuity.

The first act of the McGovern foreign policy would be to bring a complete end to American miiltary involvement in Indochina. Once this step is undertaken, the rest of the policy program would unfold in a natural, realistic sequence.

It is not only tenable, but highly desirable, that leadership in the United States focus on the community of nations instead of the narrowly defined, and often elusive goals of national self-interest. We must move ahead with even more solid progress in arms control, in improving our relationships with Communist states, including the Soviet Union and China but not exclusive of other smaller Eastern European countries, in promoting the welfare of societies in developing as well as developed countries, in resusciating those international organizations who can service the needs and the hopes of a complex world community, and in building a healthy society at home which can replenish a spirit of internationalism in this country and abroad.

Democrats and Republicans alike have lauded the achievements which President Nixon has accomplished over the last 4 years. Senator MCGOVERN has never attempted to discredit these accomplishments, but he rightly expresses concern over those areas of international relations which have not gone as well. In his statement, Senator MCGOVERN notes the cracking of an alliance in Europe and in Japan as a result of unfortunate, insensitive treatment which the United States doled out to these countries in an effort to pursue what is considered to be greater priorities. He notes the importance of treating Japan and Western Europe as equals, consulting and cooperating with them on new levels of international exchange which go beyond the traditional system of diplomatic dialog.

Senator MCGOVERN draws attention to the positive role economic reform can have on the general trend in international relations. He is critical where criticism is due, where the administration has presented friends, the true friends of the United States such as Canada, Latin America, and Europe, with ultimata which were virtually impossible for them to accept in this way. Economic relations is a form of international relations and should be handled as such, but the Nixon administration has too often let the dollar dictate the pattern U.S. foreign policy, to the detriment of our longer term interest.

Senator MCGOVERN does not attempt to provide all the answers. In fact, his view of the Presidency is such that he intends to share the foreign policy decision process with Congress, with the State Department, and with experts in this and related fields outside of Government.

American foreign policy is in need of a total review. This process is delicate and time consuming, but the Democratic presidential candidate has supplied us with a worthwhile set of guidelines. Mr. President, in commending this speech, I should like to bring it to the attention of the Senate. I ask unanimous consent that it be printed in the RECORD.

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

[From the New York Times, Oct. 6, 1972]

TEXT OF STATEMENT BY SENATOR MCGOVERN PRESENTING HIS VIEWS ON FOREIGN POLICY

(NOTE.—Following is the text of a foreign policy statement, entitled "A New Internationalism," issued yesterday by Senator George McGovern and delivered, in part, before the City Club of Cleveland.)

Next week on television I will address the American people on the subject of Vietnam. In that speech I will demonstrate a public plan—as distinct from Mr. Nixon's secret plan—to achieve peace in Indochina. In that same speech I will set forth my own vision of what American society can be once the tragedy of Vietnam is behind us.

But before then, I want to share my more general views of America's role in the world of the 1970's. And I want to contrast my own approach with the record of the Nixon years, so that in this critical area the American people can understand clearly what the choices are.

Mr. Nixon stated his current vision of the world this past January. He declared that:

"The only time in the history of the world that we have had any extended period of peace is when there has been balance of power. It is when one nation becomes infinitely more powerful in relation to its potential competitor that the danger of war arises. So I believe in a world in which the United States is powerful. I think it will be a safer world and a better world if we have a strong, healthy United States, Europe, Soviet Union, China, Japan, each balancing the other, not playing one against the other, an even balance."

But I begin today by asking whether that is all we want. And I ask, too, whether it is relevant and realistic in today's world—or does it simply resurrect an old world, of kings and princes and empires, that we will never see again.

That five power, balance of power thesis attempts to force onto the contemporary world a naive pre-nuclear view dating back to the 19th century and before.

Today, in the military sense, we have but two superpowers—capable of destroying ourselves and most of humanity many times over.

EUROPE IS NOT AN ENTITY

That will likely be the case for some time. Europe is not one entity yet, and at best, it will be a long time before it functions as one nation. Japan, though clearly a dominant economic and political power, may not seek entry into the military balance at all—and will probably profit from that decision. And we have discovered a China that seems as determined to avoid direct military entanglements outside her borders as she is to assume her proper role as a great society in world diplomacy and commerce.

It is a naive delusion as well to believe that there is some arbitrary number of actors who will determine whether the world has war or peace. There may have been periods of relative peace under a balance of power. But Mr. Nixon forgets that no balance among the giants can eradicate the causes of war among the rest of mankind. Nor can it dispel the demand of some 140 countries to have a say in the issues which determine their survival.

And finally, that balance of power neglects other ominous threats to our safety. On May 9, 1969, the then-Secretary General of the United Nations, U Thant, issued this warning:

". . . the members of the United Nations have perhaps 10 years left in which to subordinate their ancient quarrels and launch a global partnership to curb the arms race, to improve the human environment, to defuse the population explosion, and to supply the required momentum to world development efforts.

"If such a global partnership is not forged within the next decade, then I very much fear that the problems I have mentioned will have reached such staggering proportions that they will be beyond our control."

We have lost precious time since 1969, and there are precious few years left. Our preoccupation with a military balance leaves untouched the deadly imbalances among population, resources and wealth—and they, too, endanger our lives.

So we face a much different world from the one we knew as we grew up, or as we served in World War II, or even as we watched our country slip into a disastrous Asian war.

"EVERYTHING SEEMED POSSIBLE"

Less than 12 years ago John F. Kennedy was inaugurated, and on that bright January day everything seemed possible. If our sturdy American spirit did not give reason enough for that faith, we had as well a new figure and a new voice, to personify the optimism and boldness of a new generation.

In January, 1961, no one could predict the Bay of Pigs . . . the Cuban Missile Crisis, the tragic murders of John and Robert Kennedy and Martin Luther King . . . the Dominican Intervention . . . the alienation of many in our own society—least of all, the endless minefield in which we would find ourselves in Vietnam.

Yet, in the years that were to follow, we as a people would be buffeted by one shock and disillusionment after another until finally, in Vietnam, we would lose our innocence—and much of our confidence.

And today we are moving toward a mature knowledge that while we are deeply involved and have vast influence in the world, forces beyond our control will have the most to do with shaping the political arrangements of the future. We can see the error of assuming, since World War II, that our actions would be decisive in either "winning" or "losing" China . . . in causing or preventing revolution of the Right or Left in much of Latin America and the rest of the developing world . . . or in determining the outcome of a distant civil war in Southeast Asia.

But at the same time we must be aware that as the richest and most powerful nation in the earth's history, what we do both here and elsewhere will be more important than what anyone else does in moving this planet closer to either its final destruction or a more peaceful and happy future.

Possessed now with a sense of tragedy and of our own limitations, we as a people may finally be ready to play a more responsible and constructive role in the world than we ever have before.

More than 25 years ago, Adlai Stevenson, in his Godkin Lectures at Harvard, offered us these lines—and good advice—from Keats' "Hyperion."

For to bear all naked truths,
And to envisage circumstances, all calm,
That is the top of sovereignty . . .

ROLE EXAMINED

What shall our role be?

I know of no responsible person who would knowingly call for a return to isolationism.

Modern communications, and the existence of intercontinental weapons systems, have made that a practical impossibility.

Yet, in many ways, the foreign policies of the present Administration are isolating us.

We are isolated from our allies and trading partners in Europe and Asia, and even from Canada, because of six-gun economic diplomacy and failure to consult.

We are isolated from the developing nations by a policy which tells them that "what's good for Pepsi-Cola and the First National City Bank is more than good enough for you".

We are isolated from reality by the insistence that tough talk and big Pentagon budgets are somehow synonymous with national manhood.

And most of all, we are isolated from our own ideals as we back a corrupt dictatorship in Saigon, by raining fire and death on helpless people all over Indochina.

I suggest that we must rejct this unconscious isolationism in favor of a New Internationalism based not only upon our vital interests, but also upon the kind of nation we can and should be.

Where are our vital interests?

By one measure, they certainly lie in the world's North Temperate Zone.

North America, Europe, the Soviet Union and Japan do produce some 80 per cent of the world's goods. This is where the power—in the sense of wealth, technology, developed human skills, and the capacity to wage modern war—most largely resides.

And this is where both we and the Soviet Union, as the two superpowers, will for the foreseeable future continue to have the highest interest in averting any attempt by the other to threaten or subvert our respective systems of security.

The North Temperate zone, is, in short, where a final World War III would be fought—and where its potential causes must most carefully be guarded against.

But our vital interests go further.

The Arab-Israeli confrontation in the Middle East, with its potential for even more dangerous United States-Soviet confrontation, is an immediate threat to general peace. And we have a firm and deep obligation to the security and integrity of the State of Israel.

CHINA AND JAPAN

Communist China has little power in terms of conventional measurement (by 1975 Japanese per capita G.N.P. will be 12 times that of China's) but she possesses nuclear weapons and a desire to reassert her ancient prestige.

The Indian Subcontinent and Indonesia especially compel our attention in Asia, as do several states in Africa and in our own hemisphere.

What of the hundrds of other sovereign nations existing in the 1970's—including those to the south lying within the purview of the Monroe Doctrine?

All, in one way or another, have some importance to us.

But must we be committed to their armed defense?

Under what conceivable circumstances should we ever become involved in supporting their present governments in the face of domestic turmoil?

These are questions we had better ask ourselves today, rather than later.

I believe that America's New Internationalism in the 1970's must follow several clear guidelines.

First, it must be supported by a strong national defense, but one free of waste, as I have previously outlined; forces fully adequate to defend our own land and to fill vital defense commitments.

Second, it must look toward prudent relaxation of tension with potential adversary powers, such as the Soviet Union and China.

Third, it must look to reestablishment of healthy economic and political relationships with our principal allies and trading part-

ners in Europe, Japan, Canada and Latin America.

Fourth, it must avoid the kind of reflexive interventionism that has foolishly involved us in the internal political affairs of other countries.

Fifth, it must envision a world community with the capacity to resolve disputes among nations, and to end the war between man and his own environment.

Sixth, it must reassert America's role as a beacon—and friend—to those millions in the human family desperately striving to achieve the elemental human dignity which all men seek.

The kind of interventionism I woud favor as President would be agricultural and technical assistance . . . the building of roads and schools . . . the training of skilled personnel, in concert with other nations and through multilateral institutions.

A JUST SOCIETY URGED

Finally, at the bottom of it all, must lie a just and prosperous domestic society, where all our people—and the people's representatives—are involved in decisionmaking.

As my old friend Senator Humphrey has often said: America's most important foreign policy act in the 1960's was the passage of the Civil Rights Act of 1964.

I agree.

How then, should we proceed?

My first act of American foreign policy on Inauguration Day must be—will be an immediate and total end to our involvement in the Indochina War.

As Richard Nixon said in 1968: "Those who have had a chance for four years and could not produce peace, should not be given another chance."

We have had enough of secret plans to end the war. We need a public plan for peace.

As we look beyond Vietnam, the prevention of nuclear war remains the first charge on America's commitments.

During the 1960's, we built a great arsenal to protect the United States and our allies against a nuclear threat from any quarter. And we must continue to maintain the power we need.

But we also know that too much power is self-defeating.

We have seen the deadly spiral of the arms race, and drawn no comfort from it.

We have seen that if we build weapons we do not need, we only provoke the Soviet Union to follow suit.

The agreements with the Soviet Union to slow the arms race are a significant achievement. Yet they have shortcomings, for they are now used as an excuse not to halt but to escalate the race in nuclear arms.

We must not push the upward, and lose the chances for a lasting peace that are before us now.

Let us have the defense we need. But let us not permit the insatiable appetite of our military to replace our good sense, and undermine the prospects reduction in the balance of nuclear terror.

President Nixon's trip to Moscow this May was historic. It was the culmination of many years of effort that began when President Kennedy signed the Limited-Test Ban Treaty. This effort continued under three Presidents, both Democratic and Republican.

We must now build upon this effort. That is why it makes no sense for the President to return from Moscow with an arms reduction agreement and then call on the Congress to add another $4-billion to military spending.

We must work to bring the arms race under control;

We must seek areas of agreement with the Soviet Union consistent with the needs and interests of our friends and Allies. We should press for justice for Soviet Jews rather than abandon them for a trade agreement. Surely we have learned the lesson at great cost that a free people cannot sit by and merely witness the oppression of a religious minority by a totalitarian society.

We should, of course, encourage expanded trade between our two countries.

And we must spare no effort to build the structure of a lasting peace.

In limiting the arms race we do not begin with excessive trust in the Russians, for we retain more than enough for deterrence.

In reducing our excess with do not rely on Moscow's good intentions, we will remain strong enough to meet any test.

We need only act in our sure defense by seeking areas of genuine mutual interest and by tailoring our armed forces to the reality of the world around us.

If the Soviet Union responds with the cooperation dictated by her own interest as much as ours, then we can build toward a future that is not based on outdated stereotypes of military confrontation and power politics. Instead we can build toward a world of diversity in which we are secure, a world in which there are new ways of thinking and behaving, and a world where there are real prospects for enduring peace.

I also welcome the progress that the President has made in relations with China—a course I have advocated for 20 years.

CHINA MUST PARTICIPATE

We must build on this progress, by encouraging China's full participation in the community of nations, to take part in providing for Asian security, instead of threatening it.

As President, I will begin by recognizing the government in Peking.

The future of Asia will depend in part upon China. But it will also depend upon Japan, the third most powerful economic nation in the world, a nation of vigor and purpose, and a long-standing friend of the United States.

In recent years our relations with Japan have been in steady, but needless decline.

President Nixon announced his trip to China without consulting Japan, betraying the trust that nation had placed in our Asian partnership. He imposed the New Economic Policy without consulting Japan, and then blamed Japan for problems that were largely of his own making. And after these shocks, President Nixon took a year to convene a summit meeting with the Prime Minister of Japan.

This was a diplomacy of insult, and it must not continue. For as we seek new accommodations with our adversaries, we must never neglect old and treasured friends.

We must treat Japan as an equal, consult with her in trust. As President, I would begin the painstaking renewal of our cooperative relationship with this key nation in Asia.

There will be tough negotiations and vigorous competition on important matters of trade and economics, where both our nations have interests to protect. We will expect fair treatment by Japan on matters of trade and investment, and greater understanding of our domestic economic problems. But Japan also expects fair treatment from us, not the patronizing attitude that the President has shown, or the sixgun diplomacy of John Connally.

At the same time, we must recognize that Japan has a chance to become the first great power without a massive military arsenal. We must not crush that hopeful experiment. I will ensure that remaining U.S. forces in Japan serve the original purpose designed for them—to help provide for the defense of Japan, and not to become involved in military ventures in Southeast Asia;

I will place the support of the United States behind membership for Japan in the United Nations Security Council;

COOPERATION STRESSED

And I will begin laying the groundwork: with Japan in East Asia that will improve the chances that security in that troubled part of the world will be based on economic cooperation and effort, and never again on the kind of war we have been uselessly and destructively fighting in Indochina.

In Western Europe, there has been great progress toward a relaxation of tensions, and toward resolution of problems left over from World War II.

Much of the credit belongs to Chancellor Brandt of West Germany, despite occasional opposition from the Nixon Administration. There is a treaty on Berlin, and there are West German treaties with Poland and the Soviet Union. And we will soon see a Conference on Security and Cooperation.

Our Western European neighbors are fulfilling our mutual hopes and expectations of the past quarter-century.

But in Western Europe's success, there are grave implications for the United States. There will be vigorous economic competition across the Atlantic—and we should welcome it.

The Atlantic Partnership no longer needs single-handed American leadership nor do our partners want it. Nor should we.

TROOP REDUCTION NEEDED

But again there are diplomatic failures and challenges to American statesmanship.

President Nixon does not consult adequately with our allies on critical allies of detente, raising fears in Western Europe that we will reach agreements with the Soviet Union at their expense. He talks of cooperation, yet he permitted his Secretary of the Treasury, John Connally, to badger and bully the countries with whom we most need to maintain a cooperative spirit. He talks of the future, but does not understand the importance of good economic relations in preserving and strengthening Atlantic ties.

We must restore good economic and political relations across the Atlantic. And we must restore Europe's faith in our commitment to the success of the European Community.

At the same time I believe in a thorough review of the military aspects of European security.

We no longer need to maintain 319,000 American troops in Europe to deter aggression, 27 years after the Second World War. But the way we reduce our forces—and share burdens more equally—is critical to the future of the Alliance and to European security.

The key to force reductions on the side of the Warsaw Pact does not lie in the number of American troops stationed in the West, rather it lies in the cohesion, cooperation, and common purpose of the Western Alliance.

If we make some force reductions, yet strengthen these attitudes and practices, then there is nothing the Soviet Union can do to weaken us or our allies, or to reduce our security.

We retain a special concern about the Middle East. All Americans have been heartened by the reduction of Soviet involvement in Egypt. But we recognize that this does not end the threat to Israel.

We must remain committed to Israel's future, to her right to live at peace with her neighbors behind secure and recognized borders.

We must continue to supply those arms that will permit Israel to guarantee its own security. In my Administration, we will do this because of our deep and abiding concern for Israel, not adopt one policy for election year, and another for the years that follow.

We must continue to retain sufficient American power in the area to ensure that

there is no doubt of our commitment to Israel's security.

We must intensify our efforts to end the international terrorism that most recently appalled the world at Munich, and that is a threat to us all.

And we must show a deep regard for the economic and human needs of the Palestine refugees.

Today, we have long since met the demands of a world dominated by military concerns. But we are rapidly losing the world in which economic power and relations will have their day.

The international economic system is near collapse—and for a year President Nixon did almost nothing.

Our Alliances with Europe and Japan are in disarray over economic issues—and President Nixon does nothing.

"NIXON DOES NOTHING"

The problems of two and one-half billion poor people in the world are insistent and demanding—and President Nixon does nothing.

Under President Nixon, we are becoming a second-rate nation in the terms that will really count in the 1970's.

It is more than a year since the New Economic Policy began. Yet, only now has the Administration begun an effort to restructure the international economic system, while the United States balance of trade continues in the worst deficit in 100 years, and the United States dollar has been devalued as a result of the Nixon inflation at home. We have still not recovered our sense of responsibility for this economic system, upon which our prosperity, and that of other nations, depends.

We must repair our damaged friendships abroad; we must begin sorting out the difficult problems that must be solved in order to create a new international economic system. We must begin the urgent task of monetary reform not through confrontation, but by restoring and building on the international cooperation and commercial partnership that we had until this Administration. We must work out new rules of international conduct in trade and commerce. And we must begin building an awareness and understanding of international economic policy into the councils of government at all levels.

Last week, I made several concrete proposals to begin this effort:

New rules governing changes in exchange rates.

Cooperative arrangements to cushion large disruptive flows of short-term capital.

More special drawing rights—and more of them for developing countries.

Steps to resolve fairly the problem of the dollar "overhang."

We must help businesses that are uncompetitive to shift to new products.

And we must guarantee every working man and woman a good job at good pay in industries that can compete in world markets.

American will is being tested. President Nixon has decided that our will is weak—that we cannot pass the test—that we can survive economically only by having inflated military budgets and by blaming others for our difficulties. But I say this: Give Americans a chance, and we will prove that we can have the strongest economy in the world, and a prosperity in which everyone will share.

THE POOR ARE CITED

In virtually every statement, every act, of this Administration, nearly two and a half billion human beings in the world have been left out.

These are the people who have too little power to figure in a new balance of power based on the military giants; they are the people who are too meek to command the attention given to generals and weapons manufacturers producing excess weapons we do not need; they are the people whose crime was to be born poor.

Ten years ago, I was President Kennedy's first Director of Food for Peace.

He declared then: "If we do not help the many who are poor, we cannot hope to save the few who are rich."

Today, this statement is more true than ever.

Today, the ability of people from the rich countries to trade, travel, and invest in the developing countries depends upon our helping them to meet their critical problems of development.

Our future success in preserving the environment will require the help of developing countries. And even the international system of trade and monetary relations is beginning to depend on developing-country cooperation. They deserve and demand a voice, and they desperately need our help.

We have seen little to inspire our confidence in these past four years. Mr. Nixon pledged to untie aid, and then reneged; he talked of the need for development, then slashed the budget and put his lobbying efforts in Congress behind the supply of arms instead of technical assistance to developing countries. He extended the 10 per cent surcharge on imports to poor-country products as well as rich. He has used the power of his office to bully and intimidate Latin-American nations. He has defied the conscience of mankind by giving up United States opposition to racism in Southern Africa.

U.S. ROLE IN BANGLADESH

He threatened to intervene in the war between India and Pakistan, against our interests, against what was right and against the conscience of the civilized world. He then waited five months before recognizing the infant, struggling nation of Bangladesh that has suffered so much for so long. And he still has not restored aid to India—aid for schools and roads and health care—that he cut off when the war began. Indeed, the mistaken anti-India pro-Pakistan stand of the Nixon Administration while Pakistan was murdering its poor people by the hundreds of thousands was not only morally wrong, it has cost us the goodwill of India—the world's largest Democratic nation.

These have ben callous displays toward the poor of the world, for fully two-thirds of mankind. As a great nation, America cannot turn its back on their suffering. And we cannot stand aside as development—this great human adventure—goes on.

We cannot continue to abdicate our moral and political responsibility to so many people, and ultimately to the United States itself.

The New Internationalism will chart another course.

We will make a full commitment of the United States to the multilateral institutions that are helping with development, not with military weapons that make war and suffering more likely, but with the economic and technological tools that help men to improve their own lives.

We will put our relations with individual developing countries on a firm footing, not relegate them to an insignificant place in a balance of power.

We will show that we can live up to our commitments to our neighbors in Latin America, not demand that they quietly accept our domination.

We will show that we are concerned for all of Africa, and abandon this Administration's support for the racist regimes of Southern Africa. We will show our concern for the racist expulsion of Asians from Uganda.

We will renew our commitment to the efforts of the United Nations for peace and for development. And we will show that we, too, can respond to the demands that membership in the human family places upon us. The United Nations peace-keeping capacity must be strengthened and utilized. It is an essential framework for international cooperation.

The making of decisions of defense and foreign policy is an awesome task, too great for any one man—or any one branch of government. And here, too, we cry out for reform.

Long ago, we recognized that the powers of the Presidency could isolate the man and his decisions from the American people.

So we protected the nation—and the Presidency itself—from the "man in horseback," by adopting methods for the close scrutiny of foreign and defense policy.

Under President Nixon, these methods have decayed and Congress itself has been thwarted in its efforts to discharge its Constitutional responsibilities.

The executive agreement has often replaced the treaty subject to Senate approval.

Wars are fought in secret, in Laos and Cambodia, and paid for by secret funds in defiance of the will of Congress.

Under President Nixon, however, the Secretary of State has become a minor functionary, and was not even permitted to take part in the most critical negotiations the President had in Peking.

No American President should be permitted to escape the Constitutional restraints on Executive power.

Under my administration, the Congress will be fully informed, it will be fully consulted, and it will have restored to it the full powers set down for it in the Constitution of the United States.

And I will not permit the basic trends of American foreign and defense policy to be set in the inner sanctum of the White House, by men who are hidden from public view and removed from public responsibility.

There will be a Secretary of State of great capability and unquestioned stature.

No foreign policy can be effective if it is backed by weakness at home. President Nixon wants us to believe that talking of America's problems denies its greatness.

But I believe that our greatness lies in part in our ability to look at ourselves, to recognize what we have to do, and then to do something about it.

If we have four more years of the same at home, the wisdom of our foreign policy may not matter very much.

SECOND-RATE UNITED STATES SEEN

We will be condemned to be a second-rate nation at home.

We must and we can have a strong economy, with a good job at good pay for everyone who wants to work . . . an end to crippling inflation and an end to the Nixon recession.

We must have real tax reform . . . a reduction of crime . . . improved health care . . . and genuine quality education for all our children.

We must resume building a society in which government helps to bring people together, not drives them apart; where it helps to increase opportunity, not limit it; and where it taps the deep roots of the American spirit, not stifles them in indifference to the need for America to grow and change.

I believe that we can have that America, again—a first-rate nation at home and abroad, where American greatness and commitment to international cooperation will again become a thing of wonder in the world.

As a nation, we must bring to an end our time of tragedy:

—when Americans have lost faith in what their Government tells them;

—when a bitter and needless war has divided our people, and threatened our spirit and confidence as a nation.

Few other countries have faced what we have in these past few years.

But I believe that we are now prepared to use what we have learned from our past,

from success and from failure, to meet our responsibilities both at home and in the world—to the lasting benefit of the American people and all mankind.

In the final analysis, our foreign policy is no more than who and what we are. It is a reflection of our attitudes towards ourselves, towards our country, and towards the rest of mankind. We cannot separate what we do abroad from what we do at home.

How we live in the neighborhoods and communities of America will determine how we live with our international neighbors, and in the broader world community.

Today, we can aspire to a maturity in our actions abroad, and maturity as a great nation—a great people—at home.

This is a challenge appropriate to our ideals, and to all that we have dared and won in the nearly two hundred years of our independence. As Abraham Lincoln once said, in a dark hour for America:

"We shall nobly save or meanly lose the last, best hope on earth."

I have faith that we shall nobly save that "last best hope on earth."

PRESCRIPTION DRUG PRICING

Mr. MOSS. Mr. President, last week I discussed my concern for the absence of prescription drug price advertising and posting in retail pharmacies. I believe that this information is most necessary in order for the consumer to make an intelligent decision. There are many virtues to the full service pharmacy—delivery service, consultation, and drug records, to name but a few. But these services are not available at a large number of pharmacies, and a large number of consumers do not seek out these pharmacies even when broad services are available. Thus, once service is dismissed by the consumer in his selection of a pharmacy, what guides remain? If prices were available, then these could be used by the consumer in determining where he will purchase his pharmacy needs.

Mr. President, I ask unanimous consent that a special report on prescription drug pricing prepared by the Consumer Federation of America be printed in the RECORD.

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

PRESCRIPTION DRUG PRICING: AN ALMOST TOTAL ABSENCE OF COMPETITION

I. INTRODUCTION

The search for information is what makes consumers run. They organize into pressure groups in an effort to get businessmen, government officials, and professionals to share information they have with the consumer who pays for the product or services. For consumers, the lack of information makes their decisionmaking incredibly more complex.

Consumer Federation of America is made up of approximately 200 community, state, regional and national organizations. These groups conservatively represent 35 million consumers. Each year delegates from these groups draft a comprehensive policy statement for the Federation. This statement reflects the frustrations, disappointments, and hopes of the consumers represented.

The 1972 health, drugs and medical policy statement illustrates CFA concern for more information, particularly on prices of prescription drugs: "We are distressed by studies documenting price variations up to 1200% for prescriptions of the same drug in the same area. We believe this is due to a host of restrictions and prohibitions placed upon free competition in advertising and sale of prescription drugs by registered pharmacies: Including prohibitions against advertising of drug prices, against discounts for older people, and against posting of drug prices in stores; artificial barriers to entry of discount and chain drug stores into new markets; restrictions on ownership of pharmacies; prohibitions against pharmacies in supermarkets and general merchandise stores and many other devices having no relevance to the public health.

"CFA urges affiliates to work for repeal of all such laws and regulations. Recognizing further that restrictions against price competition for prescription drugs originate with state boards of pharmacy and that most such boards are dominated by druggists, CFA recommends inclusion of strong consumer representation on state pharmacy boards.

"CFA further urges affiliates to become 'friends in court' in suits challenging the constitutionality of validity of laws and regulations which inhibit drug price competition.

"We urge enactment of legislation forbidding tie-ins between hospitals, nursing homes, and other health care providers and pharmacies. We believe it is unethical for physicians to own stock in drug manufacturing companies, drug marketing and packing companies and pharmacies.

"We urge requirements that written information in understandable language be given recipients of all prescriptions explaining uses, directions, precautions and side effects—including possible hazards of mixing prescribed medication with other drugs or foods." (Appendix A).

This prescription drug price advertising study was planned to give supportive information to CFA affiliates working for repeal of state laws and regulations against prescription drug advertising. It includes a report on prescription drug prices based on statistics secured by CFA member groups throughout the country. The list of 20 prescription drugs to be checked was prepared by CFA from a list of 94 included in a March 1972 *Consumers Report* story. (Reprint Instered)

The study also includes information on state laws secured by Teela Weiner, a University of Michigan student who worked in CFA's office as a summer intern. Ms. Weiner wrote all State attorneys general, interviewed the American Pharmaceutical Association legal staff, and several professors of pharmacy.

II. STATE PRESCRIPTION DRUG PRICE LAWS AND REGULATIONS

Thirty-five states prevent by law or regulation the advertising of prescription drugs by name or price: Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Jersey, New York, North Carolina, North Dakota, Oklahoma, Oregon, Rhode Island, South Dakota, Texas, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. Some of these laws do not mention price, but the state pharmacy board has interpreted the regulation against advertising "directly or indirectly" as including price.[1]

Earlier this year consumer groups and the Washington State Labor Council successfully protested that state's regulations banning drug advertising. Washington State Board of Pharmacy formally agreed May 31, 1972, to allow advertising of prescription drug prices in public media. The ruling became effective June 30.[2] The new regulations allow on-premise posting of prescription drug prices, including a listing of brand and generic names. The July 3, 1972 Drug Topics (page 6) however reports the Washington State Board of Pharmacy "having second thoughts" and forecasts a delay on any action until the fall after the State Pharmaceutical Association convention.

Deputy Attorney General Gerald Gornish reports that Pennsylvania's Pharmacy Act prohibited the advertising of the price of drugs.[3] This act however was declared unconstitutional in January 1971 by the state's Supreme Court in the case of *Pennsylvania State Board of Pharmacy* v. *Pastor*.[4] Pharmaceutical Association pressure can still keep local pharmacists from giving out price information.

Osco Drug contested Wisconsin's regulation prohibiting drug price advertising. The Dane County Circuit Court held July 21, 1972, that the Wisconsin Pharmacy Examining Board had no authority to control advertising.[5] The Board has three months to consider an appeal. This case is similar to others Osco Drug is bringing and deserves further examination.

Osco announced in mid-October 1971 through a press release and newspaper advertising its intention to post prescription drug prices. Such postings were made for 100 commonly prescribed drugs on October 18. Osco also mailed a letter to the Wisconsin Pharmacy Board telling it of this posting. The Board immediately cited all pharmacist-managers in Wisconsin stores for violation of Wisconsin Administrative regulations prohibiting the advertising of prescription drugs by name and price.

On November 1, Osco countered on three points: (1) the signs in question, it said, do not constitute advertising within the meaning of the Administrative Code, (2) the rules are invalid in that they are not authorized by any statute, and (3) if they were authorized by statute, they are unconstitutional.

On November 19, the Pharmacy Board answered Osco's complaint and began proceedings to revoke the licenses of Osco pharmacy managers. The drug company asked that these proceedings be enjoined. On December 28, 1971, the court ordered Osco to discontinue posting signs pending a decision. On February 7, 1972, the Federal Trade Commission ordered all drug stores to post signs containing the base price of the 40 most common prescription drugs. Osco complied and on March 30, moved for summary judgment on the first two issues in its declaratory judgment action, alleging the signs are not advertising within the meaning of the Wisconsin Administrative Pharmacy Code and that these rules are not authorized by any state statute.

The Court held that the signs did constitute advertising within the Board's rules particularly when considered along with the newspaper advertising calling attention to them. However, the Court found that the Wisconsin statutes made it "clear that administrative rules may not create substantive requirements unless these requirements are authorized by statute . . . We hold that there is no such grant or necessary implication." The Wisconsin statute, the Court said, "contains no specific grant of power to regulate advertising." It further pointed out that "where the Legislature has intended to control advertising in connection with a particular calling it has expressed its intent in specific statutory language."

The Court chided the Pharmacy Board for protecting "the interest of the pharmacists rather than the interest of the public." The discussion continued: "We say this because it is a matter of common knowledge that the public has been grossly overcharged for some prescription drugs. The published work of Senator Gaylord Nelson proves this . . . we are somewhat mystified as to why the board should adopt such strained rules to prevent free competition in the market place as it affects the price of prescription drugs. In our judgment there is not legislative authorization for the formulation of such rules."

Footnotes at end of article.

Wisconsin was not the only legal action facing Osco. It has 178 stores in 17 states and began posting 100 prescription prices in all of its stores in October 1971. The Phase 2 price ruling "muddied the legal waters" for Osco, according to its secretary Charles Erickson. The drug chain got a favorable ruling on posting prescription prices in North Dakota, and has a suit pending in Illinois where it has 84 stores and its headquarters.

Another drug chain challenging the anti-prescription drug regulations is the 45-store Snyder Drug Company in Minneapolis which is suing to declare Minnesota's ban on drug price advertising unconstitutional.

Several states prohibit discount advertising, however efforts by unions, cooperatives, and the National Council of Senior Citizens are beginning to break down these restrictions. A Maryland law, effective July 1, 1972, "allows the dissemination of information by a pharmacist, directly or indirectly, through any State sponsored agency, by Maryland Commission on Aging, of special pricing and/or services, without identifying individual prescription drug items, to residents of the State who have attained 60 years of age." [6]

The Revco drug chain won a partial victory in Virginia where it advertised a 10% discount for prescription drugs for people over 60. The Court permitted the discount but prohibited advertising it. Revco has brought suit against the North Carolina state board of pharmacy on a similar issue.[7]

The constitutionality of drug price advertising restrictions has also been reviewed in New Jersey and Florida. The New Jersey court held (*Supermarkets General Corp.* v. *Sills*) that the statute prohibiting the advertising of prescription prices was constitutional.[8] The Florida Supreme Court in *Stadnik* v. *Shell's City, Inc.* ruled the advertising prohibition unconstitutional.[9] A drugstore owner brought the action for a declaratory judgment as the validity of the Florida Pharmacy Board regulation prohibiting the advertising of the names of prices of prescription drugs. Although the court found that the rule was promulgated by an administrative agency without authority to so regulate, it also addressed itself to the merits of the regulation.

The rule has more resemblance to an economic regulation prohibiting price competition in the prescription drug business than it does to a regulation guarding the public health. . . . The effect of the rule is simply that the druggist cannot advertise the price of a prescription drug even though he is prohibited by law from selling the drug except upon the prescription of a physician. There is simply no reasonable justification for such an administrative intrusion on private rights when the regulation is so completely lacking in public benefit.[10]

DRUG PRESCRIPTION ADVERTISING AND THE FEDERAL GOVERNMENT

Richard W. McLaren, assistant attorney general—antitrust division, wrote Richard G. Cline, president of Osco Drug on October 13, 1971: "The (Justice) Department has been concerned for some time about various restraints that limit competition in the retail drug field." He referred to a speech Roland Donnen, then director of policy planning for the antitrust division, presented before the 1970 American Bar Association Sherman Act committee which discussed "various state practices which could have adverse competitive effects. Among those practices which he discussed were state laws and regulations preventing or inhibiting the advertising of prescription drugs by name or price."

McLaren also expressed his support for the "Research Paper and Policy Statement of the United States Department of Justice on the Advertising of Retail Prescription Drugs," a paper the Justice Department submitted in the summer of 1971 for discussion by the Suggested State Legislation Program of the Council of State Governments. "Here again," McLaren wrote, "the Department noted its special concern over two types of restrictions relating to retail drug advertising: (1) state restrictions prohibiting the advertising or promotion of prescription drugs by name or prices, and (2) state provisions restricting the type of drug price advertising which may be used. In this Statement, we urged state legislatures to reexamine the premises on which such restrictions were based, and expressed our hope that reexamination would lead to the elimination of anti-competitive restrictions." These two documents (Donner's speech and the research paper) "rather clearly indicate our feeling that many, if not most, restrictions on the advertising of prescription drug prices are unjustified on any grounds. In addition, it seems obvious that consumers, faced with a lack of price information, are forced in many cases to make needlessly high expenditures for what to the purchasers are often essential products." (Appendix B)

The nation's law enforcement agency states in the "Research Paper and Policy Statement of the U.S. Department of Justice Regarding State Restrictions on the Advertising of Retail Prescription Drugs:" (Appendix C)

"Our experience in analyzing market practices, and our role as advocates for competitive policy, cause us to be particularly concerned over two types of restrictions relating to retail drug advertising: (1) state restrictions prohibiting the advertising or promotion of prescription drugs by name or price, and (2) state provisions restricting the type of drug price advertising which may be used, i.e. preventing the use of terms such as 'cut rate' or 'discount.' Competition is our basic national policy. It has proven to be the most effective spur to business efficiency, innovation, and low prices. Prohibitions on drug advertising represent departures from this national economic policy. Such inconsistencies should be countenanced only when clearly justified in terms of public need."

The Justice Department paper makes two specific statements of interest to consumers wanting to know the price of prescription drugs:

"The Department of Justice believes that the major effect of legislation or regulations prohibiting price advertising of prescription drugs is to reduce retailer incentives to engage in price competition with resulting costs to the public . . . . it is the Department's view that existing state legislation or regulations which prohibit or restrict price advertising of prescription drugs may well be adverse to the public interest. Since such restrictions appear to be unnecessary to protection of the public and result in unjustifiable expenditures by consumers, the Department feels they should be eliminated."

McLaren's letter was interpreted by consumers and the news media as advising states to repeal laws prohibiting advertising of prices for prescription drugs or face Federal antitrust action.

On the Federal legislative front, U.S. Representative Benjamin Rosenthal (D-NY) introduced legislation (H.R. 4423) seeking to end all state prohibitions on advertising retail prescription drug prices; require labeling of filled prescriptions and advertising of drugs by their generic, or common chemical names; require open dating of all retail drug products so that the consumer would know the date after which the drug would no longer be effective; and call for investigations of drug patent and trademark laws.

IV. THE CONSUMER AND PRESCRIPTION DRUG PRICE ADVERTISING

No consumer looks forward to shopping for prescription drugs. Medicine buying is not a luxury; it's a necessity. Someone is ill; drug costs are high; the consumer has few choices. Prescriptions are something over which he has little control. The doctor selects the product, not the consumer. Too often, the doctor even limits the product to a particular brand. The consumer pays his money and that is his only participation in the transaction.

Little wonder that consumers distrust this system. Particularly when the Federal Trade Commission's "most profitable rate of return industries" shows drugs and medicines heading the list.[11] Some pharmacy professors, economists, and state legislators are also concerned. They fail to see any relationship between pharmaceutical services and what the consumer pays for drugs.

Albert I. Wertheimer, assistant professor of pharmacy at the School of Pharmacy, State University of New York, sent his students to 30 pharmacies in the Buffalo area during the last six months of 1970. Each carried a signed prescription for 12 Tuss Ornade capsules. During the survey, different students returned to most of the pharmacies three or four times. The wholesale cost of Tuss Ornade was constant throughout the survey: $5 for 50 capsules, $47.50 for 500.

Prices not only varied widely among the 30 pharmacies, but the price routinely varied at the same pharmacy as much as 35%.

Wertheimer concluded that prices varied according to the customer's dress, his age, his race, the time of day or week he purchased the prescription, and other irrelevant factors.[12] "The price of pharmaceutical services should not depend upon which pharmacist is on duty or upon the practitioner's mood, but rather, upon sound professional and business principles." Indeed, consumers feel the pharmacist, as well as the consumer, would benefit from advertised prices.

T. Donald Rucker, until recently chief of the U.S. Social Security Administration's drug studies branch, criticizes pharmacies' inability to measure costs for dispensing drugs. Rucker told the Texas Pharmaceutical Association, July 28, 1971, "In one recent survey of 449 retail outlets, 122 firms were found to be making a pure profit on each prescription of at least 75 cents. Moreover, their average profit was $1.03. By almost any sound economic standard, absolute or relative, such a level could only be regarded as inordinate. Perhaps these stores were simply capitalizing on imperfect competition and lack of consumer knowledge about prescription prices. . . . This same survey also identified 47 pharmacies where prescription charges were not even sufficient to recover out-of-pocket overhead expenses related to dispensing . . . . Perhaps many of these 47 stores were willing to forego all profit on prescriptions in order to attract customers in the hope they would also purchase hair nets, bath oil or razor blades." [13]

Onto this uncharted sea of prescription drug pricing, Consumer Federation of America sailed in the summer of 1972. CFA sent each of its 200 member organizations a survey form. It listed 20 often-prescribed, brand-name drugs and a specific quantity of each and provided blanks for prices, name and address of the pharmacy, whether the pharmacy was "discount," "chain," or "other," and the surveyer's name and address.

Each CFA member organization could elect to participate in the survey. Several had just completed over-the-counter drug price surveys, and were reluctant to return to the same pharmacies for additional information. Member organizations were to return all completed forms by August 15, 1972.

Twenty-five CFA member organizations participated in the survey. Their representatives visited 392 pharmacies in 81 communities in 17 states and the District of Columbia. Of the 392 pharmacies these consumers entered, only 147 provided price information for a complete return.

Footnotes at end of article.

A Louisiana consumer described his reception, which is typical for the whole survey. "I'm enclosing four completed survey forms. Two other pharmacies met the base price requirements but declined to give me their prices for other drugs. Three other pharmacies took the survey form and promised to mail it back to me completed. They didn't. Six other pharmacies refused point-blank to cooperate."

An Arizonan voiced the most usual comment on the project: "I don't understand why people are so afraid of these surveys." Others commented:

Connecticut: "The percentage of cooperation in Connecticut is roughly 25%. The state Pharmacists' Association complained that we didn't go through their association in our survey. If we had (they claim) we would have gotten 95% cooperation. They argue there is no way to adequately compare their drug prices v. the large stores when the services they provide such as record-keeping and home delivery are taken into consideration."

Ohio: "It is interesting to compare the price differences of the discount pharmacy and the independent located in an elite residential suburb."

Arizona: "A local store refused to give me the information because they couldn't get the district manager's authorization because he was out of town. Another pharmacist gave me the information, pointing out that the base price list was public information. Then, he began to worry he would get in trouble since he didn't go through his district manager."

New Mexico: "The first attempt to copy a pharmacy's base price list met with hostility and several phone calls to a state Pharmaceutical Board member and the APhA."

CFA's survey shows that prescription drug prices vary widely within the same community and among communities across the country. For example, one pharmacy charges $15 for 100 capsules of Penicillin G (400,000 units); another charges $1.50. One pharmacy charges $20 for 100 250mg tablets of Tetracycline; another charges $2.50.

Except for only two of the 20 drugs, CFA's survey shows that some consumers pay more than twice as much—up to 10 times as much—as other consumers pay for the same prescription drug.

We conclude from this survey an almost total absence of competition in prescription drug pricing. Consumers know that uniform price indicates oligopolistic price fixing. Consumers also know that prices ranging from $1.50 to $15, or from $2.50 to $20, or from 63¢ to $3.90 reflect a similar absence of the free play of market forces. Knowledge that a given drug has this price range leads to frustration; for the consumer is unable to learn the price before he is forced to buy the prescription.

In fact, CFA's study indicates that consumers know less about price, prior to delivery, for prescription drugs than for any other *product* they buy. One must venture into consumer service industries—such as auto repair, television repair, medical fees—to find similar examples of the consumer's ignorance of price prior to delivery.

From this survey CFA has jettisoned all information regarding type of pharmacy. Consumers have no agreed-upon definition of "discount," "chain," or "independent." Some confusion between "discount" and "chain" was obvious. "Discount" pharmacies—as surveyers variously identified them—had 13 of the low prices and two of the high prices. "Chain" pharmacies had five of the low prices and three of the high prices. "Independent" pharmacies had three of the low prices and 16 of the high prices. (Figures include ties.) From this information, we draw no conclusions regarding prescription drug prices by type of pharmacy. (See Tables 1 and 2)

IV. CONCLUSION

Consumers have called for the repeal of state laws prohibiting prescription drug price advertising. They hold that the pharmacist is selling merchandise selected by a doctor and that the purchaser has the right to know and to be able to compare the price of this merchandise before delivery.

Court decisions have supported this conclusion. "The pharmacist dispenses a commodity the quality of which is strictly regulated by state statutes and federal legislation. Consequently, the need for a personal rapport between the pharmacist and the customer succumbs to the fact that the commodity dispensed is virtually standardized." [14]

A definitive article on the *Pennsylvania State Board of Pharmacy* v. *Pastor* suit in the *Brooklyn Law Review* (Vol. 37 1971) summarizes what is at stake. "The courts upholding the advertising prohibitions have strained to find some public benefit to be derived (from banning prescription drug price advertising)... The courts which have thus far construed these restrictions are in disagreement as to their relationship to the public good . . . It is submitted that even if a relationship between these statutes and the public health and general welfare does exist, the prohibition of the prescription price advertising is not a reasonable act as required by substantive due process. The greatest fault with the legislation is that it harmfully affects the public for it results in consumers having little idea as to the proper prices for prescription drugs, thus running a substantial chance of paying more for medicine than is necessary . . ."

CFA's study shows large discrepancies in the prices charged for prescription drugs. U.S. Justice Department research points out that prohibition of price advertising has destroyed price competition and let prices go artificially high. The consumer is the victim of this effort to keep prices secret.

"It is questionable," the *Brooklyn Law Review* article concludes, "whether the prohibition of prescription drug price advertising bears any relationship to the general health and welfare of the public and, even if such a relationship does exist, the restriction is still unreasonable because its principal effect is to curtail price competition, with resulting stabilization of retail drug prices at artificially high levels. In reality, price advertising would serve the public interest. The consumer should be allowed to know that he can get exactly the same drug from one pharmacist for considerably less than is charged by another."

What can consumer do?

(1) Support repeal of state laws and regulations that prohibit prescription drug price advertising.

(2) Join as 'friends of the court' in suits contesting these laws.

(3) Seek sponsors for laws assuring price advertising.

(4) Help get the laws passed.

Legislative language can be as simple as Vermont's:

"Annually in the month of August the secretary of the agency of human services shall prepare a list of the 100 most commonly prescribed prescription drugs, their usual strength and amount prescribed and distribute the list to each pharmacy in the state. The determination of the secretary of the agency of human services as to which drugs are to be contained in the list shall be final.

"The current list of the 100 most commonly prescribed prescription drugs shall be conspicuously posted in each pharmacy in the state. After each prescription drug listed the name of the manufacturer and the current selling price shall be clearly, neatly and legibly indicated for that prescription by the pharmacy. The "current selling price" means the price to be paid by the purchaser to the pharmacist for the listed drug.

"A pharmacy may change the current selling price and the posting of such price at any time."

Representative Rosenthal's Federal proposal offers language for a more far-reaching bill and could be structured as a state law.

Be it enacted "that (a) the Congress finds that prohibitions against or burdens upon the advertising of prescription drug prices (1) are contrary to the consumer's right to be informed, (2) interfere with the free forces of competition in the marketplace, and (3) serve no purpose in safeguarding the public health and safety. Rather, the Congress finds that it is essential to the consumer's welfare that vendors be permitted to advertise their products in a truthful manner and that consumers be provided information sufficient to permit informed choice in the marketplace. . . . It is the policy of the Congress to protect the right of consumers to receive and vendors to advertise, the prices of prescription drugs."

Dr. Milton Silverman of the U. of California's San Francisco Medical Center and co-author of an upcoming book on drug pricing, promotion and profits tells us:

". . . any patient—or any consumer group—should be able to determine readily and in advance what prices are being charged by any pharmacy in the area. This seems particularly necessary in the case of long-term medication which the patient may need for many months or years. One way to achieve this would be to encourage or permit price advertising to the public . . .

"Much of this vexing situation may be solved for us—although only after much blood has flowed in Congress—by a national health insurance or health service program that would cover most or all prescription drugs. Under such a program which will almost certainly be enacted in the next few years, the legislation may well require that drug prices at the retail level be controlled or actually specified. Another approach which is now being utilized is the growing use of low-cost generic-name products. Still another, obviously valuable primarily in the case of long-term medication, is the use of mail order pharmacies."

As Silverman suggests, the real answer is up to Congress.

FOOTNOTES

[1] Letters from state attorneys general and various law review articles.

[2] Washington State Labor Council *Reports*, Vol. 8, No. 19, June 9, 1972.

[3] 63 Purdon's Statutes Annotated Sec 390–1 et seq Sec 8, 390–8.

[4] 441 Pa. 186, 272 A. 2d 487 (1971).

[5] Osco Drug v. Wisconsin Pharmacy Board, Case No. 134429, Dave County Circuit Court.

[6] Letter to CFA from John N. Ruth, Jr., Maryland assistant attorney general and chief, consumer protection division, July 18, 1972.

[7] "Open Advertising of Rx Prices: a nightmare come true?", *Drug Topics*, June 5, 1972, pp 24–25.

[8] Civil No. C–262–65, Superior Court, N.J., December 8, 1966.

[9] 140 So. 2d 871 (Fla. 1962).

[10] Ibid. at 875.

[11] Federal Trade Commission *News*, "Drug & Medicine Companies Were the Most Profitable in 1970, FTC 'Rates of Return' Report Shows," July 14, 1972.

[12] Albert I. Wertheimer, "Prescription Pricing: Art, Science or Whim," *California Pharmacist*, March 31, 1971, p. 6.

[13] T. Donald Rucker, "Problems in Measuring Overhead Costs for Prescription Services," *Texas Pharmacy*, October 1971.

[14] 93 N.J. Superior Court, 343, 225 A.2d at 738 (Chan. 1966).

TABLE 1.—PRESCRIPTION DRUG PRICES

[Based on a survey of 147 pharmacies in 81 communities in 17 States and the District of Columbia, July–August 1972]

Quantity and drug	High	Low	High is 0.00 times low [1]	Median [2]
100 Achromycin V 250 mg	$17.94	$3.47	$5.17	$6.50
100 Actifed Tablets	10.00	2.99	3.34	5.95
100 Benadryl Kapseals 50 mg	6.35	2.77	2.29	4.00
100 Darvon compound 65 mg	15.00	7.15	2.09	9.00
100 Diuril 500 mg	11.25	5.09	2.21	6.95
100 Equanil 400 mg	13.15	4.60	2.85	7.90
100 Flagyl 250 mg	25.00	9.20	2.70	17.00
10 cc. Insulin Lilly U–80 (all types)	2.85	1.65	1.72	1.99
10 cc Insulin Squibb U–80 (all types)	2.98	.88	3.38	1.89
15 mg. Mycolog cream	5.55	3.04	1.82	4.25
100 Ornade Spansule	20.00	8.90	2.24	11.10
100 Penicillin G, 400,000 units	15.00	1.50	10.00	4.75
100 Pentids 400	15.95	6.50	2.43	11.59
100 Premarin 1.25	15.89	6.09	2.60	7.75
100 Ser-Ap-Es	13.65	6.45	2.11	8.97
100 Sumycin 250 mg	10.00	4.05	2.46	6.00
100 Tetracycline 250 mg	20.00	2.50	8.00	4.75
100 Thyroid 1 gr	3.90	.63	6.98	1.25
100 Tuss-Ornade Spansule	20.00	5.00	4.00	12.85
100 Valium 5 mg	15.00	6.75	2.22	9.38

[1] That is, the consumer paying the highest price for Achromycin ($17.94) pays 5.17 times as much as the consumer paying the lowest price ($3.47).

[2] That is, as many pharmacies charge more than $6.50 for Achromycin as charge less than $6.50.

TABLE 2

State and groups surveying	Number of stores	Number of communities
Arizona: Arizona Consumers Council	25	10
Connecticut: Connecticut Consumer Association	25	15
District of Columbia	1	1
Indiana: Consumers Association of Indiana	1	1
Kentucky: Southern Illinois University	2	1
Louisiana: American Federation of State, County & Municipal Employees Local 776; Louisiana Consumers League	8	3
Maryland and Virginia: Greenbelt Consumer Service	5	5
Massachusetts: Association of Massachusetts Consumers; American Federation of State, County & Municipal Employees Local 24	6	6
Michigan: Michigan Credit Union League; American Federation of State, County & Municipal Employees Local 1568	22	11
Minnesota: American Federation of State, County & Municipal Employees Locals 6, 65, 729	13	3
New York: Alliance for Consumer Protection (Pittsburgh, Pa.); Connecticut Consumer Association	3	1
Ohio: Ohio Consumer Association; Consumer Protection Association (Cleveland, Ohio)	5	5
Oregon: Oregon Consumer League	17	11
Pennsylvania: Alliance for Consumer Protection (Pittsburgh); Lehigh Valley (Pa.) Committee against Health Fraud	8	4
Washington: American Federation of State, County & Municipal Employees Locals 846 and 28	2	2
Wisconsin: American Federation of State, County & Municipal Employees Local 1392	1	1
Wyoming: Wyoming Consumer United Program	1	1

APPENDIX A

EXCERPT FROM CONSUMER FEDERATION OF AMERICA POLICY RESOLUTIONS, ADOPTED JANUARY 1972

VII. HEALTH, DRUGS AND MEDICAL

1. CFA is convinced that the medical care crisis can be traced directly to the lack of consumer involvement in decision making. We urge immediate reconstitution of governing boards of all non-profit insurance plans, hospitals, and other health care agencies to insure consumer involvement and guarantee majority control to the subscribers of those services and plans.

2. We are deeply concerned over the crisis in health care which worsens everyday and urge Congress to enact a comprehensive national health security plan providing:

An assessment of health care delivery systems;

Establishment of education programs designed to foster good health;

Establishment of necessary preventive and outreach services;

Availability of all physical, mental, social and supportive services necessary to maintain or restore health;

Availability of rehabilitation, health maintenance and long-term care when disability occurs.

We urge Congress to recognize that catastrophic coverage is no substitute for comprehensive health coverage, though the inclusion of a realistic proposal against catastrophic health costs deserves serious consideration as part of a national health security program. Such a health plan must include rigid cost controls on the price of the delivery of medical services and modify the unlimited "fee for service" system.

3. We urge, in response to the critical shortage of physicians, federal assistance to medical schools and economically disadvantaged students to enable them to attend medical schools and appropriate inducements to graduates to locate in areas currently denied adequate medical care.

4. We urge development of community health centers making available the full range of medical services—including prenatal, pediatric, and dental care, as well as nutrition and sanitation education—so that total, effective, health care is assured to the elderly, the poor, and the rural consumer.

5. We urge legislation to eliminate coinsurance and deductible provisions of Medicare and to extend Medicare coverage to outpatients' drugs, eye care and the cost of eye glasses, dental care and the cost of dentures, and hearing aids.

6. We insist that the same nursing home standards be provided under Medicare and Medicaid as were intended by the 1965 amendments to the Social Security Act, which established those programs.

7. We urge CFA members to affiliate with prepaid group practice group health plans.

8. We urge CFA members to insure that all comprehensive health planning commissions meet requirements of law regarding majority consumer representation we urge consumer groups to provide responsible consumers to serve on these commissions. We urge that the Administration provide funds for training consumer representatives serving on health planning commissions.

9. We urge the Secretary of HEW to press for immediate promulgation of regulations directing states to survey unmet medical needs of indigent children, as required in Section 1905(a)9(4)(B) of the Social Security Act, as amended in 1967. Action to protect the health of the nation's children is long overdue.

10. We urge that before any cosmetic is offered for sale or distribution, FDA must be satisfied as to its safety and utility and must approve its label disclosing fully the composition of the cosmetic.

11. We urge licensing of drugs and medicines by generic name on federal, state, and local levels and that such name be included on all prescriptions and prescription labels.

12. We urge immediate enactment of long-delayed legislation establishing a drug compendium.

13. We are distressed by studies documenting price variations up to 1200% for prescriptions of the same drug in the same area. We believe this is due to a host of restrictions and prohibitions placed upon free competition in advertising and sale of prescription drugs by registered pharmacies:

Including prohibitions against advertising of drug prices, against discounts for older people, and against posing of drug prices in stores;

Artificial barriers to entry of discount and chain drug stores into new markets;

Restrictions on ownership of pharmacies;

Prohibitions against pharmacies in supermarkets and general marchandise stores;

Many other devices having no relevance to the public health.

CFA urges affiliates to work for repeal of all such laws and regulations. Recognizing further that restrictions against price competition for prescription drugs originate with state boards of pharmacy and that most such boards are dominated by druggists, CFA recommends inclusion of strong consumer representation on state pharmacy boards.

CFA further urges affiliates to become "friends in court" in suits challenging the constitutionality or validity of laws and regulations which inhibit drug price competition.

14. We urge enactment of legislation forbidding tie-ins between hospitals, nursing homes, and other health care providers and pharmacies. We believe it is unethical for physicians to own stock in drug manufacturing companies, drug marketing and packaging companies and pharmacies.

15. We urge the government to purchase drugs only by generic name.

16. We urge requirements that written information in understandable language be given recipients of all prescriptions explaining uses, directions, precautions and side effects—including possible hazards of mixing prescribed medication with other drugs or foods.

17. We urge a requirement for clear, prominent, expiration date labeling for drug effectiveness of prescriptions and over-the-counters.

18. The name and place of business of the manufacturer should be required on labels of all drug products.

19. Quantities of all active ingredients should be required on labels of all drug products.

20. We urge vigorous regulatory action by the FTC on advertising of over-the-counter drugs containing misleading efficacy claims, promoting insignificant product differentials, and offering drugs for the treatment of every day interpersonal and human problems. We condemn all drug advertising which encourages, through themes or saturation advertising campaigns, pill-popping as a way of life.

21. The one-million Americans in nursing homes financed under Medicare, Medicaid, and other programs should receive the highest standard of health care. Yet deeply distressing evidence mounts that many nursing homes neglect their patients, treat them with indignity, and provide minimal health care. Many state and federal agencies, including HEW and state health and welfare departments, have failed to secure the appropriations required or to exercise the aggressive leadership needed to enforce standards of safety, health, and general welfare for nursing home patients. The result is that too many elderly persons have been neglected and payments for their care misused. This failure of governmental authorities to enforce standards has induced commercial operators, looking for quick returns on their investments, to invade the nursing home field by establishing what amount to chains of motels insufficiently concerned with the health and welfare of residents in their charge and to convert nursing home programs into housing programs, imposing on the elderly a "buyer beware" philosophy.

We urge a substantial increase in direct grants and loans to non-profit and government-operated nursing homes, with an im-

mediate, short-term goal of providing half the nation's nursing home services. We also urge substantial funds for alternative methods of care—foster homes, sheltered low-cost supervised housing and day-care centers, homemaker and home health aid services. We encourage state and community organizations affiliated with CFA to develop citizen-review teams to visit and inspect nursing homes periodically.

APPENDIX B

DEPARTMENT OF JUSTICE,
Washington, D.C., October 13, 1971.

Mr. RICHARD G. CLINE,
President,
OSCO Drug, Inc.,
Franklin Park, Ill.

DEAR MR. CLINE: This is in response to your letter of September 23, 1971 informing us of your plans to initiate a campaign to inform consumers of the retail prices of prescription drugs in your stores.

You state that you plan to post in your prescription departments the retail prices of the 150 most commonly prescribed prescriptions and make available, upon request, all of your retail drug prices. You further state that the advertising and promotion of this program would not contain any price advertising but would indicate that prices are posted in the area of the prescription department of the store and would invite price comparisons by the consumer assisted by the posted prices. You ask us whether we have available any information such as speeches of articles, and if we have taken action in support of similar programs.

The Department has been concerned for some time about various restraints that limit competition in the retail drug field. We enclose a copy of a speech made by Roland Donnen, then Director of Policy Planning of the Antitrust Division, which was delivered before the Sherman Act Committee of the American Bar Association in August of 1970. As you will note, Mr. Donnen's speech concerned various state practices which could have adverse competitive effects. Among those practices which he discussed were state laws and regulations preventing or inhibiting the advertising of prescription drugs by name or price.

In this same light, enclosed you will find a copy of a document entitled "Research Paper and Policy Statement of the United States Department of Justice on the Advertising of Retail Prescription Drugs." This Statement was submitted by the Department this past summer as part of its regular practice of participating in the Suggested State Legislation Program of the Council of State Governments. Here again, the Department noted its special concern over two types of restrictions relating to retail drug advertising: (1) state restrictions prohibiting the advertising or promotion of prescription drugs by name or prices, and (2) state provisions restricting the type of drug price advertising which may be used. In this Statement, we urged state legislatures to re-examine the premises on which such restrictions were based, and expressed our hope that reexamination would lead to the elimination of anticompetitive restrictions.[1]

These two documents rather clearly indicate our feeling that many, if not most, restrictions on the advertising of prescription drug prices are unjustified on any grounds. In addition, it seems obvious that consumers, faced with a lack of price information, are forced in many cases to make needlessly high expenditures for what to the purchasers are often essential products. We are, therefore, pleased to learn of the initiation of a program with the apparent potential to effectively provide much-needed price information in this area. If you feel the need for any further information which we are able to provide, we shall be happy to do so.

Sincerely yours,

RICHARD W. MCLAREN,
Assistant Attorney General,
Antitrust Division.

[1] We should also point out that in at least two states, restrictions on drug advertising have been invalidated by state courts. Both of these decisions are cited in the Policy Statement enclosed.

APPENDIX C

RESEARCH PAPER AND POLICY STATEMENT OF THE U.S. DEPARTMENT OF JUSTICE REGARDING STATE RESTRICTIONS ON THE ADVERTISING OF RETAIL PRESCRIPTION DRUGS

The Department of Justice, as the executive agency responsible for the enforcement of the antitrust laws, has received complaints relating to state legislative or administrative restrictions on the advertising of prescription drugs. Our experience in analyzing market practices, and our role as advocates for competitive policy, cause us to be particularly concerned over two types of restrictions relating to retail drug advertising: (1) state restrictions prohibiting the advertising or promotion of prescription drugs by name or price, and (2) state provisions restricting the type of drug price advertising which may be used, i.e., preventing the use of terms such as "cut rate" or "discount." Competition is our basic national policy. It has proven to be the most effective spur to business efficiency, innovation, on low prices. Prohibitions on drug advertising represent departures from this national economic policy. Such inconsistencies should be countenanced only when clearly justified in terms of public need.

Twenty-eight states[1] either by statute or regulation, generally prevent the advertising of prescription drugs by name or price,[2] and 10 states prohibit the use of terms such as "discount" with respect to the advertising of prescription drugs.[3] These restrictions on information have dramatic effects. A survey conducted by the American Medical Association in Chicago, and reported in the New York Times on May 28, 1967, showed price differentials in pharmacies throughout the city of up to 1200% for the same amount of an identical drug. A recent study conducted in New York by Consumers Union found that prices for the same amount of one drug ranged from $.79 to $7.45, and for another drug from $1.25 to $11.50.[4] Differentials such as these can only exist when they are unknown to potential consumers, for given a choice, most consumers would refuse to pay 10 or 12 times the going price for a drug available elsewhere. The cost to the public of the lack of price competition is enormous. In 1969, $4.0 billion was spent for out-of-hospital prescription drugs.[5]

The Department of Justice believes that the major effect of legislation or regulations prohibiting price advertising of prescription drugs is to reduce retailer incentives to engage in price competition with resulting higher costs to the public. We submit that sound ecomonic and social policy dictate that any restrictions which have the effect of raising drug costs should be kept to the minimum required by considerations of public safety. Thus the Department urges that the states, which will bear a portion of the burden of high drug prices under the Medicaid program, re-examine the essential premise upon which the advertising restrictions are based;—i.e., that the advertising of prescription drugs will endanger the public health. It is the Department's view that such a premise is largely erroneous and that, to the extent that public health dangers might pose problems, they can be met by methods which stop short of the absolute prohibition of price advertising. The *Final Report* of the HEW Task Force states the problem concisely:

The present patchwork of State pharmacy laws, regulations, and codes of ethics obviously reflects attempts to cope with a variety of pharmacy problems on a piecemeal basis. Whether they are aimed at the protection of the public health, or the prevention of competition—fair or unfair—is not clear in all cases.

This analysis is supported by a very recent decision of the Pennsylvania Supreme Court invalidating that state's statutory restrictions on drug advertising. *Pennsylvania State Board of Pharmacy* v. *Pastor*, 441 Pa. 186, 272 A 2d. 487 (1971). In an extremely cogent opinion, the court dealt with—and rejected—the traditional justifications generally used to support these restrictions.

The first argument was that advertising would encourage excessive use of drugs. The Pennsylvania Supreme Court rejected a trial court finding that, "[T]he promotion and advertising of dangerous drugs and narcotics would certainly to a degree titillate an aberrant person and create an atmosphere of easy availableness." The court noted that this finding appeared to assume either unethical or illegal conduct by doctors and/or pharmacists, an assumption which the court refused to make. The court noted that the sale of prescription drugs was closely supervised and that other statutes, both state and federal, prohibited sales except by prescription. The court concluded that the highly regulated structure of the pharmaceutical profession, together with the fact that the consumer cannot choose his purchases, made it "most likely that advertising the prices of retail prescription drugs would, or could, have any impact on the demand or consumption of such drugs."

The second justification argued was that price advertising would make it more difficult for a pharmacist to "monitor" prescriptions of individuals because it would encourage price shopping. The court found that the evidence did not establish the extent, if any, to which monitoring took place, and that, although some courts had accepted this as a justification for restrictions on advertising, even those courts had admitted that monitoring is "infrequent" and "not completely effective." In addition, the court noted that more direct methods were available to protect against the prescription of antagonistic drugs.

The third and final justification argued was that price advertising might encourage pharmacists to purchase unusually large quantities of drugs, so as to obtain a lesser price, thus creating the possibility that drugs may stay on the pharmacist's shelf for an extended period of time during which they might deteriorate. The court noted that the sale of adulterated drugs was prohibited, and could subject a pharmacist to criminal liability as well as the loss of his license. The court reasoned, "With such stringent provisions, the additional prohibition on price advertising would certainly appear to be 'patently beyond the necessities of the case.'"

[1] Fletcher, *Market Restraints in the Retail Drug Industry,* (University of Pennsylvania Press, 1967).

[2] *Advertising by Name or Price Prohibited by Statute in:* Florida, Maryland, Michigan, New Jersey, New York, Oklahoma and Texas; *and by Regulation in:* Arkansas, Colorado, Connecticut, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Louisiana Maine Massachusetts Minnesota, Nevada, Oregon, Rhode Island, South Dakota, Virginia, Washington, West Virginia and Wisconsin.

[3] Discount Advertising Prohibited by Statute In: California, Maryland and New Jersey;—*and by Regulation* In: Colorado, Louisiana, Maine, Massachusetts, Mississippi, New York and Pennsylvania.

[4] "What's the Price of an Rx Drug?" 35 *Consumer Reports* 279 (1970).

[5] United States Department of Health, Education, and Welfare, *Prescription Drug Data Summary,* at p. 7 (1971).

Even after undertaking this analysis, the court expressed reluctance to overrule the statute by "judicial fiat." The final factor which led to its decision was what the court described as "the dampening of price competition in the retail sale of prescription drugs" and its effect on consumers, especially the elderly. After citing the New York study described earlier, the court quoted from the Second Interim Report and Recommendations of the Task Force on Prescription Drugs of the United States Department of Health, Education, and Welfare, a quotation which deserves partial repetition here:

"There is an obvious need for patients to be able to determine readily the prices charged by the various pharmacies in their community. This appears to be particularly important in the case of long-term maintenance drugs.

The task force recognizes the difficulties in making such information easily available. * * *

Nevertheless, if the patient is to maintain the right to select a pharmacy, he also has a right to know the prices it charges and to compare these with other prices."

We believe that the Court's analysis is persuasive and that it should be carefully considered by other states in forming their policies in this area.[6]

Moreover, the Comprehensive Drug Abuse Prevention and Control Act of 1970[7] illustrates that competitive policy can in fact be incorporated into statutory regulations in this area. The Act specifically recognizes the importance of competition; in both the registration of domestic manufacturers and the issuance of import licenses; the statute requires regulatory action to be consistent with the maintenance of "adequate competition." Section 303(a)(1) of the Act directs the Attorney General, in registering manufacturers, to consider the maintenance of effective controls "by limiting the importation and bulk manufacture of such controlled substances to a number of establishments which can produce an adequate and uninterrupted supply of these substances *under adequately competitive conditions* . . ." Section 1002(a)(2) of the Act authorizes the Attorney General to allow additional imports where necessary to insure adequate competition. Regulations adopted by the Bureau of Narcotics and Dangerous Drugs pursuant to the statute set out specific standards by which competitive determinations can be made, including price rigidity, the extent of service and quality competition, and whether or not substantial differences exist between domestic prices and foreign prices.[8] The primary thrust of the 1970 Act is of course to develop effective controls against the diversion of legitimate drugs into illicit channels. However, it seems clear that the American public should not be denied the benefits of competition in the provision of these substances except as is necessary to carry out the purposes of the Act. Such coordination should be sought by the states in their attempts to supervise the provision of drugs to the public.

Accordingly, it is the Department's view that existing state legislation of regulations which prohibit or restrict price advertising of prescription drugs may well be adverse to the public interest. Since such restrictions appear to be unnecessary to protection of the public and result in unjustifiable expenditures by consumers, the Department feels they should be eliminated.

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[6] At least one other similar state restriction has been invalidated by a state court. *See* Florida Board of Pharmacy v. Webb's City, Inc., 219 So. 2d 681 (Fla. 1969).

[7] Public Law 91-513 (Oct. 27, 1970).

[8] 21 C.F.R. 311.42

ENVIRONMENTAL NOISE CONTROL ACT

Mr. TUNNEY. Mr. President, the latest indications from the leadership are that the noise bill will come up before adjournment sine die. I am pleased to see that the Senate will have a chance to work its will on this important, and most needed, piece of legislation.

I ask unanimous consent to have printed in the RECORD the text of a letter signed by 12 most significant groups. The letter, which has been circulated to all Senators by members of the supporting groups, states the issues the Senate will face and urges strong support for the bill as reported by the Senate Public Works Committee, and for any amendments which would accelerate the reduction of aircraft noise.

The bill is also supported by the League of Cities, Council of Mayors, Airport Operators Council International, and National Governors Conference. These groups are circulating their own letters.

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

OCTOBER 9, 1972.

DEAR SENATOR: We urge your strong support for S. 3342, the Environmental Noise Control Act of 1972, as overwhelmingly reported by the Senate Public Works Committee. The legislation will require the Environmental Protection Agency to set noise emission standards for major noise sources—including aircraft—which adversely affect the health of approximately 80 million Americans. It would provide for technical and financial assistance to the states and cities while leaving them free to establish the strongest possible environmental noise control programs suited to their local needs. For the first time, through EPA-required actions, aircraft noise emission levels would be based on public health and welfare needs--with FAA review on grounds of technological availability and safety. Each agency would take responsibility for those matters for which it has demonstrated competence.

HEALTH NEED

Of the 80 million Americans adversely affected by noise, conservative estimates indicate potential hearing damage to 40 million. This does not include an additional 17 million workers who have incurred job-related hearing damage. Aside from hearing damage, other health effects from noise include loss of sleep, anxiety, and interference with classroom learning and with normal conversation. Moreover, 15 million people, in virtually every city in the country, are adversely affected by aircraft noise.

AIRCRAFT: FAA'S FAILURE TO ACT

For 14 years, the FAA has had authority to control aircraft noise. To date less than 2% of the commercial fleet are covered by regulations establishsed in 1969. Eighty percent of the current noisy aircraft will still be flying in 1975. Increases in the number of flights and opening of new runways will probably negate the meager gains FAA regulations may provide. Based on this past performance, unless lead authority is shifted to an agency with a healthful environment as its primary goal, no relief is in sight.

OPPOSITION TO THE ANTICIPATED CANNON AMENDMENT

We strongly oppose adoption of the anticipated Cannon amendment, which would strip from S. 3342 provisions for EPA to establish health levels for aircraft noise. We would then be left with the present situation, which is totally inadequate.

The noise environment includes electric blenders, vacuum cleaners, jackhammers, buses, trucks and trains. EPA is given unchallenged authority under the bill to regulate noise emissions from every one of these sources. Neither logic nor the demands of a comprehensive program justify extracting aircraft from this authority.

In conclusion, we urge you to support S. 3342 as reported, and any amendments offered which would accelerate reduction of aircraft noise. We urge you to oppose the weakening Cannon amendment.

Sincerely,

American Public Health Association, Jas. R. Kimmey, M. D., Executive Director;

National Council of Senior Citizens, William R. Hutton, Executive Director;

AFL-CIO, George H. R. Taylor, Executive Secretary, Standing Committee on Safety and Occupational Health;

Sierra Club, Lloyd Tupling, Washington Representative;

National Association of Hearing and Speech Agencies, Thos. J. Coleman, Executive Director;

Ingersoll-Rand, George Diehl, Vice President, Engineering;

Alvin Greenwald, Chairman, American Bar Association, Urban Environment Committee of the Natural Resources Law Section;

Institute of Noise Control Engineering, William Lang, Executive Vice President;

Citizens Against Noise, Theodore Berland, President;

National Organization to Insure a Sound-controlled Environment, Ralph G. Caso, Chairman;

American Speech and Hearing Association, Kenneth O. Johnson, Executive Secretary; and

United Auto Workers, Jack Beidler, Legislative Director.

EQUAL EDUCATIONAL OPPORTUNITIES ACT, 1972

The PRESIDING OFFICER. Under the previous order, and the hour of 10 a.m. having arrived, the Chair lays before the Senate the unfinished business, which the clerk will state.

The assistant legislative clerk read as follows:

A bill (H.R. 13915) to further the achievement of equal educational opportunities.

The Senate proceeded to consider the bill.

Mr. ROBERT C. BYRD. Mr. President, on yesterday, the order was entered under which one-half of the time during the hour of debate on the motion to invoke cloture today would be under the control of the distinguished Senator from Michigan (Mr. GRIFFIN).

I am informed that Mr. GRIFFIN may be a few minutes late reaching the Chamber, inasmuch as he is at the White House at this moment. I ask unanimous consent that until such time as he arrives, the time which was allotted to him during the hour be under the control of the distinguished Senator from Alabama (Mr. ALLEN).

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

Mr. GRIFFIN. Mr. President, I ask unanimous consent that Lawrence G. Meyer, esquire, of Washington, D.C., be permitted the privilege of the floor during debate on this subject.

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

Mr. JAVITS. Mr. President, I yield

myself 30 seconds to send to the desk a series of amendments which have already, by unanimous consent, been qualified under the rule.

The PRESIDING OFFICER (Mr. TALMADGE). Without objection, the amendments will be received.

Mr. CRANSTON. Mr. President, will the Senator from New York yield?

Mr. JAVITS. I yield 1 minute to the Senator from California.

The PRESIDING OFFICER. The Senator from California is recognized for 1 minute.

Mr. CRANSTON. Mr. President, I ask unanimous consent to have printed in the RECORD a letter written to me by Lloyd Cutler representing a group of distinguished attorneys, setting forth their views on the unconstitutionality of many provisions of the pending bill.

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

OCTOBER 6, 1972.

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

DEAR SENATOR CRANSTON: This is in response to your letter of September 29, requesting our individual views on the constitutionality of H.R. 13915.

At the request of the House Judiciary Committee, the undersigned, in their individual capacities, submitted the attached statement setting forth their opinion that the proposed Student Transportation Moratorium Act (H.R. 13916) and the proposed Equal Educational Opportunities Act (H.R. 13915) would (1) violate Article III of the Constitution to the extent that they would limit the power of courts to fashion the remedies such courts believe necessary to correct adjudicated deprivations of constitutional rights in cases within their jurisdiction, and (2) violate the Fifth and Fourteenth Amendments to the extent to which they limit the power of courts to correct adjudicated findings of unconstitutional school segregation where courts determine that busing is the only effective and promptly available remedy.

Section 403(a) of H.R. 13915, passed by the House and now pending in the Senate, contains even more stringent limitations on the power of courts to remedy adjudicated findings of unconstitutional school segregation. Accordingly, for the reasons set forth in the enclosed statement, we believe the relevant provisions of that bill are also unconstitutional.

Respectfully submitted,

Lloyd N. Cutler, Washington, D.C.; John Doar, New York City; Morris B. Abram, New York City; E. Clinton Bamberger, Washington, D.C.; Thomas D. Barr; New York City; Bruce Bromley, New York; Warren Christopher, Los Angeles; and Ramsey Clark, Washington, D.C.

William T. Coleman, Jr., Philadelphia; James T. Danaher, Palo Alto; Arthur H. Dean, New York City; Richard C. Dinkelspiel, San Francisco; John W. Douglas, Washington, D.C.; Alexander D. Forger, New York City; Arthur J. Goldberg, Washington, D.C.; and John B. Jones, Washington, D.C.

Nicholas deB. Katzenbach, Armonk; Amalya Lyle Kearse, New York City; Maximilian W. Kempner, New York City; Otis King, Houston; George N. Lindsay, New York; Robert B. McKay, New York; M. C. Miskovsky, Washington, D.C.; James M. Nabrit, III, New York City; Robert L. Nelson, Washington, D.C.; Louis F. Oberdorfer, Washington, D.C.; and William H. Orrick, Jr., San Francisco.

D. Robert Owen, New York City; Stephen J. Pollak, Washington, D.C.; Francis E. Rivers, New York City; John H. Schafer, Washington, D.C.; Jerome J. Shestack, Philadelphia; Asa D. Sokolow, New York City; Theodore C. Sorensen, New York City; Cyrus Vance, New York City; John W. Wade, Nashville; and James Robertson, Washington, D.C.

STATEMENT OF JOHN DOAR AND LLOYD N. CUTLER

Mr. Chairman and Members of the Committee:

We appear here today at the Committee's invitation to testify concerning H.J. Res. 620 and H.R. 13916.

We are the present Co-Chairmen of the Lawyers' Committee for Civil Rights Under Law. The Committee is a non-profit, tax-exempt organization. It was formed in 1963 at the request of President Kennedy and it has continued its activities at the request of every succeeding President.

The Committee's purpose is to mobilize the legal resources and the moral force of the nation's lawyers to defend and uphold the civil and constitutional rights of the nation's racial minorities and other disadvantaged citizens. Our Board of Trustees consists primarily of leading lawyers throughout the country who, in today's vernacular, would be regarded as part of the legal "Establishment."

Our principal activity is to take part in the trial and appeal of cases that raise significant issues relating to the rights of minority and other disadvantaged groups. We function as lawyers, not as a political or pressure group. Attached to our statement is a copy of our most recent annual report, which describes our activities in detail and contains the names of our national Board of Trustees and members of our local committees in Atlanta, Boston, Chicago, Indianapolis, Kansas City, New York, Philadelphia, San Francisco and Washington.

Mr. Chairman, as a matter of policy our Committee, as such, does not advocate the passage or defeat of any legislation. In response to your invitation, we are submitting our opinion, as lawyers with some qualification in this field, as to the constitutionality of the moratorium bill and as to the constitutional implications of the proposed constitutional amendment. We should also note that the views we express were unanimously approved after appropriate notice by a quorum present at a regular meeting of the Executive Committee of our Board of Trustees in Washington, D.C. on April 3, 1972. Nevertheless, since we are presenting a professional legal opinion, we present it only as the opinion of the Executive Committee members whose name are attached to the statement, and who either attended the meeting on April 3 or subsequently notified us of their concurrence.

We shall first address H. R. 13916, the Student Transportation Moratorium Act, and then the Joint Resolution providing for a constitutional amendment.

H.R. 13916

We believe H. R. 13916, the moratorium bill, is unconstitutional for the reasons set forth below.

Proponents of the bill have urged that Congress may lawfully impose a stay on the effectiveness of future judicial orders providing specific relief for an adjudicated impairment of a constitutional right, when Congress finds the stay necessary to allow it time to enact another measure intended to provide standardized and at least equally effective remedies.

The question so framed is one of first impression, one that, in our judgment, would be very difficult to answer. However, it is not the question we see posed by H. R. 13916. For this bill—whether taken on its own terms or in conjunction with the companion Equal Educational Opportunities Bill that the Administration has also proposed (H. R. 13915)—has not been shown to be necessary for, or likely to result in, the enactment of standardized and equally effective remedies for adjudicated impairments of constitutional rights. To the contrary, and accepting its stated intentions, it appears on its face to enact a congressional limitation on judicial remedies for previously adjudicated constitutional rights, while Congress considers other measures that would impose still further limitations on those rights and remedies.

Congress, of course, has constitutional power to create lower federal courts and to define their jurisdiction, as well as power to make exceptions to the appellate jurisdiction of the Supreme Court. But like any other constitutional power, this power is not an absolute one. It must be exercised consistently with other constitutional grants of power and other declarations of constitutional rights. For example, no one would suggest, we assume, that Congress could enact a statute denying original or appellate access to any federal court for all claimed violations of First Amendment rights. The federal judicial power granted under Article III extends to "all cases in law and equity arising under this Constitution," (emphasis supplied) and Congress cannot constitutionally bar all federal courts from exercising this power. *Martin* v. *Hunter's Lessee*, 14 U.S. 304 (1816); *Eisentrager* v. *Forrestal*, 174 F. 2d 961, 966 (D.C. Cir. 1949), reversed on other grounds *sub nom. Johnson* v. *Eiscentrager*, 339 U.S. 763 (1950). To take an even more obvious example, Congress could hardly define the jurisdiction of the lower federal courts so as to require that, notwithstanding the Sixth and Seventh Amendments, all cases must be tried without juries. Perhaps Congress could constitutionally abolish the lower federal courts entirely, although Mr. Justice Story's opinion in *Martin* v. *Hunter's Lessee, supra*, suggests that it could not. But having created the lower federal courts and conferred on them jurisdiction over cases arising under the Constitution, Congress cannot limit this jurisdiction in ways that violate other provisions of the Constitution or prevent courts from granting effective relief.

Nothing in the Norris-La Guardia experience or in *Ex Parte McCardle*, 74 U.S. 506 (1868) is to the contrary. The curtailment imposed by the Norris-La Guardia Act on the right to an injunction in a labor dispute had the effect of protecting the First Amendment right of peaceful picketing. It did not deprive employers of a constitutionally protected right or remedy, and when the Supreme Court upheld the Act, it had no need to consider any such issue. See *Lauf* v. *Shinner*, 303 U.S. 323 (1938). In *Ex Parte McCardle*, the Supreme Court held only that Congress could lawfully take away the right of direct appeal it had previously granted under a particular Reconstruction era *habeas corpus* statute; the power of the lower federal courts to grant writs of *habeas corpus* to persons detained in violation of their constitutional rights remained unimpaired, as did the discretionary appellate power of the Supreme Court to review lower court *habeas corpus* decisions under the Act of 1789 granting it the right to issue writs of certiorari. *Ex Parte Yerger*, 75 U.S. 85 (1869). And in other cases where the congressional power to bar federal courts from issuing injunctions has been upheld, the decisions have made clear that other adequate judicial remedies remained available. *Phillips* v. *Commissioner*, 283 U.S. 589 (1931); *Younger* v. *Harris*, 401 U.S. 37, 45 (1971).

Moreover, the Supreme Court has held many times that the congressional authority to grant or remove jurisdiction in broad

classes of cases does not include the authority to review decisions within a court's jurisdiction before permitting those decisions to become effective, or to require the courts to decide such cases in congressionally specified ways. This has been true ever since *Hayburn's Case*, 2 U.S. 408 (1792). The principle has been reaffirmed in a long line of cases, of which the most important are the opinion of Chief Justice Taney in *Gordon* v. *United States*, 173 U.S. 167 (1864); *United States* v. *Klein*, 80 U.S. 128 (1871); and *Muskrat* v. *United States*, 219 U.S. 346 (1911). Even *Ex Parte McCardle* notes the unconstitutionality of "the exercise of judicial power by the legislature, or legislative interference with courts in the exercise of continuing jurisdiction." 74 U.S. at 514.

When jurisdiction has been conferred on the federal courts to adjudicate the existence of a constitutional right, the courts must have the power to grant an effective remedy. This is the clear import of Chief Justice Hughes' opinion for the Court in *Sterling* v. *Constantin*, 287 U.S. 378 at 403 (1932). As Mr. Justice Rutledge put the matter in *Schneiderman* v. *United States*, 320 U.S. 118, 168–9 (1943) (concurring opinion):

"Congress has, with limited exceptions, plenary power over the jurisdiction of the federal courts. But to confer the jurisdiction and at the same time nullify entirely the effects of its exercise are not matters heretofore thought, when squarely faced, within its authority."

In the light of these principles, the moratorium bill would plainly be unconstitutional if the moratorium were of indefinite duration. Viewed as an attempt to deprive the courts of power to adjudicate Fourteenth Amendment rights and provide adequate remedies, it could not possibly stand. Viewed as an attempt to modify or stay judicial decisions within jurisdiction previously conferred, or to require that future cases be decided in a particular way, it would be equally invalid. Viewed as an attempt to deprive the courts of power to grant the only remedy for an adjudicated impairment of constitutional rights that the courts have found adequate on the facts of a particular case, its unconstitutionality would be clear.

The bill, of course, does not provide for a moratorium of indefinite duration; it specifically limits the period of the moratorium to July 1, 1973 or such earlier date as the Congress enacts the contemplated legislation defining what constitutes a denial of equal educational opportunities and of the equal protection of the laws, and providing standardized remedies. As we said at the outset, a moratorium bill carefully limited to the period required to accomplish such an objective would present a constitutional issue of first impression.[1] Constitutionality in our view would depend on whether Congress clearly demonstrated that the moratorium was needed to enable Congress to enact the contemplated remedial legislation, and that in the remedial legislation Congress intended to protect and enforce rather than to limit the Fourteenth Amendment rights involved, and to provide at least equally effective remedies for their impairment.

One might perhaps argue that because seventeen years have already passed since the Supreme Court issued its opinion in *Brown* v. *Board of Education*, 349 U.S. 294, 301 (1955) (Brown II), Congress may lawfully delay effective relief for an additional year today. But Congress today must take into account the long line of Supreme Court decisions culminating in *Carter* v. *West Feliciana Parish School Board*, 396 U.S. 290 (1970), placing ever greater urgency on school desegration and suggesting strongly that any delay in the implementation of court-ordered plans inflicts continuing and irreparable harm on schoolchildren. In *Griffin* v. *County School Board of Prince Edward County*, 377 U.S. 218 (1964), the Court said that the time for mere "deliberate speed" had run out; in *Green* v. *School Board of New Kent County*, 391 U.S. 430, 438–9 (1968), the Court said the burden on school boards is to come forth with desegregation plans that "promise[s] realistically to work *now*"; in *Alexander* v. *Holmes County Board of Education*, 396 U.S. 19, 20 (1969), the Court said that the "deliberate speed" standard for desegregation "is no longer constitutionally permissible," and ruled that "the obligation of every school district is to terminate dual school systems at once. . . ."

If a lower court enters a busing order that goes beyond what is necessary to remedy the impairment of a constitutional right, that error can of course be corrected on appeal. But if, on the facts of a particular case, the courts finally determine that some form of busing is the only presently available means of achieving the effective remedy required by the Constitution, then for Congress to deny anyone that remedy, even for an additional school year, is a very serious matter. Frustration or denial of court-ordered remedies for school desegregation can no longer be distinguished from frustration or denial of the underlying Fourteenth Amendment right. See *Cooper* v. *Aaron*, 358 U.S. 1, 17 (1958); *Griffin* v. *School Board of Prince Edward County, supra*, 377 U.S. at 232. Action that perpetuates an unconstitutional dual school system not only delays the remedy, it compounds the harm of such a system. *Green* v. *School Board of New Kent County, supra*, 391 U.S. at 438. Thus Congress itself would be imposing constitutional injury on schoolchildren by staying the effectiveness of any new busing order which the courts have finally found in a particular case to be an indispensable element of prompt and effective relief. Such an act would raise serious questions under the Fifth Amendment (see *Bolling* v. *Sharpe*, 347 U.S. 497 (1954); *Gautreaux* v. *Romney*, 448 F.2d 731, 740 (7th Cir. 1970)). The only possible countervailing constitutional justification would be a clear demonstration of facts convincingly establishing the necessity of a moratorium to enable Congress to enact standardized and nationwide remedies that are at least equally effective.

These facts would have the status of constitutional or jurisdictional facts, in the sense that a court considering the constitutionality of the moratorium would be entitled to satisfy itself that Congress had demonstrated a compelling need for such a postponement of effective relief for an impairment of a constitutional right. *Sterling* v. *Constantin, supra; Ng Fung Ho* v. *White*, 259 U.S. 276 (1922); see Hart, *The Power of Congress to Limit the Jurisdiction of Federal Courts; an Exercise in Dialetic*, 66 Harv. L. Rev. 1362, 1386 ff. (1953). Examination of the moratorium bill and the companion Equal Educational Opportunities Bill persuades us that this essential demonstration has not been made.

To begin with, the findings contained in Section 2 of H.R. 13916 contain no statement or other showing that the moratorium is needed to enable Congress to enact the contemplated definitive legislation. Instead, the bill merely contans a finding (Section 2(a)-(5)) of "a substantial likelihood that pending enactment of such legislation, many local educational agencies will be required to implement desegregation plans that impose a greater obligation than that required by the Fourteenth Amendment and permitted by such pending legislation, and that these plans will require modification in light of the legislation's requirements. . . ."

Even if this were so, it does not demonstrate that the moratorium is needed to enable Congress to enact the contemplated remedial legislation. The moratorium would apply only to the effectiveness of subsequently issued busing orders, leaving existing busing orders in effect. However, Section 406 of the Equal Educational Opportunities Bill would authorize the reopening and require the conforming modifications of all busing orders "in effect on the date of enactment of this Act." Aside from its own constitutionality, which we doubt, the reopening provision would reach orders issued during the moratorium period just as effectively as orders already issued. If order already issued need not be stayed at once to enable Congress to enact remedial legislation, it is difficult to understand why orders hereafter issued need be stayed for this purpose. We therefore believe it would be most difficult for Congress to sustain its burden of showing a compelling public need to stay new busing orders to remedy adjudicated impairments of constitutional rights while the Equal Educational Opportunities Bill is being considered.

A further flaw in the present moratorium bill is that it prohibits *all* new busing orders, even those that would later be permitted under the contemplated definitive legislation. For example, Section 402 of the Equal Educational Opportunities Bill would permit a court, as its seventh and last relief option, to order compulsory busing above the sixth grade if the court finds that no other adequate remedy for the denial of Fourteenth Amendment rights is available. H.R. 13916, however, would stay such relief during the moratorium period *even though* the court finds no other adequate remedy is available, and even though the relief concededly does not, in the words of Section 2(a)(5) of the moratorium bill, impose on educational agencies a "greater obligation than that required by the Fourteenth Amendment and permitted by [the] pending legislation." In this important respect, the moratorium bill plainly exceeds its own stated objective.

Since the justification claimed for the moratorium bill is to allow time to enact the contemplated definitive legislation, the constitutionality of the moratorium bill also depends upon whether the provisions of the contemplated definitive legislation are themselves constitutional.

It may well be, as Professor Archibald Cox has recently suggested, that under Paragraph 5 of the Fourteenth Amendment Congress may enact a uniform nationwide program of effective remedies for school desegregation that replace or modify remedies previously decreed by the courts. (Cox, *The Role of Congress in Constitutional Determinations*, 40 Cincinnati L. Rev. 199, 259 (1971)). However, we believe that some provisions of the contemplated definitive legislation go beyond the broadest permissible reading of this congressional power and well beyond the terms of the hypothetical legislation outlined by Professor Cox in his article.[2]

[1] The only Supreme Court decision dealing wtih a legislative moratorium on judicial action is *Home Building & Loan Ass'n* v. *Blaisdell*, 290 U.S. 398 (1934), which sustained a Minnesota statute allowing courts to extend the redemption period of mortgages and thus postpone judicial foreclosure, but did so on the ground that the mortgage contract was inherently subject to modification by state law so that the constitutional ban on impairing the obligation of contracts had not been violated. The case is no precedent for a moratorium which by definition postpones the only relief a court finds effective for the adjudicated impairment of a constitutional right.

[2] In the most recent decisions considering the scope of Section 5 of the Fourteenth Amendment, several of the opinions suggest that the congressional power to enforce the Amendment does not include the power to limit the rights it confers. *Katzenbach* v. *Morgan*, 384 U.S. 641, 651 (1966); *Oregon* v. *Mitchell*, 400 U.S. 112, 128–9 (1970). The same principle would seem applicable to the denial of an effective remedy.

The most glaring example is Section 403 of the Equal Educational Opportunities Bill. Subsection (a) of Section 403 imposes an absolute prohibition on any court-ordered busing plan that increases over the levels of the preceding year either the average daily distance or the time travelled by all students in sixth grade or below, or the average daily number of such students who are bused. It contrasts starkly with Subsection (b), which would allow such busing for students above the sixth grade if the court finds by "clear and convincing evidence" that there is no other adequate remedy for the impairment of their Fourteenth Amendment rights. The plain intent of the Section as a whole is to forbid any court orders that would result in a net increase in busing for children in the first six grades of any school district, even if the court finds on the facts of the particular case that there is no other adequate remedy for an adjudicated and unrelieved infringement of their constitutional rights.

In *Swann* v. *Charlotte-Mecklenburg*, 402 U.S. 1 (1971), Chief Justice Burger recognized that travel times should be taken into account in framing busing orders, particularly for younger students (402 U.S. at 31). But the need to consider this factor can hardly justify an absolute congressional prohibition on future court orders requiring the busing of additional students in the first six grades. In this connection, it is significant that on the same day the court decided *Swann* v. *Charlotte-Mecklenburg*, it also decided *North Carolina State Board of Education* v. *Swann*, 402 U.S. 43 (1971), in which the Chief Justice and a unanimous court struck down a North Carolina statute imposing "an absolute prohibition" on involuntary busing of any student on grounds of race or to bring about racial balance. The court said that this ban "would inescapably operate to obstruct the remedies granted" in the *Charlotte-Mecklenburg* case, and noted that "bus transportation has long been an integral part of all public educational systems and it is unlikely that a truly effective remedy could be devised without continued reliance upon it." (402 U.S. at 46) If a state anti-busing statute violates the Fourteenth Amendment "when it operates to hinder vindication of federal constitutional guarantees," it is difficult to conclude that a congressional statute achieving the same result could possibly be constitutional.

The absolute prohibition of busing in the first six grades beyond previous year levels seems unconstitutionally arbitrary in other important respects. It would prevent a court from ordering an agency to bus children at the voluntary request of their parents as, for example, when a black child wants to shift from a majority black school to a majority white school—a remedy that Chief Justice Burger said was "indispensable" in *Swann* v. *Charlotte-Mecklenburg* "for those students willing to transfer to other schools in order to lessen the impact on them of the state-imposed stigma of segregation." 402 U.S. at 26. In this respect, it goes even farther than the North Carolina statute struck down in the second *Swann* case. Moreover, as applied to any given educational agency, these prior year ceilings are arbitrarily and randomly affected by agency decisions to increase or decrease busing for reasons wholly unrelated to segregation or race. Such limits cannot possibly have the "standardized" or uniform effect throughout the country that is the assumed congressional objective, since their future application must necessarily depend on the many differing factors that affect present and future busing patterns in each school district.

For all of the above reasons, Mr. Chairman and Members of the Committee, we believe that H.R. 13916, taken either on its own bottom or in conjunction with the contemplated Equal Educational Opportunities Bill, is unconstitutional.

H.J. Res. 620

Turning our attention to the Joint Resolution, we find no question of constitutionality presented by the proposal to amend the Constitution in the manner that the Constitution provides. As to the constitutional implications of that proposal, however, we share the concern voiced by others about "trivializing" the Constitution by an amendment that tries to resolve in 22 words issues as fluid and transitory as busing and school assignments, that limits the basic human rights guaranteed by the Fourteenth Amendment, and that bars even the busing of minority children whose parents want them to be bused to better and less segregated schools. We believe that such an amendment would be a backward step in our steady progress toward becoming a nation no longer divided against itself.

Respectfully submitted,

LLOYD N. CUTLER,
JOHN DOAR,
Co-Chairmen, The Lawyers' Committee for Civil, Rights Under Law.

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SUPPLEMENTAL MEMORANDUM OF LAW TO ACCOMPANY THE STATEMENT OF APRIL 12, 1972, BY JOHN DOAR AND LLOYD CUTLER BEFORE THE HOUSE COMMITTEE ON THE JUDICIARY

In response to this Committee's invitation, we submit a Supplemental Memorandum of Law to accompany and amplify our testimony of April 12, 1972.

Proponents of H.R. 13916—the Moratorium Bill—have urged that Congress may lawfully impose a stay on the effectiveness of future judicial orders providing specific relief for an adjudicated impairment of a constitutional right, when Congress finds the stay necessary to allow it time to enact another measure intended to provide standardized and at least equally effective remedies.[1]

The question so framed is one of first impression; [2] one that, in our judgment, would be very difficult to answer.

However, it is not the question we see posed by H.R. 13916. For this bill—whether taken on its own terms or in conjunction with the companion Equal Educational Opportunities Bill that the Administration has also proposed (H.R. 13915)—has not been shown to be necessary for, or likely to result in, the enactment of standardized and equally effective remedies for adjudicated impairments of constitutional rights. To the contrary, and accepting its stated intentions, it appears on its face to enact a congressional limitation on judicial remedies for previously adjudicated constitutional rights, while Congress considers other measures that would impose still further limitations on those rights and remedies.

I. ENACTMENT OF THE STUDENT TRANSPORTATION MORATORIUM ACT WOULD BE AN UNCONSTITUTIONAL INFRINGEMENT UPON THE JUDICIAL BRANCH

In defending the Bill, the Attorney General emphasized the power that Congress has over the jurisdiction of the lower federal courts and Supreme Court.[3] He argued:

"It seems clear that, if Congress has the power to create or abolish courts and to grant, withhold or revoke jurisdiction, it has the lesser power to grant or deny remedies to the federal courts or, as outlined in the President's proposals, to minimally alter some of the equitable remedies." (Kleindienst Testimony at 1262.)

We, of course, agree that Congress has constitutional power to create lower federal courts and to define their jurisdiction, as well as power to make exception to the appellate jurisdiction of the Supreme Court. But it does not follow from that point, nor is it by any means clear, that Congress could abolish all the lower federal courts. Indeed, no less a constitutional authority than Justice Story thought that Congress could not. *Martin* v. *Hunter's Lessee*, 14 U.S. (1 Wheat.) 304 (1816); 3 Story, Commentaries on the Constitution 449 (1833), and other authorities have supported Justice Story's view.[4] Subsequently, there have been court dicta to the contrary; but of course no court has ever so held since Congress has never tried to abolish all of the lower federal courts.

Even accepting the Attorney General's view of Congress' power over the jurisdiction of the federal courts, it by no means follows that the power over jurisdiction justifies legislation prohibiting all federal courts—even for a one-year period—from ordering busing when such busing is, in the judgment of the court, the only promptly available means of enforcing the constitutional right to equal protection.

Like any other governmental power, the power of Congress over the jurisdiction of federal courts is not an absolute one. For example, no one would suggest, we assume,

Footnotes at end of article.

that Congress could enact a statute denying original or appellate access to any federal court for claimed violations of First Amendment rights. The federal judicial power granted under Artcle III extends to "*all* cases in law and equity arising under this Constitution" (emphasis supplied), and Congress cannot constitutionally bar *all* federal courts from exercising this power. To take an even more obvious example, Congress could hardly define the jurisdiction of the federal courts to require that, notwithstanding the Sixth and Seventh Amendments, all cases must be tried without juries.

Congress, in the guise of a jurisdictional statute, cannot deprive a party either of a right created by the Constitution or of any remedy the courts deem essential to enforce that right. No case that we know of, including those cited by the Attorney General, refutes this basic premise.

The Norris-LaGuardia experience is not to the contrary. An employer does not have a constitutional right to have a federal court issue an injunction in a case involving or growing out of a labor dispute. Thus, Congress may validly place appropriate limits on the jurisdiction of federal courts to enjoin strikes. Such a limitation does not deprive employers of a constitutionally protected right or remedy, and when the Supreme Court upheld the Act, it had no need to consider any such issue. *See Lauf* v. *E. G. Shinner Co.*, 303 U.S. 323 (1938), upholding the Norris-LaGuardia Act's removal of jurisdiction to enjoin strikes except after a full evidentiary hearing. Such a statute does not dilute or eliminate any constitutional right; if anything, the Norris-LaGuardia statute serves to implement the First Amendment right to peaceful, non-coercive picketing. *See, Thornhill* v. *Alabama*, 310 U.S. 88 (1940). Finally, it should be noted that the carefully and narrowly drawn Norris-LaGuardia Act does not prohibit all injunctions, but instead expressly preserves to the courts power to issue an injunction after a full evidentiary hearing whenever the courts find one necessary to prevent irreparable injury.[5]

Similarly, Congress may limit the courts' injunctive powers in suits challenging the collection of taxes (while providing other fully adequate, exclusive remedies). *See, Snyder* v. *Marks*, 109 U.S. 189 (1833); *Phillips* v. *Commissioner*, 283 U.S. 589, 596–97 (1931) (Brandeis, J.) (prohibition of injunctive relief in tax cases constitutional: "Where only property rights are involved, mere postponement of the judicial enquiry is not a denial of due process, if the opportunity given for the ultimate judicial determination is adequate.") However, Congress cannot, even in tax cases, limit equitable jurisdiction so as to deprive a person of property without due process of law. *See, Enochs* v. *Williams Packing Co.*, 370 U.S. 1 (1962); *Miller* v. *Standard Nut Margarine Co.*, 289 U.S. 498 (1932) (tax enjoined).

Similarly, cases upholding 28 U.S.C. § 2283, which in general forbids federal injunctions of state court proceedings,[6] do not support the moratorium. In fact, such cases support the principle that Congress may not use a jurisdictional limitation to limit constitutional rights. *Younger* v. *Harris*, 401 U.S. (1971) (Black, J.), the most recent case construing this statute, states that generally no constitutional right is infringed by a statute forbidding injunctions of state proceedings: "[T]he moving party has an adequate remedy at law and will not suffer irreparable injury if denied equitable relief." *Id.* at 43–44. However, the Court made it clear that the statute could not be applied to prevent the issuance of an injunction where necessary to prevent irreparable constitutional injury. It noted, quoting *Fenner* v. *Boykin*, 271 U.S. 240 (1926):

"*Ex parte Young*, 209 U.S. 123, and following cases have established the doctrine that when absolutely necessary *for protection of constitutional rights* courts of the United States have power to enjoin state officers from instituting criminal actions. But this may not be done except under extraordinary circumstances where the danger of irreparable loss is both great and immediate." 401 U.S. at 45 (emphasis added).

And *Younger* approved the issuance of an injunction in *Dombrowski v. Pfister*, 380 U.S. 479 (1965), because the facts of that case showed that equitable relief was necessary to prevent irreparable injury to constitutional rights.[7] 401 U.S. at 47–49.

As we have already maintained before the Committee, and for the reasons set forth later in this Memorandum, a denial of a busing remedy may, in the facts of a given case, amount to a denial of equal protection for which there is no adequate remedy at law.

A corollary to the principle that Congress cannot limit the courts' power to issue enforceable judgments is that it cannot enact legislation which prescribes a particular result in a case. Thus, in *United States v. Klein*, 80 U.S. (13 Wall.) 128 (1871), the Court held that a congressional attempt to prescribe a rule of decision in order to make a case come out in a particular way is unconstitutional, even though the statute was phrased in terms of a limitation of the courts' jurisdiction:

"Congress has already provided that the Supreme Court shall have jurisdiction of the judgments of the Court of Claims on appeal. Can it prescribe a rule in conformity with which the court must deny to itself the jurisdiction thus conferred, because and only because its decision, in accordance with settled law, must be adverse to the government and favorable to the suitor? This question seems to us to answer itself." *Id.* at 147.

See also, Hart and Wechsler, *The Federal Courts and the Federal System* (1953) at 317–318 (Congress has no power to tell a court how to decide a case); *see generally*, Ratner, *Congressional Power Over the Appellate Jurisdiction of the Supreme Court*, 109 U. Pa. L. Rev. 157 (1960).

The basic principle established is that any power of Congress to limit federal court jurisdiction is subject (like the exercise of any other congressional power) to express limitations in the Constitution, including the Fifth and Fourteenth Amendments. See *Battaglia* v. *General Motors Corp.*, 169 F. 2d 254, 257 (2d Cir.), *cert. denied*, 335 U.S. 887 (1948) (jurisdictional power must not be exercised so "as to deprive any person of life, liberty, or property without due process of law or to take private property without just compensation").

Ex parte McCardle, 74 U.S. (7 Wall.) 506 (1868), much relied on by the Attorney General, may be thought to support the Moratorium Act; actually, it indicates that the Moratorium Act would not be constitutionally permissible. In *McCardle*, the Court upheld a post-Civil War Act of Congress that deprived the Supreme Court of appellate jurisdiction over lower federal court decisions in habeas corpus cases.[8] But the Court took care to distinguish this statute from other cases in which courts had struck down "the exercise of judicial power by the legislature, *or of legislative interference with courts in the exercising of continuing jurisdiction.*" *Id.* at 514 (emphasis added). As an example of this distinction, *McCardle* cited with approval *State v. Fleming*, 7 Humphreys 152 (Tenn. 1846), which had held that the legislature "has no power to interfere with the administration of justice, either criminal or civil, in the courts; . . ." *Id.* at 154. Similarly, the Court approved *De Chastellux v. Fairchild*, 15 Penn. State 16, 21 (1850), where the Court said that it was self-evident in the structure of government that the legislature has no power to exercise judicial functions. "[I]t is not more intolerable in principle [for the legislature] to pronounce an arbitrary judgment against a suitor, than it is injurious in practice to deprive him of a judgment, . . ." (emphasis added).[9]

We therefore conclude that the proposed Moratorium Act, even if it were rewritten in the guise of a jurisdictional statute, would be unconstitutional.

Neither can the Moratorium be justified as a stay of court orders while the orders themselves or the courts' authority to enter them are being reviewed by Congress. The Supreme Court has held many times that the congressional authority to grant or remove jurisdiction in broad classes of cases does not include the authority to review decisions within a court's jurisdiction before permitting those decisions to become effective, or to require the courts to decide such cases in congressionally specified ways.

The earliest relevant decisions in this area were written in 1792—when the Constitution and the Judiciary Act of 1789 were only three years old. Congress had enacted a statute in 1792 to govern pensions for disabled veterans of the Revolutionary War. It empowered federal and state courts, upon application of a veteran, to determine what pension, if any, should be paid. The decision of the court was to be transmitted to the Secretary of War; he might decline to follow the decision if he suspected a mistake or imposition. The Secretary's decision was then to be transmitted to Congress, and if Congress agreed with the decisions of the court and the Secretary, it would appropriate the necessary pension funds. The Circuit Court for the District of Pennsylvania refused to consider the pension application of one William Hayburn under this statute, and the Attorney General sought a writ of mandamus in the Supreme Court. *Hayburn's Case*, 2 U.S. (2 Dall.) 408 (1792).

In *Hayburn's Case*, Congress wisely avoided a constitutional confrontation by amendatory legislation before the Supreme Court actually ruled. The Court's opinion was analogous to a dismissal for mootness under modern practice. Nevertheless, the Court incorporated in the margin of its opinion some of the earliest and most authoritative thinking on the constitutional metes and bounds that separate the legislative from the judicial function.

Cited in *Hayburn's Case*[10] are court opinions holding under the principles of separation of powers that a court decision subject to review by Congress is nonjudicial in nature, and that the courts are powerless to exercise nonjudicial functions; whenever a court is exercising Article III judiciary power, no legislature may review such a decision. The Circuit Court for the District of New York, consisting of Chief Justice Jay, Justice Cushing and a district judge, had unanimously held: "[B]y the constitution, neither the secretary at war, nor any other executive officer, nor even the legislature, are authorized to sit as a court of errors on the judicial acts or opinions of this court." 2 U.S. (2 Dall.) at 410 n. (a). The Circuit Court for the District of Pennsylvania (consisting of two Supreme Court Justices and a district judge) had jointly written the President in 1792 protesting the Pension Act (*id.*, at 411 n. (a)):

"It is a principle important to freedom, that in government, the *judicial* should be distinct from, and independent of, the legislative department. To this important principle, the people of the United States, in forming their constitution, have manifested the highest regard. They have placed their *judicial* power, not in congress, but in *'courts.'* They have ordained that the 'judges of those courts shall hold their offices during good behavior,' and that 'during their continuance in office, their salaries shall not be diminished.'

* * * * *

Footnotes at end of article.

"Such revision and control [of judicial decision by a legislature] we deemed radically inconsistent with the independence of that judicial power which is vested in the courts; and consequently, with that important principle which is so strictly observed by the constitution of the United States." (Emphasis in original.)

And the Circuit Court for the District of North Carolina (consisting of a Supreme Court Justice and a district judge) had also written the President (*id.* at 413 n. (a)):

". . . whether the power in question is properly of a judicial nature, yet, inasmuch as the decision of the court is not made final, but *may be at least suspended in its operation*, by the secretary at war, if he shall have cause to suspect imposition or mistake; *this subjects the decision of the court to a mode of revision, which we consider to be unwarranted by the constitution;* for though congress may certainly establish, in instances not yet provided for, courts of appellate jurisdiction, yet such courts must consist of judges appointed in the manner the constitution requires, and holding their offices by no other tenure than that of their good behavior, by which tenure the office of secretary at war is not held. And we beg leave to add, with all due deference, that *no decision of any court of the United States can, under any circumstances, in our opinion, agreeable to the constitution, be liable to a revision, or even suspension, by the legislature itself, in whom no judicial power of any kind appears to be vested,* but the important one relative to impeachments." (Emphasis added.)

A year after *Hayburn's Case*,[11] in 1793, the separation of powers doctrine was further clarified in an exchange of correspondence familiar to every law student. Thomas Jefferson, then Secretary of State, asked the Supreme Court for a legal opinion on the effect of certain treaties. The Court refused, explaining to President Washington in a letter dated August 8, 1793, that courts may not constitutionally give advisory opinions. *See* 3 Johnston, *Correspondence and Public Papers of John Jay*, 486–89 (1891).

A court decree that has no effect until Congress implements it or allows it to be enforced amounts to an advisory opinion. In *Gordon* v. *United States*, 117 U.S. 697 (1864), an act of Congress conferring appellate jurisdiction on the Supreme Court for review decisions of the Court of Claims was held unconstitutional because Court of Claims judgments (even after Supreme Court review) could not then be paid until the necessary appropriation had been estimated by the Secretary of the Treasury and approved by the Congress on a case-by-case basis. Chief Justice Taney pointed out (in an opinion published after his death) that the entire purpose of the Supreme Court was to ensure its impartiality and complete independence from the legislative power (117 U.S. 701). Taney explained that inherent in the exercise of judicial power and essential to any judgment of a court and to its independence is the award of relief and the possibility of execution on final judgment.

"Without such an award the judgment would be inoperative and nugatory, leaving the aggrieved party without remedy. . . . unless Congress should at some future time sanction it, and pass a law authorizing the court to carry its opinion into effect. Such is not the judicial power confided to this Court. . . . " (*Id.* at 702)

See *Muskrat* v. *United States*, 219 U.S. 346, 354 (1911), citing *Gordon* with approval and noting Chief Justice Taney's opinion as one of "great learning."

In a school desegregation case over which a federal district court has jurisdiction and in which the court has found deprivation of a constitutional right, the court may in the exercise of its equity power enter an order requiring some busing in order to fashion an effective remedy. The Student Transportation Moratorium Act would render such an order "inoperative and nugatory, leaving the aggrieved party without remedy" unless Congress some time between now and July 1, 1973 decides otherwise.[12] *See Schneiderman* v. *United States*, 320 U.S. 118, 168–69 (1943), where Justice Rutledge stated, concurring, that Congress may not make:

". . . an adjudication under Article III merely an advisory opinion or prima facie evidence of the fact or all the facts determined. Congress has, with limited exceptions, plenary power over the jurisdiction of the federal courts. *But to confer the jurisdiction and at the same time nullify entirely the effects of its exercise are not matters heretofore thought, when squarely faced, within its authority.*" (Footnotes omitted; emphasis added.)

This basic principle—rooted in the independence of the judiciary and the doctrine of the Separation of Powers—was again reaffirmed by Justice Jackson, speaking for the Court in *Chicago & Southern Air Lines v. Waterman Steamship Corp.*, 333 U.S. 103, 113 (1948), when he observed:

"Judgments within the powers vested in courts by the Judiciary Article of the Constitution may not lawfully be revised, overturned or refused faith and credit by another Department of Government."

One of the most recent of these cases is *Glidden v. Zdanok*, 370 U.S. 530 (1962), a case, upon which the Attorney General has relied. In *Glidden*, Mr. Justice Harlan, speaking for the Court, held that the Court of Claims and the Court of Customs and Patent Appeals were Article III courts of the Constitution (and not legislative courts). Mr. Justice Harlan, in considering the history of the Court of Claims, noted—as we explained above—that the Supreme Court, early in the history of the Court of Claims, had held that the Court of Claims was not an Article III court because its judgments were subject to case-by-case review by the Secretary of the Treasury before he recommended an appropriation to pay each judgment. Subsequently, Congress repealed the statute which gave the Secretary of the Treasury the power to review each judgment on a case-by-case basis before an appropriation was made. The Supreme Court then exercised its Article III judicial review of the Court of Claims. Later, when the Secretary of the Treasury sought to reassert this power to review a judgment of the Court of Claims—that is, the Secretary refused to pay part of a judgment—the Supreme Court held the refusal unwarranted: the Executive may not review judicial power. 370 U.S. at 555. By the same token, Congress may not review Court orders. The constitutional method of reversing lower courts is the appellate process within the judicial branch.

Mr. Justice Harlan did agree that Congress has power over both the jurisdiction of the lower federal courts and the Supreme Court's appellate jurisdiction. 370 U.S. 530, 567. But Mr. Justice Harlan, in the very next sentence, added an important *caveat*:

"*The authority [over jurisdiction] is not, of course, unlimited.* In 1870, Congress purported to withdraw jurisdiction from the Court of Claims and from this Court on appeal over cases seeking indemnification for property captured during the Civil War, so far as eligibility therefor might be predicated upon an amnesty awarded by the President, as both courts had previously held that it might. Despite *Ex parte McCardle, supra*, the Court refused to apply the statute to a case in which the claimant had already been adjudged entitled to recover by the Court of Claims, calling it an unconstitutional attempt to invade the judicial province by prescribing a rule of decision in a pending case. *United States* v. *Klein*, 13 Wall. 128. Surely no such concern would have been manifested if it had not been thought that the Court of Claims was invested with judicial power," 370 U.S. at 568 (emphasis added).

In the light of these cases and the constitutional principles that underlie them, the Student Transportation Moratorium Act would unconstitutionally interfere with the authority of courts to issue judgments in cases over which they have jurisdiction.

II. THE STUDENT TRANSPORTATION MORATORIUM ACT WOULD IMPOSE CONTINUING 14TH AMENDMENT INJURY ON SCHOOLCHILDREN AND WOULD THEREFORE VIOLATE THE FIFTH AMENDMENT

A. Legal context of busing

Consideration of the constitutionality of the proposed Student Transportation Moratorium Act of 1972 should begin with a review of the authority by which and the circumstances under which courts order busing.

Courts order school desegregation only where they have found that the segregated conditions are due, at least in part, to official conduct in violation of the Fourteenth Amendment.[13] Once a court has found a constitutional violation, however, the Fourteenth Amendment requires the discriminating agency to "effectuate a transition to a racially nondiscriminatory school system," *Brown* v. *Board of Education*, 349 U.S. 294, 301 (1955) (*Brown II*) and to "take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch." *Green* v. *School Board of New Kent County*, 391 U.S. 430, 437–38 (1968). The authority of the federal courts to issue orders requiring such affirmative action is inherent in their equity power. *Brown II, supra.* The validity of court orders is not affected by the fact that they may be difficult or burdensome:

"All things being equal, with no history of discrimination, it might well be desirable to assign pupils to schools nearest their homes. But all things are not equal in a system that has been deliberately constructed and maintained to enforce racial segregation. The remedy for such segregation may be administratively awkward, inconvenient, and even bizarre in some situations and may impose burdens on some; but all awkwardness and inconvenience cannot be avoided in the interim period when remedial adjustments are being made to eliminate the dual school systems." *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 28 (1971).

As Chief Justice Burger observed in *Swann, supra*, at 30, busing is one "remedial technique . . . within [the] court's power to provide equitable relief . . ." in a case of constitutional injury to school children.

"[W]e find no basis for holding that the local school authorities may not be required to employ bus transportation as one tool of school desegregation. Desegregation plans cannot be limited to the walk-in school." *Ibid.*

Other techniques include teacher transfers, majority-minority "free" student transfers, rezoning (gerrymandered or "satetlite" or both), pairing, and new school construction. Courts order busing in combination with other techniques.

"The scope of permissible transportation of students as an *implement of a remedial decree* has never been defined by this Court and by the very nature of the problem it cannot be defined with precision. No rigid guidelines as to student transportation can be given for application to the infinite variety of problems presented in thousands of situations." *Swann, supra*, at 29 (emphasis added).

That busing may be found to be an *indispensable* ingredient for effective and speedy desegregation is illustrated by *North Carolina State Board of Education* v. *Swann*, 402 U.S. 43 (1971), in which the Court unanimously struck down as unconstitutional

Footnotes at end of article.

North Carolina's Anti-busing Law. The state law "operate[d] to hinder vindication of federal constitutional guarantees." *Id.* at 45. Chief Justice Burger observed:

"The legislation before us flatly forbids assignment of any student on account of race or for the purpose of creating a racial balance or ratio in the schools. The prohibition is absolute, and it would inescapably operate to obstruct the remedies granted by the District Court in the *Swann* case." *Id.*

Busing plans are therefore appropriate ingredients of effective remedies by which unconstitutional segregation can be eliminated root and branch, speedily, and effectively. In some cases, effective relief may be found to be impossible without busing. With this in mind, we turn to an analysis of the proposed Student Transportation Moratorium Act of 1972. The bill would operate to stay the implementation of any court-ordered busing plan, notwithstanding the district court's proper jurisdiction, its findings of unconstitutional state action, and its determination that busing is an appropriate ingredient of the action required to achieve the effective desegregation required by the Constitution.

B. Irreparable harm in further delay

As we have already pointed out, constitutionality of the Moratorium Bill would depend on whether it could be clearly demonstrated that the moratorium was needed to enable Congress to enact the contemplated remedial legislation, and that in the remedial legislation Congress intended to protect and enforce rather than to limit the Fourteenth Amendment rights involved, and to provide at least equally effective remedies for their impairment.

It would be difficult to demonstrate that a moratorium is necessary in order to allow Congress calmly, and with deliberation, to fashion appropriate subsequent legislation. The question is one of jurisdictional fact and would be subject to review by the courts. *Sterling v. Constantin*, 287 U.S. 378, 403 (1932) (Hughes, C. J.); *Ng Fung Ho v. White*, 259 U.S. 276 (1922). Since Congress—without a moratorium—is now considering substantive legislation in a "very calm, very deliberate, very unemotional" atmosphere (Remarks of Cong. McClory, Apr. 13, 1972 at 1412), a moratorium appears unnecessary. As HEW Secretary Richardson acknowledged, "the deliberations of this committee fully deserve the characterization [Congressman McClory has] given them." *Id.* at 1413.

Nor may it be argued that because seventeen years have already passed since the Supreme Court issued its opinion in *Brown v. Board of Education*, 349 U.S. 294, 301 (1955) (*Brown II*), Congress may now delay effective relief for an additional year. That argument fails because it does not take into account the long line of Supreme Court cases holding not only that the Fourteenth Amendment requires effective remedies to eliminate racial segregation in the public schools, but also that delays in the implementation of effective means are now intolerable. Delays are intolerable because the constitutional injury of segregation inflicted upon school children is "devastating [and] often irreparable . . . ." *Dandridge v. Jefferson Parish School Board*, 404 U.S. 1219, 1220 (1971) (Justice Marshall, in chambers). "[T]he rights of school children to schooling under nondiscriminatory and constitutional conditions cannot be recaptured for any school semester lived under discrimination practices. Nor can any court thereafter devise an effective remedial measure." *Kelley v. Metropolitan County Board of Education*, 436 F. 2d 856, 862 (6th Cir. 1970).

Eighteen years ago, the novelty of the decision in *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954), and the anticipated difficulty and complexity of fashioning appropriate relief led the Supreme Court to order something less than immediate results. The Supreme Court ordered "all deliberate speed" in desegregation but required school districts to make a "prompt and reasonable start toward full compliance," holding that: "The burden rests upon the defendants to establish that [additional] time is necessary in the public interest and is consistent with good faith compliance at the earliest practicable date." *Brown v. Board of Education of Topeka*, 349 U.S. 297, 300 (1955) (*Brown II*).

The "deliberate speed" time factor established by *Brown II* was allowed to stand for nearly a decade. In 1963, in *Goss v. Board of Education of Knoxville*, 373 U.S. 683, 689, the Supreme Court referred to the "deliberate speed" language of *Brown II* and observed, "[E]ight years after this decree was rendered and over nine years after the first *Brown* decision, the context in which we must interpret and apply this language to plans for desegregation has been significantly altered." In 1964, in *Griffin v. County School Board of Prince Edward County*, 377 U.S. 218, the Court observed at 234: "The time for mere 'deliberate speed' has run out, and that phrase can no longer justify denying these Prince Edward County school children their constitutional rights to an education equal to that afforded by the public schools in the other parts of Virginia." *See Calhoun v. Latimer*, 377 U.S. 263, 264 (1964), remanding for further consideration a desegregation plan adopted by the Atlanta Board of Education in 1964, on the basis of petitioners' assertion that it would not achieve desegregation "until sometime in the 1970's."

By 1968, in *Green* case, delay for purposes of allowing "freedom of choice" a chance to work had become constitutionally intolerable. The Court found (391 U.S. at 438–39):

"[A] plan that at this late date fails to provide meaningful assurance of prompt and effective disestablishment of a dual system is . . . intolerable. . . . The burden on a school board today is to come forward with a plan that promises realistically to work, and promises realistically to work *now*." (Emphasis in original.)

Conceding that "freedom of choice" might in some circumstances put an end to desegregation, the Court nevertheless said (391 U.S. at 441):

"[I]f there are reasonably available other ways, such for illustration as zoning, promising *speedier* and *more effective* conversion to a unitary, nonracial school system, 'freedom of choice' must be held unacceptable. (Emphasis added.)

The test established by *Green* was effectiveness, and the Court made it clear that a critical element of effectiveness is speed.

The immediacy of the relief required by the Fourteenth Amendment was firmly established in 1968. On August 21 of that year, the Justice Department moved the Fifth Circuit to allow more time for desegregation of the Holmes County, Mississippi, public schools. The private plaintiffs applied to Justice Black for a stay of the Fifth Circuit's decision granting the motion. Mr. Justice Black denied the stay, but he invited the applicants to present the issue to the full Court at the earliest possible opportunity and he wrote:

"[T]here is no longer the slightest excuse, reason or justification for further postponement of the time when every public school system in the United States will be a unitary one, receiving and teaching students without discrimination on the basis of their race or color." *Alexander v. Holmes County Board of Education*, 396 U.S. 1218, 1220 (1969) (Black, Circuit Justice, in Chambers).

"I would . . . hold that there are no longer any justiciable issues in the question of making effective not only promptly but at once—*now*—orders sufficient to vindicate the rights of any pupil in the United States who is effectively excluded from a public school because of his race or color.

"It has been 15 years since we declared in *Brown I* that a law which prevents a child from going to a public school because of his color violates the Equal Protection Clause. As this record conclusively shows, there are many places still in this country where the schools are either 'white' or 'negro' and not just schools for all children as the Constitution requires. In my opinion there is no reason why such a wholesale deprivation of constitutional rights should be tolerated another minute." *Id.* at 1222.

Two months later, in October, 1969, the full Court per curiam followed Justice Black's lead and held:

"[T]he Court of Apepals should have denied all motions for additional time because continued operation of segregated schools under a standard of allowing 'all deliberate speed' for desegregation is no longer *constitutionally permissible*. Under explicit holdings of this Court, the obligation of every school district is to terminate duel school systems at once and to operate now and hereafter only unitary schools." *Alexander v. Holmes County Board of Education*, 396 U.S. 19, 20 (emphasis added).

Thereafter, the United States Court of Appeals for the Fifth Circuit, in *Singleton v. Jackson Municipal Separate School District*, 419 F.2d 1211, 1216 (1969), conceded that the *Alexander* opinion "shift[ed] the burden from the standpoint of time for converting to unitary school systems." In language very significant for Congress' consideration of the present proposal for a Moratorium, the Fifth Circuit observed:

"The shift is from a status of litigation to one of unitary operation pending litigation. The new modus operandi is to require immediate operation as unitary systems. Suggested modifications to unitary plans are not to delay implementation. Hearings on requested changes in unitary operating plans may be in order but no delay in conversion may ensue because of the need for modification or hearing." *Id.*

The Fifth Circuit nevertheless did allow, in the twelve consolidated cases before it, a one-semester delay in the implementation of pupil transfer plans because the order came in the middle of a school year. Plaintiffs went back to the Supreme Court. There, under the name of *Carter v. West Feliciana Parish School Board*, 396 U.S. 290, decided January 14, 1970, the Court held per curiam that even a one-semester deferral of student desegregation misconstrued the immediacy required by its holding in *Alexander*. Justices White and Harlan, concurring, offered as a yardstick "the conclusion that in no event should the time from the finding of noncompliance with the requirements of the *Green* case to the time of the actual operative effect of the relief, including the time for judicial approval and review, exceed a period of approximately eight weeks. This, I think, is indeed the 'maximum' timetable established by the Court today for cases of this kind." 396 U.S. at 293. Justices Black, Douglas, Brennan and Marshall, however, disassociated themselves even from the eight-week timetable, because they believed "that those views retreat from our holding in *Alexander* . . . ." *Ibid. See also Dowell v. Board of Education of Oklahoma City Public Schools*, 396 U.S. 269 (1969), reversing an order of the Tenth Circuit staying implementation of a desegregation plan: "[T]he Court of Appeals should have permitted [the plan's] implementation pending argument and decision of the appeal." 396 U.S. at 271.

It is clear from the foregoing that in school desegregation cases, the Fourteenth Amendment requires effective relief; that "effective relief" means immediate relief; and that the courts may not permit delays in the implementation of effective relief, because delays

continue irreparable, constitutional injury to the school children involved. In cases where federal courts find that busing orders are necessary to provide effective relief for denials of equal protection found to have occurred, every day of the pendency of a moratorium enacted by Congress would inflict further constitutional harm on the school children involved.

School boards thus may not delay implementation of school desegregation plans that promise to work "now." *Griffin, Green, Alexander, supra.* State legislatures and governors may not hamper the implementation of effective remedies, whether by anti-busing statutes, *North Carolina State Board of Education* v. *Swann,* 402 U.S. 43 (1971) [14] or by other kinds of delay and interference with court-ordered desegregation. *Griffin* v. *County School Board of Prince Edward County,* 377 U.S. 218 (1964); *Cooper* v. *Aaron,* 358 U.S. 1 (1958). Congress has no less stringent constitutional responsibilities in this regard than any state agency. Yet, if Congress were to enact the Student Transportation Moratorium Act of 1972, it would be implicating itself in exactly the kind of delaying activity prohibited for school boards, state legislatures and governors. The Moratorium would be the direct cause of continuing denial of equal protection where a constitutional violation has already been found and where busing has been decreed a necessary part of the effective remedy. In short, by staying implementation of an effective remedy, Congress would be acting in aid of racial discrimination and therefore in violation of the due process clause of the Fifth Amendment. *Bolling* v. *Sharpe,* 347 U.S. 497 (1954); *Gautreaux* v. *Romney,* 448 F.2d 740 (7th Cir. 1970). *See Green* v. *Kennedy,* 309 F.Supp. 1127, 1136 (D.C. C.C. 1969), *dismissed for want of jurisdiction sub nom. Coit* v. *Green,* 400 U.S. 986 (1971). *Cf. Battaglia* v. *General Motors Corp.,* 169 F.2d 254, 257 (2d Cir.), *cert. denied* 335 (U.S. 887 (1948).

Moreover, in light of the stay provisions of the recently enacted Education Amendments of 1972, 86 Stat. 235 (June 23, 1972), a moratorium becomes unnecessary and even more difficult to justify. Under the stay provisions, busing orders issued by lower courts are automatically stayed pending appeal.[15] Thus any errors by lower courts in ordering busing when such busing is not warranted by law may be corrected through the normal judicial process.

C. Section 5 of the 14th amendment

The proposed Moratorium is not made lawful by Section 5 of the Fourteenth Amendment, which authorizes Congress "to enforce, by appropriate legislation," the equal protection guarantee.

In the first place, the Moratorium Act, on its face, does not purport to enforce the guarantees of the Fourteenth Amendment. The statement of purposes of the Act mentions the Amendment only in noting that courts are likely to require implementation of desegregation plans "that impose a greater obligation than required by the Fourteenth Amendment. . . ." Section 2(a)(5). And, since the Act does no more than stay execution of busing orders for a time, it is plainly not itself an expression of equal protection standards or means for their enforcement. The intent of the Moratorium is not to enforce the guarantees of the Amendment, but rather to protect interests not protected but perhaps threatened by the Amendment from injury by allegedly overzealous enforcement of the Amendment's guarantees.[16]

In the second place, even assuming that the Moratorium Act can reasonably be viewed as an effort by Congress to enforce what it believes to be the command of the Fourteenth Amendment, it can find no support in Section 5.

Those who would base the Act on Section 5 rest their argument on the Supreme Court's opinion in *Katzenbach v. Morgan,* 384 U.S. 641 (1966) which upheld Congress' power under Section 5 to prohibit enforcement of a state literacy requirement. The argument for the Moratorium is that under Section 5 Congress may conclude that the Fourteenth Amendment does not require busing, even though the courts, in the absence of congressional action, might have thought busing necessary to achieve constitutional guarantees. This argument is seriously flawed.

Section 5 is a remedial provision which, while authorizing Congress to *enforce* Fourteenth Amendment protections, does not empower Congress to define the scope of those protections. This was made clear in *Oregon v. Mitchell,* 400 U.S. (1970), in which the Supreme Court struck down a provision of the Voting Rights Act Amendments of 1970 which lowered the minimum voting age in state and local elections from 21 to 18.

Three of the nine Justices had maintained that Congress was empowered by Section 5 to determine that denial of the franchise to persons between the ages of 18 and 21 was a denial of equal protection, regardless of whether the court could so find absent such a statute. But the Supreme Court rejected that view. Justice Stewart, in an opinion joined by Chief Justice Burger and Justice Blackmun, expressely rejected the notion that Congress had the power "to determine as a matter of substantive constitutional law what situations fall within the ambit of the [Equal Protection] clause, and what state interests are 'compelling.'" 400 U.S. at 296.

Justice Harlan, in his separate opinion, reasoned as follows:

"In Article V, the Framers expressed the view that the political restraints on Congress alone were an insufficient control over the process of constitution making. The concurrence of two-thirds of each House and of three-fourths of the States was needed for the political check to be adequate. To allow a simple majority of Congress to have final say on matters of constitutional interpretation is therefore fundamentally out of keeping with the constitutional structure. Nor is that structure adequately protected by a requirement that the judiciary be able to perceive a basis for the congressional interpretation . . ." 400 U.S. at 205.

Furthermore, whatever the force of Section 5 in Congress' relations with the states, that Section does not augment Congress' power vis-a-vis the federal courts. The history of Section 5 plainly demonstrates that its purpose was simply to enable "Congress, in case the States shall enact laws in conflict with the principles of the amendment, to correct that legislation by a formal congressional enactment." Remarks of Senator Howard, who reported the Amendment to the Senate from the Joint Committee on Reconstruction, *Cong. Globe,* 39th Cong., 1st Sess., 2766, 2768 (1866). That Section 5 was not intended to give Congress greater power than the federal courts to define constitutional rights is unequivocally demonstrated by the history of Section 1 of the Fourteenth Amendment. The first draft of that Section provided that "Congress shall have power to make all laws . . . to secure . . . to all persons . . . equal protection. . . ." This draft was rejected in large part because it failed to entrench the stated guarantees against a future unsympathetic Congress. *See* Burt, *Miranda and Title II: A Morganatic Marriage,* 1969 Sup. Ct. Rev. 81, 92–93 (1969). Thus, the Amendment as adopted leaves the Courts with the last word in defining the rights protected by the Constitution.

The cases which have arisen under Section 5 reinforce the view that that Section concerns only questions of federalism—the Federal Government's relations with the states—not issues of checks and balances between Congress and the Federal Judiciary. In both *Morgan* and *Oregon* the issue was whether Congress had the power to find state laws unconstitutional where the courts had made no decision. In neither case was there a question of whether Congress could override an inconsistent determination by a federal court. The early cases, too, focused on the relations between Congress and the states and stressed the requirement that the object of legislation under Section 5 be to uphold the rights protected by the Amendment against State action. *See Ex parte Virginia,* 100 U.S. 339 (1879); *Virginia v. Rivers,* 100 U.S. 313 (1879); *Strauder v. West Virginia,* 100 U.S. 303 (1879). Some cases went so far as to strike down federal legislation where the court rejected the judgment of the Congress that the action at which the statutes were directed was violative of the Fourteenth Amendment. *Civil Rights Cases,* 109 U.S. 3 (1883); *United States v. Harris,* 106 U.S. 629 (1882).

Moreover, regardless of the power of Congress to *extend* by its legislation the rights protected by the Fourteenth Amendment, it is not permitted by Section 5 to *limit* those rights. As the Court noted in *Morgan:*

"§ 5 does not grant Congress power to exercise discretion in the other direction and to enact 'statutes so as in effect to dilute equal protection and due process decisions of this Court.' We emphasize that Congress' power under § 5 is limited to adopting measures to enforce the guarantees of the Amendment; § 5 grants Congress no power to restrict, abrogate, or dilute these guarantees. Thus, for example, an enactment authorizing the States to establish racially segregated systems of education would not be—as required by § 5—a measure 'to enforce' the Equal Protection Clause since that clause of its own force prohibits such state laws." 384 U.S. at 651 n. 10.

See also Oregon v. Mitchell, 400 U.S. 112, 128–29 (1970) (Black, J.).

Any other reading of Section 5 would conflict with the congressional purpose to secure Equal Protection Guarantees against a hostile Congress. Indeed, to read Section 5 as permitting restrictions of Equal Protection Rights would be to ignore the command of the Fifth Amendment that the federal government, including the Congress, as well as the States, is bound by the Equal Protection Clause. *Morgan* itself recognized this and made it perfectly clear that the lawfulness under the Equal Protection Clause of a congressional enactment is to be tested by the courts, even if the enactment purports to "enforce" the Clause under Section 5.384 U.S. at 656.

To read Section 5 as authorizing only extensions of Fourteenth Amendment guarantees, and not restrictions of those guarantees, not only accords with the language of *Morgan* and the command of the Fifth Amendment, it also makes good sense in our constitutional scheme. As former Solicitor General Archibald Cox has noted:

"There is not a priori reason for linking power to expand constitutional safeguards with power to dilute them. One can assert without logical fallacy that, since the chief function of the Supreme Court is to protect human rights, it should never defer to any legislative determination which restricts those rights without making its own investigation and characterization of the interest affected, even though it welcomes any legislative determination that extends human rights and is subject to challenge only as an unconstitutional extension of federal power at the expense of the States." Cox, *The Role of Congress in Constitutional Determinations,* 40 U. Cinn. L. Rev. 199, 253 (1971).

In sum, nothing in Section 5 or in the *Morgan* case justifies congressional interference with constitutional decisions of the federal courts. Perhaps, as Professor Cox has

Footnotes at end of article.

suggested, Congress could revamp America's educational system in a way which would comply with equal protection guarantees and render unnecessary certain court-ordered remedies such as busing. But until that revamping is an accomplished fact, where federal courts have found busing necessary to achieve compliance with the constitutional command, Congress may not—under the guise of "enforcing" the Equal Protection Clause—simply prevent the enforcement or execution of the Court's order.

CONCLUSION

It is our view that the proposed Moratorium and Equal Opportunities Bills are unconstitutional. They infringe on the Judicial Branch in violation of Article III of the Constitution. If the Bills were redrawn in the guise of jurisdictional statutes, they would still be unconstitutional because the courts have held that segregated schools cause irreparable injury, which, under certain circumstances, can only be remedied by some constitutionally required busing. Congress, it is true, has power under Section 5 of the Fourteenth Amendment to implement and enforce that Amendment; and Congress could enact a pervasive, regulatory scheme to deal with the problem of school segregation, which scheme would not run afoul of the Fourteenth Amendment if the courts found that all congressional remedies were adequate to protect constitutional rights. But where federal courts have found busing necessary to achieve compliance with the constitutional command, Congress may not—in the guise of "enforcing" the Equal Protection Clause—simply prevent the enforcement or execution of the court's order.

FOOTNOTES

[1] *E.g.*, Testimony of HEW Secretary Richardson (Apr. 13, 1972) at 1372, 1382, 1420 (hereinafter cited as "Richardson testimony"). Testimony of Acting Attorney General Kleindienst (Apr. 12, 1972) at 1279–80, 1284 (hereinafter cited as "Kleindienst Testimony").

[2] The only Supreme Court decision dealing with a legislative moratorium on judicial action is *Home Building & Loan Ass'n* v. *Blaisdell*, 290 U.S. 398 (1934), which sustained a Minnesota statute allowing courts to extend the redemption period of mortgages and thus postpone judicial foreclosure, but did so on the ground that the mortgage contract was inherently subject to modification by state law so that the constitutional ban on impairing the obligation of contracts had not been violated. The case is no precedent for a moratorium which by definition postpones the only relief a court finds effective for the adjudicated impairment of a constitutional right.

[3] Kleindienst Testimony at 1261–62.

[4] For example, Professor Goebel in his definitive work, *The Oliver Wendell Holmes Devise History of the Supreme Court of the United States: Antecedents and Beginnings to 1801* (P. Freund, ed. 1971), concludes at 243, n. 228, that the Constitution "robbed Congress of discretion whether or not to create inferior [federal] courts and left only discretion as to what courts were to be set up and to make changes." *See also id.* at 246–47; *Eisentrager v. Forrestal*, 174 F. 2d 961, 965–66 (D.C. Cir. 1949) (Prettyman, J.), *rev'd on other grounds, sub nom. Johnson v. Eisentrager*, 339 U.S. 763 (1950).

[5] 29 U.S.C. § 107 provides:

"No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as defined in this chapter, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—" [the statute here requires a showing of substantial injury, no adequate remedy at law, etc.]

[6] 28 U.S.C. § 2283 provides:

"A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

[7] *See also Oesterlich v. Selective Service Board*, 393 U.S. 233, 243–44 (1968), where Mr. Justice Harlan, concurring, notes that if § 10(b)(3) of the Military Selective Service Act of 1967—which limits the courts' jurisdiction to review selective service cases—were interpreted to preclude the opportunity to raise a constitutional issue in a competent forum, the statute would raise "serious constitutional problems." *See also id.* at 243, n. 6.

[8] Even after this statute was enacted, the Supreme Court still had original habeas corpus jurisdiction as well as power to review lower court habeas corpus decisions by writ of certiorari. *Ex parte Yerger*, 75 U.S. (8 Wall.) 85 (1868); *cf. Ex parte McCardle*, 74 U.S. (7 Wall.) at 515.

[9] *See also* the great deal of respectable authority holding that there could be no legislative meddling with the Supreme Court's appellate jurisdiction except for a narrow regulation of minor housekeeping items. So concludes Goebel, *The Oliver Wendell Holmes Devise History of the Supreme Court of the United States: Antecedents and Beginnings to 1801* (P. Freund, ed. 1971) at 240 ("exceptions clause" in Article III grant of appellate jurisdiction must be interpreted in light of contemporary state practice in which "regulations had been confined largely to such details as setting appealable minima or periods of limitation, and 'exceptions' of certain proceedings where neither error nor certiorari has been traditionally available."); *see also* Merry, *Scope of the Supreme Court's Appellate Jurisdiction: Historical Basis*, 47 Minn. L. Rev. 53 (1962).

[10] Note (a) to 2 U.S. (2 Dall.) at 410 explains:

"As the reasons assigned by the judges, for declining to execute the first act of Congress, involve a great constitutional question, it will not be thought improper to subjoin them, in illustration of Hayburn's case."

[11] The decisions reported in the margin of *Hayburn's Case* have been approved and relied on as a correct interpretation of the Constitution in subsequent cases, including, *e.g.*, *Muskrat v. United States*, 219 U.S. 346, 352–53 (1911), and *United States v. Ferreira*, 54 U.S. (13 How.) 40 (1852) (Taney, J.) (see especially *id.* at 52–53—"Note by the Chief Justice, Inserted by Order of the Court").

[12] *Cf. Sterling v. Constantin*, 287 U.S. 378, 403 (1932) (Hughes, C.J.): "If the matter is one of judicial cognizance, it is because of an alleged invasion of a right, and the judicial power necessarily extends to the granting of the relief found to be appropriate according to the circumstances of the case."

[13] *Swann v. Charlotte-Meckenburg Board of Education*, 402 U.S. 1, 16 (1971); *Deal v. Cincinnati Board of Education*, 369 F. 2d 55, 62 (6th Cir. 1966); *Bell v. School City of Gary*, 324 F. 2d 209 (7th Cir. 1963), *cert. denied* 377 U.S. 924 (1964); *U.S. v. School District 151 of Cook County, Illinois*, 286 F. Supp. 786, 797 (N.D. Ill. 1968); *aff'd*, 404 F. 2d 1125 (1968); *Taylor v. Board of Education of City of New Rochelle*, 191 F. Supp. 181, 182–83 (S.D.N.Y. 1961), *aff'd* 294 F. 2d 36 (2d Cir. 1961), *cert. denied* 368 U.S. 940 (1961).

[14] In this case a unanimous court, speaking through Mr. Chief Justice Burger, struck down a North Carolina statute banning involuntary busing.

[15] Section 803, 86 Stat. 372, provides:

"Notwithstanding any other law or provision of law, in the case of any order on the part of any United States district court which requires the transfer or transportation of any student or students from any school attendance area prescribed by competent State or local authority for the purposes of achieving a balance among students with respect to race, sex, religion, or socioeconomic status, the effectiveness of such order shall be postponed until all appeals in connection with such order have been exhausted or, in the event no appeals are taken, until the time for such appeals has expired. This section shall expire at midnight on January 1, 1974."

[16] Indeed, far from *enforcing* the provisions of the Fourteenth Amendment, the Act—by encouraging delay, resistance, and intransigence to constitutionally required desegregation—may involve the Federal Government in unconstitutional denials of equal protection. As the Supreme Court held in *Reitman v. Mulkey*, 387 U.S. 369 (1967), even government action which is otherwise permissible may be unconstitutional if, after examination of its "immediate objective," its "ultimate effect" and its "historical context and the conditions existing prior to its enactment," it appears that the action "encourages" discrimination.

Mr. JAVITS. Mr. President, I yield 15 minutes to the distinguished Senator from Massachusetts (Mr. BROOKE).

The PRESIDING OFFICER. The Senator from Massachusetts is recognized for 15 minutes.

Mr. BROOKE. Mr. President, I send to the desk two amendments both of which are qualified under the rule.

The PRESIDING OFFICER. The amendments will be received.

Mr. BROOKE. Mr. President, early on the morning of August 18, the House of Representatives sounded the first call for a retreat from the promise of the 14th amendment. And now the Senate is asked to hastily echo this call without proper consideration of its portent.

In the harried closing days of this Congress, proponents of H.R. 13915 urge the Senate to rush to undo the slow but inexorable progress of two decades and to invite the most serious constitutional confrontation in over a century.

They would have us say to millions of Americans that segregation is preferable to possible inconvenience, that fears are more persuasive than facts and that political opportunity is more compelling than our constitutional responsibility.

Mr. President, how can we teach our children respect for the law, if we in the U.S. Senate treat the law with contempt?

The law of the land for 18 years has been clear: Segregation of public schools by official act is a violation of the equal protection clause of the 14th amendment. Time and again, the Supreme Court has unanimously affirmed Brown against Topeka Board of Education and the process of desegregation has continued. Though at times it was slowed by resistance, reason has prevailed and responsible citizens have accepted necessary remedies to constitutional violations. And this has brought hope to millions of Americans that we can, and shall, be one Nation. The separate but equal doctrine of Plessy against Ferguson that divided America for 60 years must never return. Yet the measure before us, cynically entitled the "Equal Educational Opportunities Act of 1972," contains the prescription for abandoning equal edu-

cational opportunities and for returning to separate but equal facilities.

Mr. President, I have lived in this country for many years and served in many offices. I have never seen anything both separate and equal in this Nation.

I have no doubt that this invidious prescription is unconstitutional and I shall discuss the constitutional aspects of this measure later. But I ask now, how can the Congress even consider a policy that would encourage the development of two nations within our country—one white, and the other black?

The fact that we are, angers and even more, saddens me. For I see by our very consideration of H.R. 13915, the encouragement of a small minority of Americans—black and white—who champion the cause of separatism.

Mr. President, I have denounced separatism and separatists, both black and white. I believe in one Nation. I believe in integration. And I am confident that most Americans, black and white, share these beliefs.

The hope for an end to racial division lies in our educational system. The opportunities we afford our young people determine the shape of our Nation's future. If we deny children the right to an equal chance in life, we deny our Nation a chance for greatness. If we perpetuate separate societies, divided by ignorance and suspicion, we risk an unsteady and uncertain future. For each generation of segregation in our schools, we risk another generation of division in our Nation.

We must not deny our young people the chance to bridge mutual misunderstandings with shared experiences and opportunities.

This cleverly crafted measure strikes at the fundamental source of hope for our Nation—our children.

Though I am confident its most pernicious provisions would be struck down by the Supreme Court of the United States, its enactment would seriously divide and confuse our Nation. For two decades, the course has been sure but slow. And now we are asked to hastily and drastically alter it. Why? Because many Americans have become confused by the rhetoric on busing. In some cases this confusion is deliberately contrived by those who speak of "busing to achieve racial balance" when such busing is not at issue. The issue is simple: Shall we or shall we not permit necessary remedies to a constitutional violation? Segregation of public schools by official act is unlawful.

That is a fact. Busing is an integral and pervasive component of our educational system. And, that too is a fact. The fact is that in many cases, busing is necessary to uphold the law.

This legislation is not as some call it, an "antibusing" bill. Its provisions, limiting options in school assignments, permitting resegregation without remedy, and stimulating relitigation of all desegregation cases, compel a more accurate description. This is an "antidesegregation" bill. This is an "anti-integration" bill.

Similarly, this discussion is being mislabeled. How can one consider this a filibuster in face of the facts?

While its proponents claim this is one of the most important measures to be considered this Congress, they prevented the careful consideration that a measure of such import deserves.

An editorial in today's edition of the Washington Post shares this view. The editorial is headlined "The Busing Bill in the Senate." The editorial reads:

THE BUSING BILL IN THE SENATE

Today the Senate will vote on a cloture motion to cut off a "filibuster" on the House-passed antibusing bill. We put the word "filibuster" in quotations, because if this is a tactical talkathon that the bill's opponents are pursuing, it must be one of the shortest in recorded Senate history. The legislation was brought before the Senate on Friday—and the motion to cut off debate was filed the same day. Clearly, what supporters of the House-passed busing bill are after, then, is not the termination of prolonged and dilatory debate, but rather a quick opportunity in the heat of a political year to force a vote on busing and to do so without Senate examination of this particular legislation to which the House added some very far reaching provisions on the floor. These provisions have been studied by neither the House nor the Senate in committee (the bill was put directly on the Senate calendar), and it seems to us doubly necessary, in consequence, that the Senate be given at the very least a reasonable period of time to discuss them. A cloture ruling would prevent such discussion.

Among the provisions of the House-passed bill that demand such scrutiny is one which would permit the reopening of long since closed and completed Southern school cases, cases which preceded and had nothing to do with the current furor over court-ordered comprehensive busing in big cities North and South. It could put in train an endless flow of disruptive and harmful relitigation and possibly result in a rollback of court decisions whose fairness and necessity have by now been granted by practically everyone—including many of those who once opposed them.

Another provision which has not been thoroughly studied by either the Senate or the House is that which would permit court-ordered busing, but limit it to the "next nearest" school from that which was being desegregated. What this strange feature could do—and in innumerable cases would—is guarantee that the effects of busing orders be felt only in those poor white "ethnic" areas whose schools have least to offer ghetto children and where racial tensions run the highest. By voting for such a provision, the members of Congress are saying, in effect, that busing is fine so long as it tends to leave the affluent middle-class alone.

Finally, there is a provision authorizing the federal judiciary and the executive branch to compel, as a remedy preferable to busing, the closing down of old schools and the construction of new. Interestingly, when this provision came before the House, an amendment was voted down which would have at least provided some federal funds for districts compelled by the federal government to engage in what could be extremely costly construction. That vote, in our view, offers a pretty fair measure of the degree of sensitivity that prevails in Congress concerning the potential long term effects of this legislation on the districts, in question—as distinct from sensitivity toward the political value of an "anti-busing" vote, which the members feel only too keenly.

The provisions cited above in no way exhaust the list of features in the bill which could do with a good deal more reflection on the part of members of the Senate. But they do make a fairly solid case, in our judgment, for—at a minimum—a reasonable period of discussion on the floor. You do not have to be a friend of the filibuster to reach that conclusion, because that is not what is at issue in the couple of days of debate that have taken place on this very complicated and consequential bill. The Senate should resist these premature and politically motivated attempts to silence discussion on such an important issue.

Mr. President, as this editorial states, the most troublesome provisions of H.R. 13915 were written on the floor of the House of Representatives in disagreement with the action of its Commit ee on Education and Labor. The measure was so drastically revised that one of its authors, Representative QUIE, could not support it.

The PRESIDING OFFICER (Mr. TALMADGE). The 15 minutes allotted to the Senator have expired.

Mr. ALLEN. Mr. President, I yield 2 additional minutes to the Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Alabama has yielded 2 additional minutes to the Senator from Massachusetts.

Mr. BROOKE. Mr. President, I thank the Senator from Alabama.

And here in the Senate, we are asked to follow in kind. Senate supporters of this bill refused to allow the measure to be referred to the committee with proper jurisdiction over it, the Committee on Labor and Public Welfare.

By refusing to allow proper consideration of this bill, its supporters denied Americans the right to closely examine this legislation and to be heard for or against it. No one can argue that the Labor and Public Welfare Committee is a graveyard for legislation. The committee has faced up to the issue of busing time and again. The Senate has expressed its will on busing on two occasions this year alone. Knowing that the committee would act responsibly, I can only assume that the supporters of this bill feared the revelations that would ensue from its careful scrutiny. So, it is now necessary for those of us who feel it is the Senate's responsibility to carefully consider important legislation, to discharge this responsibility here in the Senate Chamber. The American people deserve this opportunity to be apprised of all the facts concerning the so-called Equal Educational Opportunities Act of 1972.

The PRESIDING OFFICER. The 2 additional minutes yielded to the Senator from Massachusetts have expired.

Mr. ALLEN. Mr. President, I yield 1 additional minute to the Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Alabama yields the Senator from Massachusetts 1 additional minute.

Mr. BROOKE. Mr. President, I thank the Senator from Alabama.

The title of this measure belies its content as any objective analysis will prove.

POLICY AND PURPOSE

The measure's basic policy and purpose as set forth in section 2 flaws the measure from the beginning. Section 2 (a)2 would establish a national policy requiring assignment of students to

schools in their neighborhoods. Other provisions in the bill contradict this policy. But let us examine the basic premise of the policy. It assumes that our Nation's educational system is based on neighborhood lines. The history of American education does not uphold this assumption. For a number of reasons—space, staff, and other resources—school assignments are not generally based on the closest school criterion. The fact that 40 percent of our public school children ride schoolbuses and 25 percent use public transportation to get to school supports this conclusion. Neighborhoods are not considered stable entities with a constant ratio of school-age children to their population.

The PRESIDING OFFICER. The Senator's time has expired. Who yields time?

The Senator from Alabama yields 1 additional minute to the Senator from Massachusetts. The Senator from Massachusetts may proceed.

Mr. BROOKE. I thank the Senator from Alabama. He has been most gracious and I am most grateful.

Mr. President, neighborhoods change. School assignments change. Nowhere does H.R. 13915 define the term "neighborhood." Without definition, this policy could be effectively used as an excuse for segregation, as in the past, through gerrymandered assignment areas.

What meaning does the term "neighborhood" have to large high school and junior high school attendance districts, which cover many neighborhoods? The answer is none.

This expression of policy in support of an educaticnal system that does not now or could not exist is irresponsible. How can the Congress of the United States enact a mythical policy? We should be more responsible than writing undefined catchwords into law.

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

Mr. ALLEN. Mr. President, I ask unanimous consent that the time allotted to the Senator from New York (Mr. JAVITS) be allotted to the Senator from Massachusetts.

The PRESIDING OFFICER. Is there objection? Without objection, the Senator from Massachusetts may proceed.

FINDINGS

Mr. BROOKE. Mr. President, the measure moves from the declaration of policy which cannot be realized to the findings of facts that cannot be supported.

Section 3(a) of H.R. 13915 would have Congress find that "many school systems have been required to engage in extensive transportation of students" in order to eliminate dual school systems.

Since only 3 percent of the children now riding school buses are doing so for desegregation purposes, the term "extensive" has no nationwide application. The experience statewide would also contradict this finding.

The facts are that there is less busing, not more busing, as the dual educational system is eliminated. This is because children are no longer bused past one segregated school to get to another. In Alabama, desegregation orders resulted in a decrease in 1 million passenger-miles. In Mississippi, 318,095 children were bused to maintain segregated schools; only 292,472 were bused when segregation was ended. The same experience—a decline in the number of students bused and the number of miles transported—resulted after desegregation orders were entered in Charlotte, in Richmond, in Leon County, Fla., and elsewhere.

The finding in 3(a)3—that school systems have been required "to expand large amounts of funds" is likewise not supported by fact. In 1933, the expenditure for pupil transportation was 3.5 percent of the cost of operating public schools. In 1969–70, it was 3.6 percent. And it should be noted that in the intervening years, there was a nationwide move toward consolidation of schools away from the outmoded one-room schoolhouse.

Are not those who now argue that busing is expensive, the same people who sought to bar the use of Federal funds for busing? Perhaps in some cases desegregation plans do require increased expenditures. If local educational agencies are required by a Federal court or agency to increase transportation, I think it is only proper that Federal funds be made available to meet part or all of these increased expenses. I cannot understand the logic of proponents of this bill who now charge that busing is expensive, yet who have consistently argued that Federal funds should not pay for student transportation.

But more importantly, viewed as a percentage of public school expenditures, transportation is but a small budget item. There is no basis for Congress to find that school systems have spent large sums for busing.

Nor can Congress conceivably find, as section 3(a)(4) suggests that transportation of students "creates serious risks to their health and safety and disrupts the educational process."

Such a finding ignores the evidence that the schoolbus is the safest way for children to get to school—safer even than walking. A 6-year study by the Pennsylvania Department of Education found riding three times safer than walking. The National Safety Council's latest statistics show that while there are 2.4 fatalities per 100 million miles of travel in private automobiles and 0.29 in airplanes, the figure for schoolbuses is 0.06.

I yield to the distinguished Senator from New York.

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

The PRESIDING OFFICER. The Senator from New York has 4 minutes remaining.

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

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. ALLEN. I yield to the Senator from Michigan.

The PRESIDING OFFICER. How much time does the Senator from Alabama yield to the Senator from Michigan?

Mr. ALLEN. The time has been returned to the Senator from Michigan.

The PRESIDING OFFICER. The Senator from Michigan has control of the time in opposition. How much time does the Senator yield himself?

Mr. GRIFFIN. Mr. President, I yield 6 minutes to the Senator from North Carolina.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mr. ERVIN. Mr. President, I rise in support of the motion for cloture. I do that because next to Vietnam there has been more debate during the past several years on the busing issue than upon any other issue confronting Congress. The opponents of cloture maintain, and they maintain quite correctly, that busing has been a feature of American education. But I would point out to the Senate there are two kinds of busing. There is busing of children whose homes are remote from the nearest school available to children of their ages and intellectual attainments. This busing is resorted to carry children to the nearest school which is open to children of their ages and educational attainment, and is for the purpose of enlightening the minds of those children.

The other kind of busing is restored to merely for the purpose of integrating the bodies of children, and not enlightening their minds. The first kind of busing is justified. The other kind of busing is a reprehensible tyranny imposed by a perversion of the equal protection clause upon helpless little children, both black and white.

The difference between busing for educational purposes and busing for integration purposes is as wide as the gulf which yawns between Lazarus in Abraham's bosom and Dives in hell.

The only way that the Supreme Court of the United States was able to upheld busing was to twist awry the words of the equal protection clause so as to make them mean something exactly opposite from what they are intended to mean. Despite the distortion and the perversion of the equal protection clause by the Supreme Court of the United States—and I use those words advisedly—the equal protection clause is perhaps the simplest provision in the entire Constitution. The equal protection clause says that no State shall deny to any person within its jurisdiction the equal protection of the laws.

What that means is extremely simple. It means that no State shall treat in a different manner persons similarly situated. I say that when the Supreme Court undertakes to justify busing for integration purposes, the Supreme Court not only distorts the Civil Rights Act of 1964, which forbids busing for integration purposes, but it twists awry and out of shape the words of the equal protection clause itself.

When a Federal court decrees that a school board must bus children, for integration purposes, it violates the equal protection clause in two ways, and this is so plain that oceans of judicial sophistry cannot wash out its truth. When a Federal court enters a busing decree for integration purposes, it says to the school board, "You must violate the equal protection clause by denying equal treatment to children who are similarly situ-

ated." You must say to one group of your children, "you are permitted to attend your neighborhood schools," and you must say to the other group of your children, "you are not permitted to attend your neighborhood schools."

It is as clear as the noon day sun in a cloudless sky, Supreme Court justices to the contrary notwithstanding, that that is a violation of the equal protection clause because it treats children who are similarly situated in a different manner.

The PRESIDING OFFICER. The 6 minutes allotted to the Senator from North Carolina have expired.

Mr. ERVIN. Just 1 more minute.

Mr. GRIFFIN. I yield 1 minute to the Senator from North Carolina.

The PRESIDING OFFICER. The Senator from North Carolina is recognized for 1 minute.

Mr. ERVIN. The decrees of the Federal courts commanding busing for integration purposes violate the equal protection clause in one other respect. The Federal Court says, "The reason why you cannot let this second group of children attend their neighborhood schools with the first group is that you must transport them to other schools, elsewhere, either to decrease the number of children of their race in the neighborhood schools, or to increase the number of children of their race in the schools elsewhere." Oceans of judicial sophistry cannot wash out the plain fact that that is denying the children who are bused the right to attend their neighborhood schools solely on account of their race. That is exactly what the Supreme Court held in the school desegregation cases is unconstitutional under the equal protection clause. That case adjudged that no child can be denied the right to attend any school on account of his race.

The PRESIDING OFFICER. The additional 1 minute allotted to the Senator has expired.

Mr. GRIFFIN. Mr. President, pending the arrival of the Senator from Tennessee (Mr. BAKER) to the Senate, who is the next scheduled speaker, I yield myself 2 minutes.

The PRESIDING OFFICER. The Senator from Michigan is recognized for 2 minutes.

Mr. GRIFFIN. Mr. President, I want to commend the distinguished Senator from North Carolina, who is a great and recognized scholar of the Constitution, for his analysis of the situation, particularly as the Supreme Court has distorted the meaning of the 14th amendment in this area.

Along with other Senators, I have introduced a proposed constitutional amendment, and the language of the amendment I have introduced says this: This Constitution shall not be construed to require that pupils be assigned or transported to schools on the basis of their race.

It seems almost incredible that it would be necessary to propose a constitutional amendment to say that students shall not be transported to schools by public authorities on the basis of their race, but, unfortunately, we have the ridiculous point where instrumentalities of government, namely, the courts, are doing precisely what the Constitution says that government cannot do. In their decisions, the courts are in effect disregarding the constitutional mandate that all people shall be treated equally under the 14th amendment. And in this Senator's views, it may well be necessary to adopt a constitutional amendment to straighten out the mess that has been created by the courts.

If we are going to be confronted, as we are here, with a filibuster by those who are traditionally against filibusters—and that is the fact, it, as we know, is going to be necessary to get a two-thirds vote of the Senate in order to even go to a vote on the anti-busing legislation. If this persists to be the case, this Senate believes that the net result will be the consideration and passage of a constitutional amendment.

The PRESIDING OFFICER. The 2 minutes of the Senator from Michigan have expired.

Mr. GRIFFIN. I now yield 5 minutes to the distinguished leader in this effort, the Senator from Tennessee (Mr. BAKER).

The PRESIDING OFFICER. The Senator from Tennessee is recognized for 5 minutes.

Mr. BAKER. Mr. President, I thank the distinguished acting Republican leader. I appreciate his comments. I am quick to acknowledge his leadership in this area, his consistent opposition to judicially ordered busing, and his consistency in trying to bring legislative relief.

He, like I, comes from a State where we know first-hand the mischief of judicially ordered crosstown busing. The distinguished Senator from Michigan has experienced in his constituency, as I have experienced in mine, the enormous dislocations, the disquiet, the fears, and the burdens that are cast, not just on the community generally, but on the children whose education is at stake in this judicially contrived situation.

Mr. President, logic does not yield a satisfactory description of the dislocations and the disquiet caused by busing decrees. While I have always opposed busing—judicially ordered busing—for the purposes of racial balance as we have experienced in Nashville, and as we may experience in other cities in my State, I am frank to say that the public reaction to it has been even more vigorous, has been even more profound, then I would have expected under the circumstances personally, because the enormous hardships that could not be expected, that could not be foreseen, have caused disruptions in families and communities that are truly of monumental proportions.

In Nashville, Tenn., for instance, we have cases where young children—grammar school children—get up well before daylight to stand on a street corner and catch a schoolbus before daylight, to go to school in a school system which until recently was being operated on a two-shift basis in order to accommodate the requirements of the judicial decree, where they travel, not just a few blocks, but literally for an hour or more—each way, Mr. President—to return, in some cases shortly after noontime, in other cases very late in the afternoon, but in any event having a highly disruptive effect on the families of those children in order to make other and additional provisions for someone, some adult, to stay with the children until the parents, who in many instances, at least, are both working parents, return home.

Mr. President, the consequences of massive judicially ordered crosstown busing have been grave indeed, and it is time something was done about it. We have made substantial efforts to provide a moratorium on new busing orders, and the courts have not fully agreed with what I think our intent was at the time. Those matters are still in litigation. I refer, of course, to the effectiveness or alleged ineffectiveness of the so-called Broomfield approach.

But now we have before us a much more comprehensive bill, dealing not only with cases now pending and cases that may be decided in the future, but cases in which decrees have already been entered, providing for the establishment of legislative guidelines the courts must adhere to before they can resort to busing.

I believe this piece of legislation is significant, important, and effective. I believe that had I been writing the bill, I might have written some of its provisions in a different way, but the point is, Mr. President, that this bill, I believe, will do the job now, and I believe that the Senate should get on with the business of considering the bill on its merits, not on the question of whether we can terminate a filibuster, but on the merits of this bill, and that we should pass the bill by a clear majority, verbatim.

While I may disagree with a few of the provisions of the bill, I think at this late date in this session of Congress there is not time to go about the business of constituting a committee on the disagreeing votes of the two Houses with any realistic hope that we can have legislation on the President's desk this year.

So, Mr. President, I fervently hope that we can pass this bill in the House form now, that we can quickly get to the business of voting on the merits of this controversy, that we can soon terminate this filibuster against this measure, and that we can bring relief this year to the hard-pressed communities which are faced with the burdensome business of crosstown busing.

Mr. President, in my native State of Tennessee, as I guess in all other States, we conduct polls from time to time to determine the attitude and outlook——

The PRESIDING OFFICER. The time allotted to the Senator from Tennessee has expired.

Mr. BAKER. I wonder if the Senator from Michigan will yield me 1 additional minute.

Mr. GRIFFIN. I yield the Senator 1 additional minute.

Mr. BAKER. We conduct polls from time to time to try to ascertain the sentiment, the viewpoint, and the attitude of the electorate on a number of issues.

On the basis of such polls, which I believe to be accurate, in Tennessee we have found not only a great majority of the white citizens of Tennessee opposed

to crosstown busing, but a substantial majority of the black citizens as well.

Mr. President, busing is not a worthy and workable tool for the accomplishment of what is otherwise a laudable and highly desirable objective, the elimination of the last vestiges of institutional segregation from the public school system of the United States. I support a unitary school system. I have always opposed and I vigorously oppose crosstown busing as a means for its accomplishment.

The PRESIDING OFFICER. Who yields time?

Mr. GRIFFIN. Mr. President, I yield 3 minutes to the Senator from Virginia (Mr. SPONG).

Mr. SPONG. Mr. President, I am voting to invoke cloture in the debate on H.R. 13915, which seeks to limit massive, enforced busing of public schoolchildren.

The time is past due for Congress to address itself to the busing issue. For years, there has been rampant confusion over what school districts are required to do in order to provide equal educational opportunities for all children. This confusion has resulted from conflicting court decisions, from various governmental actions, and from differing pronouncements by Government officials. The Congress now has the opportunity to confront the issue and failure to do so will, I believe, only leave our people more confused and bewildered.

With the possible exception of the economy, there is no domestic issue of more importance to more people in our Nation than that of busing. It is an issue which burdens people, which frightens people, which imposes hardships upon their children and which costs them money. It is a requirement which has been ordered for some, but not for others. It is a requirement whose educational value has been questioned. It is a matter which the people of this Nation expect their representatives to deal with.

I believe that most Americans are fairminded, that they want all children in our Nation to have access to the education and opportunity which will enable them to develop their potentialities. But, I also believe that Americans find it difficult to accept massive, enforced busing when it is uncertain that it produces educational benefits and when it imposes special hardships on young children—black and white.

The legislation before the Senate is of particular importance to the people of Virginia. There has probably been as much litigation over public schools in my State as in any other State in our Nation and Virginians have been forced to provide the proving ground for almost every new approach to the complex problem of providing equal educational opportunities for all children. I believe they should have relief, especially in view of the very serious questions which have recently been raised about the educational value of massive busing.

Consequently, I believe it is imperative that the Senate vote on this bill during this session of Congress.

The PRESIDING OFFICER. Who yields time?

Mr. GRIFFIN. Mr. President, I now yield at least 5 minutes, or more if he needs it, to the distinguished Senator from Alabama.

Mr. ALLEN. I thank the Senator.

Mr. President, the point has been made that the Committee on Labor and Public Welfare was not given an opportunity to consider this bill. I would like to call attention to the fact that on March 22, 1972, S. 3395 was introduced in the Senate and was referred to the Committee on Labor and Public Welfare. It was the exact same bill that was introduced in the House of Representatives as H.R. 13915. I ask unanimous consent, for the purpose of identifying the two pieces of legislation, that the first sheet of each of the printed bills, S. 3395 and H.R. 13915, be printed in the RECORD.

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

S. 3395

A bill to further the achievement of equal educational opportunities

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 "Equal Educational Opportunities Act of 1972".

POLICY AND PURPOSE

SEC. 2. (a) The Congress declares it to be the policy of the United States that—

(1) all children enrolled in public schools are entitled to equal educational opportunity without regard to race, color, or national origin; and

(2) the neighborhood is an appropriate basis for determining public school assignments.

* * * * *

H.R. 13915

An act to further the achievement of equal educational opportunities

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 "Equal Educational Opportunities Act of 1972".

POLICY AND PURPOSE

SEC. 2. (a) The Congress declares it to be the policy of the United States that—

(1) all children enrolled in public schools are entitled to equal educational opportunity without regard to race, color, sex, or national origin; and

(2) the neighborhood is the appropriate basis for determining public school assignments.

* * * * *

Mr. ALLEN. Of course, H.R. 13915 was changed on the House floor, but the exact bill that was introduced in the House was also introduced in the Senate, and the Senate committee had an opportunity to hold hearings and did hold some hearings, but that bill still reposes in the bosom of the committee. That would have been the fate of H.R. 13915 had it gone to the committee.

Mr. President, on February 26, 1964, a great speech was made in the U.S. Senate by a great, able, and distinguished Senator, the then junior Senator from New York (Mr. JAVITS), the present senior Senator from New York, commenting on the advisability of preventing a bill from going to a committee. I read from page 3700 of the proceedings on February 26, 1964, from that great speech by Senator JAVITS. I wish that I could equal it today, because it would be a great speech for the propriety of keeping this bill from going to the committee.

I read from the speech:

All kinds of things happen without measures going to committee, according to the rules. Conference committee reports are considered without going to committee. As a matter of fact, they have priority. If there is no objection, resolutions may be considered on presentation, or if there is objection, may lie over a day, and then go to the calendar. So there is no universal, unequivocal rule that everything goes to committee. Of course, it does not. So this exception from the general rule that bills and resolutions shall go to committee is entirely consistent with the general rule.

Now, it is said that we are bypassing the rules of the Senate. It seems to me that we are complying with the rules of the Senate. It is those who would argue that the words of rule XIV have no effect who are seeking to bypass the rules of the Senate by invoking some other act.

I read another excerpt from the speech:

The next question is, Shall we exercise that discretion and send it to a committee? The answer is decisively "No." We did exactly that in 1960. In deference to the arguments made at that time, we sent the bill to a committee, I believe for 5 days. And after 5 days, 2 of them spent in hearings, what happened? The only thing of substance that happened was the passing of 5 days.

That is exactly what would be done had we sent H.R. 13915 to committee.

I may say, in passing, that I advised the distinguished Senator from New York that I was going to read from his speech during the course of my remarks.

Mr. President, the further argument is made that this bill is unconstitutional. But before we vote on the application of cloture, I would like any Member of the Senate to point out a single provision of the bill before us which is inconsistent with laws of Congress already enacted on the subject of desegregation of public schools.

I would like for any Member of the Senate to point out a single provision of this bill which is in any way inconsistent with any binding ruling by the U.S. Supreme Court on the subject of desegregation.

I would like for any Member of the Senate to point out a single provision of this bill which is not consistent with traditional principles of equity which prescribe limitations on the exercise of discretionary powers by Federal Court judges.

Mr. President, the Constitution does not require racial balance in the public schools. Nevertheless, Federal judges continue to issue orders designed to achieve racial balance to the fullest extent possible.

The Constitution does not require transportation of students to public schools. Nevertheless, transportion is required by Federal judges even of school systems which have never before provided transportation. It is required for the purpose of achieving racial balance, as nearly as is practicable, in all of the public schools of a school system.

The Constitution does not require, nor does it empower, U.S. district court judges with discretion to levy taxes upon

the people or to allocate public tax revenue. Yet, U.S. district court judges do compel the allocation of local tax revenues according to priorities established in the discretion of such judges.

The Constitution does not require that boundary lines of political subdivisions of a State be disregarded in the discretion of U.S. district court judges. Nevertheless, we are all familiar with case after case in which U.S. district courts have disregarded the integrity of political subdivisions of a State in the implementation of desegregation decrees which require massive busing and cross busing of students to achieve maximum racial mixing in public schools.

The Constitution does not require, nor will equity and good conscience tolerate court decrees which endanger the health and safety of individuals. Yet, U.S. district court judges continue to issue orders requiring transportation which is so excessive as to seriously endanger the health and safety of children.

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

Mr. ALLEN. May I have 1 additional minute?

Mr. GRIFFIN. Mr. President, how much time remains on this side?

The PRESIDING OFFICER. Three minutes.

Mr. GRIFFIN. I yield 1 additional minute to the distinguished Senator from Alabama.

Mr. ALLEN. Mr. President, the Constitution does not require and equity will not permit transportation of schoolchildren away from their neighborhood and community schools to distant schools which provide inferior educational opportunities. But, it is an all too common practice for U.S. district court judges to disregard the best interest and welfare of the children whom they order bused and cross-bused to inferior schools.

The Constitution does not vest in U.S. district court judges the discretionary power to keep public schools in a state of suspension and turmoil in perpetuity. Yet, U.S. district court judges insist upon a discretionary power to require modification of desegregation plans year after year in order to accommodate racial shifts in the school populations to maintian an arbitrary racial ratio in the schools.

The Constitution does not require nor will equity tolerate U.S. district court decrees based on the doctrine of retribution. Yet, U.S. Federal court judges continue to inflict upon schoolchildren a requirement that they be bused and cross-bused to an extent that it inflicts undue hardships, if not punishment, upon innocent schoolchildren for the alleged offense of their fathers and forefathers.

Mr. President, the bill before us is designed to remedy the above abuses of power by U.S. district court judges.

If it is true, as some contend, that Congress does not have the power to curb abuses in the discretionary equity powers of Federal court judges then let it be recorded that the people of the United States do have the power.

If the Senate will not act to curb these abuses, then the people will. Those Senators who vote to block the will of the people in a matter which directly affects the health, safety, and welfare of children are sowing the wind and they shall surely reap the whirlwind.

Mr. President, again, the hour of decision is fast approaching. I urge each Senator to be mindful that he is voting for or against an unlimited discretionary power in Federal court judges to reduce human beings to the status of chattels. I am persuaded that a vote to deny the Senate an opportunity to work its will on this bill is a vote against the bill. But more, it is a vote in favor of the continuation of abuses of power which the people of our Nation will not continue to tolerate.

I urge your support for the proposition that the Senate should be given an opportunity to vote this bill up or down on its merits.

Mr. President, I ask unanimous consent to have printed in the RECORD a study prepared by the Library of Congress on the question of rule XIV.

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

PRECEDENTS REGARDING PRACTICE OF PLACING BILL ON CALENDAR INSTEAD OF REFERRING IT TO COMMITTEE

Reference is made to your inquiry of October 6, 1972, for information on the above. Specifically, you ask us to cite recent precedents whereby a measure may be placed on the Calendar instead of being referred to Committee.

Ordinarily, "[b]ills and resolutions, nominations, messages, and communications, petitions, memorials and other matters are referred to one of the 15 standing committees as provided in Rule XXV [Rule XXV, sec. 1] or to the Joint Committee on Atomic Energy [42 U.S.C. 1815]." Watkins and Riddick, *Senate Procedure* (Senate Document No. 44, 88th Congress) 575 (1964).

"When a measure is introduced, unless some other disposition is made of it at that time by unanimous consent or brought up on motion as a privileged business, it will be referred to the appropriate committee; after the second reading of a bill it will be referred under the rule, unless some other steps are taken by the Senate.

"Before the Legislative Reorganization Act of 1946 [P.L. 601 of 79th Cong.], a motion to refer a measure was in order, during the Morning Hour, after the second reading; under Senate practice, since the enactment of that law, a measure must actually be taken before the Senate in order for a Senator to make a motion to refer it to a committee, and not just a motion pending to proceed to its consideration.

"Under the present rule and practice, the Presiding Officer makes the reference of bills to committees, both those introduced in the Senate and House bills messaged to the Senate. An appeal may be taken from the decision of the Chair in making the reference, at the time it is made.

"A senate bill upon its introduction or a House bill which has been messaged to the Senate, *upon objection to further proceedings on it after its second reading, under Rule XIV, paragraph 4, may be placed on the Calendar instead of being referred.*" Id., at 576. (Footnotes largely omitted; emphasis supplied.)

Rule XIV, paragraph 4, expressly provides:

"Every bill and joint resolution reported from a committee, not having previously been read, shall be read once, and twice, if not objected to, on the same day, and place on the Calendar in the order in which the same may be reported; and every bill and joint resolution of the House of Representatives which shall have received a first and second reading without being referred to a committee, shall, if objection be made to further proceeding thereon, be placed on the Calendar."

Section 137 of the Legislative Reorganization Act of 1946, *supra*, states:

"In any case in which a controversy arises as to the jurisdiction of any standing committee of the Senate with respect to any proposed legislation, the question of jurisdiction shall be decided by the Presiding Officer of the Senate, without debate, in favor of that committee which has jurisdiction over the subject matter which predominates in such proposed legislation; but such decision shall be subject to an appeal."

In the first apparent clash over priority of right as between the two sections, the Senate by failing to sustain a point of order, effectively subordinated Rule XIV, paragraph 4, to section 137 of the Legislative Reorganization Act of 1946. As described in Senate Procedure, *supra*,—

"In 1948, under a decision of the Senate, after a House bill had been messaged to the Senate and objection had been made to its further consideration at that time, a question of reference of the bill was raised, under Section 137 of the Legislative Reorganization Act of 1946, which momentarily stayed any action of placing the bill on the Calendar. A point of order was then made regarding the priority of right under Rule XIV, paragraph, as compared to section 137 of the Legislative Reorganization Act.

"Under Rule XX, the Chair then submitted the following question to the Senate for decision: 'Is the point of order of the Senator . . . well taken?' The point of order was not sustained and the Chair under 137 of the Legislative Reorganization Act of 1946 made the reference from which an appeal was in order." Id., at 576–577.

However, the Senate effectively reversed its decision some nine years later. In 1957, under a like situation, an objection under Rule XIV, paragraph 4, having been made to further proceding on a House bill which had been read twice without being referred, the Senate decided that Rule XXV, as amended by the Legislative Reorganization Act of 1946, did not supersede and annul Rule XIV, paragraph 4. 103 CONGRESSIONAL RECORD 9778–9829 (1957).

The legislation on which the 1957 procedural vote was taken became the Civil Rights Act of 1957, P.L. 85–315, 71 Stat. 634 (1957). Senator Paul H. Douglas and Senate Minority Leader William F. Knowland (supported by Senators Allott, Clark, Hennings, Javits, Kennedy, Kuchel, and Saltonstall, among other) objected to referring the bill to the Senate Judiciary Committee and Senator Richard B. Russell raised the point of order against the objection. A roll call vote of 39–45 rejected the point of order. See Appendix 1.

The Senate reaffirmed its 1957 position on the so called by-pass procedure in connection with the Civil Rights Act of 1964, P.L. 88–352, 78 Stat. 241(1964). On February 26, 1964, the Senate voted 54–37 to place the House passed bill (H.R. 7152) on the Senate Calendar rather than refer it to the Judiciary Committee. On this occasion, Majority Mike Mansfield filed objection under Rule XIV, paragraph 4, to any further proceedings. He was supported by Senators Humphrey, Javits and Keating, among others. Once again, Senator Richard Russell raised a point of order. See Appendix 2.

RAYMOND J. CELADA,
Legislative Attorney.

Mr. TOWER. Mr. President, seldom in modern times have our Federal Courts evoked such an overwhelming outpouring of protest as we have witnessed in the last

few years as a result of the decisions to require the forced massive cross-town busing of our Nation's schoolchildren.

Ideally, our children should be attending the public schools which are closest to their homes. In this way, they can progress naturally from their home environment to their neighborhood surroundings and on into the spectrum of the community. It allows them to develop a sense of confidence and security as they grow in awareness of the world around them.

Nevertheless, our courts have ignored these educationally and psychologically sound principles in the interest of social experimentation. In numerous decisions they have required pairing, zoning, clustering, and massive busing in search of the illusive goal of "racial balance" in our Nation's school systems. These requirements, consequently, are resulting in a decline in the overall quality of our educational system.

Certainly I share the desire of all Texans and all Americans to insure a quality education for all our children regardless of their race or national origin. I am, indeed, appalled by instances in which children from poor families and children from minority groups have been denied their right to such a quality education.

Nevertheless, massive crosstown busing is not the answer to their dilemna. This "tool" of the courts has only contributed to the further deterioration of our educational system.

I feel, today, that some have lost sight of our goal of quality education and are working instead merely to assure that children of different backgrounds and heritages share the same classrooms. It is, indeed, wasteful of our tax dollars to buy buses to transport large numbers of children across town when our schools so desperately need those dollars to employ more and better teachers, to provide the best possible textbooks, and to provide an overall environment which contributes to the learning situation of the child. Massive busing requires the needless expenditure of millions of dollars which are then unavailable for other, more important, programs which contribute to the quality of our children's education.

Massive busing deprives a child of the full oppotunities to participate in extracurricular activities which nourish the development of social and psychological attitudes; it makes a child's schoolday longer, draining needed energy from involvement in other activities.

In many instances, the efforts of the court are diametrically opposed to the efforts of the school board and the faculty to educate our children. This simply must be stopped.

Some years ago, some school systems assigned pupils to schools based upon their race. That was segregation and that was a contravention of American principles. Now it is the courts which are directing that children attend schools based upon their race, and this too is a contravention of American principles. Ideally, our Nation's schools should be colorblind in the matter of student assignments.

The American goal is to provide the opportunity for achievement to all, regardless of race, allowing each individual to attain stature and to contribute to our society in accordance with his abilities. Education is a vital ingredient in affording Americans the opportunity to achieve this dream.

In the Senate, I have previously sponsored a constitutional amendment which, if passed, would redirect the Supreme Court decisions on the issue of forced massive crosstown busing of schoolchildren.

The constitutional amendment, Senate Joint Resolution 112, would specifically state that children should not be assigned to public schools on the basis of race. The amendment would be wholly within our American principles and would go a long way toward reestablishing the policy that public schools are primarily the concern of the local school boards and the parents of the community. My resolution would instruct the Supreme Court to consider more carefully the disruptive effects of its rulings on our educational system, and prohibit the busing of children as a method of balancing ethnic groups in public schools.

The process of amending our Constitution is, quite understandably, a combersome one. Therefore, I have joined in the effort to seek action on the House-passed bill that would bar the use of forced busing in most instances. Specifically, it would prohibit any busing in the first six grades and, in other grades, it would limit busing to the next nearest school. In addition, it would require that all other methods for desegregation be exhausted before busing could be required. Any school district under order to bus could go into Federal District Court and have that order modified to comply with the requirements of the new act. Since the possibility continues to exist that a court could find any law unconstitutional, I shall continue to vigorously support an amendment to the Constitution as the surest method to prohibit forced busing. The Supreme Court cannot declare a constitutional amendment unconstitutional.

Mr. President, it seems highly suspect to me that some in this body who speak out solemnly on the rights of the people, now seek to thwart the wishes of these people. In every sampling that has been taken on this matter, people of all races opposed forced busing and opposed it in overwhelming numbers. No one wants busing, yet there are those here in the Senate who seek to substitute their will for that of the Nation.

I believe that we must now vote cloture and then move to the rapid consideration and passage of the Equal Educational Opportunities Act. We have had months of debate on this important issue during the 2 years of this Congress. There are very few, if any, Senators who do not know how they are going to vote on this bill. Let us now do our duty of representing our constituents and proceed to favorably consider this bill that will improve the quality of education in America while at the same time putting an end to the educationally destructive practice of forced busing.

The PRESIDING OFFICER. Who yields time?

Mr. GRIFFIN. I yield myself the remainder of the time on this side.

Mr. President, the people of my State—particularly those in the metropolitan Detroit area—have been subjected to a threat of court-ordered busing that is monstrous in its proportions, monumental in its folly.

I refer, of course, to the treat of one Federal judge to order busing across the boundary lines of 53 different school districts in the Detroit area.

This threat hangs heavy over the heads of Detroit area citizens—black and white. Concern and emotion are intense. Although the Sixth Circuit Court of Appeals in Cincinnati has issued a temporary stay while it deliberates, the children in those communities and their parents live daily with the knowledge that massive, disruptive cross-district busing may be put in effect early in the next calendar year or in the next school year.

Unfortunately, there is mounting, disturbing evidence that many citizens who can afford to do so are moving out of the targeted areas—moving out to the far suburbs and beyond because of this busing threat. And this process is rapidly accelerating the deterioration of the inner city of Detroit.

Citizens and citizen groups are groping for and demanding an answer to this threat that will permit their children to continue to attend the school in the neighborhood where they live—the neighborhood into which they moved precisely because they wanted their children to attend that school.

It is unfortunate, but it is a fact that the people have little or no faith in the courts on this issue—and the people are turned off by public officials who continually tell them to rely on the courts.

The people know they do not elect the Federal judges. But they do elect the Representatives and Senators in Congress. And the people expect—indeed, they demand—to be represented.

Surveys taken in my State indicate that more than 80 percent of people of Michigan oppose cross-district busing. The opposition to busing cuts across all voting groups.

There is no doubt that busing is a key issue in Michigan. But the candidates running for office did not make it an issue—the courts and the people have made it an issue.

I strongly oppose forced busing, based on race, and I am satisfied that this is also the position of a large and growing majority of Americans, black and white.

My position is—and consistently has been—for equal rights and against discrimination. During my 16 years of service in the Congress, I have had the opportunity to vote for every civil rights bill that has become law since reconstruction days following the Civil War.

Like most Americans, I am convinced it is fundamentally wrong for any instrumentality of government—including a court—to discriminate in the treatment of children on the basis of their race. It is wrong for a court to order a child to be bused away from his neighborhood school solely because the

color of his skin happens to be black or white.

In retrospect, it is ironic that the Brown case came to the Supreme Court in 1954 as a suit on behalf of children who were being bused by school authorities past their neighborhood school and forced to attend a distant school solely on account of the color of their skin. The plaintiffs were seeking the right to attend the school closest to their home without discrimination on the basis of race.

Now, 18 years later, some Federal judges have extended and distorted the logic of that case to the point where thousands of boys and girls are being denied, by court order, the right to attend their neighborhood schools—and are being bused to distant schools—solely because they happen to be black or white.

As one who is keenly interested in making more and swifter progress toward the goal of a society without racial discrimination, I am deeply concerned that the tool of forced busing is counterproductive and is actually working against the very objective it is supposed to advance.

Instead of penalizing children with time-consuming bus rides and wasting the tax dollars of their parents, commonsense suggests that we should be striving harder to make sure that job and housing opportunities are really equal, and that opportunities for a quality education are really available to all children, regardless of race or economic circumstances.

Forced busing not only dissipates our tax resources but it carries no guarantee of a quality education at the end of the bus ride. Busing only soaks up funds that could, and should, be used to pay for better teachers and to provide for better educational facilities.

For the most part, I am convinced that the strong opposition people feel to forced busing is not a reflection of bigotry or discrimination. It is a reflection of understandable human concern of parents for their own children.

This strong opposition comes from the North as well as the South. It is found among educators and parents, among the affluent and the poor, among professional people and factory workers. In short, reasoned and reasonable opposition to forced busing runs deep and broad in our society.

Naturally, I am most familiar with the opposition so evident now in my own State where a Federal judge proposes an order that would affect hundreds of thousands of children in 53 communities throughout the Detroit metropolitan area.

It takes the form of protest demonstrations, in some cases not unlike other civil rights movements of the past. To be sure, in some cases there have been excesses and these have been deplored. But by and large, the busing opposition in Michigan is simply the sincere reaction of frustrated parents whose commonsense tells them this is wrong.

As I have said, busing is an issue because the people of this country are vitally concerned. Surely, the Senate owes it to the people not only to consider the problem but to vote on this bill.

Admittedly, there are wide differences between the positions of the major practical parties on this issue.

However, clear and immense may be the gap between these two positions there can be no excuse for blocking a vote in the Senate.

Mr. President, the people do not elect Federal judges—but they do elect the Representatives and Senators in Congress; and the people expect—indeed, they demand—to be represented. It is incredible that a small band of probusing Senators would seek to block action on this effective antibusing legislation—legislation which would prohibit the courts from ordering the busing of any student beyond his or her neighborhood.

Just today the Supreme Court refused to review the Detroit area busing decision—the Roth case. Although this action is not a fiscal decision, it is another strong indicator that Congress must act if there is to be a permanent solution to the busing problem.

Regardless of what happens in Cincinnati when the court of appeals rules, the Roth case will be appealed to the Supreme Court. And today's decision underscores again the native folly of those who would rely completely upon the courts for a solution.

It is tragic that a minority group of probusing Senators are now filibustering in the Senate to block passage of this bill.

This filibuster by a small band of probusing Senators is an attempt to thwart the will not only of a majority in the Senate but of an overwhelming majority of the people.

By filibustering, they are forcing us to muster a two-thirds vote in the Senate—which is the same vote necessary to adopt a constitutional amendment.

If the bill before us now is blocked by this filibuster this year, I predict that the necessary two-thirds vote to adopt a constitutional amendment will be available in the Senate next year after the election.

I have introduced and strongly support a constitutional amendment. In the final analysis, this may be the only foolproof solution.

Mr. JAVITS. Mr. President, I am reminded, in respect of this debate, of a statement which I venerate from the Old Testament. It says:

Behold, I have given you a good doctrine. Forsake it not.

The difficulty with this bill is that it is a complete reversal of all the policy of the United States since 1954. If anything was needed to give it away, it is the so-called reopener clause.

Mr. President, we in the Senate of the United States must elevate our sights to the country. I realize the problems of the Senator from Michigan, the Senator from Virginia, the Senator from Florida, and a few other Senators; but we are dealing with a nation.

About 11.5 million attend school in the 11 Southern States. The desegregation of those schools has now resulted in millions of those children having reversed their previous course, being given an opportunity to lead a decent life. The maximum estimate of children bused because of desegregation is some 600,000—3 percent of all the schoolchildren in the country—and the Department of Transportation estimates that two-thirds of those would travel by bus, anyway. So that would be 200,000 children—riding buses solely because of desegregation.

Yes, the shoe pinches in State A or State B or State C when some judge might have made errors which will be reversed by a conservative Supreme Court, which we have today. But this bill proposes to turn the clock back to pre-1954, and the reopener clause gives it away.

Mr. President, if we fall for that, then we are not looking at the country through the right end of the telescope but through the wrong end.

I repeat: This doctrine of desegregation was long overdue in this country, under the Constitution and under morality. The Supreme Court has given us a good doctrine; let us not forsake it now.

CLOTURE MOTION

The PRESIDING OFFICER (Mr. HUMPHREY). The hour of 11 a.m. having arrived, under the unanimous-consent agreement, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion which the clerk will state.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate upon the bill (H.R. 13915), an act to further the achievement of equal educational opportunities.

1. William Proxmire.
2. Ernest F. Hollings.
3. Lloyd Bentsen.
4. Lawton Chiles.
5. David H. Gambrell.
6. Herman E. Talmadge.
7. B. Everett Jordan.
8. W. B. Spong, Jr.
9. Jennings Randolph.
10. John Sparkman.
11. Strom Thurmond.
12. Robert P. Griffin.
13. Clifford P. Hansen.
14. Edward J. Gurney.
15. Bill Brock.
16. Bill Roth.
17. Robert Dole.
18. Paul J. Fannin.
19. Howard H. Baker.
20. John Tower.

CALL OF THE ROLL

The PRESIDING OFFICER (Mr. HUMPHREY). Under rule XXII, the Chair directs the clerk to call the roll to ascertain the presence of a quorum.

The legislative clerk called the roll, and the following Senators answered to their names:

[No. 538 Leg.]

Aiken	Fannin	Moss
Allen	Fong	Muskie
Allott	Fulbright	Nelson
Anderson	Gambrell	Packwood
Baker	Goldwater	Pastore
Bayh	Griffin	Percy
Beall	Gurney	Proxmire
Bellmon	Hansen	Randolph
Bennett	Harris	Ribicoff
Bentsen	Hart	Roth
Bible	Hartke	Schweiker
Brock	Hatfield	Scott
Brooke	Hollings	Smith
Buckley	Hruska	Sparkman
Burdick	Hughes	Spong
Byrd, Harry F., Jr.	Humphrey	Stafford
Byrd, Robert C.	Inouye	Stennis
Cannon	Jackson	Stevens
Case	Javits	Stevenson
Chiles	Jordan, N.C.	Symington
Church	Jordan, Idaho	Taft
Cooper	Kennedy	Talmadge
Cotton	Magnuson	Thurmond
Cranston	Mansfield	Tower
Dole	Mathias	Tunney
Eastland	McClellan	Williams
Edwards	Miller	Young
Ervin	Mondale	
	Montoya	

Mr. ROBERT C. BYRD. I announce that the Senator from Missouri (Mr. EAGLETON), the Senator from Alaska (Mr. GRAVEL), the Senator from South Dakota (Mr. MCGOVERN), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Montana (Mr. METCALF), and the Senator from Rhode Island (Mr. PELL) are necessarily absent.

I also announce that the Senator from Wyoming (Mr. MCGEE), and the Senator from Louisiana (Mr. LONG), are absent on official business.

Mr. GRIFFIN. I announce that the Senator from Delaware (Mr. BOGGS), the Senator from Nebraska (Mr. CURTIS), the Senator from Colorado (Mr. DOMINICK), the Senator from Kansas (Mr. PEARSON) and the Senator from Ohio (Mr. SAXBE) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Kentucky (Mr. COOK) is absent on official business.

The Senator from Connecticut (Mr. WEICKER) is absent to attend the funeral of former Senator Prescott Bush.

The PRESIDING OFFICER (Mr. HUMPHREY). A quorum is present.

VOTE

The PRESIDING OFFICER (Mr. HUMPHREY). Pursuant to rule XXII, a rollcall has been had, and a quorum is present.

The question before the Senate is, Is it the sense of the Senate that debate on H.R. 13915, a bill to further the achievement of equal educational opportunities, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MANSFIELD (after having voted in the negative). On this vote, the Senator from Delaware (Mr. BOGGS) and I have a pair with the Senator from Louisiana (Mr. LONG). If he were present and voting, he would vote "yea." If we were permitted to vote, we would vote "nay." Therefore we withhold our votes.

I find, according to the Parliamentarian, that I misspoke when I announced the pair.

The Senator from West Virginia (Mr. ROBERT C. BYRD) is recorded as voting "yea," and the Senator from Montana, now speaking, is recorded as voting "nay." The Senator from Louisiana (Mr. LONG), were he present, would vote "yea."

Having already voted in the negative, I withdraw my vote.

Mr. ROBERT C. BYRD (after having voted in the affirmative). Mr. President, on this vote I have a pair with the Senator from Louisiana (Mr. LONG) and the Senator from Montana (Mr. MANSFIELD). If the Senator from Louisiana (Mr. LONG) were present and voting, he would have voted "yea." The Senator from Montana (Mr. MANSFIELD) has already voted "nay." I have voted "yea." The Senator from Montana has withdrawn his vote. I therefore withdraw my vote.

I announce that the Senator from Missouri (Mr. EAGLETON), the Senator from Alaska (Mr. GRAVEL), the Senator from South Dakota (Mr. MCGOVERN), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Montana (Mr. METCALF), and the Senator from Rhode Island (Mr. PELL) are necessarily absent.

I further announce that the Senator from Louisiana (Mr. LONG), the Senator from Wyoming (Mr. MCGEE) are absent on official business.

Mr. GRIFFIN. I announce that the Senator from Delaware (Mr. BOGGS), the Senator from Nebraska (Mr. CURTIS), the Senator from Colorado (Mr. DOMINICK), the Senator from Kansas (Mr. PEARSON), and the Senator from Ohio (Mr. SAXBE) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Kentucky (Mr. COOK) is absent on official business.

The Senator from Connecticut (Mr. WEICKER) is absent to attend the funeral of former Senator Prescott Bush.

If present and voting, the Senator from Delaware (Mr. BOGGS) and the Senator from Connecticut (Mr. WEICKER) would each vote "nay."

Also, if present and voting, the Senator from Nebraska (Mr. CURTIS) would vote "yea."

The yeas and nays resulted—yeas 45, nays 37, as follows:

[No. 539 Leg.]

YEAS—45

Aiken	Cotton	Mathias
Allen	Dole	Packwood
Allott	Eastland	Proxmire
Anderson	Edwards	Randolph
Baker	Ervin	Roth
Beall	Fannin	Schweiker
Bellmon	Fong	Smith
Bennett	Gambrell	Sparkman
Bentsen	Goldwater	Spong
Bible	Griffin	Stennis
Brock	Gurney	Talmadge
Buckley	Hansen	Thurmond
Byrd, Harry F., Jr.	Hollings	Tower
Cannon	Hruska	Young
Chiles	Jackson	
	Jordan, N.C.	

NAYS—37

Bayh	Humphrey	Pastore
Brooke	Inouye	Percy
Burdick	Javits	Ribicoff
Case	Jordan, Idaho	Scott
Church	Kennedy	Stafford
Cooper	Magnuson	Stevens
Cranston	McClellan	Stevenson
Fulbright	Miller	Symington
Harris	Mondale	Taft
Hart	Montoya	Tunney
Hartke	Moss	Williams
Hatfield	Muskie	
Hughes	Nelson	

PRESENT AND GIVING LIVE PAIRS, AS PREVIOUSLY RECORDED—2

Mr. Robert C. Byrd, for.
Mr. Mansfield, against.

NOT VOTING—16

Boggs	Long	Pearson
Cook	McGee	Pell
Curtis	McGovern	Saxbe
Dominick	McIntyre	Weicker
Eagleton	Metcalf	
Gravel	Mundt	

The PRESIDING OFFICER. On this vote there are 45 yeas and 37 nays. Two-thirds of the Senators present and voting not having voted in the affirmative, the cloture motion is not agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent, on behalf of the Senator from Illinois (Mr. PERCY) that Mr. William Littman or Miss Julia Bloch, of the staff—one or the other—have the privilege of the floor during the debate and votes on H.R. 13915.

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

ORDER FOR RECOGNITION OF SENATOR YOUNG TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on tomorrow, immediately following the remarks of the two leaders under the standing order, the Senator from North Dakota (Mr. YOUNG) be recognized for not to exceed 5 minutes.

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

ORDER FOR RECOGNITION OF SENATORS AND TIME FOR DEBATE ON CLOTURE MOTION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that, following the recognition of the Senator from New York (Mr. JAVITS) tomorrow, the distinguished Senator from Mississippi (Mr. STENNIS) be recognized for not to exceed 10 minutes, that he be followed by the distinguished Senator from Iowa (Mr. HUGHES) for not to exceed 15 minutes, and that he be followed by the junior Senator from West Virginia (Mr. ROBERT C. BYRD) for not to exceed 15 minutes, at the conclusion of which the hour under rule XXII on the motion to invoke cloture begin to run.

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

Mr. JAVITS. Mr. President, will the Senator yield very briefly?

Mr. ROBERT C. BYRD. I yield.

Mr. JAVITS. Will there be any time tomorrow for the transaction of morning business, say at the end of the day?

Mr. ROBERT C. BYRD. At some point during the day; yes.

MESSAGES FROM THE PRESIDENT—APPROVAL OF BILLS

Messages in writing from the President of the United States were communicated to the Senate by Mr. Leonard, one of his secretaries, and he announced that the President had approved and signed the following acts:

On October 2, 1972:

S. 1031. An act to credit certain service rendered by District of Columbia substitute teachers for purposes of civil service retirement.

On October 6, 1972:

S. 447. An act to modify the boundaries of the Santa Fe, Gila, Cibola, and Carson National Forests in the States of New Mexico, and for other purposes.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer (Mr. HUMPHREY) laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the Committee on Armed Services.

(The nominations received today are printed at the end of Senate proceedings.)

EQUAL EDUCATIONAL OPPORTUNITIES ACT, 1972

The Senate continued with the consideration of the bill (H.R. 13915) to further the achievement of equal educational opportunities.

CLOTURE MOTION

Mr. MANSFIELD. Mr. President, I send to the desk a cloture motion.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair, without objection, directs the clerk to read the motion.

The assistant legislative clerk read the cloture motion, as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate upon the bill (H.R. 13915), an act to further the achievement of equal educational opportunities.

1. Herman E. Talmadge.
2. Howard Baker.
3. Lloyd Bentsen.
4. B. Everett Jordan.
5. Jennings Randolph.
6. James O. Eastland.
7. George D. Aiken.
8. Paul Fannin.
9. Norris Cotton.
10. Lawton Chiles.
11. William Proxmire.
12. John Sparkman.
13. Edward J. Gurney.
14. James Buckley.
15. W. B. Spong, Jr.
16. Robert C. Byrd.
17. Fritz Hollings.
18. John Tower.

Mr. MANSFIELD. Mr. President, for the information of the Senate, and we do this only because——

Mr. SCOTT. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order.

Mr. MANSFIELD. We do this only because of the difficulties we encountered yesterday seeking to accommodate all Senators, which proved to be an impossibility, so we will go back to the rules as laid out in the book. The vote in the cloture motions on Wednesday and Thursday, if needed, will occur after special orders are disposed of and if there is a morning hour for the conduct of morning business—either after the special orders are concluded, with no morning business, or after the special orders are concluded, along with the morning business, the time will start running at the expiration of that time for 1 hour, as called for under the rules.

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

Mr. MANSFIELD. I yield.

Mr. SCOTT. Can we fix that a little more definitely for the benefit of Senators? At what hour will it be expected or at approximately what hour can we expect the vote?

Mr. MANSFIELD. It is kind of hard to be too definite. I understand we have 11 special orders for tomorrow. Eight of them are 10-minute orders. We are coming in at 8:30 a.m. tomorrow. So I would say it would be somewhere around 11 o'clock, more or less.

Mr. SCOTT. Special orders would work out to approximately 2 hours, or until about 10:30, then a brief morning hour?

Mr. MANSFIELD. No morning hour. If the Senator's mathematics are correct it will be around 10:30 or thereabouts when the debate will start and, therefore, the vote will be 1 hour later or in the neighborhood of 11:30 a.m.,or therabouts.

Mr. SCOTT. It is a nice neighborhood, Mr. President.

The PRESIDING OFFICER. The Senator from Massachusets is recognized.

Mr. BROOKE. Mr. President, each day 20 million young Americans ride school buses. This bill suggests they are all in danger. Yet it does nothing to remove the alleged risks for 97 percent of these children. Rather, it responds only to the 3 percent who ride the bus for desegregation purposes. The question is: Are those who ride school buses in danger? The answer is no. Therefore we should not make a finding that they are.

Furthermore, section 802(a) of Public Law 92–318 makes clear the intent of Congress in respect to "excessive" busing by stating:

No such funds shall be made available for transportation when the time or distance of travel is so great as to risk the health of the children or significantly impinge on the educational process of such children.

This portion of current law is derived from Chief Justice Warren Burger's opinion written for the Court in Swann against Charlotte-Mecklenburg Board of Education:

An objection to transportation of students may have validity when the time or distance of travel is so great as to risk either the health of the children or significantly impinge on the educational process.

The Supreme Court has set proper limits to busing. Congress has passed and the President has signed into law similar limits. There is, therefore, no reason for Congress to raise the spectre of undue danger on the school bus. I can only conclude that this finding about busing risks is included in the measure before us to stir up emotions. It serves no useful purpose.

Neither does the finding which follows section 3(a)(6), which states that the Supreme Court's guidelines for remedies to dismantle dual systems have been "incomplete and imperfect." This section, in effect, issues a challenge to the very nature of the judicial process. Particularly with respect to transportation, the Supreme Court has made it clear in Swann that—

No rigid guidelines as to student transportation can be given for application to the infinite variety of problems presented in thousands of situations."

But as previously mentioned, the Court and Congress, in Swann and Public Law 92–318, respectively, have provided a "clear, rational and uniform" standard generally for student transportation contrary to the finding of section 3(a)(6). But the Court in Swann rejected rigid guideliness as being impossible to devise.

In 1955, in Brown II, the Court determined it was proper for the district courts to exercise their equity jurisdiction with its traditional flexibility to fashion specific remedies for each unique factual situation in school desegregation cases. Last year the Court affirmed this position in Swann. It stated that—

Conditions in different localities will vary so widely that no rigid rules can be laid down to govern all situations.

Yet that is what this bill seeks to do in defiance of the Court.

Local educational agencies do not act in a vacuum when it comes to remedying a dual school system. Over a period of 18 years, the Supreme Court has established clear guidelines for remedying a dual school system.

Swann makes clear the limits on transportation and the absence of a requirement of racial balance or racial quotas to desegregate school systems.

In Green against County School Board of New Kent County, Va., the Court ruled out freedom of choice or "open enrollment" plans. And Swann spelled out clear alternatives: redrawing attendance zones and "pairing", "clustering" or "grouping" of schools. There has been no doubt as to the District Courts' responsibilities in the desegregation process. In Brown II, the Court said school officials and the courts are responsible for achieving the constitutional requirements for desegregated schools. The schools were given the responsibility for developing plans, but the Court stated that "the courts will have to consider whether the action of school authorities constitutes a good faith implementation of the governing Constitutional principles". In Green and Swann, the Court reiterated this opinion. The Court has also been clear as to the speed with which desegregation responsibilities should be discharged. In Brown I, the Court said district courts should implement desegregation rulings "with all deliberate speed". The Court also said that limited delays in achieving complete desegregation would

be acceptable if a school board could "establish that such time is necessary in the public interest." Ten years later in Griffin against County School Board for Prince Edward County, Va., the Court served notice that such delays were no longer acceptable.

In 1968, in Green, the Court ordered desegregation to take place immediately: "The burden on a school board today is to come forward with a plan that promises realistically to work and promises realistically to work now."

The following year, in Alexander against Holmes County, Miss., Board of Education, it held:

> The obligation of every school district is to terminate dual school systems at once and to operate now and hereafter only unitary schools.

Contrary to the finding of section 3(a)(6), guidelines do exist as to remedies, responsibilities and speed in eliminating dual school systems. Due to the varied nature of our school systems, the Supreme Court has ruled out rigid formulae for compliance, but has provided general guidelines which are adequate for the task.

The suggestion that the courts have failed is an unnecessary one, except for the purpose of the authors of this legislation, which is to limit the jurisdiction of the courts in school desegregation cases.

We see in section 3 of H.R. 13915, an effort to use incorrect findings of fact to prove the courts have failed. In subsequent sections, the bill provides that the Congress shall remedy these alleged failings.

TITLE I—ASSISTANCE

No one can quarrel with the need for additional funding for compensatory education. Yet I object to H.R. 13915's attempt to rob school desegregation to pay compensatory education. This is what title I of H.R. 13915 would do. Until such time as title I of the Elementary and Secondary Education Act is fully funded, there is no need for this new title. It attempts to doom the Emergency School Aid Act before it is even implemented. For 2 years Congress considered and debated this act and now as it is ready to be put in effect, we cannot afford to drain off one half of its annual authorized resources for a new compensatory program which is duplicative of existing law. The Emergency School Aid Act was designed to assist school districts desegregating voluntarily or under court order or title VI order. It remains an essential component of our desegregation effort and should not be the victim of a funding sleight of hand. Title I of this bill would only authorize the expenditure of funds that do not exist for purpose that are fully covered by existing, yet underfunded programs. I can only add that this title is consistent with the illusory nature of the bill.

TITLE II—UNLAWFUL PRACTICE

Title II of H.R. 13915 seeks to weaken the 14th amendment, raises again the straw man of racial balance and reiterates a national educational policy premised on the neighborhood school.

By narrowly defining the scope of what constitutes a denial of equal protection of the laws, section 201 is contrary to the holdings of the Supreme Court. Subsections (a), (b) and (e) require that the action which results in discrimination be deliberate or for the specific purpose of segregation. The Court, however, has held in a variety of cases that it is not necessary to prove discriminatory motive, purpose, or intent as a prerequisite to establishing an equal protection violation when discriminatory effect is evident. As recently as June 22, in Wright against Council of the City of Emporia, Justice Stewart, writing for a majority of the Court, explicitly stated that no showing of a discriminatory purpose was required:

> The mandate of Brown II was to desegregate schools and we have said that the "measure of any desegregation plan is its effectiveness." Thus, we have focused on the effect—not the purpose or motivation—of a school board's action in determining whether a permissible purpose cannot sustain an action that has an impermissible effect.

Two recent decisions of the Fifth Circuit Court of Appeals in the cases of Austin and Corpus Christi have reiterated that there is no requirement of proof of discriminatory purpose.

In the Corpus Christi case, Cisneros against Corpus Christi Independent School District, the Fifth Circuit said:

> We affirm the finding of the district court that action by the school district here has, in terms of cause and effect, resulted in a severely segregated school system in Corpus Christi. We need find nothing more. Discriminatory motive and purpose, while they may reinforce a finding of effective segregation, are not necessary ingredients of constitutional violations in the field of public education.

The courts have consistently made it clear that plaintiffs need not demonstrate an improper motive or discriminatory purposes behind the actions of school authorities in order to vindicate their rights under the 14th amendment.

And Congress cannot impose such a requirement of proof of discriminatory purpose and thereby restrict and impede the rights of children to equal educational opportunity. This attempt, through section 201, to legislate a new burden of proof on those seeking equal protection of the law is among the most disturbing features of this bill. And the further one delves into this measure, the more obvious becomes the authors' intent to create as many obstacles as possible to school desegregation.

Yet section 202 has an allied purpose. It seeks to create public opposition to busing by continuing to confuse the busing issue through its assertion that the failure to achieve racial balance is not a denial of rights under the 14th amendment. In Swann, the Supreme Court was clear on racial balance:

> The Constitutional command to desegregate schools does not mean that every school in every community must always reflect the racial composition of the whole school system is likely to be a useful starting point in shaping a remedy to correct constitutional violations.

The issue is not now, nor has it ever been "busing to achieve racial balance." This phrase has consistently and deliberately been used to instill unfounded fears in millions of Americans who envision massive busing across school district, municipal, county and even State lines. No such busing is now required by Federal courts and agencies. It is unlikely any such busing shall ever be federally mandated.

Those who raise once again the spectre of "busing to achieve racial balance" have had full opportunity to deal with this non-problem. Congress passed and the President signed into law a moratorium on any such busing ordered by a U.S. District Court.

The provisions of section 803, Public Law 92–318 are clear:

> Notwithstanding any other law or provision of law, in the case of any order on the part of any United States district court which requires the transfer or transportation of any student or students from any school attendance area prescribed by competent state or local authority for the purpose of achieving a balance among students with respect to race, sex, religion, or socioeconomic status, the effectiveness of such order shall be postponed until all appeals in connection with such order have been exhausted or, in the event no appeals are taken, until the time for such appeals has expired. This section shall expire at midnight on January 1, 1974.

If court-order busing to achieve racial balance is a problem as the inclusion of section 202 in this measure suggests, current law provides adequate time—14 months—for Congress to seek remedies. But busing to achieve racial balance is but a bogus issue raised to divert attention from the real intent of proponents of this legislation. Justice Powell's ruling in the Augusta case last month underscored the distinction between the goal of racial balance and the imperative of desegregation. As to section 803 of Public Law 92–318, Powell ruled:

> It does not purport to block all desegregation orders which require the transportation of students.

Powell also wrote:

> If Congress had desired to stay all such orders, it could have used clear and explicit language appropriate to that result.

It is obvious that the so-called "anti-busing" forces were caught in a semantic trap they themselves had set. To excite the public, they spoke of "forced busing to achieve racial balance." And so Congress postponed such orders for 18 months. However, since busing for racial balance was not the problem, those who oppose busing for its present constitutional purposes were obviously displeased with this solution. Caught in their own trap, they fought more relentlessly than I, or most people, expected, and H.R. 13915 is the product of their zeal.

In a May 30 editorial, the Washington Post weighed the merits of the "Education Amendments of 1972" and concluded:

> We have expressed in this space our reasons for believing that the higher education bill to which these amendments are attached is one of the most important and commendable pieces of legislation to come before the Congress in a long while. We do not think it should be sacrificed in an effort to stop the "anti-busing" provisions of the bill—when the effort, almost by definition, cannot

succeed in the Congress this year and when its ultimate consequence would likely be the enactment of far more regressive anti-civil rights legislation.

I disagreed with the Post's admonition and opposed the conference report on the "Education Amendment of 1972," but shared their view that its enactment would ward off more regressive anti-civil rights legislation. It did not, because the intent of the "antibusing" forces is far more pernicious than that set forth in title VIII of Public Law 92-318.

It is particularly clear in section 203 of H.R. 13915, which provides that the assignment of students to "neighborhood" schools fulfills a school system's constitutional obligation. This seeks to establish the previously stated but mythical national policy of the neighborhood school as the basis of our educational system. Again, the proof of intent or purpose is required if such neighborhood school assignments result in segregation. In effect, this section would say to segregated youngsters that they are now attending de facto rather than de jure segregated schools. Such a change in labels is of little comfort to those denied an equal education.

This section ignores the fact that the racial character of neighborhoods has not been accidental. All levels of government have been involved, partly by design, mostly by default, in residential segregation. School assignments based solely on a student's residence is often discriminatory and is not a neutral device for complying with the 14th amendment. Neighborhoods may be a convenient basis for pupil assignment, but they are not of such supremacy as to override constitutional rights. As Chief Justice Burger noted in Swann:

> Desegregation plans cannot be limited to the walk-in school.

Section 203 would mandate such inadequate remedies and prevent the courts from developing alternate desegregation plans sufficient to remedy a constitutional violation. Section 203 is but one of many provisions of the bill which seeks to block adequate remedies to violations of the Constitution.

TITLE III—ENFORCEMENT

Section 302 of this measure would allow the gradual restoration of segregation in our Nation's schools and provide impunity to the resegregation process. How frightening to contemplate the undoing of all that we have strived for in the past two decades. But the authors of this legislation seem indifferent to the consequences and constitutionality of section 302. Under section 302, once a court has approved an implemented desegregation plan, an individual is prohibited from seeking his constitutional rights to equal protection, should the schools within the system become segregated again because of shifts in population. Such resegregation could well stem from official act or neglect and clearly violate the equal protection clause of the 14th amendment which, since Brown I, has prohibited the maintenance of racially segregated schools.

Such segregation is as much a constitutional violation if it results from a process of resegregation after a court-approved desegregation plan is implemented, as it is prior to the implementation of the plan.

This provision is a patent infringement on the rights of citizens for equal protection. Congress does not have the power to pass a law limiting or narrowing the guarantees held to be embodied in the equal protection clause. In 1966, the Supreme Court addressed itself specifically to this point in Katzenbach against Morgan, when it stated:

> Section 5 (of the 14th Amendment) does not grant Congress power to exercise discretion in the other direction and to enact statutes so as in effect to dilute equal protection and due process decisions of this court. We emphasize that Congress' power under Section 5 is limited to adopting measures to enforce the guarantees of the Amendment; Section 5 grants Congress no power to restrict, abrogate, or dilute these guarantees.

Section 5, moreover, cannot be used as a basis for regulating the jurisdiction of the Federal courts. It concerns only questions of federalism—not questions of checks and balances between Congress and the judiciary.

Section 302 of H.R. 13915 is clearly unconstitutional, but constitutionality was obviously not a criterion for those who crafted this measure.

Section 305 would delay civil action against an educational agency until such time as the Attorney General served notice to the agency of the conditions which constitute a violation of the act and he is satisfied that the agency has not taken adequate remedies within a reasonable time. The effect of this section is to slow the desegregation process. It is but another obstacle to integration this bill seeks to erect.

The next section, 306, follows this defiant pattern. It would provide that the prevailing party in any action under the act may, at the court's discretion, recover a reasonable attorney's fee as part of the cost.

There is no doubt of the consequences of such a provision. It strikes at the very foundation of American justice by intimidating and deterring the poor from asserting the constitutional rights of their children.

The Association of the Bar of the City of New York's Committees on Federal Legislation and Civil Rights stated the case against section 306 as follows:

> To permit the recovery of attorney's fees against civil rights plaintiffs is to reject the rationale of Title II of the 1964 Civil Rights Act as interpreted by *Newman* v. *Piggie Park Enterprises, Inc.* where the court stated that a plaintiff under Title II of that act obtains an injunction not for himself alone but also as a "private attorney general." In fact the 1964 Civil Rights Act and the 1968 Fair Housing Act provides that attorneys' fees are recoverable by plaintiffs under certain circumstances in accord with the public-interest nature of such litigation.
>
> The prospect that a plaintiff may lose a civil rights action and therefore be required to pay substantial attorneys' fees would have an "in terrorem" effect on attempts to vindicate civil rights. The problem is highlighted by other provisions of EEOA which make it likely that decrees heretofore obtained by civil rights plaintiffs will be reopened.
>
> Moreover, to allow a court to charge attorney's fees to an unsuccessful plaintiff is quite contrary to the spirit of American justice which has not allowed the taxation of costs so high as to discourage plaintiffs from commencing litigation to obtain what they deem to be their rights.

This section is clearly "contrary to the spirit of American justice". This bill is, too, as we have seen in the policy, findings, definitions of unlawful practices, and enforcement provisions.

TITLE IV—REMEDIES

However, it is in the bill's proscription on remedies that this measure is most threatening to the rights of Americans.

Section 401 mandates that in formulating a remedy, "a court, department, or agency of the United States shall seek or impose only such remedies as are essential to correct particular denials of equal educational opportunity or equal protection of the laws."

It is unclear what is intended by section 401. The House Education and Labor Committee's report on H.R. 13915 states only that—

> This provision means that courts are not to use law suits against school districts as occasions for imposing free-wheeling requirements on these school districts. Rather they must restrict themselves to the particular facts and circumstances of the cases.

So we are confronted with a section of vast implication with only the slightest hint of legislative intent. We can only speculate as to its full intent.

The limitiation of remedies to particular denials of rights could be intended to restrict the courts from ordering school districtwide desegregation plans. The Justice Department has recently contended that district courts must limit their orders to remedies applying only to "pockets" or "incidentals" of discrimination within a school system. Judge Wisdom of the Fifth Circuit Court of Appeals in United States versus Texas Education Agency responded to this argument:

> What the Department now refers to as proof only of piecemeal or pocket discrimination has always been its tried and true method of proving school segregation. The discriminatory acts of the school authorities infect the entire school system; they are particularly obvious in the so-called 'pockets' . . . The concept of 'incidents' of discrimination' is an inscrutable new concept totally at odds with the teaching of *Brown* and its progeny—and with all previous cases in which the Department of Justice has appeared.

The effect of section 401 would be to allow the judicial treatment of symptoms without responding to the disease itself.

It could also be that this section is intended to preclude the use of class action suits in school desegregation cases. But the intent is not now clear.

In the House debate on the measure, Representative WIGGINS asked Representative QUIE:

> Whether or not the use of the word "particular" is intended to foreclose class actions.

Representative QUIE answered:

> I could not tell the gentleman, but I doubt that would be the case. The question never came up, so I have not checked it with counsel at all, but I doubt that it would.

If Representative QUIE's doubts are not affirmed, section 401 could limit courts to providing remedies only to individual plaintiffs, thus making it impossible to desegregate entire school systems without costly multiple suits.

This section could also be intended to eliminate the use of statistics to prove a pattern of discrimination in a school desegregation case. Such evidence is in many instances the most objective and compelling way to prove discrimination.

However this limitation is interpreted now, it is obvious that its lack of clarity would lead to extensive litigation in the future.

In light of the other provisions of this measure, I must interpret section 401 as intending to narrow the application of remedy, the use of class actions and the submission of statistical evidence.

Section 402 of H.R. 13915 sets forth a priority of remedies whereby the Federal courts would be required first to attempt to assign students to the nearest school, taking into consideration building capacities and "natural physical barriers." Yet if this does not work, the bill would allow the courts to ignore physical barriers such as railroad tracks, a river or busy highway. The great concern for safety in respect to busing earlier expressed in section 3 is obviously not paralleled in title IV's consideration of alternate remedies. The third priority remedy set forth in susbection (c) is contrary to a series of Supreme Court decisions since 1968 that have ruled that "freedom of choice" or "open enrollment" plans are rarely an effective remedy. Section 402(c) would undermine any impact a desegregation plan might have by permitting white students to transfer from integrated schools. Any white student who could show that students of his "national origin" were not in a majority in the school he wished to attend could presumably effect a transfer.

I cannot imagine a more potentially divisive scheme than to suggest that all schools keep track of the national origin of all its students. It would only call attention to differences and create group tensions where none had previously existed. While white studients would find transfers easy, a black student would be required to assume the full burden of change as an outsider coming into a school that must have a minority of his race.

Each year since 1966 the Senate has rejected proposals that would seek to make freedom of choice fulfill constitutional desegregation requirements. We are now confronted with a measure which places such plans third in line of priority, and seeks to limit true freedom of choice to whites.

Section 402 sets forth remedies that are inequitable and inadequate to fulfill constitutional responsibilities.

Section 403 denies a remedy that is in many instances the only one available—transportation. Simply stated, section 403 insures that should all the other provisions of this measure fail to impede desegregation attempts, this provision will succeed.

By forbiding Federal courts and agencies from ordering any school system to implement a desegregation plan requiring transportation of students beyond the school next closest to their place of residence, this provision would preclude desegregation even in the inner city; impose the entire burden of desegregation on those white families who live adjacent to the inner cities; and lead to chaos. It would free the more affluent from the desegregation process while lower-middle-income families, black and white, found their children bused to inner-city schools. This is the most blatant example of class legislation I have seen. Consider the consequences of the knowledge that a family must live only a certain distance in relation to two schools to insure its children were not part of the desegregation process. This provision would lead to neighborhood instability, real estate panics, and the flight of the middle class from the fringes of the inner city. Our cities would become more and more bastions of the very rich and the very poor. This is an expression of the worst social policy imaginable. It also seeks to deny the judiciary the flexibility which the Supreme Court has continually recognized they must have to devise remedies likely to succeed in local situations.

The "next closest school" concept was considered after only brief hearings in the House Committee on Education and Labor. Clearly an inflexible national standard with such far-reaching implications deserves the most careful scrutiny. I doubt anyone in Congress or the executive branch really knows how this would affect our various cities, and its different effects on large, medium, and small cities. I doubt if anyone really knows the effect that this would have upon the people who live in these areas. How can we conceivably consider acting in such a vacuum of information?

Subsection (b) of section 403 is merely an unnecessary affirmation of Swann and current law—section 802(a), Public Law 92–318. Again the authors of this bill have sought to suggest problems that do not exist in order to advance their measure.

Section 403(c) in permitting resegregation without remedy once a court determines a school system has eliminated its previous dual system, was added on the floor of the House.

In conjunction with section 403(a), limiting transportation to the next closest school, section 403(c) would assure and promote further segregation of neighborhoods and the resulting resegregation of neighborhood schools. Since students could be bused only to the next closest school and since subsequent court orders requiring transportation to adjust for shifts in residential populations would be prohibited, families living in school attendance zones next closest to black neighborhoods would need move only one attendance zone further toward desegregation completely.

Thus section 403(c) would fortify the next closest school concept by foreclosing future options to the courts to remedy the residential shifts caused by application of the next closest school concept.

In proposing this amendment, Representative FASCELL contended that—

> This makes the language of the Mecklenburg case apply to an act of a department or agency as well as that of a court.

I disagree with Mr. FASCELL's interpretation of Swann versus Charlotte-Mecklenburg, as already imposing limitations contained in section 403(c) on the courts.

In the closing paragraphs of the Swann decision, Chief Justice Burger stated:

> At some point, these school authorities and others like them should have achieved full compliance with this Court's decision in *Brown I*. The systems will then be 'unitary' in the sense required by our decisions in *Green* and *Alexander*.
>
> It does not follow that the communities served by such systems will remain demographically stable, for in a growing, mobile society, few will do so. Neither school authorities nor district courts are constitutionally required to make year-by-year adjustments of the racial composition of student bodies once the affirmative duty to desegregate has been accomplished and racial discrimination through official action is eliminated from the system. This does not mean that federal courts are without power to deal with future problems; but in the absence of a showing that either the school authorities or some other agency of the state has deliberately attempted to fix or alter demographic patterns to affect the racial composition of the schools, further intervention by a district court should not be necessary.

This dictum assumes that neither the Federal Government nor the State have contributed in any way to the shifts in demographic patterns that may resegregate schools. It must also be read in the context of the Swann decision as a caution to courts to exercise commonsense in the administration of desegregation plans. Section 403(c) is more than a caution, it is an invitation for covert actions to subvert desegregation orders by official acts, which would result in resegregation. A statutory prohibition of subsequent action against the effect of such an act could well encourage the act.

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

Mr. BROOKE. I am pleased to yield to the distinguished Senator from Michigan.

Mr. HART. Mr. President, I am grateful that the Senator has developed the points he has. The Senator was commenting a moment ago on section 403. I am not sure we understand fully the affront, really, that appears to be contained in the kinds of orders that this bill would issue to the Federal courts.

Am I correct in understanding the Senator from Massachusetts to make the point that no matter how gross a denial of equal protection of the laws a court may find a school district to have engaged in in violation of the 14th amendment, we are saying in section 403 that the court cannot exercise either its commonsense nor give any relief to a constitutional violation?

Mr. BROOKE. Precisely. That is exactly the point I am stressing.

Mr. HART. Is it correct to say that in a sense we treat Federal judges of this country as men lacking in commonsense and, second, even if we concede they have commonsense, we are denying them the opportunity to exercise it?

Mr. BROOKE. That is exactly what this bill would do. And it is inconceivable to me that the proponents of this legislation really want to do this. I would much rather believe they do not understand the nature of this act.

Mr. HART. That is a gracious, gentle judgment to express, and I share it, but I hope in this pellmell effort to adjourn we will not do even unconsciously what the Senator from Massachusetts makes clear would be done by the enactment of this measure.

Mr. BROOKE. I thank the Senator.

Mr. President, another prohibition contained in section 404, would not allow for the ignoring or alteration of school district lines unless there is proof of discriminatory purpose. This section represents an unnecessary intrusion into the judicial process. It appears to have been prompted by a recent district court decisions in Richmond and Detroit, which are currently under review in the Federal Appellate Courts. It is inappropriate for Congress to attempt to legislatively dictate a result in pending litigation or attempt to impose its view of constitutional requirements on the courts.

Yet this is the basic intent of this measure—to intrude into the judicial processes and dictate constitutional requirements that would thwart constitutional rights, and thus deter the constitutionality mandated desegregation of our Nation's public schools.

If this effort to impede school desegregation was not sufficiently sinister itself, consider section 406 of the measure before us. This section would seek to undo every existing court-ordered or title IV desegregation effort now underway. It would allow 1,500 desegregated or desegregating school systems, with the assistance of the Attorney General, to return to the courts and Federal agencies to have their plans modified in accordance with this bill. And the provisions of this deviously drafted measure would allow the return to segregation.

This would be in cases where district courts have already approved plans—sometimes modified them, to be sure—by which the process of desegregating school systems is proceeding in accordance with law. What section 406 would say to the courts and schools is, "Let us open this all up now. You can stop desegregating, go back to the courts, modify your plans, and, in fact, return to the segregated point you were at before you either voluntarily proceeded to desegregate or you were ordered to do so under law."

This would put us back decades; and this would totally disrupt areas where many, many times the people have found that the desegregation of the public schools is not the bugaboo many have tried to make it in proposing this legislation. Millions of Americans have found that their fears have been allayed; and they are working very well to bring about the desegregation of their public school systems.

But this measure, particularly this section, would encourage them to return to the segregation which they had before. To me this is a unconscionable proposition for anyone to have set before Congress.

This "reopener" clause is frightening in its potential. The wording is so broad that it would allow the reopening of all past desegregation cases going all the way back—over 18 years of progress to the Brown case.

In testifying before the House Committee of the Judiciary, Attorney General Richard Kleindienst was asked whether the right to reopen cases under section 406 would apply only to cases involving busing or to all desegregation cases. He answered:

> All desegregation cases, even where busing might not even be an issue involved in it. You are going to have an opportunity for a school agency to come into a Federal district judge and say, this order was entered into 12 years ago, Congress has laid down a new national standard and we want to re-examine this and apply the remedies and priorities set forth in the national standards, and obtain a new order in this particular case.

This measure invites chaos across the country. Because the remedies and priorities of this measure thwart desegregation plans and violate the constitutional rights of our citizens, separatists, black, and white, will return to the forefront as the chance is offered to undo the hard work and good will of reasonable men and women. Those who have worked hard to make integrated schools a workable reality would be shunted aside by separatists, with the aid of Congress.

In arguing that section 406 is unconstitutional, the Association of the Bar of the City of New York stated:

> It is cynical in the extreme, therefore, to permit new rounds of litigation where successful adjustment to constitutional order exists.

That is not an understatement, nor is the association's assertion that section 406 is unconstitutional.

If this section intends to create a right to reopen proceedings which is greater than the traditional equity doctrine to review in the light of changed circumstances, and I assume it is or the section would be unnecessary, then it singles out on the basis of race a class of Federal court decrees for special treatment since it applies only to desegregation cases.

Therefore, I contend that placing such a burden on minority group litigants violates the doctrine of Hunter versus Erickson. In that 1969 decision, the Supreme Court held unconstitutional a provision added to the charter of the city of Akron, Ohio, which required any ordinance regulating the sale or lease of property on the basis of race to win the approval of a majority of voters in a general election before it could take effect. The Court held that the charter could not place "special burdens on racial minorities within the governmental process."

Section 406 would place special burdens on racial minorities. This section makes it more difficult for minority children to enjoy their right to equal educational opportunity since it forces them to relitigate cases they had presumably already won. Thus I contend this section is most probably unconstitutional under the principle of Hunter versus Erickson.

Yet I take little comfort in the presumed unconstitutionality of this reopener. That the House of Representatives could pass and the Senate could even consider such a provision frightens me. How can the Congress proceed so callously with respect to the rights of millions of Americans? I would like to believe that it has done so unknowingly.

But this section was drafted and considered. Section 406 only stands out amid the cynical provisions of this measure because, as the Association of the Bar of New York said, it is "cynical in the extreme." Under ordinary circumstances almost every provision of this measure would similarly be labeled.

Section 407 would allow the transportation portions of court orders to be terminated upon a finding that the school system is not excluding any person from any school on account of race. In other words, busing would remedy the illegal situation, but the moment this had occurred it would be possible for the school system to return to the situation prior to the busing order. Then only if it could be shown that the system is "effectively excluding any person from any school because of race, color, or national origin. could the court re-issue a busing order. Here again the burden is on the plaintiffs, who could conceivably be going back and forth to court. Section 407 would be a revolving door which would result in periodic utilization and termination of busing orders. And the educational process would suffer in the confusion.

Section 408 would terminate entirely court desegregation orders once a school system has been found to have a unitary system. It contains no time limits and would permit the lifting of an order the moment a school system can claim to be unitary. This provision is contrary to the practice in other areas where illegal conduct sought to be remedied has ceased. In such areas as antitrust, trade regulation, and voting rights, courts exercise jurisdiction after the illegal conduct that prompted the litigation has been remedied.

Section 408 also would apply whether the schools involved were in the past segregated de jure or de facto. Together, sections 407 and 408 would nullify section 201, which defines as a denial of equal educational opportunity the failure of an educational agency which formerly practiced deliberate segregation—de jure—to take affirmative steps to remove the vestiges of a dual school system. Sections 407 and 408 would require nothing more of a de jure school system than a de facto system. This is inconsistent with section 201.

CONSTITUTIONALITY

Consistency and constitutionality were obviously not criteria in drafting this measure. Reviewing H.R. 13915 carefully, I find, as many legal scholars have done, that this measure is clearly unconstitutional and invites a severe constitutional confrontation. I have discussed, provision by provision, the constitutional questions involved. They are varied and many. In House debate on H.R. 13915, there was a brief but interesting comment that reinforces my contention that this measure seeks to subvert the Constitution.

Representative MIKVA offered an amendment to the bill, which stated:

The limitations on student transportation contained in this section shall not include any court, department, or agency of the United States from ordering an adequate remedy for denial of equal protection of the laws.

Representative PUCINSKI argued:

This amendment totally negates everything we have been doing here all evening.

Mr. President, is that what the House of Representatives really intended to do? Is that what they want for this country? This amendment, to be sure, was voted upon. And what do you think happened?

It was defeated 223 to 154, yet the admission it prompted from Representative PUCINSKI will endure. The intent of this measure is clear: To deny remedies to violations of the 14th amendment. And this is unconstitutional.

Eighteen years ago, Brown I established that State-imposed segregation by race in public schools denies equal protection of the laws under the 14th amendment. To correct such violations the 14th amendment commands that the discriminating authority take whatever steps are necessary to convert to a racially nondiscriminatory school system. And in Swann, the Supreme Court held that if school authorities fail in fulfilling their affirmative constitutional obligations, "judicial authority may be invoked" and that the Court's power in fashioning effective remedies is broad, for "breadth and flexibility are inherent in equitable remedies."

Busing is but one of many remedies available to school authorities and the courts. But in some instances busing is the only effective remedy for the speedy desegregation plans mandated by the Supreme Court in the Green case. With 20 million American children riding yellow schoolbuses each day, it is impossible to contradict the Supreme Court's recognition in Swann of busing as an "integral part of the public education system for years" and as a "normal and accepted tool of educational policy." In Swann, the Supreme Court found "no basis for holding that the local school authorities may not be required to employ bus transportation as one tool of desegregation." It added:

Desegregation plans cannot be limited to the walk-in school.

H.R. 13915 would overrule the principles of Swann, North Carolina State Board of Education against Swann, and Brown II, by prohibiting the use of busing in any meaningful manner as a remedial tool for overcoming a constitutional violation.

In North Carolina State Board of Education against Swann, the Supreme Court has declared that no State may frustrate the constitutional mandate of the 14th amendment. In declaring North Carolina's antibusing law to be unconstitutional, the Court held:

If a state-imposed limitation on a school authority's discretion operates to inhibit or obstruct the operation of a unitary school system and impede the dis-establishing of a dual school system, it must fall; state policy must give when it operates to hinder vindication of federal constitutional guarantees.

I contend that Congress has a no less stringent constitutional duty in this regard than any State agency. Yet H.R. 13915 contains the same segregatory mechanism prohibited for school authorities, State legislatures and Governors. This measure is clearly designed to "impede disestablishment of a dual school system."

To enact H.R. 13915 would be to deny equal protection where a constitutional violation has been found and where busing has been decreed a necessary part of the effective remedy. By staying the implementation of an effective remedy, Congress would be aiding racial discrimination and therefore in violation of the due process clause of the fifth amendment.

Viewed in terms of article III of the Constitution, it is clear that Congress lacks the authority to prevent Federal courts from effectuating a constitutional mandate. While article III authorizes the Congress to regulate the jurisdiction of Federal courts, the Supreme Court has held in Marbury against Madison, away back in 1803, and Martin against Hunter's Lessee, in 1816, that the principle of separation of powers precludes Congress from limiting the authority of the courts in interpreting the Constitution and effectuating constitutional rights. In the guise of a jurisdictional statute, Congress cannot deprive a party either of a right created by the Constitution or of any remedy the courts deem essential to enforce that right.

Nor can Congress enact legislation which prescribes a particular result in a case. In United States against Klein, in 1872, the Supreme Court held that the statutory limitation on the Federal courts' jurisdiction, enacted by a Congress anxious to correct what it considered an erroneous line of cases, was unconstitutional.

"We are directed," said the Court, "to dismiss the appeal, if we find that the judgment must be affirmed . . . Can we do so without allowing one party to the controversy (the Congress) to decide it in its own favor? Can we do so without allowing that the legislature may prescribe rules of decision to the Judicial Department of government in cases pending before it? We think not . . . we must think that Congress has inadvertently passed the limit which separates the legislative from the judicial power.

The Klein case was decided 4 years after the ex parte McCardle, which upheld an act of Congress depriving the Supreme Court of appellate jurisdiction over lower Federal court decision in habeas corpus cases. But the Court in this case was not sanctioning unrestricted congressional power to deprive it of jurisdiction. Despite the act, which it sustained, the Court still had original habeas corpus jurisdiction as well as power to review lower court habeas corpus decisions by writ of certiorari.

Prof. Alexander Bickel has described the McCardle case as "aberrational" and reads it "as a fairly narrow holding." I agree with his interpretation.

Section 5 of the 14th amendment authorizes Congress to enforce that amendment by "appropriate legislation," yet it provides no basis for sustaining this measure.

Section 5 does not authorize Congress to limit the scope of protection guaranteed by the 14th amendment. Congress may not thwart the purpose of this amendment, which was designed to expand and extend constitutional protection to those who had previously been denied such rights.

In Katzenbach against Morgan, the Supreme Court addressed this point clearly:

Section five does not grant Congress power to exercise discretion in the other direction and to enact "statutes so as in effect to dilute equal protection and due process decisions of this Court." We emphasize that Congress' power under Section five is limited to adopting measures to enforce the guarantees of the amendment; Section five guarantees Congress no power to restrict, abrogate, or dilute these guarantees.

And that is the purpose of this measure, Mr. President. It would restrict, abrogate, and dilute rights under the 14th amendment—the guarantees of the Constitution.

I referred to this citation earlier in my specific analysis of section 302 of H.R. 13915. But it should be continually cited in our consideration of this legislation. Section 5 cannot be used, as the authors of this measure would seek to use it, either as a means of limiting the scope of equal protection or as a basis for regulating the jurisdiction of the Federal courts. Section 5 concerns only questions of federalism, as I have stated before. The history of section 5 demonstrates this. Senator Howard, who reported the 14th amendment to the Senate from the Joint Committee on Reconstruction, said section 5's purpose was simply—

To enable Congress, in case the states shall enact laws in conflict with the principles of the amendment, to correct the legislation by formal Congressional enactment.

Section 5 was not intended to give Congress greater power than the Federal courts to define constitutional rights.

In its severe restrictions on remedies to a denial of equal protection of the law, this measure would diminish the scope of the 14th amendment. Therefore, it fails the test of section 5.

Another unsuccessful amendment to H.R. 13915 during House consideration of the measure underscores the severe constitutional questions this bill would raise. Representative STOKES offered a proposed title VII to the measure, which stated:

Nothing in this Act is intended to be inconsistent with or violative of any provision of the Constitution.

The amendment was defeated by a vote of 197 to 178. Like Representative PUCINSKI's admission, the rejection of this amendment makes it clear that the obvious unconstitutionality of the bill was of little concern to its proponents in the House, as well as a majority of the House.

That is why, when I first heard, Mr. President, that this legislation was being proposed, I made a statement across this country that it was politically inspired. I do not like to use harsh language, but I must when I see men appealing to the wrong instincts in millions of Americans, without any regard for the constitutionality of what they were doing. They were playing for votes for November 7, and nothing more, and it is clear politics in

its worst form. If it were not, certainly the House of Representatives could not conceivably have denied an amendment which stated:

> Nothing in this Act is intended to be inconsistent with or violative of any provision of the Constitution.

How, in good conscience, could they vote against such a measure if they were not playing sheer politics, without regard to the Constitution and without regard to the safety of this Nation?

We in the Senate must uphold our obligation to the Constitution. And we cannot do so by passing a measure which would remove the only effective remedy for violation of an individual student's conustitutional rights; and violate the principle of separation of powers; and of the fifth as well as the 14th amendment.

I call upon my colleagues, many of whom are up for reelection in this election year—and I am among them to stand firm behind our Constitution. In my own Commonwealth of Massachusetts emotions run high on the question of busing, as they do across the country. But there are some things that are far more important in this land than being elected and reelected, such as upholding the Constitution of the United States and doing what is right under God.

If I am so certain the Supreme Court would eventually strike down this legislation as unconstitutional, why then do I not suggest we enact this measure and allow the courts to proceed? Representative JAMES SCHEUER, in his individual views contained in the House Education and Labor Committee's report, provided a most compelling answer to this question:

> As a Member of Congress, I took an oath to uphold the Constitution. This oath prevents me from taking any action that I know will jeopardize the delicate balance the Founding Fathers struck between the three branches of government. The Supreme Court is the last bastion against legislative tyranny—a tyranny we experienced during the days of Senator Joseph McCarthy. I cannot take any action which will unnecessarily weaken the Court by politicizing its deliberations and subject it to further emotional and demogogic charges and counter charges for merely exercising its clear responsibilities under the Constitution.

Each of us has taken the same oath and our obligation is clear to uphold, not tear down the Constitution when our citizens find its provisions temporarily uncomfortable.

It is our most compelling obligation to proceed orderly. Yet this measure would inevitably lead to a devastating constitutional confrontation between the Supreme Court and Congress, which would weaken both branches and undermine the confidence of Americans in our ability to govern. This measure does not confront decisions of the Court which have been narrowly decided. Rather, it seeks to undo a long line of unanimous decisions. The outcome of the confrontation would be clear as to law. The Court and the Constitution would prevail over Congress. But it would be a hollow victory as the Nation proceeded chaotically and found, for however brief a moment, that it was directed once again on a course of separatism.

Who knows how devastating the brief existence of such an act would be on the American people? How can you contemplate the effect of a measure that would have Congress state that because it is not convenient for us to obey the law of the land, we shall change it, though we have no authority to do so?

Do we lack the courage to make clear our constitutional obligation? Are we afraid to tell the people that what some may desire from us, we cannot lawfully deliver? I think they would understand.

I believe that the proponents of this measure underestimate the reasonableness of those they represent. I have always believed that it is the right and responsibility of a legislator or any leader to educate his constituency, not just to look at the polls. Do we really want government by polls? We have always known that crowds could be whipped up into emotion by orators and that polls could be effective measures of momentary passions. Is it a responsible legislator who merely reacts to that poll and finds that some particular subject is unpopular at a particular time in the history of our Nation or of the world?

Changes are constantly taking place in this country and across the world—great, sweeping changes. Right now we are doing things we never would have thought of doing just a year ago today. What was unpopular then may be popular today. What was popular then may be unpopular today. Yet, we have yielded to this emotionalism of busing. We have created a Frankenstein. We have misled the people as to what the real issue is. We have talked about busing for racial balance, when most of those who do the talking know that that is not the real issue before Congress. We have not lived up to our constitutional responsibility.

I would rather be defeated at the polls than to compromise my principles and to undermine the Constitution of the United States. I believe in our Constitution that strongly. I also believe the proponents of this measure underestimate the reasonableness of those they represent. I think their constituents, fully aware of the provisions of this measure, would oppose it.

I believe that this is why the proponents of this bill denied the American people a full opportunity to review this legislation through the normal committee process.

The American people, black and white, are weary of division. They long for a respite from turmoil and tension. And I believe they truly desire one Nation indivisible, not two nations apart.

It was my privilege to serve in the Kerner Commission after the riots of 1967. We went to many of the strife-torn cities across this Nation, and we listened to the people. We came back and wrote a report, and we pointed up what was happening in this country: That we were creating a nation divided, a nation with one side black and one side white, separate and unequal; that if we did not change it, we would be confronted some time down the road—perhaps 1973 or beyond—with the same situations, if not worse, that tormented this Nation in 1967. It was not the intention of that Commission to throw fear into the American people or to create more bitterness in the American people. It was an objective committee that called the facts as it saw them, reported its findings, and made its recommendations.

Now, Mr. President, the Congress of the United States is driving a wedge between Americans, a wedge which could do more harm and is more dangerous than any wedge we have ever had before.

Mr. President, because I believe in the good will of our people, I shall do all that I can—and I ask my colleagues to do likewise—to educate our people as to the frightening provisions of H.R. 13915, which would turn us away from our earnest quest for one Nation united toward an unconstitutional and unconscionable retreat toward two nations "separate but equal." The choice is clear. My faith in our people is strong and my faith in the Senate of the United States is strong.

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

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

Mr. BROOKE. Yes; I am privileged to yield.

Mr. HART. Mr. President, the Senator from Massachusetts reminded us of the caution voiced by the Kerner Commission, a commission which the Senator from Massachusetts graced with great distinction.

Does not the Senator from Massachusetts agree that the caution voiced several years later by the Commission on the Causes and Prevention of Violence also has relevance here. The Commission on Violence described ours as a country which was developing into two nations, the armed and often affluent suburbs and the decaying, savage cities.

That is a harsh description and enormously ominous. Is not the Senator from Massachusetts suggesting that it is precisely this division and separation which this bill, whatever the motives of those who seek its enactment, would dig still deeper into and more fatally broaden.

Is this not also a caution and a reminder that should be in the minds of each of us as we are asked in the closing moments, really, of this Senate to act upon a bill which has not even had hearings?

Mr. BROOKE. Precisely. I think the distinguished Senator from Michigan, who has been such a great leader in protecting the Constitution of the United States states it well.

I would like to believe that many of those who have voted on this, particularly in the House, have done so, as I stated earlier, without full knowledge of the assault upon the Constitution of the United States that is contained in this particular measure. They have reacted to the high emotionalism in the country, much of which has been created by the proponents of this particular type of legislation—many, I think out of fear, because of the potential political ramifications or results could come from an adverse vote on this measure. But as the Senator pointed out, after the Kerner Commission report on the riots of 1967, and then the Commission on Violence report. All agree we did not have any

disagreement. In any of the commissions that have ever met and made reports, the findings have been relatively the same. The causes have been relatively the same. Many of the recommendations have been relatively the same. The fact is that we have not acted upon them, we have not implemented those recommendations, in the main.

Then, as the Senator put it, in the waning days of this session of Congress, to take up legislation which sets us back way beyond the Brown case, with all of its inherent dangers, as I have tried to specifically point out section by section in my remarks, it just seems that this is something that Congress should wait and have proper hearings on.

The committee could hear witnesses, and many of the questions which have been raised could be answered. Many of the doubts and maybe some of the statements I have made or that others have made which could be in error, or could be explained.

But how can we do this unless we proceed in the usual legislative manner and put this bill where it belongs, in its proper committee, have a hearing and a report—the Labor and Public Welfare Committee has a long history of never having buttonholed or bottled up legislation—rather than come before us now and report it right out on the floor.

I just think it is most regrettable. I am sure that if our colleagues knew what was contained in the bill, it could never be considered in this session of Congress.

Therefore, I hope and pray that calm minds will prevail, courageous leadership will prevail, and that those who are concerned about the election results will put this country above their own personal political fortunes.

Mr. JAVITS. Mr. President, will the Senator from Massachusetts yield?

Mr. BROOKE. I am happy to yield to the Senator from New York.

Mr. JAVITS. Very briefly, I should like to express my pleasure and the pleasure which one always has when a friend as well as a colleague speaks with such great eloquence, with such deep sincerity and is so excellent a witness to the truth.

To me, the Senator's address, a great deal of which I have heard, is so critically important in our evaluation of the situation because it is the voice of a witness.

The Senator knows that I can get up here and predict tremendous social strain and tension, perhaps deferred in terms of its effect; but it will be inevitable. Our colleagues may not fully realize what is in the bill exactly, but only generally. But what it will do, and how it will be used and abused, is to put the clock back to pre-1954. The people will suffer for it, those who have made the effort to desegregate, the millions of young children in the South who have been given a much better direction in terms of education, and the alleged victims themselves, when they realize what has happened to them by this improvidence of a last-minute bill, with such lethal consequences, by Senators from States where they have a lot of public pressure—but that is why we are a nation and not a collection of individual States. And if the Senate will keep its head and not be panicked by these individual cases which the courts have, can, and will look at, then I think that the Nation will, indeed, be grateful to those of us who have felt as strongly as we have about this situation. There is no desire to defer legislation. If the Congress wants legislation on this subject, it will have it. But it should not have it until the heat and the emotion have been given an opportunity to yield to reason and fact.

Mr. BROOKE. Mr. President, I thank my distinguished colleague and my very dear friend, the senior Senator from New York, for he and the Senator from Michigan (Mr. HART) have truly worked together in this whole area of civil rights and civil liberties. And long before I came to the Senate of the United States, I respected them both as guardians of the Constitution. I cannot, as a man who has been trained in the law and in the practice of law and who has loved it, and who has served as a State attorney general before coming to Washington, make a higher commendation than to call the two Senators guardians of the Constitution of the United States. And that is exactly what their actions demonstrate.

They have been courageous. They have been eloquent. And they have been effective. And I think that history will prove that they have been right. I cannot be more grateful in concluding my remarks this morning and this afternoon than to have had join with me in a short colloquy the distinguished senior Senator from New York (Mr. JAVITS) and the distinguished senior Senator from Michigan (Mr. HART).

Mr. President, I yield to the junior Senator from Illinois (Mr. STEVENSON).

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. STEVENSON. Mr. President, I ask unanimous consent that two members of my staff, William Staszak and Harold Wolman be granted the privilege of the floor during the debate on H.R. 13915 today.

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

Mr. STEVENSON. Mr. President, I want to first associate myself with the remarks of the distinguished Senator from Michigan and the distinguished Senator from New York in commending the Senator from Massachusetts. His statement, if only heard, would I believe move the hearts and the minds of all Members of this body.

Mr. President, in the first 2 days that the pending legislation, H.R. 13915, has been before the Senate, this body has heard some ironic, strange, and disquieting suggestions. First of all, we are asked to pass this House-passed bill without ever having referred it to committee.

To be sure, there were some hearings on the administration's version of the bill. But no bill has been reported from the Labor and Public Welfare Committee, nor have the hearings held thus far been printed. As I understand it, an extra day of hearings on the President's bill was held only 2 weeks ago at the behest of a proponent of that bill. However, even if it could be said that the proper Senate committee had held hearings on the administration bill, it could not possibly be said that there have been hearings on the House bill.

And the House bill, as we all know, differs in major respects from the bill introduced last March on behalf of the administration. It differs so much that two of the leading proponents of the administration bill in the House, Representatives QUIE and ERLENBORN, voted against passage of the final version of the House bill because they, too, thought it was unconstitutional.

I recall earlier this session when a motion was made to recommit the no-fault insurance bill, despite the fact that extensive hearings had been held on every aspect of it by the Commerce Committees.

But the Senate was told there were some legal and even constitutional questions involved in the no-fault bill, and that therefore the Judiciary Committee should be allowed to study the bill and to give us its authoritative view of the legalities of the no-fault concept.

It would seem, Mr. President, that the constitutional and legal uncertainties involved in this bill, H.R. 13915, make those of the no-fault bill look tiny by comparison. Yet the Senate is asked to act on this bill without the benefit of any of its committees' advice.

The second ironic and disquieting suggestion is that we end discussion on the merits of this bill on the floor of the Senate after only 2 days.

Certain Senators who had an extended discussion only last week on the Consumer Protection Act and voted against cloture now ask us to spend 2 or perhaps 4 or 5 days in discussing this profoundly important and disturbing legislation, the so-called Equal Educational Opportunities Act of 1972. At least on the consumer protection bill, a far-sighted bill on which a fair majority of the Senate wished to work its will, we had the benefit of a committee report and several days of discussion before the first cloture motion was filed. But this was not the case with H.R. 13915. A cloture motion was filed almost before one word was spoken for or against a bill on which there was no previous Senate consideration.

Yet the third ironic and disquieting suggestion is that we pass the bill virtually without amendment.

We are told by one proponent of the bill that, although it is not in exactly the form he would like to see it, those who favor this kind of legislation "would do well to resist amendments that may be offered to this bill."

The distinguished junior Senator from Michigan went on to state:

> Some of the amendments may be appealing, some may have merit, but I think we ought to be practical and realistic. If significant changes are made in this House passed bill, it will then have to go to conference where it will surely die. The one way—perhaps the only way—to be sure we get a bill passed and enacted into law is to stick with the House passed bill and pass it here in the Senate.

In other words, Mr. President, we are asked to give up our prerogatives as in-

dividual Senators and as a co-equal body of Congress. We are asked to give up our right to improve or to perfect legislation which has not even been considered by one of our own committees. We are asked as U.S. Senators to be a rubber stamp, no matter what the appeal or the merit of an amendment. We are asked to give the American people a law by which they would have to live, even though a majority of us believe that in certain ways this law might be made better or less onerous. Or—heaven forbid—they suggest we might have to go to a conference to resolve our differences with the House.

Mr. President, I say that the American people deserve more from "the greatest deliberative body in the world."

They deserve deliberation.

More than that, they deserve leadership from their elected President, Representatives, and Senators, an enlightened public discussion of perhaps the most complex social issue of our time.

Most of all, the American people deserve a true and responsible answer to their concerns, not the false hope or political cynicism that this bill in its present form represents.

And there is a concern among many Americans, a concern is conjured up by the very word "busing." There are of course some Americans for whom "busing" conjures up the more sinister motives of bigotry or even hatred, but for undoubtedly many more Americans—white and black, and yellow, red, and brown—this concern translates into a kind of fear of the unknown, and thereby consequently is a threat to their own security and to certain values they hold dear.

So it may be that many concerned citizens, who may never have had their children bused—at least for purposes of desegregation—and may never in the future have their children bused for purposes of desegregation, hear vaguely about Court decisions which require "massive busing." They grow "concerned," for they wonder what the effects of such a Court order would be on their children and on their neighborhoods. This concern grows highest, of course, when the Court action becomes imminent—as now in such cities as Richmond and Detroit.

There is first of all a concern about the safety of their children—on the schoolbus itself, or in the more distant school. No matter that riding a schoolbus is statistically less dangerous than walking to school, or that the school or the neighborhood of the school to which the child might be bused is as safe or safer than their own neighborhood. These citizens know their own neighborhood, and in many cases chose to live in it in the first place because of the school in the neighborhood. They do not know to which school in which neighborhood their child might be bused.

And for many Americans there is a deep and traditional value in the very concept of "the neighborhood." They see a threat to this traditional value on many fronts, not just from busing their children or grandchildren out of the neighborhood, but also from other basic changes in American society, such as the dispersal to suburbia.

Although he feels that they may be disintegrating, the Pulitzer Prize winning columnist of the Chicago Daily News, Mike Royko, has written a description of one kind of neighborhood, that is called the "ethnic neighborhood." He writes of the city he and I know best, Chicago:

> But Chicago, until as late as the 1950's, was a place where people stayed put for a while, creating tightly knit neighborhoods, as small-townish as any village in the wheat fields.
>
> The neighborhood-towns were part of larger ethnic states. To the north of the Loop was Germany. To the northwest was Poland. To the west were Italy and Israel. To the southwest were Bohemia and Lithuania. And to the south was Ireland.
>
> It wasn't perfectly defined because the borders shifted as newcomers moved in on the older settlers, sending them fleeing in terror and disgust. Here and there were outlying colonies, with Poles also on the South side, and Irish up north. . . .
>
> In every neighborhood could be found all the ingredients of the small town: the local tavern, the funeral parlor, the bakery, the vegetable store, the butcher shop, the drugstore, the neighborhood drunk, the neighborhood trollop, the neighborhood idiot, the neighborhood war hero, the neighborhood police station, the neighborhood team, the neighborhood sports star, the ball field, the barber shop, the pool hall, the clubs, and the main street.
>
> Every neighborhood had a main street for shopping and public transportation. The city is laid out with a main street every half mile, residential streets between. But even better than in a small town, a neighborhood person didn't have to go over to the main street to get essentials, such as food and drink. On the side streets were taverns and little grocery stores. To buy new underwear, though, you had to go to Main Street. . . .
>
> The borders of neighborhoods were the main streets, railroad tracks, branches of the Chicago River, branches of the branches, strips of industry, parks, and anything else that could be glared across. . . .
>
> But in the neighborhood, you were safe. At least if you did not cross beyond, say, the other side of the school. While it might be part of your ethnic state, it was still the edge of another neighborhood, and their gang was just as mean as your gang.
>
> So, for a variety of reasons, ranging from convenience to fear to economics, people stayed in their own neighborhood, loving it, enjoying the closeness, the friendliness, the familiarity, and, he says, trying to save enough money to move out.

As Royko suggests, this particular kind of neighborhood may to some extent become a thing of the past. But it was and to an extent still is representative of many cities north and south—and as Royko suggests, it is closely akin to the idea of a small town. And if the concrete example of the "neighborhood" is not as well-defined as formerly, certainly some of the implications of the concept are still with us. Thus the statement of Royko that—

> In the neighborhood, you were safe. At least if you did not cross beyond, say, the other side of the school.

For the school was on "the edge of another neighborhood," and that represented the unknown.

I do not speak of these concerns of citizens in order to explain them, or to speak of the concept and value of "the neighborhood" in order to enshrine it or the necessity of preserving it as an unalienable right of society. I speak of it because neighborhoods exist, and while I value neighborhoods and the sense of community they embody I speak of them here to point out that certain values are threatened, and real fears arise.

To some these concerns arise because they know too well what the Supreme Court is asking for. But for many others they exist because they do not know what is or may be asked of them, by the Supreme Court, by all the "bureaucrats" in Washington, or by any politician. Politicians above all are not to be trusted. Government is no longer viewed as of, by, and for the people, but only against the people.

And so these concerns, approaching fears, exist. It should be the role of political leadership either to allay these concerns by explaining to the people just what the issue is, and to keep trying to explain the issue no matter how complex or how long it may take. And if the concerns cannot be allayed by explanation, then responsible solutions to the underlying problems should be sought. Responsible political leadership does not exploit the fears of the people for political expediency by simplifying or falsifying the explanation of an issue or by proposing irresponsible solutions.

But that is just what many politicians, including the President—especially the President—are doing in regard to "busing." What is the problem? Simple, "busing." What is the answer to the problem? Simple, enact a law stopping busing.

As the philosopher Alfred North Whitehead once said: "Strive for simplicity, but learn to mistrust it." I for one am wary that the problem is simply busing, and I know that, in time, if not today, the American people will distrust those who promise them the simple answer, a law stopping busing.

There are some, of course, who say that busing is a "non-issue," and is therefore a code word or a scare word. But as Prof. Alexander Bickel has said:

> One man's code-word or scare-word is another man's symbol.

Busing, then, is a symbol to many of a real issue. Professor Bickel would define the "real issue" as follows:

> What is the proper objective of federal policy toward racial concentration—or separation, or isolation—in the public schools, and beyond that, what are the proper priorities of federal policy in primary and secondary education?

Accepting this formulation of the real issue, the American people should realize that "the Federal policy toward racial concentration—or separation, or isolation, in the public schools" is almost entirely being formulated by the Supreme Court, in part because of its responsibility within the Federal Government of interpretation of the Constitution.

But another reason why the Court has taken on this role at the Federal level is an historical one, a complete abdication of responsibility by the Congress and the executive. In 1868, when the 14th amendment became part of the Constitution, public school systems barely existed. In 1896, however, the Supreme Court decided the case of Plessy against Ferguson. This case did not deal

with public schools directly, but it held that where States provided "separate but equal" facilities, the State would not be held to violate the 14th amendment right of "equal protection of the laws." After 1896, then, as school systems all over America were fully developed, many school systems came to provide—directly or more subtly—separate facilities to white students and to black students, and to other minorities. Whether from a Federal viewpoint they could ever be "separate but equal" was unknown. There was in fact no Federal viewpoint. Congress, of course, had the power under section 5 of the 14th amendment, "to enforce, by appropriate legislation" the "equal protection of the laws." But it was either incapable or afraid to so legislate, or it took the attitude that education was up to the States. Nor did the executive propose to act.

Many States, both North and South, took advantage of Plessy against Ferguson to enact laws actually enforcing segregation—in public schools and in many other facets of life. Other States and cities found more subtle ways to enforce such segregation.

After a period of time, however, it became clear that "separate but equal" was not working, given the realities of what was happening. And moreover, there was a good deal of evidence that such separate facilities were not equal.

Given the existence of inequality and the failure of the other two branches of the Federal Government to act, the Supreme Court felt compelled to take action under the constitutional mandate to insure that States should provide the "equal protection of the laws."

The historic case in which the Court did this, of course, was Brown against Board of Education I, decided in 1954. There were really four related cases, all dealing with the most blatant statutes establishing dual school systems, one system for blacks and one system for whites. The discussions of this case are legion, and I make no pretense that any interpretation of the case which I could provide would be definitive, or that the case could easily be applied in a myriad of factual situations. But let me give just one commentator's view, that there were two somewhat distinct but related elements or branches in the Brown holding: First, "the simple, minimal proposition that the State may not, by legislation or administratively, in the schools or otherwise, classify the population along racial lines, except for obviously remedial purposes;" and second, showing the Court's special concern with education, that "separate educational facilities are inherently unequal." This last phrase was Chief Justice Warren's in the case. To quote the case further, the Court could not have taken on the doctrine of "separate but equal," at least as it applied to public schools, any more directly:

> Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other "tangible" factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does.

No matter what one thinks of the Brown decision, or any subsequent Supreme Court desegregation decision, certain facts must be acknowledged: that in our Government, under the doctrine of separation of powers, the Supreme Court is the final interpreter of the Constitution; and that the Supreme Court, in deciding Brown I, relied on the Constitution as the basis for its holding, that is, the constitutional mandate to the States that they must provide the equal protection of the laws to all of their citizens.

Since Brown, I, then, the Supreme Court—and the appellate and district courts—have been struggling to apply Brown I to hundreds, and now thousands, of factual situations. Along the way, the Congress and the Executive even sought to help, as by passing and enforcing the Civil Rights Act of 1964. But besides applying the principles of Brown to other factual cases, the Courts of necessity had to provide remedies for the violation of the constitutional rights. And of course this is where the trouble—if that it is what it can be called—has come. To quote Professor Bickel again:

> Brown decreed the end of legally enforced segregation. It is possible formally to abolish a system of legal segregation by simply wiping the laws that enforced it off the books. But if that had been all that Brown demanded, it would have amounted to a sham, since the law of segregation bespoke attitudes that were still widely held, and that would have continued to have effect. And so the Brown decision had to be administered in order that it might be made palpable. It had to be administered for the sake of maintaining the integrity and credibility of law. Dual school systems had to be visibly disestablished.

I would like to summarize some of the major holdings of the Court in regard to remedies, again without any hope that this will by a definite interpretation of what the Court has said.

One of the first questions the Court had to decide was how rapidly desegregation must take place, once segregation had been found. In Brown II, in 1955, the Court said district courts should implement desegregation rulings with all deliberate speed, although the Court added that limited delays would be acceptable if a school board could establish that such time is necessary in the public interest. By 1964, however, the Court was serving notice, in Griffin against County School Board of Prince Edward County, Va., that such delays were no longer acceptable, saying:

> The time for mere "deliberate speed" has run out, and that phrase can no longer justify denying these . . . school children their constitutional rights to an education equal to that afforded by the public schools in the other parts of Virginia.

Four years later, in Green against County School Board of New Kent County, Va., the Court ordered desegregation to take place immediately:

> The burden on a school board today is to come forward with a plan that promises to work, and promises realistically to work now.

As to what a previously segregated school system had to achieve, in the 1968 Green case the Court stated the constitutional objective as "a unitary, nonracial system of public education—a system without a 'white' school and a 'Negro' school, but just schools." And in the famous case of Swann against Charlotte-Mecklenburg Board of Education in 1971 the Court set the goal as "the greatest possible degree of actual desegregation." As to whether this degree meant actual racial balance, the Court said "no," although such a balance might be a useful starting point. The Court in Swann also did not say there could be no "one-race" schools; there could be a small number of these although the presumption would have to be against them.

Of course, to effectuate this "greatest possible degree of actual desegregation," school boards have to employ certain methods. The Supreme Court has also discussed there in various cases, notably Green and Swann. And here is where the Court met head-on with some of those traditional and most understandable values I mentioned earlier, such as parents wishing to send their children to the school of their choice, or simply to "the neighborhood school."

"Freedom-of-choice" is the formal name for the method of school assignment which allows a pupil or his parent to choose the public school which he wants to attend. In Green, however, the Supreme Court found that the school board's freedom-of-choice desegregation plan was not "a sufficient step to 'effectuate a transition' to a unitary system." It further said that: "if there are reasonably available other ways, such, for illustration, as zoning, promising speedier and more effective conversion to a unitary, nonracial school system, freedom of choice must be held unacceptable."

And as for neighborhood schools, it was in the Swann case that the Supreme Court emphatically stated that in reaching the objective of eliminating illegally segregated school systems the neighborhood school or any other assignment plan "is not acceptable simply because it appears to be neutral." The Court said:

> All things being equal, with no history of discrimination, it might well be desirable to assign pupils to schools nearest their homes. But all things are not equal in a system that has been deliberately constructed and maintained to enforce racial segregation. The remedy for such segregation may be administratively awkward, inconvenient, and even bizarre in some situations and may impose burdens on some; but all awkwardness and inconvenience cannot be avoided in the interim period when remedial adjustments are being made to eliminate the dual school systems.

If "freedom of choice" or "neighborhood schools" were not the final answer—although they could be if they were effective in achieving the greatest possible degree of actual desegregation—what other methods were to be considered? Said the Court in Swann, as examples: "a frank—and sometimes drastic—gerrymandering of school districts and attendance zones," resulting in zones "neither compact nor contiguous; indeed they may be on the opposite ends of the city." Or perhaps "pairing, 'clustering,' or 'grouping' of schools with attendance assignments made deliberately to accomplish the transfer of Negro students out of formerly segregated Negro schools and

transfer of white students to formerly all-Negro schools."

Of course, either indirectly, as when pairing, clustering, or grouping was used, or directly, as when attendance zones were drastically gerrymandered—there would have to be provided a means of getting the students to the school. In most cases, the student could probably still walk to school. In others, however, a schoolbus would have to be provided, although in many instances the students were already being bused.

The Supreme Court discussed busing in the Swann case. It first stated a very obvious fact, that the busing of students is "a normal and accepted tool of educational policy." In fact, in the United States today 43 percent of all school children are bused, with only 2 to 3 percent of them being bused for purposes of desegregation. This being so, the Court believed that in certain instances school boards could provide busing for the purposes of achieving desegregation. The Court said:

> Desegregation plans cannot be limited to the walk-in school.

The Court very clearly did, however, recognize limits on school busing, as it stated the now familiar:

> An objection to transportation of students may have validity when the time or distance of travel is so great as to risk either the health of the children or significantly impinge on the educational process.

There it is, then. The Court in effect has held that such valued concepts as "freedom of choice" or "neighborhood schools" must sometimes give way in order to effect a constitutional right, if those concepts in the first place cannot prove effective.

At the same time responsible political leaders can tell citizens that if a desegregation plan comes their way, they may not have their "freedom of choice" or be able to send their child to the neighborhood school, they had better also tell them how limited a "threat" this is. First of all, the idea of the walk-in neighborhood school is no longer as firmly affixed in America as it once was—not when 43 percent of all schoolchildren ride buses anyway, and only 4 to 7 percent of these for purposes of desegregation. A Department of Transportation study has shown that less than 1 percent of the annual increase in busing can be attributed to desegregation.

Second, there can never be real freedom of choice. A school board must, to a great degree, have control of which students go to which school—otherwise overcrowding and diseconomies could result.

Third, the people ought to know that the Supreme Court has recognized limits on busing. The safety of the child and the disruption of the educational process must be taken into account.

Moreover, the people should be aware that some 1,500 desegregation orders are now in effect and to a great extent are working effectively. In many places the moral scar of segregation has been healed.

One further element in this picture: The Supreme Court—not the lower courts—has not yet spoken to the issue of de facto segregation. So far, the Court has only adjudged cases of de jure segregation—that is, cases where there were actually dual school systems established by State or local statute or ordinance, or where schools were segregated as a result of discriminatory actions or acquiescence by public officials, be they school board officials or zoning officials or whatever.

The Court may be dealing with some cases in the near future in which it discusses de facto segregation—cases where, because people happen to live in a school district, there is a high or low degree of racial concentration. The Court may discuss this question in the pending Denver case, or perhaps the upcoming Richmond or Detroit cases—although I have no intention of prejudging those as cases of de jure or de facto segregation or as cases of segregation at all. I merely state that much of the furor in such situations has resulted from lower court decisions, and that the Supreme Court has not yet ruled on certain issues, and that much of the concern resulting from these cases may be premature.

To quote Professor Bickel again:

> So it is that we have arrived where we are. Where we are is not in the presence of hundreds of massive integration decrees in the South, let alone in the North, involving extensive shuffling of total school populations, by busing or otherwise. But we are in the presence of a fair number of such decrees; there are further ones impending North and South; and that is the direction which the Supreme Court has authoritatively indicated to lower federal judges. It will involve busing, more busing in many places than before, and busing to different ends than before.

This, then, is what responsible political leaders should be telling their constituents: that the desegregation of certain previously segregated school districts, as mandated by the Constitution, requires judicial remedies; that these remedies to a greater or lesser degree may go beyond the traditional concepts of a limited freedom of choice or the neighborhood school, if those traditional concepts do not prove effective for overcoming desegregation; and that presumably the local school board, under a mandate to desegregate, can choose methods of desegregating—that is, remedies that are the least expensive and the least damaging to traditional concepts or values—as long as they work. They might then add that busing is not nearly as massive as some might lead them to believe, and that the Supreme Court in discussing the remedy of busing has already tried to take account of its effect on the safety and the educational process of the individual child.

But, instead, so-called political leaders across the Nation are playing upon the fears of the people. They do not relate the whole story of desegregation, or of what the Supreme Court has really said, or the terrible fact of segregation which desegregation is ending. Instead, the overworked phrase, "the busing of little schoolchildren," is used to imply the demise of every neighborhood in every city, the health and safety of every child, and the destruction of the educational system itself.

But the political irresponsibility does not end there. To be popular, and hence ultimately to be reelected, politicians—who have already defined the problem as "busing"—feel they must propose a solution to the problem. Some are honest enough to realize that the way ultimately to change the situation is to adopt a constitutional amendment—but then they propose a blunderbuss amendment that virtually wipes out the 14th amendment.

Others are less candid. They promise simple legislation to "end busing." Not mere advisory legislation to tell the Court what priorities of remedies the Congress would like to see the Court employ, but legislation directing the Court which remedies to employ—no matter that they are unconstitutional. And while they are at it, for further political ends, they would have this legislation destroy much or all of the good which the Courts have accomplished over the past 18 years by dismantling dual school systems.

The greatest perpetrator of this irresponsibility, of course, because he is in the position of greatest responsibility, is none other than President Nixon. In March of this year, just a few days after a primary in Florida, where there was a referendum on busing and many an aspirant for office went wild in playing upon the concerns of the people, Mr. Nixon spoke to the Nation on busing. To a great degree, he misrepresented the issue as merely busing, massive busing. But then he turned to a solution. He said that he had considered a constitutional amendment, and that Congress should too, but that the constitutional amendment method of effecting a solution would take too long—18 months to 2 or 3 years. Mr. Nixon might have added that that might be after the November election, presumably Mr. Nixon's last election. So Mr. Nixon moved on to simple legislation, which he had the temerity to call the "Equal Educational Opportunities Act of 1972."

I shall proceed in just a few minutes to a discussion of the possible constitutionality of the administration bill—and the even more dubious House bill—although, of course, in the final analysis, no bill is unconstitutional unless the Supreme Court—or, in its absence, a lower court—says so. But we have it on the good word of many knowledgeable people and on commonsense that the Nixon and House bills defy constitutionality. In other words, they are much more likely than not unconstitutional.

And Mr. Nixon knows it. He is, therefore, trying to perpetrate a fraud on the American people. And just by the way, he is using our courts—which are not supposed to be the targets of political partisanship—for partisan political ends.

I should say that Mr. Nixon is once again using the courts for his political ends. All of us with memories of the last 4 years can recall the ominous implications of Mr. Nixon's rhetoric on law and order. Or the more specific instances of intervention in the Calley and Manson cases. But my mind has been called back to 1954, after the first Brown decision itself.

If my memory does not fail me, Mr. Nixon, who was, of course, the Vice Presi-

dent then, with bad taste which, unfortunately, is not uncharacteristic, praised the decision of the U.S. Supreme Court in the Brown case, even going so far as to say that the decision had been handed down by a great Republican Chief Justice. Of course, nine men handed down the decision, only one of whom had been appointed by a Republican President. But the point should be that there is but one Supreme Court, and it is neither Republican nor Democratic.

But in any event, in his present desire to exploit the anxieties of the people and to use the courts for political ends, Mr. Nixon gave us his version of the Equal Educational Opportunities Act of 1972. The House amended it for better or worse, and I suspect worse, to the point of voting down a proposed title VII that would merely have stated that "Nothing in this act is intended to be inconsistent with or violative of any provision of the Constitution." And then the House passed the bill, 282 to 102. I do not wish to excuse its conduct by saying this is an election year, but it was the wisdom of the Founding Fathers who foresaw such election year pressures that they provided only one-third of the Senate would be up in any election year. Presumably, then, two-thirds of us can deliberate on this bill, and on the underlying administration bill, on the merits, and without the great pressures of an election.

So, as for the merits, I should like to confine my remarks at this point to what I believe is the substance of the argument against the bill; namely, its probable unconstitutionality. Other Senators here have been trying to deal with other prospective problems with the bill—its necessity, its effect on harmonious race relations, and the myths on which it is based. I stress "trying to deal," for I would once again remind the Senate that we have no Senate committee report, no Senate committee hearings, and on many of the important elements of the House bill, no House document except for a brief discussion on the floor about the effect of certain amendments—as the limitation on busing to the closest or next closest school.

Both the House and administration bills run into the same constitutional problems. For the core of the administration's argument for constitutionality is that they affect only the remedies for school desegregation. The argument runs thus: the first Brown decision declared a 14th amendment right which Congress cannot repeal, but all subsequent decisions attempting to disestablish the dual school system are merely a matter of remedy and are therefore subject to any action Congress may take.

Many commentators have characterized this right-remedy distinction as "barren" and "simplistic," noting that it "flies in the face of both commonsense and the clear decisions of the court."

The House bill, and to a lesser degree the administration bill, attempts to place absolute limits on busing. But although busing is only one of many techniques available for use in desegregating dual school systems, it is sometimes found to be the only effective remedy for the speedy desegregation plans mandated by the Court in Green. In Swann, for example, the Court found:

> No basis for holding that the local school authorities may not be required to employ bus transportation as one tool of desegregation,

Adding that:

> Desegregation plans cannot be limited to the walk-in school.

The House bill especially, however, would prohibit the use of busing in any meaningful manner, by school authorities and Federal district courts, as a remedial tool for school desegregation. The House bill would prohibit busing in every case—except to the closest or next closest school—for every child of school age, regardless of time and distance or number of children involved.

Moreover, in a companion case to Swann against Charlotte-Mecklenburg called North Carolina State Board of Education against Swann, the Supreme Court declared that no State enactment may frustrate the constitutional mandate of the 14th amendment. The Court said:

> An absolute prohibition against transportation of students will . . . hamper the ability of local authorities to effectively remedy constitutional violations.

Thus the Court declared North Carolina's antibusing law to be unconstitutional, and held:

> If a State-imposed limitation on a school authority's discretion operates to inhibit or obstruct the operation of a unitary school system or impede the disestablishing of a dual school system, it must fall; state policy must give way when it operates to hinder vindication of federal constitutional guarantees.

It seems apparent to me and most commentators that Congress has no less stringent constitutional duty in this regard than any State agency. Yet, if Congress were to enact H.R. 13915, it would be implicating itself in exactly the kind of segregationist activity prohibited for school boards, State legislatures, and Governors. Congressional action would be the direct cause of continuing denial of equal protection, where a constitutional violation has already been found and where busing has been decreed a necessary part of the effective remedy. In short, by staying implementation of an effective remedy, Congress would be acting in aid of racial discrimination, and therefore in violation of the due process clause of the fifth amendment.

There is another side to the constitutional argument against these bills. Neither Congress' authority to regulate the jurisdiction of Federal courts, nor its authority to enforce the 14th amendment, authorizes legislation which would prevent Federal courts from effectuating a constitutional mandate. For although articles III of the Constitution authorizes Congress to regulate the jurisdiction of Federal courts, the principle of separation of powers precludes Congress from limiting and effectuating constitutional rights. This follows from the landmark 1803 case, Marbury against Madison. Congress, in the guise of a jurisdictional statute, cannot deprive a party either of a right created by the Constitution or of any remedy the courts deem essential to enforce that right.

Nor can Congress enact legislation which prescribes a particular result in a case. In an 1872 case called United States against Klein, the Supreme Court held that the Statutory limitation on the Federal courts' jurisdiction—offered by a Congress anxious to correct what it thought was an erroneous line of cases—was unconstitutional:

> "We are directed"—said the Supreme Court—"to dismiss the appeal, if we find that the judgment must be affirmed . . . . Can we do so without allowing one party to the controversy (the Congress) to decide in its own favor? Can we do so without allowing that the legislature may prescribe rules of decision to the Judicial Department of government in cases pending before it? We think not . . . . We must think that Congress has inadvertently passed the limit which separates the legislative from the judicial power.

The Klein case was decided after the 1868 case of ex parte McCardle, which upheld a post-Civil War act of Congress that deprived the Supreme Court of appellate jurisdiction over lower Federal court decisions in habeas corpus cases. But it seems clear from this case that the Court was not sanctioning unrestricted congressional power to deprive it of jurisdiction to consider constitutional claims. Despite the act of Congress which it sustained, the Court still had original habeas corpus jurisdiction as well as power to review lower court habeas corpus decisions by writ of certiorari. Moreover, such constitutional authorities as Alexander Bickel and the late Henry Hart read the McCardle case as "aberrational" and as having "a fairly narrow holding."

Nor do congressional restrictions on the jurisdiction of courts found in the Emergency Price Control Act of 1942 and the Norris-LaGuardia Act justify the busing limitations in the House or administration bills. The structure under the former statute preserved a full remedy in Federal courts, and the latter statute did not restrict constitutional rights because a businessman does not have a constitutional right to have a Federal court enjoin a strike growing out of a labor dispute. In fact, the Norris-LaGuardia statute served to implement the first amendment right to peaceful, noncoercive picketing.

Finally, section 5 of the 14th amendment, which authorizes Congress to enforce that amendment "by appropriate legislation," provides no basis for sustaining this legislation.

Section 5 does not authorize Congress to contract the scope of protection guaranteed by the 14th amendment.

The equal protection clause of the 14th amendment was designed to expand and to extend constitutional protection to those who had previously been denied such rights. Congress may not thwart this purpose.

The Supreme Court spoke specifically to this point in the 1966 case, Katzenbach against Morgan, when it stated:

> Section 5 does not grant Congress power to exercise discretion in the other direction and to enact "statutes so as in effect to dilute equal protection and due process decisions of this Court." We emphasize that

Congress' power under Section 5 is limited to adopting measures to enforce the guarantees of the Amendment; Section 5 grants Congress no power to restrict, abrogate, or dilute these guarantees.

Section 5, moreover, cannot be used as a basis for regulating the jurisdiction of the Federal courts. That section concerns only questions of federalism—the Federal Government's relations with the States—not issues of checks and balances between Congress and the Federal judiciary. The history of section 5 plainly demonstrates that its purpose was simply to enable "Congress, in case the States shall enact laws in conflict with the principles of the amendment, to correct that legislation by a formal congressional enactment."

Section 5 was not intended to give Congress greater power than the Federal courts to define constitutional rights.

The legal impact of H.R. 13915 and of the administration bill would therefore probably be to eliminate busing as a viable tool for school desegregation. Though the House bill's language states "except to the closest or next closest school," busing restricted to these conditions will prove ineffectual in countervailing the impact of residential segregation upon school attendance patterns of children. Where busing is an indispensable and effective method of desegregation, Federal courts will find themselves constrained to render less than effective remedies.

For all of these reasons, then, I believe there is great doubt as to the constitutionality of this bill. As I say, I believe the President and the congressional sponsors of this bill are being less than responsible by proposing these bills, and even less responsible by trying to force the Senate to pass them without adequate consideration.

But I in turn would be disingenuous if I did not acknowledge the concerns of the people of whom I have spoken, and offer to allay those concerns with responsible alternatives to this bill.

I cannot deny the values represented by the neighborhood school, or the desire to choose within reasonable limits the school which a parent wants his child to attend. And no legislator can tell a parent not to worry about the safety of his child or the kind of education his child is getting.

But, with the exception of assuring the parent that the Supreme Court has held that the safety of the child and the quality of the educational process is to be taken into account when there is busing, I cannot assure parents that these values or desires may not be overridden if the Supreme Court or the lower courts find that as remedies they will not achieve desegregation in a school district found to be segregated contrary to the 14th amendment. This is because these values, although recognized by the Supreme Court, cannot override the constitutional directive to guarantee the equal protection of the laws. And the Constitution, of course, is the highest law in the land.

Given, then, that these concerns are to a large extent valid, how can they be allayed or answered? First, I would urge that we wait before acting in any way to meet the problem "head-on." This is an election year, and emotions on the issue of busing have been running high since long before the Florida primary. But beyond this, there is the fact that much of the concern has been generated over such cases as the Richmond, Detroit, and Denver cases, and that the Supreme Court has not yet acted on those cases. It may be that what the Court does in regard to those cases may allay the concerns of many. Or it may not be; what the Court does may only exacerbate those concerns. But I believe we should wait and see how the Court interprets the constitutional mandate in those cases.

My own guess is that the Court will act in the near future to further define the constitutional guarantees of equal protection in the schools. The notion of a government deliberately separating children between schools by race is clearly reprehensible and contrary to the equal rights guaranteed by the Constitution. But the notion that the purely voluntary congregation of American citizens with common ethnic origins in neighborhoods, be they Chinese, Irish, Mexican, or Negro, is reprehensible and cannot be reflected in the racial composition of community schools frustrates decent and very human desires for community and for cultural identity. To insist upon sending these children outside of their neighborhoods invites the indignation of genuinely aggrieved parents and some practical difficulties as well for the courts.

The educational benefits are not always easy to perceive. Efforts to achieve the maximum degree of desegregation of such schools as sometimes happens in de jure cases of segregation—may lead to segregated schools, as one race leaves to make room for another and the schools "tilt". What is more, some of the sociological assumptions of Brown I may be overtaken by a growing racial consciousness, manifested in such expressions as "black power."

Evidence is being assembled which indicates that educational benefits from busing may be marginal and sometimes won at the expense of harmonious relations between the races.

Carried to its logical extreme, the "greatest possible degree of actual desegregation" could require all the children in every school of every State to be mixed in proportion to statewide racial proportions. At some point along the way the Court will have to face the improbabilities inherent in the logical extension of some of its reasoning. It may conclude that all "separate" schools are not inherently unequal, any more than all schools balanced perfectly by race are inherently equal.

We may find that it makes more sense to overcome the separateness of schools for the poor than for one race or another, although the poor often have common racial characteristics. We may come to accept the notion that cultural identity and racial pride can be important to the education of a child and the enhancement of his chance for a fair, at least equal, opportunity to survive in a highly competitive society. Urban Indians want their schools. The Chinese in San Francisco want their schools. Mexican Americans in Chicago want their schools.

Increasingly the blacks want their schools. I cannot say that those wants, in the larger order of things, are unreasonable or unrelated to the welfare of the child. Nor can I say that those schools which reflect a voluntary community of people, by racial origin, offend the guarantees of the 14th amendment. The Supreme Court has not said so either.

The Court may draw a line between de facto and de jure segregation, leaving it to the courts to decide in a given case upon which side a particular school falls—and leaving it to the executive and the legislative branches of governments at every level to break down racial discrimination in jobs and housing in order to facilitate the mixing of races and persons of different economic levels in truly integrated communities.

In those cases where schools do offend the constitutional guarantees of equal protection, the Court may well have more to say about the appropriate remedy. Again it seems to me we ought to give the Court a chance to answer the questions it has raised. We ought not to act impulsively and in the heat of a campaign upon a delicate subject and without the benefit of much forethought. The Court may obviate the need for legislation or, on the other hand, it may raise the need for a constitutional amendment. We simply cannot say at this point. We are asked in this bill to change the law—and we cannot say what the law is.

Waiting for the Court could be just another abdication of congressional responsibility, much as passing the House bill and daring the Court to find it unconstitutional would be an abdication of responsibility. And so I would propose that the Congress take positive action, as early in the next session as possible, to alleviate certain of the underlying causative factors of inequality within our school systems.

For the Court has already said, in the Swann case, that it looks upon busing as an interim measure. But how long this interim period might last must certainly depend on the willingness of the legislative and executive branches to act to end the inequalities, or in the words of Professor Bickel:

> Try to change the reality on which the courts have been acting, rather than trying to alter the decisions the courts have been making.

In the House and administration bills, the attempt to change the reality on which the courts have been acting is supposed to be title I, "assistance." But again, this title is misleading, if not an outright fraud. It does not provide any new moneys not already authorized by existing legislation. And it does not provide any new incentives or mechanisms for educational reform. Rather it mandates that the first $500 million appropriated for desegregation assistance—a new and innovative program enacted this year—be used instead to provide additional funds for schools enrolling a high proportion of low-income students.

But the positive vehicle does exist. S. 3779, the Stevenson-Mondale-Javits bill, which was introduced on June 29, 1972, was cosponsored by 17 other Senators including: Senators ANDERSON, BAYH, CASE, EAGLETON, HARRIS, HUGHES, HUMPHREY, INOUYE, KENNEDY, MCGEE, METCALF, MOSS, PASTORE, PERCY, RIBICOFF, TUNNEY, and WILLIAMS.

The bill consists of two parts, integrally tied together. The first is a new program of general education assistance to states, while the second part is an amendment designed to make title I of ESEA more effective.

The general assistance program would provide States with an additional $5.25 billion annually for elementary and secondary education—more than doubling the amount the Federal Government now spends for all elementary and secondary education programs. The present programs with the exception of impact aid are all categorical. Federal funds are earmarked for specific purposes and cannot be used by school districts as they see fit to offset rising operating costs or meet locally determined priorities. Our proposal would terminate several categorical programs which together now account for $150 million in annual Federal expenditures.

States will be able to use the new general assistance funds for any educational purpose including, of course, the purposes now served by categorical programs being eliminated.

The general assistance funds would be distributed by formula to each of the State education agencies. The formula for distribution of Federal funds among the States would be based upon State effort and State capacity and total number of school-aged students. A portion of each State's allotment would be set aside to assure that nonideological, nonreligious educational services could be provided to students attending nondiscriminatory private schools. States with comprehensive educational assessment programs would receive an additional 5 percent above their formula allotment.

States would be prohibited from distributing any general grant in aid funds to school districts or private schools which discriminate. Federal funds could not be commingled with State or local funds.

A State would have to meet one basic condition before receiving any funds under this new general aid program. It would submit a plan showing how it would reduce the gross disparities in per pupil expenditures which exist among the various school districts within the State. The plan may utilize any financial system the State wishes, including the use of the Federal general assistance funds for this purpose.

The Federal Government would not mandate, review or even suggest the means by which a State would reduce these disparities. The Federal Government's role would be confined to determining annually whether disparities were within the range clearly set forth in the legislation.

If in any year after the first year in which the State received general aid funds, disparities were not within the permissible range, a State would not be eligible for general assistance funds for the next year unless it resubmitted a plan showing how disparities would be reduced. If the disparities were still not reduced to within the permissible range after that year, the State would not be eligible for future general assistance funds until the disparities were within the permissible range.

The standard in the legislation would set a reasonable floor, but not a ceiling, on a school district's per pupil expenditures. A district could spend as much per pupil as it wished. But the State would be responsible for assuring through allocation of the new Federal general aid and its own State finance program that no school district could spend less per pupil on education than the floor set in that State.

The legislation we propose does not mandate a specific State education finance structure. It permits any structure, including new structures States may devise or be required to implement in the wake of the Serrano decision, so long as educational resources are not inequitably distributed.

The legislation will enable States and local school districts to improve the quality of education children receive without resorting to additional and onerous property tax increases.

The second part of our proposal addresses itself directly to quality education by focusing on the results of the educational process rather than solely on the availability of resources.

At present, title I of the Elementary and Secondary Education Act of 1965 provides funds for "compensatory education" to local school districts with a high concentration of children from low-income families. School districts must concentrate these funds on specific title I schools.

Unfortunately, title I does not contain strong incentives for assuring that students will actually receive the basic skills necessary for self-sufficiency. It is an input-oriented program focusing on improving the performance of children with educational deficiencies.

Our proposal would add a new provision to title I allowing States, on a voluntary basis, to participate in an education achievement grant program designed to provide real incentives for quality education. If a State chose to participate, it would administer annually standardized tests in the two basic cognitive skills—reading and mathematics—to all students in title I schools throughout the State.

The test would be selected by the State and certified by the U.S. Commissioner of Education. To receive certification, the test must be designed to measure a student's progress towards the objective of being able to read and calculate sufficiently well to function independently and to participate actively in American society. The overall results of the test scores by school must be made public, but there would be a strict prohibition against disclosure of an individual student's test score except to his parents.

Every school district receiving title I funds within a participating State would receive achievement progress bonuses of at least $150 for each title I student in the district who made satisfactory progress in reading and mathematics over the course of the school year. The school district could use the achievement progress bonus as general education aid.

The proposed education achievement grant program would provide schools with strong incentives to improve skill achievement and to demonstrate that our public school system can effectively teach educationally disadvantaged children.

I must emphasize that our bill would not change the present mechanism for distributing title I funds, nor would it restrict or change the uses to which title I funds can be put. Title I funds would continue to flow to school districts regardless of whether their State participated in the education achievement grant program.

Nor would future title I funding be contingent upon satisfactory test scores of a school's title I students. The achievement progress bonus is a reward for school districts which do well; there is no penalty because withholding title I funds would only penalize students who are most in need of extra educational resources.

The bill would not change the General Education Provisions Act prohibition against Federal involvement in determining either what is taught in American schools or how it is taught. The Federal Government would not mandate the structure or content of school curricula; it would only provide an incentive for schools to devise and utilize whatever methods they determine actually produce quality education. The Federal role would be limited to continued encouragement and funding on a demonstration basis, of promising education innovations and to dissemination of information with respect to various innovations.

Mr. President, I ask unanimous consent that a section by section analysis of S. 3779 and a fact sheet describing it be printed in the RECORD at this point.

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

SECTION-BY-SECTION ANALYSIS

Section 1: Short title:

This section provides that the act may be cited as the "Elementary and Secondary Education Assistance Act of 1972."

Section 2: Purposes:

This section states three purposes of the Act:

1. To provide increased resources for elementary and secondary education;

2. To redress inequitable distribution of resources for elementary and secondary education among States and among local educational agencies within the States;

3. To improve the educational achievement of educationally disadvantaged elementary and secondary school students.

TITLE 1. GENERAL GRANTS FOR ELEMENTARY AND SECONDARY EDUCATION

Section 101: Grants authorized:

This section directs the Commissioner of Education to make grants to State educational agencies for them to make grants to local educational agencies and to engage in other activities. The section authorizes the appropriation of $5,250,000,000 for the purposes of this title but specifies that no

funds can be appropriated for this title in any fiscal year in which the appropriations for Title I of ESEA are not at least as great as in fiscal year 1973.

The section reserves from the monies appropriated for the purposes of this Title:

1. $50 million plus one percent for the purposes of section 106(c)—(expenses of State educational agencies for certain activities).

2. Five percent for the purposes of 106(b)—(comprehensive assessments of the quality and equality of elementary and secondary education programs in the States).

3. Two percent for Office of Education expenses, of which at least one percent must be used to finance evaluations of activities under this title by qualified persons or institutions other than the Department of Health, Education and Welfare and the recipients of aid under the title.

Section 102: Apportionment Among States:

This section describes the mechanism by which remaining funds appropriated under this Title are to be apportioned among the States.

First, the section reserves up to three percent of the remaining funds for grants to Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territories of the Pacific Islands.

Secondly, the section apportions funds which still remain among the fifty states and the District of Columbia according to three criteria:

1. 60 percent according to the number of children, aged 5 to 17.

2. 20 percent according to need, as measured by a States personal income per school-aged child, adjusted according to criteria developed by the Bureau of Labor Statistics of the Department of Labor for regional differences in purchasing power.

3. 20 percent according to effort, as measured by a State's total state and local expenditures from its own sources on elementary and secondary education, divided by its total personal income, adjusted according to criteria developed by the Bureau of Labor Statistics of the Department of Labor for regional differences in purchasing power.

The section provides that any funds freed by the nonparticipation of any State may be reapportioned among the remaining States in proportion to their original entitlements and their need for further financial aid. It also provides that the resource index for the District of Columbia shall be no smaller than the smallest resource index for any other State.

Section 103: Distribution of resources among local educational agencies:

This section describes the manner in which the States shall allocate the funds apportioned to them in section 102(b) to local educational agencies.

The section provides that any State desiring to receive assistance under this title shall submit a plan showing how it will make use of the Federal funds, in conjunction with state and local funds, to reduce the disparities which exist among local educational agencies within the State in per pupil expenditures. The section further defines the criteria for determining whether such disparities have been sufficiently reduced. For elementary school students, the plan must provide that each local educational agency have a per pupil expenditure of at least 90 percent of the target per pupil expenditure, which is defined as the expenditure per elementary school students during the previous year of that local educational agency whose expenditure in that year was exceeded by no more than 10 percent of the State's local educational agencies. In the case of a local educational agency serving at least one-third of the children of an urban center (defined as the central city of a standard metropolitan statistical area), and in any case no less than 25,000 students, the plan must provide that the agency expend 100 percent of the target expenditure per pupil. For secondary school students, the plan must provide analogous assurances based on a target per pupil expenditure for secondary school students.

In the second and subsequent years of the title's operation, the State must further give proof to the Commissioner that every local educational agency had per pupil expenditures for elementary school students and for secondary school students at or above the required levels in the preceding year. If a State cannot provide such proof it is required to submit a new application with appropriate assurances. Any State which fails to meet the per pupil expenditure requirements for two consecutive years is barred from receiving funds under this title until such time as it can prove that it met the expnditure requirements in the preceding year.

The section provides that any funds apportioned to the State which remain after the requirements for eliminating expenditure disparities have been met shall be allocated among the local educational agencies of the State in the following manner: 50 percent on the basis of average daily membership and 50 percent on the basis of the number of low-income families (as defined in the Elementary and Secondary Education Act of 1965) residing in the district of each local agency.

Section 104: State applications:

This section requires the Chief State School Officer of any State which desires to participate under this title to submit an application each year, and details the assurances which this application must contain. It further sets forth special provisions concerning aid to private nonprofit schools.

Applications submitted by the Chief State School Officer for aid under this title must contain assurances:

1. that the State will comply with all the provisions of the Act, including the requirements for reducing expenditure disparities among local educational agencies and for aiding non-public schools, and that the State will not provide aid to any local educational agency which does not comply with all the requirements set out in the following section, and elsewhere in this title.

2. that the State will adopt adequate accounting and fiscal control procedures and will not commingle federal funds with state or local funds.

3. that the State will make available to the Commissioner various reports. These include: 1) the annual reports on evaluation of programs under this title and on school-by-school analysis of pupil achievement which are required of local educational agencies by section 105; 2) reports by the State concerning the purposes for which it made payments under this title and evaluations of the effectiveness of such payments and of payments pursuant to Title I of the Elementary and Secondary Education Act of 1965.

4. that the State will make application, reports and all documents pertaining to them readily available to the public.

Subsections (b) and (c) of this section make special provisions with regard to private, non-profit elementary and secondary schools. Under subsection (b) the State is directed to reserve a portion of its apportionment under this title for use in fulfilling its obligations to non-public schools under section 105(a)(2)(A). The portion so reserved must represent the same percentage of the State's apportionment as the number of children aged 5 to 17 enrolled in private, non-profit schools represents of total enrollments in elementary and secondary schools. Under subsection (c), any portion of such reserved funds which is not used by the State, on account of State law or for some other reason, reverts to the Commissioner for use under the provisions of section 105(c).

Section 105: Local Educational Agency Applications:

This section details the conditions under which a local educational agency may receive a grant under this title.

Subsection (a) requires that the local educational agency submit an application to the appropriate State educational agency and that the State educational agency approve this application after determining the following items, in accordance with basic criteria which the Commissioner may establish:

1. That the programs and activities for which assistance is sought will be administered by or under the supervision of the applicant.

2. That the local educational agency will make provisions for students enrolled in private non-profit elementary and secondary schools in its district consistent with their proportion among all students in the district. The items to be provided must be secular, neutral, and nonideological educational services, material, and equipment, including such facilities needed for their provision. Special arrangements such as dual enrollments may be developed to assure the adequate participation of nonpublic school students where this is appropriate. The control of funds and the title to property acquired under this title must remain in a public agency, a public agency must administer such funds and property, and services must be provided by employees of a public agency or through contract with a person, association, etc. which is independent of the private school being aided, and of any religious organization. No provision may be made to benefit children attending a private school operated on a racially segregated basis as an alternative to persons seeking to avoid attendance in desegregated public schools, or which otherwise practices discrimination on the basis of race, color, or national origin.

3. That the local educational agency will maintain its per pupil expenditure of the previous year, except insofar as State funds are used to substitute for an equal amount of local funds in a manner approved by the Chief State School Officer.

4. That the local educational agency will institute effective procedures to evaluate the effectiveness of its programs in meeting students' educational needs and that it will submit an annual report to the State educational agency, plus any other reports and records required by the State in the performance of its duties. The annual report must include school-by-school information relating to educational achievement.

5. That applications, reports, and all documents pertaining to them, as well as all evaluations and reports required under 105(a)(5), shall be public information, except that information relating to the performance of an individual student shall in no circumstances be made public.

Subsection (c) stipulates that the Commissioner shall arrange for the provision of services to children in nonpublic schools in the district of any agency which is located in a State in which no State agency may legally provide such services, or which has failed to provide such services on an equitable basis. The Commissioner is to pay for such services out of funds which have reverted to him under the provisions of earlier sections, and may arrange for such programs through contracts with institutions of higher education or other competent non-profit institutions or organizations.

Subsection (d) provides that the State shall make arrangements for providing services to students of non-public schools in the districts of any local educational agencies which have not applied for funds under this title or whose applications have not been approved, unless the State is legally barred from doing so by applicable law. In the lat-

ter case the Commissioner shall make appropriate provisions.

Section 106: Payments.

This section directs the Commissioner to make payments to the States, and the States to make payments to the local educational agencies, in accordance with the provisions of preceding sections. The section also makes provisions disallowing payments to agencies which reduce expenditures from their own sources or which are otherwise in noncompliance with the provisions of this Act.

The section directs the Commissioner:

1. To make payments to the States in conformance with the provisions of sections 103 and 104 (general aid for education).

2. To use the funds reserved to him by section 101(b)(2) to make payments of up to 5 percent of its basic apportionment to any State in any year in which the State conducts a comprehensive assessment of the quality and equality of its public elementary and secondary educational system. This assessment must include, but must not be limited to, an analysis of educational achievement by school, and an evaluation of the effectiveness of school programs in the State in meeting the needs of children from varying social and economic backgrounds, including the special educational needs of minority groups and of bilingual and educationally disadvantaged children.

The section authorizes the Commissioner to make payments to the States, from the funds reserved to him under section 101(b)(1), in an amount equal to the expenses of the State for proper and efficient fulfillment of its duties under this title, for provisions of technical assistance to local educational agencies within the State, and for model innovative programs designed to increase academic achievement of educationally disadvantaged children.

The section directs the States to make payments to local educational agencies, in accordance with section 105(a), in the amounts for which applications have been approved.

The section sets forth two restrictions on payments by the Commissioner and by the States:

1. The Commissioner may not make payments to any State for any year in which that State's per pupil expenditure from State sources during the previous year was less than its expenditure for the second preceding fiscal year, and the States may not make payments to any local educational agency whose per pupil expenditure from local sources in that year is less than the preceding year, except where State funds have been used to replace local funds under an approved plan.

2. Upon finding that a recipient of aid is in noncompliance with this Act, or has knowingly given false assurances, or failed to make a good faith effort to establish the accuracy of its assurances, the Commissioner shall notify the recipient of his findings and shall cease payments to such recipient—at least for those activities affected by the noncompliance—until the situation has been corrected.

Section 107: Judicial review:

This section provides procedures for judicial review of actions taken pursuant to this Act.

Section 108: Prohibitions and limitations:

This section sets forth two restrictions:

1. Nothing in this title shall be construed to authorize any department, etc. of the United States to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution or school system.

2. Nothing in this Act shall be construed to authorize payments for the construction of facilities as a place of worship.

Section 109: Administration:

This section authorizes the Commissioner to delegate any of his responsibilities under this Act, except the making of regulations, to another officer of the Office of Education, and to use the services and facilities of any agency of the Federal Government or of any public institution in the fulfillment of the provisions of the Act, under suitable arrangements.

Section 110: Termination of programs:

This section repeals Title V of the Elementary and Secondary Education Act of 1965 (Grants to State and local educational agencies to strengthen technical and administration services), effective July 1, 1973, and Titles II of ESEA (Grants to State educational agencies for the acquisition of library resources, textbooks and other instructional materials) and III of the National Defense Education Act of 1958 (Financial assistance for strengthening instruction in science, mathematics, modern foreign languages, and other critical subjects), effective the first fiscal year in which section 101(a) of this Act is fully funded.

Section 111: Definition:

This section defines "per pupil expenditure" for any State or local educational agency as the agency's aggregate current expenditure for elementary and/or secondary education divided by the number of children in the average daily membership of the agency, exclusive of the costs of transportation, health, maintenance or construction of physical facilities, activities related to compensatory education or education of the mentally or physically handicapped, and aid received under title I of the Elementary and Secondary Education Act of 1965.

TITLE II. AMENDMENTS TO THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965

Section 201: Education Achievement Grants Authorized:

Subsection (a) of this section amends section 102 of the Elementary and Secondary Education Act of 1965 by extending the authorization from June 30, 1973 to June 30, 1976.

Subsection (b) of this section amends Title I of ESEA by adding a new Part D, and making appropriate conforming changes. The new Part D is entitled: "Education Achievements Grants." It has four sections.

Section 141 of the new Part D provides that the Commissioner shall, upon request from a State, certify for administration achievement tests in reading and mathematics to be given to Title I-assisted pupils in all local districts in the State receiving aid under Title I of ESEA (compensatory education for educationally disadvantaged low-income children); the tests must be given prior to June 1 of the year for which they are certified. The Commissioner is further directed to establish criteria of minimum satisfactory performance for children in each grade on each test which he certifies. The criteria should measure progress toward the objective of being able to read and calculate well enough to function self-sufficiently and to participate actively in American society.

Section 142 provides that, for each fiscal year beginning with fiscal year 1975, each local educational agency in states participating in the Education Achievement Grant Program shall receive a bonus equal to $150 or 50% of the average per Title I child funds that year, whichever is higher, for each Title I student whose score on the test the previous year was below the minimum performance score but whose score on the most recent test showed satisfactory progress (as defined by the Commissioner). The bonus funds may be used as general education aid. An equivalent amount of additional ESEA, Title I funds will be made available to children in private schools on the basis of improvement on their test scores. There is no penalty for poor performance. Title I funds continue so that children are not punished. But there is a substantial reward for local educational agencies whose Title I pupils show achievement progress. Grants under this section are to be made only to local educational agencies which have submitted to the State an annual plan for improving the agency's pupils' reading and mathematics skills. The plan must include measurable objectives; the State must provide assurances that the plan was prepared with parental participation, was approved by the local agency, and will be available to the public.

Section 144 authorizes the appropriation of such sums as may be necessary to carry out the provisions of section 142 for the fiscal year ending June 30, 1974, and two succeeding fiscal years.

TITLE III. AMENDMENT TO GENERAL EDUCATION PROVISIONS ACT

Section 301:

This section amends section 422 of the General Education Provisions Act, "Prohibition Against Federal Control of Education," to include in its provisions the Elementary and Secondary Education Assistance Act of 1972.

FACT SHEET

Sets forth three purposes: 1) provide increased financial resources for elementary and secondary education, 2) redress inequitable distribution of educational resources among school districts within a state, and 3) improve educational achievement of educationally disadvantaged children.

TITLE I

Authorizes $5.25 billion annually for elementary and secondary general education grants to states (more than $5 billion of which is new money).

Apportions funds among states on the basis of school-aged population, need, and tax effort for education.

Specifies that, in order to receive funds, a state must submit annually a plan showing how it will distribute the funds, in conjunction with state and local resources, to assure that every school district will spend at least 90% of a target per pupil expenditure. Big city school districts, where the cost of education is higher, will spend 100% of the target expenditure.

The target expenditure for each state is the per pupil expenditure the previous year of the school district in that state at the 90th percentile in per pupil expenditure.

The effect is to place a floor under the per pupil spending of all school districts in the state while still permitting any school district to spend as much as it wishes.

Federal general education grants above the amount necessary to meet above criteria will be allocated by the state to local school districts—50% on the basis of student enrollment and 50% on the basis of low income population.

Local school districts receive funds, which may be used for any educational program or purpose, through state education agencies.

Funds must be provided for benefit of students attending private non-profit schools for secular, neutral, and non-ideological educational services, materials, and equipment (language from most recent Supreme Court decision relating to aid to children attending private schools).

Includes maintenance of effort requirements on both state and local education agency recipients—but provides state may assume all or part of LEA responsibility.

Requires that achievement program by school be made public, protecting individual test score from disclosure, and provides state with 5% bonus if it adopts or has adopted a comprehensive assessment program including an analysis of academic achievement by school and other appropriate factors specified by the Commissioner of Education.

Terminates present ESEA Title V (Aid to improve state education offices) but sets aside greater amount of funds for similar purposes.

Terminates ESEA, Title II (grants for library resources) and NDEA Title II (grants for equipment and minor remodeling) upon full funding of the Act.

Safeguards existing compensatory education programs under Title I, ESEA by requiring at least continued funding at 1972 levels.

TITLE II

Amends ESEA, Title I (Aid to Educationally Disadvantaged) by adding a new program of Education Achievement Grants.

States wishing to participate would give annual tests in reading and math to all Title I students in the State. A school district would receive a $150 Achievement Progress bonus for each Title I student whose test score showed achievement progress of at least one year. The achievement progress bonus could be used by the school district for general education aid. Receipt of funds under the present Title I program would not be affected by the new program.

Protects individual test scores from disclosure except to parents, but requires public disclosure of test scores aggregated by school, local education agency and State.

Authorizes for appropriation such sums as may be necessary.

Mr. STEVENSON. Beyond waiting for the Court to act and taking these positive steps, we must in the future consider whether the concerns of the people are strong enough and widespread enough among all groups within our population to warrant changing the law which has given rise to these concerns. In other words, we should face the reality of whether we want a constitutional amendment, and what kind of constitutional amendment we want. We will have to ask hard questions—we will have to consider closely the evidence, now widely debated and uncertain, that "the greatest possible degree of actual desegregation," or something close to integration for the sake of integration, offers little improvement if indeed any in the education of the formerly "deprived" child. And we shall have to consider carefully the corollary to that, that the value of such desegregation, beyond the neighborhood school concept, is indeed so small that we would want to establish certain of these other values in the Constitution.

I cannot say where I shall stand on any proposed amendment. I shall have to consider carefully the evidence presented in support of any proposal. And I have already stated that I shall not consider any amendment that would undermine the great promise that was and is the 14th amendment.

But that is the future. Now we are faced with a bill on the floor of the Senate that I believe is in many respects bad policy and that I believe is probably unconstitutional in certain respects. Unless it is drastically improved, I shall vote against the bill, if it comes to a vote. I hope that the Senate will recommit the bill or take it off the floor and vote to have it considered in depth in the next session of Congress. If it must come to a vote, it should be first amended. We could improve title I in order to make it meaningful; or if not, strike it. We could delete sections 406 through 408. And I hope that either in section 403 or in a new title, we could add wording to the effect that we have no desire to undermine the Constitution. It seems to me that is the least we can do to show our affinity to the Constitution and to be faithful to our oath of office. It would also be a way of showing that we are not daring the Court to hold the bill unconstitutional, and that thereby we are not once again throwing the monkey on the Court's back.

Mr. President, it seems to me that these latter courses of action, and the truth, are what the American people deserve from "the greatest deliberative body in the world." They do not deserve inflammatory rhetoric or false hopes. In short, Mr. President, they do not deserve this bill. They deserve something much, much better.

Mr. PERCY. Mr. President, I took an oath when I became a Member of the U.S. Senate 6 years ago. It is the same oath that every other Member of this body has taken to support that Constitution of the United States. I can neither abandon nor forget that oath.

The question now before the Senate tests our commitment to that oath for we are faced with determining whether this body, whose principal duty is to enact laws consistent with the Constitution, should, in the face of impressive evidence suggesting the unconstitutionality of this bill, summarily approve it without the benefit of so much as a single public hearing much less adequate floor discussion.

Quite frankly, I am not prepared at this point to conclude that this bill is unconstitutional. Nor am I prepared to say that it is not unconstitutional. Ultimately, whether legislation is or is not constitutional is a judicial determination. What I am prepared to say—indeed, what I am compelled to say—is that the legislation before us poses so many problems and questions concerning conformance with basic constitutional standards that, so long as I am sworn to uphold the Constitution, I cannot vote in favor of any action that will move the legislation closer to enactment while these questions remain unanswered.

For this reason, I am voting today against cloture, the petition for which was filed the same day this bill, H.R. 13915, was taken up for discussion without ever having been referred to a Senate committee—action unprecedented in the U.S. Senate to my knowledge. As most of my colleagues know, I am a vigorous opponent of filibusters. I consider them a poor way to conduct the Nation's business: They are wasteful, undignified subterfuges of otherwise legitimate, fair parliamentary procedures. I need not further elaborate my views on this point. But this is not a filibuster at all. Discussion and debate has just barely gotten underway.

Suffice it to say that only the most compelling circumstances prompt me to vote in favor of continued debate. I would not vote to continue debate if I believed the merits of the pending question had been explored fully, whether or not I agree with the legislation or its prospects for enactment. Believing in this case that the merits have not been fully explored—indeed, that the surface considerations have barely been scratched—I am voting for further time for debate and thoughtful consideration.

I vote today to continue debate on this legislation for another valid reason: The legislation has not received any formal study by the Senate prior to its reaching the floor. Through an unusual parliamentary maneuver, the bill was not referred to committee and the Senate was thereby deprived of the opportunity to receive and evaluate public testimony, to discuss the strengths and weaknesses and scope of the bill, to offer alternatives and modifications to the existing language, and simply to take the time to think through the full thrust of this proposal. The Senate is engaged in a race against time as the session draws to a close. But I submit that the clock is not our most important master. More important are our commitments as elected representatives to apply a full measure of study and deliberation to the legislation which we consider. The weight of that duty is increased when we deal with questions of civil rights, an independent judiciary, and quality education.

Mr. President, there are two salient examples of the constitutional questions raised by this legislation. First, section 406 would permit reopening any existing court order or HEW title VI plan to determine whether such plan or order is consistent with the requirements of this bill. The Attorney General has admitted that he believes that this would permit the reopening of all such orders going back to Brown against Board of Education, a period covering almost 20 years—20 years of hard fought and often painful progress. Would not this legislation jeopardize that progress?

Five hundred professors, including a number of deans from 42 law schools throughout the country have stated that this bill in their judgment, and I refer to their language now, would—

Open to relitigation nearly two decades of judicial desegregation decisions many of which involve no busing whatsoever, thus leading to divisiveness and confusion in many communities already satisfactorily operating under school desegregation plans . . .

And—

Place the Legislative and Judicial Branches in conflict . . . remove a remedy for the vindication of constitutional rights, even when that remedy is constitutionally required . . . impair the Supreme Court's role of final arbiteur of constitutional matters.

Therefore, the second most troubling aspects of this legislation, the aspect which most deserves, but has not received, complete scrutiny, centers on the relationship balances of two coequal branches of Government. To state the issue precisely, the question before the Senate is whether the Congress has the authority to limit the remedies available to a court where the jurisdiction of the court is acknowledged and a violation of a constitutional right has been demonstrated. In other words, can the Congress tell the courts how to enforce constitutional rights by legislating the method or restricting the method?

I vote to continue our deliberations because in my judgment the discussion of this legislation by its proponents has been far from dispassionate, far from focused, and frankly, insofar as I am concerned, far from helpful. We have remained on the periphery of the issue by

refusing to come to grips with the high costs of violating longstanding constitutional principles, by refusing to assess the impact of a complete turnabout in educational and social commitments which this legislation may represent, and by doggedly refusing to seek out the areas of compromise and conciliation which is essential to any democracy.

Mr. President, I regret that, irrespective of what we do or say here today, our actions will be interpreted as being reflective of our positions on busing. I do not see the question before the Senate as being whether one is "for" or "against" busing. The real question cuts deeper: It concerns the manner in which we choose to conduct the business of the Senate. I cannot justify to my constituents—indeed, I cannot justify to myself—my participation in a scheme which brings about the enactment of laws without public discussion, without public hearing, without full and contested debate in this Chamber, and without even addressing the most obvious and serious constitutional question that this legislation raises.

When the constitutional questions have been answered satisfactorily, then the merits of this legislation can be considered and voted on. I will take a position, defend it and attempt to persuade my colleagues of its strength. Until then, I will not place my imprimatur on this legislation or on these tactics by voting to cut off debate.

And in conclusion, I will repeat what I said at the beginning of my statement: I took an oath when I became a Member of the U.S. Senate 6 years ago. It is the same oath that every other Member of this body has taken to support the Constitution of the United States. I can neither abandon nor forget that oath.

Mr. President, I have already referred to the opinion of 500 professors of law and deans of certain of our great law schools which has been printed in the RECORD for our study and our guidance. However, I felt it incumbent upon myself to seek out advice and counsel from the leading deans of law schools in the State of Illinois.

I now ask unanimous consent to have printed at this point in the RECORD a statement first by Philip Neal, dean of the University of Chicago Law School, on H.R. 13915. Certainly Dean Neal is recognized as having one of the greatest legal minds in this country. He is an outstanding student of law and a scholar. And his judgment, I think, is important for us to have available on this particular legislation.

I also ask unanimous consent that the statement of Dean James A. Rahl, dean of the Northwestern University School of Law, on the pending legislation also be printed at this point in the RECORD.

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

STATEMENT BY DEAN PHILLIP NEAL

I believe the House-passed anti-busing bill raises very serious questions of constitutional propriety which from a long-term point of view overshadow the questions about the extent to which busing should or should not be permitted.

I say questions of constitutional "propriety" rather than merely of unconstitutionality because the issue is more fundamental than whether the bill, or particular provisions in it, will be held constitutional. The approach taken in the bill raises sensitive and potentially far-reaching questions concerning the respective responsibilities of Congress and the Supreme Court, and the balance between them in maintaining our constitutional system.

There is no doubt that the bill as a whole, and certain specific provisions in it (particularly Sections 203, 403 and 406) constitute a sharp and direct challenge to the evolving principles developed by the Supreme Court and found by the Court to be anchored in the 14th Amendment, in the series of decisions stretching over the 18-year period from *Brown v. Board of Education* to the present. The confrontation would not end with the passage of the bill; that would be only the beginning. The court would then undoubtedly be faced in a series of cases with the momentous choice of yielding its deliberately taken views of the Constitution to the will of Congress or of defiantly reasserting its own paramount authority as the ultimate interpreter of the Constitution. Either result seems to hold perils for the strengths of our institutions.

The kind of clash thus posed, raising the most fundamental questions about ultimate authority, is one that we have happily and wisely avoided during most of our history. It is most reminiscent of the potentially fateful test which many foresaw, and some hoped for, in *Marbury* v. *Madison*, where it seemed for a time that the court must impale itself by either abdicating its authority or inviting defiance of its judgment. The ingenuous path by which this ultimate dilemma was wisely avoided was, of course, critical to the development of the court's position in our system. We could not count on being so fortunate again.

This, it seems to me, is the overriding difficulty with the bill from a constitutional standpoint, but there are other important problems. The bill represents a drastic assertion of the power of Congress to define and limit rights that have their source in the Constitution. With due recognition of Congress' remedial powers under Section 5 of the 14th Amendment, the detailed and severe curtailment of remedies attempted in this legislation can hardly be conceded to be an exercise of the "power to enforce" contemplated by that section. If that attempt were sustained it could not fail to undermine the entire range of rights heretofore safeguarded by the 14th Amendment. Finally, Section 406 of the bill, which would reopen judgments already entered and apply to them newly declared principals of both substantive and remedial law, raises most serious questions concerning the separation of powers and the independence of the judicial authority under Article III.

I believe that ways are open to the Congress to provide guidance and leadership to the country in the difficult problems of school segregation and busing that do not so fundamentally disturb our constitutional arrangements. It is the responsibility of Congress as well as of the court to exercise its powers in the light of constitutional wisdom and not merely its immediate policy objectives.

STATEMENT OF DEAN JAMES A. RAHL

The pending bill in Congress to curtail the powers of the Federal Courts to order busing in school desegregation cases appears to me to be of very doubtful constitutionality. In particular, grave questions under the doctrine of separation of powers would be raised by such an attempt by Congress to restrain and limit the courts in their exercise of valid jurisdiction in cases of great constitutional significance.

Mr. PERCY. I also note that a letter which was inserted in the RECORD earlier today sets forth the reasoning and conclusions of some of the top lawyers in the country that, in their opinion, this bill is unconstitutional. Among those who signed this letter are names which are the most respected in legal circles, the people that we in the Senate normally would look to for guidance and advice on matters such as this. Among those who signed the letter are a former Justice of the Supreme Court and two men who formerly have served as the Attorney General of the United States. They said that the provisions of this bill would:

(1) violate Article III of the Constitution to the extent that they would limit the power of courts to fashion the remedies such courts believe necessary to correct adjudicated deprivations of constitutional rights in cases within their jurisdiction, and

(2) violate the Fifth and Fourteenth Amendments to the extent to which they limit the power of the courts to correct adjudicated findings of unconstitutional school segregation where courts determine that busing is the only effective and promptly available remedy.

Mr. STEVENSON. Mr. President, I ask the distinguished Senator from Illinois whether in making this statement today and voting against cloture one has a right to assume that he is in favor of busing.

Mr. PERCY. Mr. President, I think this is very pertinent, and I am very happy to respond to my distinguished colleague. I commend him on the excellence of his statement.

Mr. President, I have made it unmistakably clear ever since the inception of this debate on busing that I do not like busing, could not be considered a probusing advocate and actually know few groups, regardless of race, creed, or color, who feel that busing is the best answer or even a satisfactory answer to equal educational opportunities.

But I am equally clear and adamantly opposed to the separate but equal dual school system ruled unconstitutional by the 1954 Supreme Court decision. I have queried Supreme Court Justices nominated by President Nixon on this very point, and I do not believe a single one of these appointees, confirmed by the Senate, would vote to roll back that decision.

When there is no other alternative and no other remedy available to the court—when all other, more preferable remedies have been exhausted and there is no other avenue toward which the court can turn—then, transportation of schoolchildren, a means of providing public facilities, a means already used to provide busing to 20,000,000 or 43.5 percent of American schoolchildren in more than a quarter of a million vehicles each and every schoolday of the year, cannot by act of Congress be denied the courts as a remedy. Nor should Federal funds be denied local school districts capriciously and arbitrarily by the Federal Government, if they decide to provide such transportation facilities to the schoolchildren in their district.

I helped develop and actively supported the Scott-Mansfield busing amend-

ment which has been adopted by the Congress and, following the signature of the President, has become the law of the land. This provides that: First. Federal officials cannot require any local educational agency to use State or local funds for any purpose for which Federal funds were forbidden, unless constitutionally required.

Second. Forbids Federal officials from requiring any local educational agency to undertake transportation of any student where the time or distance of travel was so great as to risk the child's health or significantly impinge on his educational process. Third. Postpones the effectiveness of any U.S. district court order requiring the transfer or transportation of any student from one local educational agency to another, or which required the consolidation of two or more local educational agencies for the purpose of achieving a racial balance among students, until all appeals or time for appeals had been exhausted.

I do not know of any serious challenge in the courts that has been made to the constitutionality of this law that has now been in effect for many months.

I express deep gratitude to my distinguished colleague from Illinois for not only the excellence of his position and statement, but also for his courtesy in yielding this time to me.

Mr. STEVENSON. I thank my colleague from Illinois for his convincing statement.

Mr. SCOTT. Mr. President, the vote earlier today marks the first time in my 14 years in the Senate that I have voted against cloture. I have voted many times to modify rule XXII to bring the closure of debate more in line with the majority rule by which the Senate primarily functions. Although one of the strengths of the Senate is the great opportunity it presents for debate, I have always believed that the time comes on every issue when the Senate as a whole must be allowed to work its will.

My feelings in this regard have not changed. In fact, it is because of them that I opposed closing debate on the Equal Educational Opportunities Act. This is not the time for the Senate to vote on an issue which affects the fundamental requirements of our Constitution and the future of millions of our citizens. The national elections will be held in 5 weeks; the Congress is attempting to adjourn within 1 week. This is not the time to rush through consideration of such a momentous matter.

Now that the first attempt at cloture has failed, I would hope that those who wanted to rush precipitously toward a final vote will consider carefully just what damage this proposed legislation will wreak on nearly two decades of multiracial progress.

The most insidious provision of the proposed legislation is section 406. This section provides for the reopening of any desegregation order in effect as of the date of enactment of the Equal Education Opportunities Act which does not comply with the provisions of the act. This reopener is not limited to those cases in which busing was required but applies to every desegregation order implemented since 1954, because in addition to virtually eliminating busing as a remedy, the legislation imposes a nearly rigid formula for the imposition of remedies other than busing.

Those who argue that this will only affect cases in which a court has ordered mass busing just are not looking at what the legislation says. The Attorney General of the United States, in his testimony before the House Committee on the Judiciary, stated that it was his firm belief that this reopener would apply to all desegregation cases, not just those in which busing was part of the court order. And under this proposed legislation, the Attorney General is the very one who is required to assist educational agencies in reopening and modifying such orders.

The chaos this provision would cause is almost unimaginable. Approximately 1,500 school districts have desegregated under court order or HEW plan since 1954. Each one of these district plans would be eligible for reopening under section 406. Fifteen hundred reopening suits with the Attorney General required to assist in each one, nearly 20 years of work, conciliation, and progress—all this would go down the drain under section 406.

I will not at this time go into the delineation of permissible court ordered remedies under section 402 except to note that in many cases these remedies will provide no remedy at all. I do, however, want to comment on the limitation of busing in section 403(a) to the closest or next closest school.

An editorial in the September 13 Washington Post describes as clearly as anyone the end results of such a limitation:

> The legislators have, in effect, done two things. They have voted to spare high income persons such as themselves and the communities in which they live the inconveniences that attend busing orders. But they have also made sure, in their "closest or next closest" school provision, that the impact of outward bound ghetto busing will be hardest felt in those adjacent blue-collar, lower-income "ethnic" communities whose schools have least to offer poor black children and where racial feelings are the most inflamed.

Section 402(a) will permit nothing more than the creation of a thin band of integrated schools, with the schools in the very innercity and those in the suburbs remaining segregated. The racial tensions created by such a situation will only provide new impetus for the legendary flight to the suburbs with further residential and employment segregation resulting.

With all deference to my distinguished colleagues in both the House of Representatives and Senate, I believe that this proposed legislation is a hoax on those citizens who oppose busing as an integration tool because it is my firm conviction that the sections I have discussed are both unconstitutional. What will happen if this legislation is enacted into law is that legislators will go home proclaiming that they have done their duty; all voluntary efforts toward racial integration will cease; our court dockets will overflow with reopening suits; the Department of Justice will be inundated with demands for legal assistance; racial tensions will flareup again in areas which long ago attained racial harmony; the flight to the suburbs will take on entirely new dimensions; and finally, some day well after the November elections, the Supreme Court will rule section 406, section 402(a) and very probably other sections of this proposed act to be repugnant to the Constitution.

Earlier this year the Senate considered, at some length, other legislation to circumscribe busing as a desegregation tool. At that time, the distinguished Majority Leader and I offered what we believed to be a reasonable and constitutionally permissible proposal, and a majority of the Senate agreed. The Scott-Mansfield amendment delayed the implementation of court orders which require the consolidation of local education agencies or require transportation from one local education agency to another for the purpose of achieving racial balance. We believed, and still do, that it is reasonable to await a final Supreme Court decision in cases imposing more extensive remedies than have previously been ordered. The conferees on the Higher Education Act expanded this provision to include all district court orders, whether or not such orders were based on solidly established constitutional requirements. This provision has been found inapplicable in some cases, but the Supreme Court has yet to rule on its constitutionality. I think we should wait for this ruling before we further upset and undo our accomplishments of the past.

I believe that the enactment of several of the provisions in the Equal Educational Opportunities Act would require a constitutional amendment. The Founding Fathers were not unmindful of the necessity that changes in our Constitution be made with deliberation and by more than a majority of the moment. If 60 or 70 percent of the American people want such provisions enacted, as has been asserted, then this is the route we should take. But I believe that when the American people became aware of what the legislation before us will actually do, not one-third of them would support it.

Mr. President, I ask unanimous consent that a short statement on what I view as the most serious constitutional objections to this proposed legislation be printed at the end of my remarks.

We have a multifaceted society, which all but the hermit must learn to grow up and live in. While racial and ethnic pride is of great importance, I could not disagree more with those, be they white or black, who preach racial separatism. I do not believe our Nation can continue to exist, and certainly not thrive under such a system. And neither can children exposed only to racially and economically segregated schools thrive in our integrated adult world.

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

CONSTITUTIONAL CONCERNS RAISED BY THE EQUAL EDUCATIONAL OPPORTUNITIES ACT

I. VIOLATION OF DUE PROCESS UNDER FIFTH AND 14TH AMENDMENTS

The Fifth Amendment, which provides that "No person shall be . . . deprived of life, liberty, or property without due process

of law," necessarily prohibits the passage of any measure by Congress refusing individuals the right of redress against State action which denies them equal protection of the laws under the Fourteenth Amendment. As stated in Marbury v. Madison 5 U.S. 137 at 163 (1866), "The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he received an injury."

Congress may not deny individuals equal protection of the laws by legislating the termination of court-ordered desegregation plans. As held by the Court in Green v. County School Board 391 U.S. 430 at 439 (1968), school districts have a constitutional obligation to implement desegregation plans that will work "until it is clear that State-imposed segregation has been completely removed."

The courts have found that the unconstitutional effects of State-action establishing a dual school system may exist long after the State has ceased to take any positive action. In Swann v. Charlotte-Mecklenburg Board of Education 402 U.S. 1, at 20-21 (1971) the Court noted:

The location of schools may influence the patterns of residential development of a metropolitan area . . . choices in this respect have been used as a potent weapon for creating or maintaining a state segregated school system.

Thus, although a State has taken no "new" discriminatory action, the results of past action often require continued remedial steps—steps which cannot constitutionally be terminated even though no new action is being taken.

The "Equal Educational Opportunities Act" almost totally prohibits the use of transportation to desegregate schools, even where "no other method . . . will provide an adequate remedy for the denial . . . of equal protection of the laws." This provision was justified, particularly under the House-committee bill, by the holding of the Court in Swann v. Charlotte-Mecklenburg Board of Education, supra at 30:

"An objection to transportation of students may have validity when the time or distance of travel is so great as to either risk the health of the children or significantly impinge on the educational process . . . . It hardly needs stating that the limits on time of travel will vary with many factors, but probably with none more than the age of the students."

But to deduce that this permits the denial of transportation as a remedy for students, elementary or not, overlooks the very facts on which this case was decided. The Charlotte-Mecklenburg Board of Education had devised a school desegregation plan providing for the desegregation of teaching staffs and secondary school students through the revision of school zones and the use of transportation. However, the plan relied entirely on the "gerrymandering of geographic zones" for elementary school students. The District Court's rejection of this plan and the Supreme Court's affirmation of the District Court's decision was *based almost entirely on the fact that the plan did not utilize transportation to desegregate the elementary schools.* Thus this provision in the "Equal Education Opportunities Act" runs directly contrary to the Supreme Court's decision.

The primary justification for the constitutional viability of the proposed act is that Sec. 5 of the Fourteenth Amendment allows Congress to prescribe remedies for its breach. Sec. 5 provides:

"The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

The Court had occasion to determine the meaning and effect of this section in Katzenback v. Morgan 384 U.S. 641 (1966). In this case the Court found a section of the Voting Rights Act of 1965 exempting certain individuals from English literacy tests as a precondition to voting constitutional under the Fourteenth Amendment. The dissenting opinion raised the concern that this decision could be construed as allowing Congress to *restrict* the Fourteenth Amendment rights of certain classes of individuals. The majority opinion specifically rejected this contention (note 10 at 651):

"Contrary to the suggestion of the descent . . . § 5 does not grant Congress power to exercise discretion in the other direction and to enact 'statutes so as in effect to dilute equal protection and due process decisions of this Court.' We emphasize that Congress' power under § 5 is limited to adopting measures to enforce the guarantees of the Amendment; § 5 grants Congress no power to restrict, abrogate, or dilute these guarantees. Thus, for example, an enactment authorizing the States to establish racially segregated schools of education would not be—as required by § 5—a measure 'to enforce' the Equal Protection Clause since that clause of its own force prohibits such state laws."

It is true that in suits claiming the impairment of the obligation of contracts (Article I § 10) the Court has distinguished between the right to the obligation of the contract and the right to a specific remedy. However, the Court has been careful to point out that although a State may alter existing remedies it may not, in so doing, effectively deny any remedy at all.

"The legislature may modify, limit or alter the remedy for enforcement of a contract without impairing its obligation, but in so doing, it may not deny all remedy or so circumscribe the existing remedy with conditions and restrictions as seriously to impair the value of the right." (Richmond Mortgage Corp. v. Wachovia Bank 300 U.S. 124 at 128 (1937)).

Under explicit holdings of the Court, the delineation of remedies proposed by the "Equal Educational Opportunities Act", far from "enforcing the provisions of the Fourteenth Amendment," would totally prohibit the implementation of an effective remedy in a large number of cases.

In finding the Charlotte-Mecklenburg school board desegregation plan inadequate, the unanimous Court held:

"Desegregation plans cannot be limited to the walk-in school." (Swann v. Charlotte-Mecklenburg Board of Education, supra at 30).

In the companion case of North Carolina State Board of Education v. Swann 402 U.S. 43 at 46 (1971), the unanimous Court held:

"Bus transportation has long been an integral part of all public education systems, and it is unlikely that a truly effective remedy could be devised without continued reliance on it."

And finally, in Davis v. Board of School Commissioners of Mobile County 402 U.S. 33 at 37 (1971), the unanimous Court reaffirmed its earlier decisions and concluded:

"Neighborhood school zoning," whether based strictly on home-to-school distance or on "unified geographic zones," is not the only constitutionally permissible remedy; nor is it *per se* adequate to meet the remedial responsibilities of local boards . . . The measure of any desegregation plan is its effectiveness.

Clearly, transportation is a *necessary* remedy for the effective restitution of Fourteenth Amendment rights in many school desegregation cases. And as held by the Court in Alexander v. Holmes County Board of Education 396 U.S. 19 at 20 (1969):

Continued operation of segregated schools under a standard of allowing "all deliberate speed" for desegregation is no longer constitutionally permissible. . . . Under explicit holdings of this Court the obligaton of every school dstrict is to terminate dual school systems at once and to operate now and hereafter only unitary schools.

Finally, there is serious question as to whether the establishment of *any* limited set of nationwide guidelines for relief in desegregaton cases can adequately assure equal protection of the laws in each individual case.

In Swann v. Charlotte-Mecklenburg Board of Education, supra, the Court noted that district courts need both breadth and flexibility in formulating equitable remedies, and concluded (at 28–29):

"Conditions in different localities will vary so widely that no rigid rules can be laid down to govern all situations. . . . No rigid guidelines as to student transportation can be given for application to the infinite variety of problems presented in thousands of situations.

"The remedy for such segregation may be administratively awkward, inconvenient, and even bizarre in some situations and may impose burdens on some; but all awkwardness and inconvenience cannot be avoided in the interim period when remedial adjustments are being made to eliminate the dual school systems."

Section 406 of the Equal Educational Opportunities Act, while arguably permissible under the usual doctrine that equity decrees are always subject to review because of change of circumstances, creates a right to reopen proceedings which is greater than the traditional equity doctrine. In addition, Section 406 singles out on the basis of race a class of Federal Court decrees for special treatment since the provision applies only to desegregation cases. Placing such a special burden on minority students would seem to violate the doctrine of *Hunter v. Erickson,* 393 U.S. 385 (1969). In that decision the Supreme Court held unconstitutional a provision added to the Charter of the City of Akron, Ohio, which required any ordinance regulating the sale or lease of property on the basis of race to win the approval of a majority of voters at a general election before it could take effect. The Court held that the charter could not place "special burdens on racial minorities within the governmental process."

The decision of a three-judge district court in *Lee v. Nyquist,* 318 F. Supp. 710 (W.D. N.Y. 1970), aff'd per curiam, 402 U.S. 935 (1971), strongly supports this argument. In that case the court found unconstitutional as violative of the Fourteenth Amendment a New York law which had been passed to reverse the policy of the Board of Regents of striving to achieve racial balance in the public schools of New York. The court noted that the statute singled out the Regents policy on racial balance for special treatment—approval by local elected school boards. The court stated:

"The statute thus creates a clearly racial classification, treating educational matters involving racial criteria differently from other educational matters and making it more difficult to deal with racial imbalance in the public schools. We can conceive of no more compelling case for the application of the *Hunter* principle."

Section 406 creates a racial classification since it applies only to school desegregation cases. The section makes it more difficult for minority children to enjoy their right to equal educational opportunity since it forces them to relitigate cases they had presumably already won.

II. *Violations of Separation of Powers Doctrine*

There have been other attempts by the Congress to interfere in judicial determination of "law and fact", as is proposed by the delineation and restricting of remedies under Section 402 of the Equal Educational Opportunities Act.

In a factually similar case, U.S. v. Klein

80 U.S. 128 (1871) the Court overruled an act of Congress which, while giving the court of the United States jurisdiction to hear appeals from Court of Claims decisions, required the court to dismiss the case should it find a Congressionally-prescribed fact situation to exist. The Court held (at 146–147):

"This is not an exercise of the acknowledged power of Congress to make exceptions and prescribe regulations to the appellate power . . . What is this but to prescribe a rule for the decision of a cause in a particular way? Can we do so without allowing that the legislature may prescribe rules of decision to the Judicial Department of the government in cases pending before it? . . . We must think that Congress has inadvertently passed the limit which separates the legislative from the judicial power."

The "Equal Educational Opportunities Act" provides that after a court of the United States determines that transportation is necessary to the guarantee of equal protection of the laws it must follow Congressional prescribed guidelines in ordering its use, or, in some Congressional prescribed instances, not use it at all.

There would seem to be circumstances under which the Congress could, under its power to enforce the Fourteenth Amendment, remove the use of certain remedies, and even prescribe which remedies are to be considered before others, as long as an effective remedy is available to the petitioner. However, under the proposed Act, Congress directs the court to find certain facts and *ipso facto* prescribes the remedy, without allowing a judicial determination of what the law requires.

Nor, under U.S. v. Klein, supra, may Congress order the courts, upon a finding that there has been no additional violation of Fourteenth Amendment rights during a certain period of time, terminate the court's judicial power to enforce the continued protection of the laws as is provided in Sections 407 and 408.

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Hackney, one of its reading clerks, announced that the House had disagreed to the amendments of the Senate to the bill (H.R. 1) to amend the Social Security Act to increase benefits and improve eligibility and computation methods under the OASDI program, to make improvements in the medicare, medicaid, and maternal and child health programs with emphasis on improvements in their operating effectiveness, to replace the existing Federal-State public assistance programs with a Federal program of adult assistance and a Federal program of benefits to low-income families with children with incentives and requirements for employment and training to improve the capacity for employment of members of such families, and for other purposes; agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. MILLS of Arkansas, Mr. ULLMAN, Mr. BURKE of Massachusetts, Mrs. GRIFFITHS, Mr. BYRNES of Wisconsin, Mr. BETTS, and Mr. SCHNEEBELI were appointed managers on the part of the House at the conference.

The message also announced that the House had disagreed to the amendments of the Senate to the bill (H.R. 16754) making appropriations for military construction for the Department of Defense for the fiscal year ending June 30, 1973, and for other purposes; asked a conference with the Senate on the disagreeing votes of the two Houses thereon, and that Mr. SIKES, Mr. PATTEN, Mr. LONG of Maryland, Mrs. HANSEN of Washington, Mr. MCKAY, Mr. MAHON, Mr. CEDERBERG, Mr. JONAS, Mr. TALCOTT, and Mr. BOW were appointed managers on the part of the House at the conference.

ENROLLED BILLS SIGNED

The message further announced that the Speaker had affixed his signature to the following enrolled bills:

H.R. 56. An act to establish a national environmental data system and State and regional environmental centers pursuant to policies and goals established in the National Environmental Policy Act of 1969, and for other purposes;

H.R. 2118. An act for the relief of the estate of Amos E. Norby;

H.R. 9676. An act to authorize the conveyance of certain lands of the United States to the State of Tennessee for the use of the University of Tennessee;

H.R. 10655. An act to designate certain lands in the Lassen Volcanic National Park, California, as wilderness;

H.R. 13780. An act to authorize the Administrator of Veterans' Affairs to convey certain property in Canandaigua, New York, to Sonnenberg Gardens, a nonprofit, educational corporation;

H.R. 13825. An act to extend the time for commencing actions on behalf of an Indian tribe, band, or group; and

H.R. 14731. An act to amend the Fish and Wildlife Act of 1956 in order to provide for the effective enforcement of the provisions therein prohibiting the shooting at birds, fish, and other animals from aircraft.

The PRESIDENT pro tempore subsequently signed the enrolled bills.

ORDER FOR ADJOURNMENT UNTIL 8:30 A.M. TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 8:30 tomorrow morning.

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

THE CALENDAR

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Nos. 1219 and 1220.

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

FLAT TOPS WILDERNESS, ROUTT AND WHITE RIVER NATIONAL FORESTS, COLORADO

The Senate proceeded to consider the bill (S. 1441) to designate the Flat Tops Wilderness, Routt and White River National Forests, in the State of Colorado, which had been reported from the Committee on Interior and Insular Affairs with amendments on page 1, line 8, after the word "dated", strike out "April 24, 1967" and insert "September 1972"; and, on page 2, line 2, after the word "approximately", strike out "one hundred and forty-two" and insert "two hundred and two"; 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 in accordance with subsection 3(b) of the Wilderness Act of September 3, 1964 (78 Stat. 891), the area classified as the Flat Tops Primitive Area, with the proposed additions thereto and deletions therefrom, as generally depicted on a map entitled "Flat Tops Wilderness—Proposed," dated September 1972, which is on file and available for public inspection in the office of the Chief, Forest Service, Department of Agriculture, is hereby designated as the Flat Tops Wilderness within and as a part of the Routt and White River National Forests, comprising an area of approximately two hundred and two thousand acres.

SEC. 2. As soon as practicable after this Act takes effect, the Secretary of Agriculture shall file a map and a legal description of the Flat Tops Wilderness with the Interior and Insular Affairs Committees of the United States Senate and the House of Representatives, and such description shall have the same force and effect as if included in this Act: *Provided, however,* That correction of clerical and typographical errors in such legal description and map may be made.

SEC. 3. The Flat Tops Wilderness shall be administered by the Secretary of Agriculture in accordance with the provisions of the Wilderness Act governing areas designated by that Act as wilderness areas, except that any reference in such provisions to the effective date of the Wilderness Act shall be deemed to be a reference to the effective date of this Act.

SEC. 4. The previous classification of the Flat Tops Primitive Area is hereby abolished.

The amendments were agreed to.

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

SOCKEYE SALMON FISHERIES ACT

The Senate proceeded to consider the bill (S. 4037) to amend the Sockeye Salmon Fisheries Act of 1947 to authorize the restoration and extension of the sockeye and pink salmon stocks of the Fraser River system, and for other purposes which had been reported from the Committee on Commerce with amendments on page 1, line 3, after the word "salmon", strike out "Fisheries" and insert "or Pink Salmon Fishery"; in line 4, after "61 Stat. 514", strike out "U.S.C. 776(f)" and insert "16 U.S.C. 776f"; and, on page 2, line 3, after the word "of", insert "Salmon enhancement facilities pursuant to"; 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 section 8 of the Sockeye Salmon or Pink Salmon Fishery Act of 1947 (61 Stat. 514; 16 U.S.C. 776f) is amended by (a) designating existing section 8 as "section 8(a)"; and (b) inserting at the end thereof the following new section:

"(b) In addition to the amounts authorized in subsection (a) of this section, there is authorized to be appropriated the sum of $7,000,000 for the share of the United States of costs and expenses incident to the development and construction of Salmon enhancement facilities pursuant to the program for the restoration and extension of the sockeye and pink salmon stocks of the

Fraser River system as approved by the Commission, to remain available until expended."

The amendments were agreed to.

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

The title was amended, so as to read: "A bill to amend the Sockeye Salmon or Pink Salmon Fishery Act of 1947 to authorize the restoration and extension of the sockeye and pink salmon stocks of the Fraser River system, and for other purposes."

MILITARY CONSTRUCTION APPROPRIATION BILL, 1973

Mr. MANSFIELD. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 16754.

The PRESIDING OFFICER (Mr. TAFT) laid before the Senate a message from the House of Representatives announcing its disagreement to the amendments of the Senate to the bill (H.R. 16754) making appropriations for military construction for the Department of Defense for the fiscal year ending June 30, 1973, and for other purposes, and requesting a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. MANSFIELD. Mr. President, I move that the Senate insist upon its amendments and agree to the request of the House for a conference on the disagreeing votes of the two Houses thereon, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to, and the Presiding Officer (Mr. TAFT) appointed Mr. MANSFIELD, Mr. PROXMIRE, Mr. MONTOYA, Mr. HOLLINGS, Mr. MCCLELLAN, Mr. BROOKE, Mr. BOGGS, Mr. STEVENS, Mr. YOUNG, and Mr. SYMINGTON conferees on the part of the Senate.

PLAN TO CONSIDER WELFARE AND PENSION FUND LEGISLATION EARLY NEXT YEAR

Mr. JAVITS. Mr. President, it has been reported to me that on yesterday the majority leader gave certain assurances, in my absence, about very early consideration, in the next session, of the bill for reform of welfare and pension funds.

Mr. MANSFIELD. Yes, and also the consumer council bill both of which would have to be reported out of committee again, but, as far as the Senator from Montana is concerned, they will receive the most expeditious consideration as soon as the committees report them to the Senate; and the earlier the better, because I think they are both good bills. They should be passed, and I want to see them passed.

Mr. JAVITS. I wanted to express my appreciation. As the Senator knows, welfare and pension fund reform has been a 5-year labor for me, now joined by the Senator from New Jersey (Mr. WILLIAMS). I am grateful to the distinguished majority leader.

Mr. MANSFIELD. I appreciate the remarks of the distinguished Senator from New York who, with the distinguished Senator from New Jersey (Mr. WILLIAMS), has worked long and hard on a plan, reported out of the Labor and Public Welfare Committee, which is an excellent plan, and which I approve thoroughly, but I could not approve the bill reported by the Finance Committee, and I want that on the record, too.

ORDER FOR RECOGNITION OF SENATORS HANSEN, HARRY F. BYRD, JR., TALMADGE, STENNIS, FANNIN, AND HUGHES ON FRIDAY NEXT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on Friday next, October 13, 1972, immediately following the recognition of the two leaders under the standing order, the following Senators be recognized, each for not to exceed 15 minutes, and in the order stated:

Senators HANSEN, HARRY F. BYRD, JR., TALMADGE, STENNIS, FANNIN, and HUGHES.

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

TIME ON CLOTURE MOTION TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent, on tomorrow, that the hour of controlled debate, under rule XXII, on the motion to invoke cloture on H.R. 13915 begin running at 11 a.m.

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

ORDER FOR TRANSACTION OF ROUTINE MORNING BUSINESS TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that, if there is any time remaining following the orders for the recognition of Senators on tomorrow, and prior to the hour of 11 a.m., such remaining time be utilized for the transaction of routine morning business, with statements therein limited to 3 minutes.

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

CONTROL OF TIME ON CLOTURE MOTION DEBATE TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that time during the 1 hour of controlled debate under rule XXII, on tomorrow be equally divided between and controlled by the distinguished Senator from Michigan (Mr. GRIFFIN) and the distinguished Senator from New York (Mr. JAVITS).

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

QUALIFICATION OF AMENDMENTS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that all amendments at the desk at the time of the vote on the motion to invoke cloture on tomorrow be considered as having met the reading requirements under rule XXII.

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

Mr. GAMBRELL. Mr. President, reserving the right to object, the agreement with respect to amendments at the desk would not abrogate the requirement that amendments to be considered under the cloture vote must be germane.

Mr. ROBERT C. BYRD. My request would go only to the reading requirement and not to the germane requirement.

The PRESIDING OFFICER (Mr. TAFT). The Senator from West Virginia is correct.

Without objection, it is so ordered.

UNANIMOUS-CONSENT REQUEST

Mr. ROBERT C. BYRD. Mr. President, I send to the desk a unanimous-consent agreement and ask that it be stated by the clerk. My understanding is that it has been cleared all around.

Mr. MANSFIELD. Yes, Mr. President; that is correct. It has been cleared all the way around.

The PRESIDING OFFICER. The unanimous-consent agreement will be stated.

The legislative clerk read as follows:

UNANIMOUS-CONSENT AGREEMENT

Ordered, That, effective when and if H.R. 640 is considered by the Senate, that debate on any amendment, motion, or appeal, except a motion to lay on the table, shall be limited to 1 hour, to be equally divided and controlled by the mover of any such amendment or motion and the manager of the bill: *Provided,* That in the event the manager of the bill is in favor of any such amendment or motion, the time in opposition thereto shall be controlled by the minority leader or some Senator designated by him: *Provided further,* That no amendment that is not germane to the provisions of the said bill shall be received.

Ordered further, That on the question of the final passage of the said bill debate shall be limited to 1 hour, to be equally divided and controlled, respectively, by the majority and minority leaders: *Provided,* That the said leaders, 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.

Mr. JAVITS. Mr. President, reserving the right to object, and I hope not to object—if I could have the attention of the distinguished majority leader—I heard something there about a motion to table. I do not know what the provision is. Could the Chair inform me?

The PRESIDING OFFICER. The clerk will restate that portion of the unanimous-consent request.

The legislative clerk read as follows:

. . . debate on any amendment, motion, of appeal, except a motion to lay on the table, shall be limited to 1 hour . . .

Mr. JAVITS. That is all right.

Another thing, we have in mind to offer an amendment relating to unemployment compensation. I do not know exactly whether it would be germane or not, but it is close to what the bill is all about. It is not an extraneous matter. Could it be understood that those amendments will be in order?

Mr. MANSFIELD. Oh, yes. Remember, this is an "if and when"——

Mr. JAVITS. I understand.

Mr. MANSFIELD. Yes, they would be in order, because that is one of the things we had in mind, among the others.

Mr. JAVITS. I want to avoid, so far as I can, making a Christmas tree of the debt-limit bill. So that if we could be accommodated on this bill, we can test the question——

Mr. MANSFIELD. Fine.

Mr. JAVITS (continuing). And see where we go.

Mr. BAKER. Mr. President, reserving the right to object, may I inquire, was there a provision for unanimous consent that no nongermane amendment would be in order?

The PRESIDING OFFICER. There is.

Mr. JAVITS. Mr. President, will the Senator from Tennessee yield?

Mr. BAKER. I yield.

Mr. JAVITS. My question was directed to a particular matter relating to unemployment compensation in certain situations where unemployment compensation has run out. I do not know that it will be germane, but it is a relevant provision of the bill, and I do want to leave it in the twilight zone, but if the Senator objects——

Mr. MANSFIELD. If there is any objection, I will be glad to withdraw the request, because I have no interest in it.

Mr. BAKER. I have no interest either, except I have had a standing concern for some time against germaneness and if that section is stricken on the unanimous-consent request——

Mr. MANSFIELD. Mr. President, I withdraw the request.

The PRESIDING OFFICER. The request is withdrawn.

VISIT TO THE SENATE BY TURKISH PARLIAMENTARY DELEGATION

Mr. JAVITS. Mr. President, I have the honor to introduce to the Senate a delegation of Turkish parliamentarians which is visiting us today, consisting of Orhan Alp, Justice Party Deputy for Ankara, chairman of the Foreign Affairs Committee; Faruk Sukan, Democratic Party Deputy from Konya; Vefa Tanir, National Reliance Party Deputy from Konya; and Mustafa Ustundag, Republican People's Party Deputy for Konya.

(Applause, Senators rising.)

The PRESIDING OFFICER (Mr. TAFT). The Chair welcomes our guests.

Mr. JAVITS. Before I introduce these gentlemen to the Senate, I wish to pay a tribute to the longstanding fight of the people of Turkey for freedom, which has been from time to time difficult, and to the right which they have earned to govern themselves in a profound revolutionary struggle, and to the liberalization of all their institutions, which the world has witnessed in the leadership of Mustafo Ustundag.

Mr. GAMBRELL. Mr. President, if the Senator will yield, I would like to join the Senator from New York in extending greetings to the members of the Turkish Parliament who are here. I would like to join in the sentiments the Senator has expressed about the difficulties the people of Turkey have been through in seeking to achieve democracy in their country. I would also like to recognize the outstanding patriotism that the Turkish people have demonstrated and the dedication that they have shown as allies of this country in many fields around the world for a number of years, and the reputation they have for being among the greatest fighters for the things they stand for. They are among the greatest soldiers in the world, and they have been our staunch allies through many years of great trial in sustaining the freedoms of themselves and their neighbors throughout the world.

I welcome them, along with the Senator from New York.

EQUAL EDUCATIONAL OPPORTUNITIES ACT, 1972

The Senate continued with the consideration of the bill (H.R. 13915) to further the achievement of equal educational opportunities.

Mr. WEICKER. Mr. President, I ask unanimous consent that two members of my staff, Mr. Geoff Baker, and Searle Field be permitted the privilege of the floor while the matter before the Senate proceeds.

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

Mr. WEICKER. Mr. President, I have just returned from the State of Connecticut where I attended the sad occasion of the funeral of the former Senator from Connecticut, Prescott Bush. In the comments I was asked to make relative to Pres Bush, I said that here was a man who tore away the images that might normally be associated with one who came from staid New England and was a member of the conservative, financial world, in that he had enormous compassion for the people and problems around him, and he spent a lifetime on the floor of the Senate trying to solve those problems and seeing to it that the dignity of human beings in the United States of America was elevated to the highest possible degree.

Tomorrow morning, I shall have more to say about that, but it is ironic that I return from that particular moment to confront a bill, which is a disgrace to the concept called the United States of America. I know that the press sometimes likes to simplify matters and put a probusing or an antibusing label on people.

The real argument there is not a probusing pitch but that some of us feel there is still a long way to go in this country before we achieve the type of equal opportunity that is the American dream. That is the group that is labeled probusing.

Well, I know of no one on either side of this argument who thinks busing is the solution to equal educational opportunity—nobody. There are those who feel that there is a sizable portion of our Nation that does not have equality of educational opportunity.

This is what we are fighting for. We want a clock that brings us a tomorrow, not a tolling for yesterday. America is a concept, a concept that is as vital today as it was at the founding of our country. We have not made it yet, and I do not think we ever will. If we do, we can go ahead and shut the doors of the Senate and the House and no further legislation will be necessary. That may be tomorrow but it certainly is not today. On the other hand, there are those who think that America has made it, that America is more or less a country club with certain membership requirements and that the facilities cannot stand any more people. And to that I say "Rot."

There are those, in other words, who are in the lifeboat while others are still swimming around. And whenever somebody gets one hand up on the gunwale down comes the oar on the hand. And to that I say, "Build a bigger lifeboat."

How in heaven's name we can be sitting here some 18 years after the Brown against Board of Education decision, considering a matter involving the whole question of equal educational opportunity is beyond me.

I would like, Mr. President, at this time to lead off with a speech I made up in Connecticut over the weekend. I think it comments upon some disturbing attitudes in this Nation. Members of both parties have tried to take advantage of these attitudes, which is unfortunate.

Mr. President, I gave this speech on the occasion of the opening of a new masonic hospital at Wallingford, Conn. This is a hospital built with not 1 cent of Federal funds, but with privately donated nickels, dimes, and dollars from thousands of people. It was a labor of love. In my speech I referred to it as being all too rare or to use the ecological term that is so popular nowadays, so rare as to be an endangered species.

I said in that speech that we are in the grips of a national selfishness rather than a national caring.

I said that on Wednesday of this past week I had occasion to visit with the Secretary of Health, Education, and Welfare—Elliot Richardson—in the company of a wonderful man, Frank Stolfi of Waterbury. Specifically, the meeting centered around the funding of a narcotic rehabilitation program in that city. This project is rather unusual in that it involves not just an asking for Federal funds but a giving of sizable amounts of private money collected from individuals and corporations from all over the Naugatuck Valley.

Mr. President, I might add that Naugatuck Valley is an economically stricken area of my State with tremendous unemployment. Yet, there was money from the unfortunate for the even less fortunate.

At one point in the conversation, Frank Stolfi remarked that he hoped that such a project, which was now unique to Waterbury, might be adopted on a national scale. The secretary replied that he had seen many instances of a particular program working fantastically well in one area and not in another. This because the success of that program depended on the individuals behind it—their drive, their devotion, their spunk. Lacking those particular people, the program had no guarantee of duplicating success. The message then is that dedication to great causes, great reachings out, rely in the

United States today more on individual than national conscience.

However, the masonic home and hospital, and projects like it, is in ecological terms "an endangered species." Why? Because the Nation is in the grips of a national selfishness rather than a national caring. And that is what I came home to talk with you about today.

Like the civilian who bought his way out of the Civil War draft, too many feel that by the payment of taxes we are quits of our obligations to that great concept called the United States of America. Not only do many feel quits but actually expect the United States to maintain them in the style they have dreamed about rather than they maintaining the United States as the Nation it was dreamed to be.

Today's Nation is in a mood of "I've got mine and the hell with everybody else." I think it is time we analyze in this Chamber and throughout the Nation whether in fact I got mine or somebody else did, because the future depends on acknowledging the hard truth that our own contribution is only one of many that have brought so many Americans to a good life. It is because Americans have always lived for somebody else that we have derived a strength and result far beyond our actual numbers and resources.

I liken our history to a bucket of water filled to the top. Add only an eyedropper of water each day and it remains full. Do nothing and the process of evaporation soon evaporates the water and leaves the bucket as an empty, rusty pail. This bucket of national caring, full over the years, today is going down under the heat of national selfishness.

None of us can get away with the "let them do it" dodge. We are "them." We are not just second or third or fourth generation Italians, English, Polish, Irish, Germans. That is a nice thing to be. It is a happy thing to recall. That brings warm memories. But it is a little tough to admit that everyone of us in the Chamber, in the galleries, and outside are also second, third, and fourth generation uneducated, unfed, unhoused, uncared for, untrained. That is a recollection that we all like to go ahead and forget. However, it is true. And we have been able to forget about it because someone else made sure we did not have to live with it.

Let me put my hand on a few raw spots in today's America.

At some point in our history a young nation determined that a decent roof over every man's head was essential to a nation that was the embodiment of hope. And it was understood that in order to reach that goal governmental participation was a necessity. Now of late some of these governmental housing projects have not acquitted themselves well. They have, for a variety of reasons, become eyesores. So much of the country today has started to turn its back on this crucial investment in human dignity.

To that I respond that most public housing projects of the fifties and sixties look like Federal penitentiaries. There is no open space for children to play. They have to go clear across the city to find a place to play any sport. They are distant from decent educational facilities. Yet we wonder why the public housing projects failed. Goodness has not failed, the goodness in each of us; it is to say that we have learned we can do better. I believe in the original hope that every man, woman, and child in this country deserves a decent roof over his head. I am just more certain we can do it right.

For those of us who have paid money for the roof over our heads, this is our time to work for that reality for others.

EDUCATION

At some point in our history a young nation determined that the most meaningful investment that we could make in our future was to create equality of educational opportunity for all American children.

It did not happen overnight. The public universities were not on the same footing with the Yales, Princetons, and Harvards. The high schools were not on the same footing with the Pomfrets, Tafts, and Choates; the grammar schools were not on the same footing as the Greenwich Country Days or Rembrooks. But today as we sit here that is the case. The public institutions are fully as excellent as their private counterparts.

What was not contemplated in that early American dream was another group of educational institutions meant for Americans of different color or of a national origin that is not quite "in" yet. The dream was excellent education for all Americans and I believe in the original, not the modified, dream.

MEDICAL CARE

No nation in the history of the world has made the advancements in medical science that the United States has made. We have developed a delivery of health care that surpasses anything in the world. Very few of us sitting here today are not covered by some sort of health insurance which guarantees us a share in that medical proficiency. And we can proudly say that we have paid for it ourselves and therefore we deserve it. And yet there are millions of Americans hurt and dying who wait for months for what you and I get in hours. And that is wrong. And that is not what this country is all about.

In the months ahead as you wander through the rooms and hallways of this beautiful hospital, you will not see the sight all too familiar in other hospitals throughout the country—thousands of men, women, and children standing, sitting in hallways waiting for someone to help them out of their pain.

Good health and relief from suffering is not something you should have to earn in America; it should be what every American makes sure his neighbor has.

It is not so much then an American's right as an American's obligation.

JOB OPPORTUNITY

There were no such things as labor unions when this Nation started out. Employees were at the mercy of their employers. In fact, the early history of American business is not particularly inspiring when it comes to the treatment of the American worker. Conversely, the history of American labor is truly inspirational when it comes to their long and successful fight to elevate the dignity of the American workingman and woman. But now all too often American labor acts as if the job is done and they are a for-profit corporation rather than an organization dedicated to bettering the lot of those desiring to enter in the labor market. This while American business still fights tooth and nail against minimum wages being a little higher than the poverty level; while American business still fights the correction of conditions attendant to manufacture, which conditions are clearly detrimental to both labor and the public. It is as if neither labor nor business had a common stake in America but only in their corner of America. And indeed how well both have done by America.

All of this is to say that the accomplishments of the past are great. But where is the national encore?

Spending money alone is not going to create schools, homes, hospitals, jobs. There has to be a will, a belief that it is right to do these things. What I am saying is that there is a terrible lot of need piling up around us and we are not doing much about it except to pay someone else to worry.

Because we got burned in the war against poverty, we are saying that it was all a bad mistake and there is no poverty.

Because a couple of housing projects were ill-conceived and already look like slums, we say there are no homeless.

Because many of us either privately or throughout employment have medical benefits and a personal physician, we say everybody is being cared for.

Because most of us have good paying jobs in the factories and offices, we say that anybody can work.

Because our children are getting educated, we say everybody has the same opportunity.

And all of this is not so and we know it.

We are still a young, vigorous country. Let us not act like a giant hypochondriac. Because we sustained a few knocks is no reason to take to our beds and pull the covers over our heads.

I know that Senators are supposed to like the 6-year aspect of their job. And after eight elections in 8 years, I thought I would.

Well, I do not.

I would like another election now. I do not like security. I like fighting. And I think my record ought to be challenged. I would rather go up or down with reality than just be because the Constitution says so.

That is what I am saying about our country this afternoon. It has been too long since we have tested ourselves. To be for ourselves and our immediate family alone is no test. It is benign selfishness.

On the other hand to also be for the other fellow sometimes that takes guts. Always that is America.

Mr. President, to get to some of the specific aspects of this bill that I believe deserve close scrutiny, I refer to a speech I made in March of this year. It is every bit as valid today as it was then—even more so, because we are in the midst of a heated election. I do not think we want to see emotion tear apart the Constitu-

tion of the United States and obliterate the opportunities that have been created in this country over the years by legislation.

In this election year what we are not going to do is to give away the Constitution of the United States.

I realize that it is only on paper, only in a book; it does not come out of anybody's pocket; nobody is going to miss it, least of all, the young people who are in process of learning that their greatest wealth is that piece of paper. But are the adults of the United States, who have given away everything of value, going to give away this, too? Not as long as I stand on this floor. It is going to be just as good for my children as it was for me. It is going to mean every bit the hope and opportunity to my children as it meant to me, as it meant to my father and grandfather when he came here from Germany.

I realize that it is much easier to pass off concepts than to dig in the pocket or to put the shoulder behind the wheel, because nobody understands concepts as well as money or effort. I think the busing hysteria and the busing demagoguery that have gone on are an absolute and total disgrace, whether an election year or not.

My own State of Connecticut is called the Constitution State. The Constitution of the United States was constructed in large measure of thought from its original fundamental orders. I am not going to support laws that say men are not created equal. That is what the bill before us says. That is not the United States of America.

I have said to my own State of Connecticut, let us spend our time, not leading a cheering section for those areas of the land that have said men are not created equal. Let us go ahead in our own State, while we have time and are not under mandatory pressures, to correct any de facto situations that exist—and they do exist in Connecticut, as they exist throughout the Nation. This is proper work.

I learned how the busing hysteria grabbed my own State. Back in March, when I delivered this speech, we were going through the busing routine on the floor, and I walked up to constituent after constituent and asked, "How many children do you think we have being bused in the State of Connecticut under Federal court order?" They said thousands and thousands, in Bridgeport, Hartford, and New Haven. Thousands were being bused, they said. Mr. President, we did not have one—not one single child—in the State of Connecticut. But thousands were being bused, they thought, because that was the hysteria of the times.

Now, that is a great mood in which to make a national decision. Take a little piece of the Constitution and just cheapen it a little bit. Let me read what I said in March in discussing the busing legislation before us then:

> Our areas of disagreement are two-fold:
> (1) constitutional
> (2) achieving equality of educational opportunity for 2.5 billion dollars
> On October 21st, 1971, the President addressed the nation over television, which address announced his nominations of Lewis Powell and William Rehnquist to the Supreme Court. In the course of that speech, President Nixon stated:
> "Let me add a final word tonight with regard to a subject that is very close to my heart because of my legal background, and because of years of study of the American system of government. I have noted with great distress a growing tendency in the country to criticize the Supreme Court as an institution. Now, let us all recognize that every individual has a right to disagree with decisions of a court. But after those decisions are handed down, it is our obligation to obey the law, whether we like it or not; and it is our duty as citizens to respect the institution of the Supreme Court of the United States."

I am continuing to quote from President Nixon:

> We have had many historic, and even sometimes violent debates throughout our history about the role of the Supreme Court in our Government. But let us never forget that respect for the Court, as the final interpreter of the law, is indispensable if America is to remain a free society.

Those words accurately describe my feelings as to role of the judiciary in our Government. To be true to those words means rejecting the judicial interference advocated in the Student Transportation Moratorium Act of 1972 and the Equal Educational Opportunities Act of 1972 which was the legislation that was before this body, much akin to the legislation we have before us today. I said:

> Why? Because when our founding fathers set up the rules for building a nation they gave each branch of government one swing at each pitch.
> Referring again to the Powell-Rehnquist speech of October 21st, the President stated that:
> "You will recall, I am sure, that during my campaign for the Presidency, I pledged to nominate to the Supreme Court individuals who shared my judicial philosophy, which is basically a conservative philosophy."

To which I say "Amen" and "Hooray."

This the President has had unprecedented opportunity to do during his first term in office, not only at the level of the Supreme Court but throughout the Federal judicial system. Since January of 1969 he has appointed four new justices to the Supreme Court and 161 justices to the lower Federal courts. These figures represent an almost one-third turnover in the space of 3 years.

Certainly then, the ingredient of conservatism has been added to the Federal court system—a conservatism that most would agree was long overdue. But that was and is the President's swing at the pitch.

Referring again to the speech of October 21 which so magnificently set forth the philosophy of the founders of this country, the President said, and I quote:

> By "judicial philosophy" I do not mean agreeing with the President on every issue. It would be a total repudiation of our constitutional system if Judges on the Supreme Court, or any other Federal court, for that matter, were like puppets on a string pulled by the President who appointed them.
> When I appointed Chief Justice Burger, I told him that from the day he was confirmed by the Senate, he could expect that I would never talk to him about a case that was before the Court.

May I suggest that because the talks to the judiciary are over television as in the cases of Lieutenant Calley and busing, they are no less demeaning or suspect than if they were held 1 to 1 behind closed doors.

The function of Congress should not be to collaborate in such talks but to see to the business of legislative rather than judicial or executive solutions of America's problems. The courts, except as to number, type and the character of the men who sit on them, are not our business; America is. And that is the basic difference contained in the debate on this floor.

I get back to my first comments. You do not think there is legislative business for us out there in America? There are hundreds and thousands of American children who are not educated like your children and mine, and do not even have a chance to be. That is something we can do something about. That is something the senior Senator from New York has devoted a lifetime to, legislatively, to see that those kids get that kind of an education.

Or the sick, the people, who cannot be treated in the hospital or get the care from doctors that you and I have. That is something for the legislative branch of Government to take up.

Or the fact that Americans still cannot be trained for jobs, that cries for our legislative hand.

I think the time has come for each American to believe that the Federal courts exist for him as much as for the other fellow. Certainly each of us, at one time or the other has felt left out because of a particular court decision. But the fact remains that the judiciary has played an important role in making this the Nation—that is us—it was dreamt to be.

I think history shows that majorities have prospered in this country. But, it is what America has done for its minorities that gives meaning to the word "greatest." as in "the greatest nation on earth."

Majority and minority does not mean white or black. It means the working man; it means the diseased; it means the elderly; it means the uneducated.

It means the diseased. In all their forms, they have been minorities. Who would know about the retarded, were it not for President Kennedy and his family? They were a minority until they had someone to stand up and speak for them. Or in the area of cancer; one of the most important achievements of this administration, of President Nixon, has been to have a program for conquering cancer as we conquered the moon.

All of those were minorities.

It means the elderly. Do Senators not think the elderly are a minority today, forgotten, in an age that honors looks, youth, and sex? They created the United States of America and they are forgotten. They are a minority.

And it means the uneducated, whom I have referred to before, another minority. All of these were—and some still are—minorities in a rights or compassion sense. And since politicians—that is us, here on this floor—Presidents and

Senators, are elected by majorities—actually, that is a little strained; I got elected by only 42 percent in my State, since there were three candidates, but most are elected by majorities—logically the judiciary has drawn down the duty of being a voice for minorities.

But I am going to say one thing, Mr. President: Majority or minority aside, one thing I do know is, when the day comes that it is my ox that is being gored, I hope to God there is a court system in this land whose concern is me and principle rather than the President and the tempers of the times.

One comment in passing as to the constitutional amendment route. The reason I reject that as a way of handling the busing question has nothing to do with how long it would take, but has a great deal to do with its cheapening of the Constitution. The Constitution of the United States is a document for all generations, not just the class of 1972. The last time we used it as a vehicle for handling a national craze, we invoked prohibition on January 16, 1920, only to repeal it on December 5, 1933.

When we are confronted with knotty problems one way to handle them is to appoint a committee. In the Connecticut State Legislature, we used to form committees in such cases to come back and give a report 2 years later. Now we are facing a new method. It is suggested that we try a little amending of the Constitution here on the Senate floor.

Mr. President, just what are we going to hand on to our children? The same thing we got, something better or something valueless? Such in and out legislating would eventually render the Constitution worthless.

In closing my arguments against what I believe to be the unconstitutional aspects of the two acts, I would like to address a few comments to my own State of Connecticut.

I would like each parent who has a child that is being bused in Connecticut under a Federal court order to stand up. The fact is no such situations exist in our State. Whatever busing exists is strictly on a local, voluntary basis.

We do have some litigation going on at the present time.

Might I suggest to the people of Connecticut that instead of giving gratuitous encouragement to efforts intended to slow down the breaking up of de jure segregation, that's separate but equal, we utilize the time to take care of any de facto situations in our State so that neither Congress nor the courts will legislate a solution for a problem that if handled imaginatively now, can be handled voluntarily without busing.

In conclusion, certainly insofar as a Connecticut resident is concerned, he is getting nothing for giving up some of his constitutional rights. Our history is that we sold wooden nutmegs, we did not buy them.

Now to the question of the Equal Educational Opportunities Act of 1972. My disagreement here lies not with the principle but with the substance of what has been proposed.

The impression has been left with the people of my State that this is a new program with new funding to build new schools. In fact, what has been proposed is already an ongoing program. No new money has been recommended. And no new concepts such as linking schools and home together have been proposed. It is like having your Christmas gifts given back to you as birthday presents.

I think it important to point to this shifting around of existing funds because so many people have written me giving as their reason for support of the President's program their belief that the stated $2.5 billion makes them quits of what they recognize to be a valid national obligation of supplying quality education for all children. Unfortunately, catch-up equality does not come that cheap.

Let us get this point clear on this floor this afternoon: If anyone thinks that there is a positive alternative contained in this bill for money to create educational opportunity, "it just ain't so." And if Senators want to know what it is going to cost, never mind the $2.3 billion of reallocated funds. If the right and proper thing were to be done for America's disadvantaged, it would cost us not $2.5 billion but $12 billion per year.

Now start making the choice as to whether or not you would like to go ahead and take on the obligation to positively create equality of educational opportunity rather than bus? I think it is something we should take on. It is one of the main reasons why I cannot possibly vote for any sort of spending ceiling. This is the type of unfinished business—that deserves funding. But certainly it is not in this bill.

I base this figure on an estimated per pupil cost of $1,200 per year for a quality education. At the present time we are spending slightly over $900 per pupil. As there are 46 million children of elementary and secondary school age, this would mean the spending of an additional $300 per pupil or the spending of the aforementioned $12 billion.

Let me also say this: This Senator does not believe you are going to achieve equality of educational opportunity with just $12 billion. I think we all recognize that housing is fully as much a part of the educational process as school buildings. So if you really want the tab, add another $12 billion, and probably you are close to the solution. In other words, that would be $24 billion in housing and educational facilities. Probably at that stage of the game we would have the answer to equality of educational opportunity. Now, who would like to go ahead and pay the $24 billion that would be required to achieve the ostensible purposes of this act, or would you like to bus?

What it all adds up to in this area is that honesty is the worst political policy. As clearly set forth in the Newsweek poll of February 25, 1972, Americans indicated their being equally opposed to busing and to segregated schools. It then follows, if busing is going to be rejected, that we have the job as the President has indicated of providing equality of educational opportunity for all Americans. I just think the American people have a right to know what that providing is going to cost and to be assured that it is going to do the job as advertised.

Having disagreed, I would like to state my alternatives to the President's proposals. I have a deep belief in the sanctity of our courts. Under no circumstance would I see that sanctity violated even in the smallest way for the shortest period of time.

I am supporting other Senators in this effort; but if there was not one man to assist, I would still be standing here as long as I could. I am going to make sure that nobody tampers with the courts of this country—nobody. That is the issue.

In years past, many availed themselves of the right of unlimited debate on the Senate floor to slow the process of desegregation in this Nation. Should the occasion arise, I would hope my colleagues would avail themselves of the same right to slow the reintroduction of the separate but equal philosophy into the enactments of this body. What I am saying is that for those who think we are going to get the hot busing issue over the election year hump by a little moratorium on the courts, I suspect they are going to see the Senator from Connecticut and others still arguing the propriety of such a method right up to election day. And during that period of time the courts of the United States will continue to operate without Presidential or congressional back seat driving.

As to assuring educational opportunity, perhaps by the time we come back into session next time, we ought to figure out a positive plan on behalf of Congress, as to supplying the money for education and for housing that in fact will make that American educational dream come true.

When I went back to my State of Connecticut in March, I received a great deal of criticism for defending the courts. Is it not interesting that right after March 1972, the same courts which we were going to stop because a lower court issued a rather far-ranging order which got everybody into a panic, reversed the lower court. How do you like that? Maybe my side ought to storm the courts now, since they seem to be on the wrong side of the issue. The problem is when we try to determine what right and wrong decisions are.

That is the postscript to the debate of March 1972. At that time the courts were bad boys. I am sure that the proponents of this bill would now say, "The last few decisions have been good decisions, so we do not want to do anything about those courts."

What I am saying is that the judicial process must wend its own way without direction from the Senate, the House, or the President. I do not know what the future will bring when my children's or my well-being would depend on a court decision. It is busing today. Tomorrow it may be my life or the lives of my children. Once you start the nibbling away there is no end to it. It certainly is not a process in which the Senate should participate.

It has been so long since we laid it on the line. We are pulling in our horns rather than fighting for the other man. This country is dead when we strain to stand.

There are always going to be knocks as long as we try. But is there a man in this Chamber who can say there still is not an enormous job to be done in the area of educational opportunity for all Americans?

Why go slow now? There is no reason for it. It demeans the American dream. It demeans our purposes as legislators. I am fully aware as to the heat that those of us speaking now are going to get when we return home. But it seems to me, that for a change, the job of the U.S. Senate is to lead—leadership. It is great to be a Senator. You get publicity, the pay is good, and the glory always present. Then come those crunchy times, and all of a sudden it is tough to be a U.S. Senator. I think that is just the kind of time we are in right now. And I think I like that part of it just as much as I like the glory. Maybe if we act honorably we will find the two are synonomous.

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

Mr. WEICKER. I yield.

Mr. JAVITS. Mr. President, I have heard much of the Senator's speech, and I have been deeply moved, especially for his putting in perspective the national aspects of what we do and its effect on the future history of the country.

We are here but for the time being, as trustees for our people, and inevitably others will take our place, and we are men upon whom the future depends, because we construct the future and the present. I am deeply moved.

The Senator is young. His freshness and vigor about life are relatively new to this Chamber, and it should be inspiring to every American to hear such fundamental truths uttered in this particular cause. The Senator is right that it is not just a cause; it is what the cause means in terms of the institutions we seek to preserve and safeguard—to wit, the third branch of our Government, the judiciary.

The Senator, in practical terms, has even pointed out that, having made the judiciary much more conservative—allegedly—than it was, we now seek to dismantle the very authority we have sought to protect.

I thank the Senator for a very fine contribution.

Mr. HUMPHREY. Mr. President, has the Senator from Connecticut completed his remarks?

The PRESIDING OFICER. Does the Senator from Connecticut yield the floor?

Mr. WEICKER. I yield the floor.

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Hackney, one of its reading clerks, announced that the House insisted upon its amendment to the bill (S. 2280) to amend sections 101 and 902 of the Federal Aviation Act of 1958, as amended, to implement the Convention for the Suppression of Unlawful Seizure of Aircraft and to amend title XI of such Act to authorize the President to suspend air service to any foreign nation which he determines is encouraging aircraft hijacking by acting in a manner inconsistent with the Convention for the Suppression of Unlawful Seizure of Aircraft and to authorize the Secretary of Transportation to revoke the operating authority of foreign air carriers under certain circumstances, disagreed to by the Senate; agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. STAGGERS, Mr. JARMAN, Mr. DINGELL, Mr. HARVEY, and Mr. SKUBITZ were appointed managers on the part of the House at the conference.

NOTICE TO SENATORS REGARDING CONSIDERATION OF NOMINATION OF GEN. CREIGHTON ABRAMS

Mr. MANSFIELD. Mr. President, as the Senate knows, I indicated, with the approval of the distinguished Republican leader, that any time after today the nomination of Gen. Creighton Abrams to be Chief of Staff of the U.S. Army will be brought up.

I have talked with the distinguished chairman of the Committee on Armed Services, the Senator from Mississippi (Mr. STENNIS) and he indicated to me that his report is now ready, or will be shortly. On that basis, in view of the fact that several Members have indicated they would like to be notified ahead of time—which they have already been, but this is a double notification—it is the intention of the leadership, on tomorrow, if cloture is not invoked, to call up the Abrams nomination sometime between 1 p.m. and 2 p.m. I would hope that that would meet with the approval of the Senate. This is just a means of notifying all concerned.

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

Mr. MANSFIELD. I yield.

Mr. STENNIS. I thank the Senator for giving this matter his attention. It is important. We will have a brief report on it for the membership. The record of the printed hearings is available. I think that we can get into debate on this matter and I hope that we will be able to move expeditiously and get the nomination before the Senate. Everyone will have a reasonable opportunity to make such remarks as they may wish.

I thank the Senator from Montana for giving this notice.

H.R. 640—UNANIMOUS-CONSENT AGREEMENT

Mr. MANSFIELD. Mr. President, I am renewing the unanimous-consent request which was offered earlier but was withdrawn.

At this time, I send to the desk the unanimous-consent agreement and ask that it be read and considered by the Senate.

The PRESIDING OFFICER. The unanimous-consent request will be stated.

The assistant legislative clerk read as follows:

Ordered, That, effective when and if H.R. 640 as reported with an amendment is considered by the Senate, that debate on any amendment, motion, or appeal, except a motion to lay on the table, shall be limited to 1 hour, to be equally divided and controlled by the mover of any such amendment or motion and the manager of the bill: *Provided*, That in the event the manager of the bill is in favor of any such amendment or motion, the time in opposition thereto shall be controlled by the minority leader or some Senator designated by him: *Provided further*, That no amendment that is not germane to the provisions of the said bill shall be received.

Ordered further, That on the question of the final passage of the said bill debate shall be limited to 1 hour, to be equally divided and controlled, respectively, by the majority and minority leaders: *Provided*, That the said leaders, 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.

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

Mr. MANSFIELD. Yes, indeed.

Mr. JAVITS. Mr. President, this matter was up for consideration before the Senate earlier today. There was some question about whether the bill as reported means as reported with an amendment. This does not breach it if the amendment is adopted. It does have a question as to the rule of germaneness. With respect to this question, the Senator from Tennessee (Mr. BAKER) advises me that he is agreeable to this unanimous consent request respecting the bill as reported which, as I understand it, includes the amendment.

Mr. President, I therefore make a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. JAVITS. Mr. President, if this request is consented to, may an amendment be made to the amendment in the bill, which deals with unemployment compensation?

The PRESIDING OFFICER. The modification of the request has the effect of making the committee amendment in order and not subject to the rule of germaneness. Other amendments from the floor would be subject to the limitation of germaneness.

Mr. JAVITS. Would the germaneness include germaneness with respect to the committee amendment?

The PRESIDING OFFICER. It would apply to anything in the bill, and that includes the committee amendment.

Mr. JAVITS. I thank the Chair.

The PRESIDING OFFICER. Is there objection to the unanimous consent request? The Chair hears none, and it is so ordered.

Mr. MANSFIELD. Mr. President, this is an "if and when" proposition. I think that has been clearly stated, I would also like to check once more with the distinguished Senator from Louisiana (Mr. LONG), chairman of the Finance Committee, before this matter is finalized, at least in my opinion. I think he approves of it. He is absent from the Chamber at the moment. So, with that caveat and that understanding, the agreement has been made. However, if there is any question on the part of the distinguished Senator from Louisiana, that agreement would be vitiated.

And I thank the distinguished Senator from Minnesota.

A "RETROACTIVE ITEM VETO"—THE NIXON ADMINISTRATION'S ATTACK ON THE SEPARATION OF POWERS

Mr. HUMPHREY. Mr. President, I rise to discuss today the pending legislation, H.R. 13915; but prior to my discussion of this measure, I should like to make a comment in reference to the plan of the Nixon administration to seek a spending ceiling. I want the RECORD to note that I intend to fight this effort on the part of the Nixon administration to impose what they call a spending ceiling, not because I believe in extravagant spending, but because I believe in the separation of powers—in the right of Congress to determine the tax and spending policy of this country and in the right of Congress to appropriate funds for operating the programs of Government.

Mr. President, I have become increasingly disturbed over the Nixon administration's request for a spending ceiling. I have labeled this budget gimmick for what it really is—a coverup for Presidential fiscal mismanagement and an election year ploy.

It is clear that the Nixon administration wants this spending ceiling not to stop inflation but to turn around the time honored relationships between the legislative and executive branches of our Government. It is nothing more than a cynical power grab. The proof of this desire has been articulated by a high official of the Nixon administration—Dr. Charls Walker, Under Secretary of the Treasury.

Dr. Walker, in a private meeting of the executive committee of the American Bankers Association, told the bankers that the spending ceiling would amount to a "retroactive item veto."

Mr. President, I am worried—I am worried about high administration officials who have such little regard for the fundamental principles on which this Nation is based that they would toss away the doctrine of separation of powers. I am worried about an administration that continues to impound ten billions of appropriated money. And, I am worried about an administration that deliberately runs high spending deficits then attempts to fix the blame on Congress.

I am opposed, and I will fight, the granting of a "retroactive item veto," an "item" veto, or a spending ceiling to the President of the United States. A "retroactive item veto" would place unprecedented power in the hands of the President—power that would be effectively exercised not by the President, but by nameless, faceless appointees deep inside the executive bureaucracy. An "item veto-spending ceiling" would alter the public responsiveness of public officials in this country. It is, in effect, the replacement of the appropriations and authorization powers of the Congress by non-elected, career and political officials.

Mr. President, I believe that the Under Secretary of the Treasury has all too clearly labeled exactly what the President is seeking when he lobbys for a spending ceiling. He wants a "retroactive item veto." The Congress should be forewarned, and the Nixon administration ought to stop playing politics with what is a potentially dangerous and constitutionally disruptive power grab.

Mr. President, I want the RECORD to note that I will take whatever time is necessary to stop this power-grab. The other House is considering this measure today. If the other body gives its vote of approval to a spending ceiling, such as was reported from the House Ways and Means Committee, then I would inform my colleagues that there will be a deliberate, persistent, long-term battle here on the Senate floor, in which I intend to participate very actively to prevent the Nixon administration from violating the fundamental constitutional principles of this country—the separation of powers.

We have given away far too much to the executive branch and the Office of Management and Budget, already. We have given the President and the executive branch, not just this President, but the Office of the President, incredible power, almost unlimited power in the field of national security and foreign policy.

And, domestically, the President is able, apparently, without any regard to Congress, to impound money that Congress has appropriated.

I consider that to be an unconstitutional act. That is my judgment. But the President persists in it and none of us have been able to change the presidential policy.

Therefore, I will not put the stamp of congressional approval by my vote, or by my word, upon what I consider to be another unconstitutional act of imposing a spending ceiling, which gives the President nothing less than an item veto over the actions of Congress. It is unnecessary. It is illegal. It is unconstitutional. It violates the principles of representative government and the separation of powers.

Mr. President, I ask unanimous consent that an article published in the New York Times, entitled "Nixon Aide Hails Plan to Curb Spending" be printed in the RECORD.

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

NIXON AIDE HAILS PLAN TO CURB SPENDING

(By Eileen Shanahan)

WASHINGTON, September 2.—A top Administration official has privately disclosed that many of the Democratic social welfare programs started in the nineteen-sixties would be cut back or eliminated if Congress enacts the ceiling on Federal spending that President Nixon has requested.

The disclosure came from Charls E. Walker, Deputy Secretary of the Treasury, in remarks to a private meeting of the executive committee of the American Bankers Association.

Mr. Walker also told the bankers that the spending ceiling would amount to a "retroactive item veto" for the President. He said that some other Administration officials, notably Caspar W. Weinberger, director of the Office of Management and Budget, objected to his use of that term, but that he felt it was accurate.

REFUSALS BY CONGRESS

Congress has always refused to give the item veto power to the President because it feels that it would impair the power of Congress to control spending.

The item veto would permit the President to disapprove selected items in an appropriation bill. Such a bill generally covers spending for one or more entire governmental departments and, at present, he must either approve or veto the entire bill. Many state Governors have the item veto power.

Mr. Walker spoke to the bankers' group 10 days ago. Today, in a telephone interview from Graham, Tex., where he is spending the weekend, he confirmed the accuracy of the report of his remarks that was obtained from one of the men who attended the meeting.

Mr. Walker said in his speech that his personal favorite candidate for elimination would be the Government's manpower training programs.

He said that they had cost the taxpayers about $40-billion since they began in 1961, were budgeted for $4-billion this year, and had succeeded in reducing the unemployment rate by less than one-half of 1 percentage point, a figure that represents 400,000 persons.

FINDS RESULTS EXAGGERATED

In the interview today, Mr. Walker said that he had singled out this program because he had studied it in detail. He might give priority to a different program if he was equally well-informed about something else, he said.

Even the figure of one-half of 1 percentage point overstates the success of the manpower programs, Mr. Walker said, because it includes the persons who are actually in the training program at any given time.

President Nixon has asked that a spending ceiling of $250-billion be enacted for the current fiscal year 1973, which began July 1. That is the amount the Administration, as of the end of June, estimated would actually be spent this year. But Congress has already passed several bills that would increase the figure, and more are pending.

If Congress approves the spending ceiling in the form requested by the President, it would turn over to him the authority to decide which programs should be cut to keep the Government within the ceiling. Congress has always been reluctant to make such decisions itself once it has passed the appropriations bills.

ASSERTS PROGRAMS FAIL

Mr. Walker told the bankers it was "a myth" that it was impossible to cut the budget because so large a part of it represented uncontrollable expenditures, such as interest on the public debt or payment of Social Security benefits.

He said that he had found $45-billion worth of programs outside these uncontrollable areas and the defense program.

He said that he believed the heads of the agencies that administered many of the programs he would like to cut would "welcome the reductions."

"They know the programs are not working, but they're on the statute books, so what can the department heads do?" he asked.

He said there were programs in the housing and health area that he also felt were ripe for cutbacks, in addition to the manpower training programs.

Mr. Walker explained today that he felt it was urgent to get the Federal budget under control because "we could be back in demand-pull inflation in 12 to 18 months if we don't get the budget back in line with the economy's ability to handle it."

"We have to have this right now," he continued. "We've got to go back and weed out

the deadwood in programs that may have had promise at the beginning but haven't worked."

Mr. HUMPHREY. Mr. President, a recent editorial in the New York Times has concisely exposed the current Presidential shell game over the spending ceiling for what it really is—an admission of failure on part of the Nixon administration to budget, to plan, and to control Federal spending. The Times editorial correctly notes that:

If Congress grants the President this authority—the spending ceiling—it will surrender its own fiscal responsibilities and in effect hand the President the right to make item vetoes totaling $7 billion to $10 billion from education, manpower training, pollution control and other social programs.

I ask unanimous consent that the editorial be printed in the RECORD.

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

PROCRUSTEAN BED

The national budget forces a President to translate his political and social philosophy into hard arithmetic terms. Mr. Nixon took office four years ago as a budget balancer. But, following the recession of 1969–70 which his policies helped to induce, Mr. Nixon announced that he had become a Keynesian; he proceeded to pile up budget deficits in excess of $80 billion in an effort to restore the economy to high employment before the 1972 election.

Now that the election is almost here, and the economy is climbing upward, Mr. Nixon is shifting sharply to the right once again. He has asked Congress to give him the authority to cut any programs he wishes in order to hold Federal expenditures below a $250 billion ceiling. In a radio address this past weekend, Mr. Nixon said that imposition of that ceiling would provide "absolute insurance" against a tax increase next year. If Congress grants the President this authority, it will surrender its own fiscal responsibilities and in effect hand the President the right to make item vetoes totaling $7 billion to $10 billion from education, health, manpower training, pollution control and other social programs.

Beyond 1973, it is still impossible to discern Mr. Nixon's plans for national expenditures and taxation except in the most general terms. Earlier, the President promised through aides that there would be no tax increases if he were elected for a second term. He has now fuzzed and politicized this commitment by saying that he would "not make any promises in this campaign that would require a tax increase now or in the future." He thus implies that any responsibility for future tax increases would be "Congressional" not "Presidential."

The greatest reason to be concerned about Mr. Nixon's recent budget and tax statements is not because he may be playing "fiscal responsibility" politics before the election but because he may intend to do precisely what he says. The fact is that the Federal budget is currently running a deep deficit of nearly $35 billion; even if the economy should climb back to full employment, intensifying inflationary pressures, the budget would still be substantially out of balance.

Taxes have been overcut during Mr. Nixon's first term. The nation cannot keep inflation in check and meet its social needs without some combination of higher taxes and reduced military expenditures. But Mr. Nixon is determined not to give ground on either front. His military planning and commitments now threaten to lift defense expenditures above $100 billion by 1975. And he has dug himself in deeper against any significant tax increases, apparently unwilling to reverse the "trickle down" tax cuts that he extended to business as a means of stimulating the economy in 1971–72.

To suggest that the nation can somehow benefit from neglecting its congested urban transportation systems, poor health conditions, inadequate public schools, undertrained and underemployed work force and other social problems is to impose a cruel deception upon the public.

Senator McGovern may not have provided the precisely correct designs for dealing with all of these problems, but he has at least faced up to the real issues by proposing that the military budget be trimmed to levels that would still provide a strong national defense and that additional revenues be raised by imposing a fairer share of national burdens on the returns to capital of business corporations and wealthy individuals.

A national policy of no tax increases, such as Mr. Nixon is proposing, would mean that the rich must get richer year by year even if social programs are lopped off to fit into a procrustean bed whose length would be determined by the nation's shrinking tax base and its swelling defense outlays.

Mr. HUMPHREY. Mr. President, the fact is that during the Nixon years, the budget deficits have reached new proportions—over $90 billion. Deficits have to be paid—both through interest and through a sickness in the economy that haunts the average working family. But, to blame the Congress of the United States for being big spenders is to ignore the Nixon administration's own economic record.

We have had deficits precisely because the Nixon administration in 1969 began a deliberate slowdown in the economy—that means less production, less tax revenues, more borrowing.

We have had revenue shortfalls because the Nixon administration has granted big business, and the wealthy few, tax breaks, such as the Domestic International Sales Corp. and the ADR system, amounting to billions of dollars in lost tax dollars the Treasury will never see.

We have presidential additions to the budget request to the tune of $4.4 billion for military activities, and a recent extra $2.8 million for bombing in Vietnam. And, at the same time, there are presidential vetoes in health, education, public works, hospital construction, railroad retirement, and child care.

Now the President wants to make up for his own ineptness by blaming the Congress for his rather unfortunate, off-the-cuff no-tax promise by saying in effect that a tax increase will come, but it will be a congressional tax increase, not a presidential tax increase.

The fact is that the President of the United States got a little overheated in the political zone not long ago, and it seemed to be the right thing for him to say at the moment. And he came whirling out with this pledge of a no-tax increase.

Obviously when he got back to the White House after one of these tours, he was told by the experts, and I can just hear the words: "Mr. President, you have overcommitted yourself. You have got to be careful. You may have to have a tax increase."

So the politicos got together, the political medicine men got together, and mixed up a concoction that they called a spending ceiling. It is a new form of constitutional elixir, and they started pouring it out. And they are saying that the public will have to take this because Congress has been on a spending spree that has wrecked the President's budget and promoted inflation and gone far beyond what this "fiscally responsible" President wanted.

We all know that is a lot of hogwash. The President wants to make up for his own ineptness, as I said, by blaming Congress.

I say that this kind of wordsmithing is the worst kind of political fakery. Rather than be the strong leader who stands forth and truly fights for what he believes, the President would search for scapegoats, search for excuses, search for explanations.

I trust that the President has been paying attention to the bookkeeping. I trust that he has a basic knowledge at least of arithmetic. He knows, the Senate knows, and the country needs to know that the Congress of the United States has reduced the Presidential budgets every year, and not only for this President, but also for Presidents prior to President Nixon. Yet the President is trying to put the so-called fiscal monkey on our backs.

May I say that if there is going to be any political zoo carried around the country, it will be by the President himself, because he presented the budget. And apparently, it is his budget that is running far beyond what he thinks it should be. The Congress has reduced the budget. I think what the President is angry and concerned about is that we have made reductions where we wanted to and have made increases where we needed to. We have cut the military budget and increased the budget for health, education, and pollution control apparently, the President does not agree with this shift of priorities by the Congress.

Mr. HART. Mr. President, will the Senator from Minnesota yield?

Mr. HUMPHREY. I yield.

Mr. HART. Mr. President, the Senator from Minnesota has a record of public service and a skill with words which combines to assure that what he has just said is widely known across the country. However, I have the feeling that it is not widely understood in the Senate itself.

Everything the Senator from Minnesota says is true. It is one of those things that has objective existence. We can go to the books and look at the figures, and we know that the President asked for x billions of dollars and that we reduced it to x billions of dollars minus several billions of dollars. It is a truth that is in objective existence. Had we been rubberstamping the President, the overspending of his budget would have been enormously greater. Notwithstanding the fact that there are truths and that a man as eloquent as the Senator from Minnesota has raised his voice frequently to make it clear to the country that these are the facts, by and large the country just does not believe or un-

derstand it. And I repeat that I have a terrible feeling that some in this Chamber do not understand it, because I hear the suggestion made that we are the fellows who bundle up the money and throw it out the window.

I look up at the gallery, and there is one correspondent here. How can we make it clear?

Mr. HUMPHREY. I will tell the Senator how we can make it clear. I am going to lay it on the line. If we were here on some bill to help the poor and the needy and as a result it saved millions of dollars for the poor, the needy, and the sick, the story that would go out would say, "Congress increases President's budget umpteen billion dollars."

I want to challenge the empty seats up there in the Press Gallery. The press of this country, the media of this country has a responsibility for objective reporting. It is not good enough to say, "Well, it is not interesting." Who knows if it is interesting? What is uninteresting to one person is interesting to another person.

I want it understood, if in no other place than the RECORD, that the President has sent budgets over here every year that have been reduced by this Congress. This Congress has been prudent; this Congress has saved taxpayers billions of dollars. And Mr. Nixon is trying to tell us we have been on a spending jag.

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

Mr. HUMPHREY. I yield.

Mr. MANSFIELD. In the past 20 years, to my knowledge, every Congress has reduced every presidential request, and just last week this Congress, this Senate specifically reduced the Defense appropriation budget by about $4.8 or $4.9 billion. The next day it reduced the presidential budget request for military construction by $300 million. So the net result was a saving on the basis of appropriation bills, passed by the Senate in the last 10 days, of $5.3 billion.

Every year we cut the President's request; every year. But, of course, the Senator from Minnesota and the Senator from Michigan ought to know that Congress is a sitting duck, a pigeon, easy to criticize. We have to expect it.

I would not worry about the press not being up there because the record has to speak for itself. As long as it is in the record we can go home to our States and tell the public the truth. People believe us. That is all that counts.

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

Mr. HUMPHREY. I yield.

Mr. HART. I must speak briefly to make a comment. I made a misstatement of fact that I want to correct.

When I looked at the empty seats up there I did see two people, and one I knew to be a member of the Senate staff, not a press man. I was wrong. I made the suggestion nobody was listening. Both occupants of the seats happen to be members of the Senate staff; they were not members of the press media.

Mr. HUMPHREY. The Senator and I are subject to censure, either direct or indirect; I think it has been indirect. I think the media of this country, the electronic and the printed media, owe it to the country to say that Mr. Nixon has a bill before us that is a fake; namely, the so-called spending ceiling, because no one has been violating any spending ceiling.

The President sends a budget here. That is his ceiling. No one has bumped his head on it, much less hit the ceiling. If there is any fiscal irresponsibility it is not because of this Congress. I intend to make a fight of it. I do not intend to let the power of the Congress and this body be eroded any more than it is.

Mr. MANSFIELD. I assume the Senator is referring to the administration request to set a ceiling on budget expenditures or budget requests, whichever way you look at it, of $250 billion.

Mr. HUMPHREY. That is correct.

Mr. MANSFIELD. If Congress is foolish enough to fall for something like that, then I think Congress might just as well abolish itself. All we would be doing would be to give additional power to the President, and this would apply to any President on the same basis that we have been doing it since the early Roosevelt years. All we are doing is compounding our weaknesses and doing away with constitutional equality which is supposed to exist and should exist between the legislative branch and the executive branch. If this is ever done we will have no one to blame but ourselves, as we have no one to blame but ourselves for Senate dilution and diminution of power which we have handed over voluntarily to the executive branch since the early days of the Roosevelt administration.

If this ever becomes a law the next best thing to do would be to abolish Congress entirely because all the power would be down there and we would be contravening the constitutional power of appropriation which is the strongest weapon this Government has, and which the Constitution provides rests in the hands of Congress and specifically in the hands of the House.

Mr. HUMPHREY. Mr. President, I express again my thanks for the cogent and forceful comment and remarks of the distinguished majority leader.

Mr. President, I mentioned a moment ago the importance of Congress preserving its power. I also think the courts must preserve their power. I believe in a system of the balance of powers, checks and balances, and I believe in the separation of powers.

EQUAL EDUCATIONAL OPPORTUNITIES ACT, 1972

Mr. HUMPHREY. Mr. President, I see in this bill before us, H.R. 13915, the so-called equal educational opportunities bill a violation of constitutional principle.

Mr. President, I have seen many hundreds of bills considered here in this Chamber during my years in the Senate, but today we are presented with something that is unique.

Today we are discussing H.R. 13915, a bill which surely represents the epitome of the sleight of hand arts of public relations, public manipulation, and public deception.

For today we are considering a bill which the public believes will do one thing—stop school busing—when it will actually do quite a few other things, such as repealing the 14th amendment, undermining the Constitution, upsetting the balance of power between our three branches of Government, diminishing the independence of our courts, and eroding public respect for law and order.

As I said, the bill's sponsors have been telling America that the bill will bring a stop to schoolbusing. I find that just slightly misleading, since the fact is that less than 3 percent of all those youngsters who ride schoolbuses are riding them due to court-ordered desegregation.

In other words, if all busing for desegregation were stopped today, 97 percent of all students who ride buses would still be riding them tomorrow.

So what we are talking about here really is not busing after all—since it is quite obvious from that one fact that most students are riding buses because their parents want them to, or because it gives quality education.

What we are really talking about is not buses, but desegregation.

What we are really talking about is not buses, but the right of every single American child to an equal educational opportunity—a right firmly planted in our Constitution, in the Bill of Rights, in our laws, and in the interpretation of our laws by our courts.

But this bill would reject all that. It would tell all those millions of law-abiding Americans who helped in the peaceful desegregation of their communities that their work, their caring, their courage, their obedience to the law was not really worth the effort and the sacrifice.

It would tell them that if you're clever enough, you can resist the law until the smart ones find a way to make an end-run around the Constitution.

H.R. 13915 contains, among other features, a provision known as the "reopener clause." This clause—section 406—means that all the hundreds and hundreds of desegregation cases already settled, in countless communities where desegregation has long since become a peaceful and progressive fact of life, can be reopened.

It is an invitation to further difficulty and strife.

It means that all the bitterness, all the strife, all the agony, all the needless suffering and community division can be pried open again, like an ugly boil that had supposedly healed.

That impresses me as a very odd way to bring us together. And many of these hundreds of cases that would be reopened under this blanket clause do not even involve busing. So I think we all understand what we are really talking about here.

And I do not think that patriotic Americans can, or should, or want to pay the price for the harm embodied in this bill.

This bill, in my judgment, makes a mockery of law and order. It is such a serious affront to our Constitution. Some 500 of our Nation's most distinguished constitutional experts—law school deans, law professors and lawyers—from all

over the country, have sent to the Senate a statement expressing their grave reservations about the constitutionality of this bill.

They do not understand how U.S. Senators—who have sworn an oath to uphold the Constitution—can support legislation which would place limits on the ability of our courts to fulfill their constitutional function of providing the necessary remedy for a denial of a constitutional right.

Yet that is exactly what this bill would do. For by virtually eliminating busing as one tool—and I underscore the words "one tool"—for the desegregation of school found to be illegally operating on a segregated basis, the bill deprives the courts of one vital tool—a tool which in some cases happens to be the only effective remedy to the denial of equal opportunity.

It is true that Congress has in the past enacted legislation to limit the remedies Federal courts may give in certain cases. But never like this. Always in the past, Congress has made certain that other effective remedies were available.

Congress does not have the power to eliminate a constitutional right. What we see here today is an effort to usurp that power, to abridge cynically and indirectly citizens' guaranteed rights, by denying the only effective remedy to their violation.

Our Nation's constitutional experts are further disturbed by the fact that H.R. 13915 will prevent our courts and local school authorities from implementing the constitutional requirements established by more than 18 years of Supreme Court rulings under Chief Justice Earl Warren and Warren E. Burger. Last year's Swann decision unequivocally stated that bus transportation is one important means of effecting desegregation.

So what we have here is a clear threat—actually a challenge—to the integrity and independence of our judicial system.

To add still more to the damage, we have in this bill the clear promise of a clash—a totally unnecessary clash—between the legislative and judicial branches. We have already seen enough harm done to our Nation in recent times through the usurpation of congressional powers by the executive branch. We should be the last ones to multiply this damaging distortion of the balance of powers by joining with the executive branch in subverting the powers of the courts.

Furthermore, it has been clearly established through an unbroken series of findings dating all the way back to 1803, in the famous case of Marbury against Madison, that the principle of separation of powers precludes Congress from limiting the authority of the courts in interpreting the Constitution and effectuating constitutional rights.

As a final dimension to the incredible affront to our Constitution posed by this bill, we see its sponsors trying to justify it on the basis of section 5 of the 14th amendment, which authorizes Congress to enforce that amendment by appropriate legislation.

What a marvelous irony. What an irony that today, in 1972, some of those who argue that section 5 gives Congress the power to enact legislation, are the very same people who told us in 1964 and 1965 that there was no authority under that section to enact the Civil Rights Act of 1964 or the Voting Rights Act of 1965.

I well remember those arguments, having participated many weeks in those debates.

I know our Constitution is a living document whose interpretation is subject to the shifting courses of time and events, but I do think this is stretching the privilege a bit thin.

But beyond that, let us take a good, hard look at what section 5 really does say: Section 5 of the 14th amendment gives Congress no power to reduce the 14th amendment's assurance of equal protection. Indeed—and I am certain my friends who are backing this bill know this perfectly well—the Equal Protection Clause of the 14th amendment was designed specifically and unquestionably to expand and extend constitutional protection to those who had previously been denied such rights.

In other words, the 14th amendment, with section 5, has as its purpose to enforce the equal protection of the laws, not to reduce that protection. Congress may not thwart this purpose of extending the constitutional protection to those who have been denied their rights.

Yet that is exactly what this bill seeks to do.

So I would like to make a challenge of my own to those who would, through H.R. 13915, challenge some of the most deeply rooted principles on which our great country was founded and has prospered for nearly two centuries.

I challenge them—if they really mean it when they talk about strict construction of the Constitution—and we have heard more than a little about that these past few years—I challenge them to prove they mean what they say. I challenge them to prove they are men of their word. If they are, they have no choice but to reject this destructive legislation which, far from reflecting strict construction, can only be said to embody irresponsible destruction.

Section 5 of the 14th amendment is a section to enforce the constitutional rights, to protect those constitutional rights, not to limit them.

This bill's meat-ax assault on our Constitution, our laws, and our courts is reason enough to reject it out of hand. Indeed, it is more than reason enough: it leaves us no choice. It makes rejection mandatory, if we are to fulfill our most compelling obligations as lawmakers.

And note that that is just exactly what was done by my Republican colleague from Minnesota, Congressman ALBERT QUIE, when this bill was voted on in the House of Representatives last August.

The Congressman, as a loyal supporter of this administration, labored day after day for many long weeks to shepherd this bill through a difficult course to the floor of the House. But he was so distressed by the content of this bill by the time it was amended to what we see on our desks here today, that he unhesitatingly set aside all those weeks of work and dedication and said, No, he could not in good conscience support this bill, as it was amended in the House.

No, he would not put his loyalty to his party above the Constitution.

He knew, as we all know, that this bill was an attack on the Constitution, and he did what we all know we should do. He rejected it.

But even beyond the bill's dubious constitutionality—although it should not be necessary to go further—there are other reasons for rejecting this bill. I will not recite them all at this time, but I would like to call attention to just a few.

All of us know that probably the greatest single obstacle to the unity that could energize an era of our national progress—in fact probably the greatest obstacle—has been, and continues to be, racial prejudice.

If I am proud of anything I have accomplished in my lifetime, I am proud of the things I have done to realize our national promise of equal opportunity and equal protection under the law for every American.

I recognized this need when I began my career in public life, and I have fought for it ever since, and I do not intend to turn back now. We still have a long way to go, but we have made many great strides since then.

One of the most important steps forward was the Civil Rights Act of 1964. I was privileged to be the floor manager of that bill. I believe it added a new dimension of freedom for all Americans. I find myself truly puzzled and distressed today as to why anyone would want to erase those precious gains for human rights.

Yet that is the real meaning of H.R. 13915. There is no room for rationalizing, no "compromise" to make; no "taking the good with the bad," because there is no goodness in this bill. Its only effect will be to cheat minority children one more time, to tell their parents—who have suffered enough and been denied their own chance—that some lawmakers are still not ready to open the door, that still another and then another generation of little children are going to grow up on the outside looking in.

I think most especially about two titles in that Civil Rights Act of 1964; title 4, which permitted the Attorney General to bring school desegregation lawsuits, and title 6, which helped desegregation because it made Federal financial assistance contingent upon the absence of racial discrimination.

I think about all that those two titles have already meant to making America a better place for all of us to live—and I wonder, and I truly cannot understand, why anyone would want to undo such a step forward.

Yet that is in my judgment exactly what H.R. 13915 is designed to do and would do.

Ironically, of course, it is a completely phony bill, a bonafide fraud. It cheats even those it purports to help. It does it by saying busing will be limited to the school closest or next closest to home.

That means that those whites who live nearest the central-city ghettos, and

who may be among those objecting to busing, are the very ones whose children will be bused, while those who have enough money to live in more expensive homes farther out, will not be touched.

So the bill is not just antiblack, which is its subtly advertised promise. It is antipoor, antiworking class, black and white alike.

Mr. President, some weeks back, in speaking to the Senate on March 1 of this year, I outlined what I believed were some of the dimensions of quality education, including the equal participation in educational excellence that should be enshrined as the constitutional law of the land. I said then that no proposed constitutional amendment that deals with anything less than this fundamental issue or that is any less permanent in its application can be acceptable to the American people.

This was at the time that we were talking about the possibility, here, of a constitutional amendment to prohibit busing.

I went on to point out:

No proposed constitutional amendment that deals with anything less than this fundamental issue, or that is any less permanent in its application, can be acceptable to the American people. And it should be clearly recognized that any proposed constitutional amendment that speaks of "freedom of choice," or that inveighs against required attendance at a school on the basis of race, is divorced from the reality of existing Federal law specifically prohibiting enforced school segregation, and employs language repeatedly proposed over recent years precisely to maintain this segregation.

Nor ought any statute be enacted by Congress that retreats from the proposition that all men are created equal and should have the fullest opportunity to enjoy a meaningful life in freedom, or that undermines our commitment to a united nation where justice is established and the general welfare promoted.

What we must establish now is a firm Federal policy of full support for State and local efforts to provide a quality education for all children. Local authorities have the first-hand knowledge and responsibility to take the initiative to achieve this goal.

Then I went on to talk about the whole subject of school transportation, pointing out that busing provides a partial answer to this critical need of quality education, and that the Supreme Court has never asked that there be busing entirely for the purpose of racial balance, but rather for quality education.

I pointed out in that address of March 1 in the Senate a series of steps that can be taken, including the use of busing wherever it is needed and desirable, to upgrade the quality of education for our youngsters.

Mr. President, I ask unanimous consent that my remarks of March 1 be printed in the RECORD at this point.

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

SCHOOLBUSING AND QUALITY EDUCATION

Mr. HUMPHREY. Mr. President, I believe it is profoundly wrong to children and concerned parents across America to twist complex and serious problems of education in our Nation into slogans and emotional appeals offering the deception of simple answers to the difficult question of schoolbusing. The people of America expect their elected leaders and representatives to, in fact, demonstrate the conscience and hard thinking demanded of leadership in addressing these vital issues, rather than pander to public opinion of the moment.

The real concern of our people is that all of our children be guaranteed the opportunity to obtain a quality education. School busing, where properly intended to provide this opportunity to millions of children who have suffered under racial and economic segregation, addresses this concern only in part. For other millions of children, this opportunity has been increasingly threatened by tightening school budgets in countless communities where traditional revenue collection measures have reached the saturation point in the face of rising public service costs.

The provision of the best possible education for all our children constitutes an absolutely essential national resource. It is for the protection and strengthening of this national resource that the people of America are now calling the President and Congress to account.

I wish to undertake this accounting now; first, by clarifying the problem of schoolbusing to identify the real issues at stake in the Federal Government's response; and second, by proposing a legislative program of action by this Congress to provide critical Federal financial relief and incentives to our States and communities endeavoring to define and establish equal opportunity to quality education for all our children.

THE PURPOSE OF SCHOOLBUSING

The goal of assuring for all of our children equal access to a quality education is not advanced by moving children from better schools to poorer ones. Nor is it advanced, as the Supreme Court has recently held, when travel to school risks the health of children or adversely affects or infringes upon their education. No child, black or white, should be set adrift in an unstable school situation. No parent, no educator, no responsible government official sees any merit to so-called massive busing to achieve an arbitrary racial balance based on a mathematical formula. It does not help the child. It cannot bring about quality education. It has been divisive, compounding rather than helping to solve our racial problems.

The issue of schoolbusing is currently focused on the widely publicized lower court decision affecting the organization of the school districts of Richmond, Va., and neighboring Henrico and Chesterfield Counties. The decision having been appealed, any comment by a governmental representative or official would be premature. But this case does point to one basic need, that school systems throughout the land must develop viable programs that will enable the children of the inner cities to share in the educational and cultural life which should be open to all Americans. The schoolbusing issue must cease to be the symbol of a Nation's failure to provide quality education for all its children.

It is wrong to foster public confusion by equating the critical need for better schools for all our children with a demand for a fixed or arbitrary racial balance in our schools, which is a totally incorrect interpretation of Federal statutes protecting our civil rights. The Civil Rights Act of 1964, to correct a pervasive violation of the 14th amendment to the Constitution guaranteeing the equal protection of the laws, called for an end to State action enforcing the segregation of children in separate schools on the basis of their race—a segregation, let it be clearly noted, that itself had required extensive school busing. This governmentally dictated isolation of hundreds of thousands of children was found to violate their most basic right of equal opportunity, denying their common human dignity, and crippling their educational and emotional development.

Despite dramatic accomplishments in the subsequent desegregation of our schools, over half of our black children, comprising 15 percent of public school enrollment, are in schools with a minority group concentration from 80 percent to 100 percent of total enrollment. Of the 2 million Spanish surnamed pupils in the public schools of the United States, about 70 percent attend schools in a five-State southwest region, with the majority of these students being Mexican-American. About 30 percent of these children are concentrated or isolated in schools in predominantly Mexican-American districts in this region.

What is demanded today at the national level is an honest policy on school desegregation that moves forthrightly against any attempt at official discrimination. It is this government denial of the equal protection of the laws, whether sanctioned or intended, that is prohibited by Federal law. And it is the enforcement of the specific prohibitions of this law that should be neither avoided nor exceeded by the executive branch of the Federal Government.

But what is also required of the present administration now is the clear recognition that the central issue is not busing. The issue before the American people is the need of all children to have an equal chance to get the best possible education. No parent, white or black, wants his or her child to attend a school with inferior educational standards. What the children of the urban ghetto and the poverty-stricken rural county require, if they are to have an equal opportunity to obtain the best education available, is a major investment by America to redress the serious imbalance in educational resources with which they have been too long confronted.

No child should be condemned to an inferior education by the circumstance of residence, family income level, or race. No child's learning and emotional development should be stunted by a pervasive and constant experience of poor school facilities, obsolete textbooks, sharply limited learning opportunities, or of hunger and malnutrition, and an unsafe and deteriorating neighborhood where he knows only fear, hostility, racial bitterness, and deprivation.

Honesty demands our recognition that such conditions can permanently cripple a child, can effectively deny him the opportunity in later life to obtain a good job, and can mean that a potential productive member of American society becomes, instead, a burden upon society.

Every child should have the right to a stable local school situation where the learning process is stimulating, comprehensive, guided by the most up-to-date knowledge and educational psychology, and assures that his or her specific interests, abilities, and needs receive careful and continuing attention.

It is this right to equal participation in educational excellence that should be enshrined as a constitutional law of the land, for it is a prime foundation for establishing the equal opportunity of every American to make the most of his life and to contribute his skills and abilities to make a better society for all. And it should be a permanent right that simultaneously advances our Nation toward the full realization of the ideals under which the United States of America was originally constituted.

No proposed constitutional amendment that deals with anything less than this fundamental issue, or that is any less permanent in its application, can be acceptable to the American people. And it should be clearly recognized that any proposed constitutional amendment that speaks of "freedom of choice," or that inveighs against required at-

tendance at a school on the basis of race, is divorced from the reality of existing Federal law specifically prohibiting enforced school segregation, and employs language repeatedly proposed over recent years precisely to maintain this segregation.

Nor ought any statute be enacted by Congress that retreats from the proposition that all men are created equal and should have the fullest opportunity to enjoy a meaningful life in freedom, or that undermines our commitment to a united nation where justice is established and the general welfare promoted.

What we must establish now is a firm Federal policy of full support for State and local efforts to provide a quality education for all children. Local authorities have the first-hand knowledge and responsibility to take the initiative to achieve this goal. But they have a special capability and duty to launch innovative and comprehensive measures to assist children attending schools in areas of economic and social deprivation. This can and should include the busing of children from a deprived area into a better learning environment—not a so-called massive busing which defeats this very purpose, but a carefully implemented plan that assures that all children affected will enjoy constructive educational benefits, including that vital sense of continuing involvement in the total life of the school they are attending.

The question of school transportation should be decided at the local level. And this decision can only be justified where it will advance the quality of education and the equality of educational opportunity for those children bused. But busing should be viewed as only one method by which children can be released from the isolation of racial segregation and poverty to share in the educational opportunities that are essential for them to realize their true potential.

Busing provides only a temporary and partial answer to this critical need. Wherever possible, we should make full use of other methods to overcome the educational disabilities borne by children isolated in the urban and rural ghettos of poverty in America. These can include carefully planned school district rezoning and new school construction to benefit all children in the local area, as well as the selective assignment of children from poor schools to respective classes in surrounding schools offering a better learning environment.

But the central emphasis must be placed on ending the disparities that deny hundreds of thousands of schoolchildren an equal chance to obtain the best possible education. To compensate for generations of neglect, we must provide these children with the best schools and teachers, with extensive remedial services to upgrade basic learning skills, and with new curricula and instructional methods focused on the values and strengths of the unity that must continue to be forged out of our distinctive, multiple cultural and ethnic backgrounds. We must initiate extensive guidance and counseling services, innovative applications of communications media and audiovisual resources, and bilingual-bicultural programs. And we must make unremitting efforts to assure effective community participation in the programs of these schools.

Such extensive new directions cannot in themselves overcome the problems of neighborhood decay, social deterioration, and the constant anxiety and despair of critical economic need that also constitute the total learning experience of a child in an atmosphere of racial and economic discrimination. The difficult and sustained task of constructively redressing these grievances remains before American society. But we know that in the education of children we have a preeminent tool with which to work at this task, and it must not be set aside. Children who confront the reality of a dual school system of segregated and inferior education in slum schools and slum neighborhoods must have the right to the promise of an integrated educational system with modern facilities and well-trained, competent teachers. We need a massive and immediate national effort—a Marshall plan for our cities—to improve and rebuild our neighborhoods and aid all of our school districts.

A PROGRAM TO ESTABLISH FULL EDUCATIONAL OPPORTUNITY

Let history record that precisely out of the current emotion and confusion surrounding the single issue of school busing, there arose a positive demand by the people of America that our Government exercise leadership in presenting a forward-moving and comprehensive program for the extensive improvement of the educational resources of America on behalf of present and future generations of children.

The essential task before the administration and Congress is to forge this new public consensus through developing a constructive legislative program to substantially expand the Federal investment in the education of all of America's children and youth. This program has been launched in the vital legislation presently before the Senate.

FEDERAL ROLE ONE-THIRD OF TOTAL PUBLIC INVESTMENT IN EDUCATION

But we must do much more in fulfilling our responsibilities as representatives of the people. We must achieve a Federal investment in the education of their children that amounts to at least one-third of all public resources devoted to this task. This investment must have a two-pronged purpose. First, through a system of basic grants tied directly to the number of schoolchildren, it must provide essential relief to local communities bearing a heavy cost burden for their education, and it must lead to an overall balancing of public support among school districts to firmly establish the equal opportunity for all children to obtain a quality education.

Second, through the provision of additional compensatory aid grants, this Federal investment must provide for extensive special educational services targeted at helping children overcome the serious educational and cultural handicaps with which they are afflicted as a result of being brought up in a segregated and deprived school atmosphere.

This can and should include a program of Federal support for contiguous or adjacent local school jurisdictions to develop joint programs where transportation can improve the quality of a child's education, and where expanded and improved school facilities can enable the effective exercise of this important option in overcoming the deprivation behind barriers of segregation.

NATIONAL EDUCATIONAL TRUST FUND

To enable local school boards to carefully plan and carry through the complex and sustained effort that will be required to end disparities in educational opportunity, the level of this Federal investment must be guaranteed. That is why I have proposed the establishment of a National Educational Trust Fund, with financing based in part on a predetermined allocation of Federal Revenues. The employment of a trust fund will enable Congress to carry through its commitment to State and local reponsibility for the education of our children and youth. It can fulfill a national responsibility to support this task, in recognition of the impact of increasing population mobility that can progressively limit the effectiveness of local revenue support measures for education. And it justified by the high national priority that now must be given to policies and programs to assure the protection and development of America's human resources through education.

A major program of Federal assistance must be carefully designed to preserve and strengthen State and local decisionmaking authority and freedom in the area of elementary and secondary education. We must do more than simply affirm support for local control of our schools, which still leaves our communities with the critical problem of rising school costs and inadequate facilities and services—a problem which State and local officials are frank to admit is already on the verge of being out of control. We must provide effective relief from the burden of these costs and assure that Federal assistance is rapidly channeled to meet critical local educational needs. There should be additional Federal incentives for the achievement of these goals, including the promotion of State and local fiscal support reforms and of programs of assessment and accountability on the utilization of educational resources.

SCHOOL CONSTRUCTION AND MODERNIZATION ASSISTANCE

Any program to further the equalization of local fiscal support for education must mean more than meeting instructional or operating costs. Over the past index of school construction costs. There has been a steady decline in voter approval of school bond referendums, with less than one-half the par value of issues being approved in fiscal 1970. And interest costs for public elementary and secondary school bonds in that fiscal year continued a rising trend to a record high. The result has been curtailments in critically needed school construction, as well as crowded classroom conditions, a wider use of short or double sessions, and the continued use of outmoded and unsafe facilities.

It is in light of these disturbing trends that I have proposed a program of Federal grants and loan guarantees to provide local education agencies with essential relief from the increasing burden of capital outlay and debt servicing costs. The equalization of disparities in this category of school costs, particularly on behalf of deprived urban and rural areas demands effective Federal support.

NEW DIRECTIONS TOWARD A COMPREHENSIVE EDUCATION PROGRAM

I have been talking about the education of some 46.2 million children and youth in America this year at a total public cost of $46.8 billion. But we should also be looking to a recomputation of these figures that enables effective assistance for additional vital areas of education. By this I mean to include the 6.5 million preschool children who have a serious need for comprehensive early childhood development programs, and several million handicapped children who have the right to special educational services. I am talking about 6.2 million children for whom compensatory and remedial skills programs are critical to their future ability to cope with the demands and challenges of adulthood, and 2.2 million youth who want and deserve the opportunity to pursue vocational and career education. And it is time to give full effect to recently enacted Federal programs, to provide extensive adult education opportunities to some 15 million Americans.

A new education policy must also address the total social and learning environment of the child and young person—his health, his neighborhood, his need for careful development and guidance. It is for this reason, for example, that I intend to press for favorable action on the Universal Child Nutrition and Nutrition Education Act, which I introduced to address the pervasive evidence of inadequate nutrition among children of all income levels across America, and to end the confusing patchwork of Federal regulations that can work to deny a daily nutritious meal to hundreds of thousands of schoolchildren.

DEPARTMENT OF EDUCATION

These examples emphasize the tremendous importance of education in our Nation today. The high national priority which must therefore be given to education demands the establishment of a Cabinet-level Department of Education. The legislation presently before the Senate moves in this direction. But I believe we must accelerate this governmental reorganization to consolidate Federal programs to effectively meet a critical national need. We must have a spokesman for education at the highest level of Government—a department that can launch a concentrated Federal effort to maintain and improve our vital educational resources, and effectively support the ongoing knowledge explosion and rapid and extensive developments in the broad field of learning processes and opportunities.

In the near future, I will be introducing further legislation to enable the achievement of the goals I have outlined for a comprehensive program of action by Congress to promote the equal opportunity for a quality education for all of America's children and youth. I urge the Senate to launch this effort through taking favorable action on the pending legislation, the Education Amendments of 1972. It is now essential that Congress fulfill the responsibilities of conscience and leadership in ending the disparities and deprivations that deny millions of children and youth an equal chance to obtain the best possible education.

Mr. HUMPHREY. Mr. President, I believe it is time to let local communities solve their problems locally and lawfully.

Indeed, all the evidence indicates that the best thing that could happen is for all adults—and not the least of them being we adults in the Congress—to let these who actually go to our schools find the solution.

For the evidence is on the record. It shows that in community after community, our children and youth have taken a very constructive approach in dealing with new situations.

There are dozens of examples of this, but let me just close with just one from Pontiac, Mich. I see in the Chamber the distinguished senior Senator from Michigan (Mr. HART). I am sure he is more than familiar with this well-reported statement of a student. Let me recall the words of John Kindig, age 13, and therefore clearly lacking in all the profound "insights" that we adults have, but possibly with the clarity of vision and the wholesomeness of conscience that are so desperately needed on this vital issue.

Seventh-grader John Kindig said it this way to Time magazine:

All these adults keep telling us we're supposed to be against busing. They tell each other "Burn the buses, tear down the schools, beat up the niggers." Who do they think they are? We're the ones who are going to school. We're the ones that have to live together. We can do it fine if they'll let us alone.

Well, I have not had a chance to talk with John Kindig, but I hope that I can send him this page from the CONGRESSIONAL RECORD. And I want to say to him:

"I'm with you, John. I want us to let you and your friends alone. I think you'll manage just fine without us. And I know America will manage just fine without H.R. 13915"—a piece of proposed legislation that will do more to set back quality education than anything that has come before this body in years. What a misnomer: A bill that is supposed to be providing what they call equal educational opportunities, entitled "An Act to Further the Achievement of Equal Educational Opportunities."

Mr. President, I respectfully suggest that there ought to be truth in labeling on proposed legislation in Congress as well as on commodities in the marketplace. This does not add to equal educational opportunity any more than just a bus makes it possible.

I say Congress must have a broader vision than to try to settle the problems of race relations in a bus, or to try to settle problems of education by banning a bus. Neither answer lends itself to the problem. We have a job before us, and that job must be, as it has been, to provide the tools, the resources, for quality education for every boy and girl in this country, to have some equalization of financial resources in our school systems, and to see to it that every boy and girl, regardless of race, creed, color, or economic status, has a chance to attend a first-class school, with good teachers, modern curriculum, and modern facilities. That is what we need to do, and we need to use whatever tools we have to accomplish it.

If it is necessary to bring a boy or a girl from a poor school to a good school in order to achieve that, and we have to use a bus, then the bus ought to be used. I hope that I can live to see the day when our people will not only go to school together, but that we will learn how to live together as neighbors, and will be able to solve most of these problems, not by employing vehicles or machines, but rather by employing just common decency and a sense of conscience.

I hope that the Senate will reject H.R. 13915, and do it in the name of upholding the 14th amendment to the Constitution and the principles of government on which this country was founded.

Mr. President, I yield the floor.

Mr. MUSKIE. Mr. President, I rise today to join the distinguished Senator from Minnesota (Mr. HUMPHREY) in opposing H.R. 13915, a piece of legislation that seeks not only to shackle our courts but also to repeal a basic commitment to justice.

My difficulties with the bill begin with its title: the "Equal Educational Opportunities Act of 1972." In fact, this legislation renounces the struggle for equality and for full educational opportunities.

Instead of turning back, I wish to remind the Senate of the words President John F. Kennedy spoke in sorrow and determination on the night of June 11, 1963. His speech to the Nation acknowledged the legal and moral shortcomings of our treatment of blacks in America, and even though some of the statistics he used then are now out of date, I want to read part of his remarks and remind Senators of their force and of the pledge they bore.

President Kennedy said:

It ought to be possible . . . for every American to enjoy the privileges of being American without regard to his race or his color. . . . Every American ought to have the right to be treated as he would wish to be treated, as one would wish his children to be treated. But this is not the case . . .

This is not a sectional issue. Difficulties over segregation and discrimination exist in every city, in every State of the Union, producing in many cities a rising tide of discontent that threatens the public safety. Nor is this a partisan issue in a time of domestic crisis. Men of good will and generosity should be able to unite regardless of party or politics. This is not even a legal or legislative issue alone. It is better to settle these matters in the courts than on the streets, and new laws are needed at every level, but law alone cannot make men see right.

We are confronted primarily with a moral issue. It is as old as the scriptures and is as clear as the American Constitution.

The heart of the question is whether all Americans are to be afforded equal rights and equal opportunities, whether we are going to treat our fellow Americans as we want to be treated. If an American, because his skin is dark, . . . cannot send his children to the best public school available, . . . if, in short, he cannot enjoy the full and free life which all of us want, then who among us would be content to have the color of his skin changed to stand in his place? Who among us would then be content with the counsels of patience and delay? . . .

Too many Negro children entering segregated grade schools at the time of the Supreme Court's decision nine years ago will enter segregated high schools this fall, having suffered a loss which can never be restored. The lack of an adequate education denies the Negro a chance to get a decent job. . . .

We cannot say to ten percent of the population that you can't have that right; that your children can't have the chance to develop whatever talents they have; that the only way that they are going to get their rights is to go into the streets and demonstrate. I think we owe them and we owe ourselves a better country than that.

Therefore, I am asking for your help in making it easier for us to move ahead and to provide the kind of equality of treatment which we would want ourselves; to give a chance for every child to be educated to the limit of his talents.

As I have said before, not every child has an equal talent or an equal ability or an equal motivation, but they should have the equal right to develop their talent and their ability and their motivation to make something of themselves.

We have a right to expect that the Negro community will be responsible, will uphold the law, but they have a right to expect that the law will be fair; that the Constitution will be color blind. . . .

That address—that call to a nation's conscience—impelled the Congress, the following year, to enact the historic Civil Rights Act of 1964, the most far-reaching legislation in the field since the Reconstruction Era. In introducing that legislation at the beginning of 74 days of debate, the distinguished Senator from Minnesota (Mr. HUMPHREY) said:

Freedom requires full freedom. There cannot be half freedom. There cannot be full freedom for whites and little freedom for Negroes.

The former Senator from California, Senator Thomas Kuchel, then the Republican whip, set forth his and his party's concern for civil rights the same day in an address to the Senate that concluded:

The struggle for effective civil rights legislation is not a partisan fight. It is an American fight.

If it is won in the Senate Chambers, and I am confident that it will be, it will be won because men of good will want to make the American theory of equal treatment under law a reality rather than a mockery. It is a fight to keep faith with the hopes and aspirations of those who came before us and those who will come after us. To be true, to them, Americans, all Americans, and to the dream we share, we must be true to ourselves and to man's deep desire for freedom and equality of opportunity. If we are true to these ideals, we will truly have kept faith.

Mr. President, the legislation we are considering today mocks those ideals and turns aside from that faith. This bill would have us say that opportunities for some can be more equal than opportunities for others. It would have us decree that the pledge of equality on which America is founded cannot be guaranteed by the processes of law. It would have us break a promise implicit in the Constitution, a promise repeatedly reaffirmed by Congress and the President, the promise to millions of young children that they are entitled to develop their full potential on equal terms with all other American children.

Quite specifically, this bill would have us append a shameful footnote to the 14th amendment to the Constitution, after the sentence in section 1 which says:

No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The footnote this pending legislation would add to that language would say, in effect, "but the courts of the United States may have no power to guarantee equal protection of the laws to all citizens." Let us not mince words. The import of this bill is too clear for euphemisms. Should it be enacted, we would be saying, quite specifically, that no Federal court—finding that school segregation exists and that it does deny "equal protection of the laws"—may order that segregation ended through the use of busing. Further, we would say that all past findings of segregated schooling and all remedies already set in motion are subject to review, and, perhaps, to reversal.

Do we really want to reverse those decisions and go back to the "separate but equal" doctrine of education that obtained from the end of the last century until the Supreme Court in 1954 cast aside that fallacy? Speaking unanimously in Brown against Board of Education, the Court declared that:

In the field of public education the doctrine of "Separate but equal" has no place. Separate educational facilities are inherently unequal.

That decision climaxed 20 years of tireless effort by black parents and their lawyers to vindicate their fundamental rights, not in the streets, but in the courts. They based their struggle on the conviction that justice for blacks, as for all Americans, could be won from white judges in white courts.

We all know what followed their victory. Twisting the Court's order to proceed with desegregation "with all deliberate speed," many school districts adopted instead a policy of "massive resistance." Some public school systems simply closed their doors. Some States appropriated funds to help parents send their children to "private" schools. "Pupil assignment laws" permitted school authorities to send children back to the same schools as before, but with race no longer given as the reason. One by one, again through the courts, black children overcame these new barriers, but by the middle 1960's, most segregated schools are almost as segregated as ever.

Still the struggle went on in the courts. As President Kennedy said, children who had entered segregated first grade classes at the time of the Brown decision were preparing to graduate from segregated high schools. Another entire generation of children had been denied its constitutional rights.

In 1968, 14 years after Brown, the Supreme Court spoke again, and spoke unanimously. In Green versus County School Board of New Kent County the court stated unequivocally that the Constitution required public school authorities to establish "a unitary, nonracial system of public education—a system without a 'white' school and a 'Negro' school, but just schools." School boards were "clearly charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch." Moreover said the Court, the constitutional rights of black children could no longer be subjected to further temporizing:

The burden on a school board today is to come forward with a plan that promises realistically to work, and promises realistically to work now.

The elimination of segregation in schools is a complex matter, as we all know. Many techniques are available and have been used successfully: pairing of a white and a black school in one enlarged attendance zone; clustering schools and rearranging grades so that children who formerly attended separate schools now go to school together; closing old and dilapidated school buildings—usually black—and dispersing their students through other—usually white—schools; creation of "magnet" or specialized schools with special programs. Some desegregation merely requires the rearrangement of transportation patterns; some requires less and some requires more transportation to be provided to the children. All of these devices were used by local school boards in seeking to comply with the Brown and Green cases.

The question remained, however, whether a school board complied with the Constitution if the steps it took left "white schools" and "black schools"—that is schools which were readily racially identifiable. The Supreme Court answered this question in Swann versus Charlotte-Mecklenburg Board of Education. The Court was once again unanimous, this time speaking through the newly appointed Chief Justice, Warren E. Burger. In Swann, the Court said that:

The constitutional command to desegregate schools does not mean that every school in every community must always reflect the racial composition of the school system as a whole.

Nevertheless, awareness of the racial composition of the whole school system is likely to be a useful starting point in shaping a remedy to correct past constitutional violations. The persistence of predominantly one-race schools raised a presumption that the school system had not been desegregated to comply with the Constitution, and a district court might require a school system to take whatever steps were reasonably necessary to eliminate racially identifiable schools. The Court found it appropriate, in such cases, to require the use of all available devices for desegregation, including measures which might increase the need for transportation of students. In fact, the Court explicitly and unanimously approved the creation of noncontiguous attendance zones and crosstown busing.

This was the Supreme Court's "busing decision." And it is this unanimous verdict that the bill before us seeks to overturn even if, in doing so, it is necessary to scramble the Constitution, tear down the protections that separate the three branches of Government and deny the promises of equality and justice on which America is built.

Obviously, the issue of busing schoolchildren has aroused such passion that its opponents are oblivious to the constitutional dangers of their course. We should remember, however, that America has been through this fight before. In the 1930's as one-room schoolhouses were giving way to consolidated schools, many of the same arguments we hear now were voiced with equal fervor.

The history of pupil transportation in this country is discussed in an article appearing in the March 1972 issue of Inequality in Education, a publication of the Center for Law and Education, Harvard University. Since the past is illuminating, I would like to quote a portion of that article:

Throughout America, the evolution of the public school system has shared three characteristics: (1) smaller districts (with one-room schools) have been consolidated into more comprehensive regional schools (often grouping students from different civic jurisdictions); (2) state aid has supplemented the school finances raised by the local property tax; and (3) students have been transported from their home neighborhoods to the more comprehensive, state-supported schools.

This third device, transportation, has attracted the greatest acrimony. One list of objections includes:

1. Bad roads and irregular distribution of public highways.
2. Uncertainty about expense.
3. Loss of the home school.
4. Fear that land on the border of enlarged district will depreciate in value.
5. Central school might build a new, large building and the discontinued schools might wish to return to the old regime.
6. Many teachers would be thrown out of employment.
7. Would build up a central school in a rival district. (Jealousy).
8. Disbelief that pupils can be transported comfortably and safely.

9. Doubt whether a graded school is better than an ungraded school.

10. Children would have to leave home too early and could not get back in time to do chores.

11. The evil influences would be much greater, particularly if children are transported to village or town schools.

These arguments were listed by L. D. Harvey, Wisconsin Superintendent of Public Instruction, at a time when the controversy was nearing one of its peaks—1902. When the problem surfaced again, in 1937, the Arkansas Department of Education compiled a new list:

1. Consolidation destroys community life.

2. The consolidation of districts takes away local control of the schools.

3. The opposition of teachers and principals who may lose their positions.

4. The selfish interests of certain individuals.

5. Objections to transportation.

6. The school will be too far away.

7. Religious and denominational interests.

8. Social distinction between rural and urban pupils.

9. Failure to see the advantages of large schools.

Similar arguments are occasionally heard today.

Past controversies, of course, were resolved in favor of consolidation, state aid, and pupil transportation—much to the general satisfaction of the populace thereafter. (Indeed, this was the course recommended by both state departments of education, although the resolution was probably easier in Arkansas since the school bus had been invented by 1937). There may be a point, nonetheless, to a brief review of school district consolidation and pupil transportation in America. As Professor M. C. S. Noble, Jr. observed in 1939:

"When evaluating such objections, it is well to remember that the school is an agency of society; hence any objections raised by the people must be met in a proper spirit and should receive careful and respectful consideration."

Parents we see have often rebelled against sending their children to distant schools. They were and are concerned over how the children would get home in emergencies or following after-school activities. They were and are anxious about the safety of the schoolbuses. And some believed and still believe that the costs of busing are excessive compared to other educational goals.

It is necessary, then, to recite the facts we do know about busing today and to hope that a few simple truths can be heard above the din.

First of all, the relative cost of bus transportation in the Nation has not changed in nearly 40 years. According to the May 1972 publication of the U.S. Civil Rights Commission, Your Child and Busing:

In 1933, the expenditure for pupil transportation was 3.5 percent of the cost of operating public schools. In 1969–70, it was 3.6 percent.

Last year, the cost of pupil transportation was just over $1.5 billion, out of a total public school expenditure of nearly $44 billion.

In fact, the increased cost of transportation occasioned by desegregation orders has rarely been more than 2 percent of the local school budget, if the capital cost of acquiring buses is amortized over the useful life of the buses. The cost of transportation per child, moreover, is a very small fraction of the cost of compensatory education programs, so, unless communities are prepared to tax themselves far more, busing remains the most economical way to open quality education to ghetto children.

Second, as for safety, the figures compiled by the National Safety Council show that the schoolbus is by far the safest way to get to school. The accident rate for bused children is 0.03 per 100,000 student-days against 0.08 for children who walk to school. The fatality rate per 100 million passenger-miles is 0.06 for schoolbuses, 0.24 for other buses, and 2.40 for passenger cars. The yellow bus with its flashing lights is an island of safety for children amid today's commuter traffic in our cities and suburbs.

Third, we have the question of distance and the allegation that time spent riding back and forth to school under court-ordered desegregation plans is exhausting and unhealthy. Again, it is necessary to cite the Civil Right Commission's report last May:

There seems little doubt in the minds of busing opponents that busing steals hour after hour from the children. The facts do not support this result as being a natural and usual consequence of busing.

Indeed, in the South the reverse can and does happen. Desegregation actually can cause many children to spend less time on the bus. This is because they are no longer bused past one segregated school to get to another; hence the trip is shorter.

In Hoke County, North Carolina, for example, the switch from segregation to integration resulted in bus runs that were 15 minutes shorter. In Georgia the number of pupils bused statewide has risen gradually from 516,000 in 1967–68 to 566,000 in 1970–71. During the same period, however, the number of miles logged by Georgia buses has dropped from 53,997,000 to 51,257,000.

Similarly, it is possible that an attendance area in a Northern district might be so drawn that a bus trip after desegregation might be quicker than the ride or walk prior to desegregation.

In most districts where pupils are being bused for desegregation, trips are rarely long. The average travel time reported seems to be 20 to 30 minutes. Trips of an hour or more would be out of the ordinary. A trip of a half hour or so would not bring the pupil home much later than if he walked from a neighborhood school.

The desegregation order for Richmond, Virginia, for example, would call for average bus rides of about 30 minutes, which is less than the current average in an adjacent county involved in the decision.

Of 11 cities surveyed recently by the Center for National Policy Review, the length of the average trip had been increased by more than 15 minutes in only two. In six cities, the average trip remained exactly the same before and after court-ordered desegregation.

Fourth, we have the claim that busing, by itself, is bad for children. Despite this concern, as the senior Senator from Minnesota (Mr. MONDALE) told the Senate in his eloquent address last February 18:

Busing is the way the overwhelming majority of school children outside our central cities get to school. Twenty million elementary and secondary school children are bused. They rode 256,000 yellow buses 2,200 million miles last year . . . And 40 percent of our school children—65 percent when those riding public transportation are included—ride to school every day for reasons that have nothing at all to do with school desegregation.

If nearly two out of three American youngsters can survive bus rides to school year in and year out, I frankly fail to see reasonable grounds for the fears being expressed again that such transportation will destroy their health and diminish their chances to get a good education.

A couple of years ago, the U.S. Commission on Civil Rights issued a statement in response to the President's March 26, 1970, statement on school desegregation. What the Commission said then is well worth repeating now:

Busing is neither a new nor a unique technique, and its use is not limited to facilitating desegregation. For example, for decades, black and white children, alike, in the South were bused as much as 50 miles or more each day to assure perfect racial segregation. In many cases, busing was the exclusive privilege of white children—black children often were required to walk considerable distances. No complaints then were heard from whites or any harmful effects. Nor was any concern exhibited over the damage suffered by black children through their deliberate segregation. The Supreme Court in Brown described vividly the nature of the harm to which Negro children were being subjected.

"To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone."

Thus the arguments that some now make about the evils of busing would appear less than ingenuous. The plain fact is that every day of every school year 18 million pupils—40 percent of the Nation's public school children—are bused to and from school, and the buses log in the aggregate more than two billion miles—nine billion passenger miles—each year. It also should be understood that the overwhelming majority of school busing has nothing to do with desegregation of achieving racial balance. The trend toward consolidation of schools, for example, particularly in rural areas, requires extensive busing. It causes no disruption to the educational routines of the children and is treated as normal and sensible.

Amid the controversy over busing, in many school systems, North and South, transportation is being used quietly and effectively as a means of bringing about desegregation. The bus rides are not long—in Berkeley, California, for example, a city of 120,000 people, the bus trip never exceeds 20 minutes—and it causes no harm. In the South, of course, the amount of busing needed to bring about desegregation frequently is considerably less than was required to maintain dual school systems. For example, at the Commission's 1968 hearing in Montgomery, Alabama, we found that black students in Selma, seeking to attend trade school, were bused some 50 miles to the nearly all-black Trenholm School in Montgomery, although the Rufus King trade school was located in Selma. Rufus King however, was all-white.

It is a mistake to think of the problems of desegregation and the extent that busing is required to facilitate it solely in the context of the Nation's relatively few giant urban centers such as Chicago, New York, or Los Angeles. In most of our cities the techniques necessary to accomplish desegregation are relatively simple and busing creates no hardships. The experience in communities which have successfully desegregated could easily be transferred to cities of greater size.

Even in giant urban centers, progress in desegregation does not require interminable bus rides or disruption of our children's education. The President, in discussing the re-

cent California court decision requiring desegregation of the Los Angeles school system, quoted "local leaders" as estimating that the total cost of busing will amount to 40-million dollars over the next school year. This estimate represented the contention of the defendants in that litigation. It was presented to the court for the purpose of arguing against the feasibility of desegregation in that city's school system. In fact, the court rejected this estimate as unrealistic.

In Los Angeles, as in other cities substantial desegregation can be accomplished through relatively simple devices such as alteration of existing school attendance areas, school pairing, and the establishment of central schools. To be sure, transportation is necessary in giant urban centers as it is in smaller cities, but here too, it is false and defeatist to assume that the bus rides must be lengthy or that the education of our children will be disrupted.

In the Commission's view, the emphasis that some put on the issue of busing is misplaced. As most Americans would agree, it is the kind of education that awaits our children at the end of the bus ride that is really important.

Let us be frank. We do not really know how many more children will have to take school buses if the courts are permitted to include busing among the remedies for segregated schooling. The Department of Health, Education and Welfare believes the number of children being bused under court-ordered desegregation plans equals some 600,000. The Department of Transportation estimates 100,000. Last year a HEW survey of the Nation's 100 largest school systems found 23 operating for the first time under school desegragation orders. In only three of those districts was the proportion of bused children significantly higher after desegregation than the average proportion of bused children elsewhere in the same state.

At this point, I believe it is appropriate to say something about the neighborhood school concept. The neighborhood school was extolled by the President in this 1970 statement and is given a Congressional imprimatur by the pending legislation. The Commission on Civil Rights, in its reply to the President's 1970 statement, questioned whether the neighborhood school should be one of the cornerstones of educational policy. It said:

In his statement, the President emphasized the desirability of maintaining the neighborhood school principle. For several reasons, the Commission questions whether this should be one of the cornerstones upon which national educational policy rests.

For one thing, neighborhood schools do not represent the invariable principle governing school attendance that many believe. Frequently, neighborhood attendance is subordinated to other educational goals. In some cities, for example, handicapped children or academically talented students attend schools other than the one in their neighborhood.

Further, the Commission has found numerous instances of departures from neighborhood attendance policy that have had the effect of promoting racial segregation, where faithful adherence to the neighborhood school principle would have assured integrated student bodies. In Cleveland, Ohio, and San Francisco, California, for example, optional zones were created to permit white students who otherwise would have attended racially integrated schools to choose instead nearly all-white schools out of their neighborhood. Transfer plans, ostensibly instituted to relieve overcrowding, also have had the effect of promoting racial separation.

There is, in fact, a good deal of inconsistency and hypocrisy that all too often surround the lip service paid to the neighborhood school principle. Courts, as well as school officials, have had little difficulty in dismissing its importance for the purpose of maintaining segregation. In Cincinnati in 1876, for example, black children who had to walk four miles each way to attend a black school brought suit to enter the much nearer white school. The court refused and said: "Children cannot cluster around their schools like they do around their parish church." Several years ago, then Chief Judge Tuttle of the U.S. Court of Appeals for the Fifth Circuit, in a case involving the Mobile, Alabama, school system, made some observations on this point:

Both in testimony and in the briefs, much is said by the appellees about the virtues of "neighborhood schools." Of course, in the brief of the Board of Education, the word "neighborhood" doesn't mean what it usually means. When spoken of as a means to require Negro children to continue to attend a Negro school in the vicinity of their homes, it is spoken of as a "neighborhood" school plan.

When the plan permits a white child to leave his Negro "neighborhood" to attend a white school in another "enghborhood" it becomes apparent that the "neighborhood" is something else again. As every member of this court knows, there are neighborhoods in the South and in every city of the South which contain both Negro and white people. So far as has come to the attention of this court no board of education has yet suggested that every child be required to attend his "neighborhood school" if the neighborhood is a Negro school. Every Board of Education has claimed the right to assign every white child to a school other than the neighborhood school under such circumstances.

And yet, when it is suggested that Negro children in Negro neighborhoods be permitted to break out of the segregated pattern of their own race in order to avoid the "inherently unequal" education of "separate educational facilities," the answer too often is that the children should attend their neighborhood schools." So, too, there is a hollow sound to the superficially appealing statement that school areas are designed by observing safety factors, such as highways, railroads, streams, etc. No matter how many such barriers there may be, none of them is so grave as to prevent the white child whose "area" school is Negro from crossing the barrier and enrolling in the nearest white school even though it be several intervening 'areas' away.

There also is some question whether the narrow attendance areas served by neighborhood schools truly represent the "neighborhood" as we currently understand that term. In fact, the meaning of neighborhoods has changed over the years. Recent development in the pattern of urban life—rapid population shifts and the growing distances city residents travel for recreation, business and shopping—have diffused traditional neighborhood patterns. They no longer are the self-contained, cohesive communities they may once have been. In short, it is doubtful that adherence to the neighborhood school principle is required by considerations of close community ties in narrow geographic areas. The schools have an opportunity, by broadening the geographical areas they serve, to expend the experience of children beyond that of the restricted confines of their narrowly defined neighborhood, and establish the school as a broader "community" or "neighborhood" in which the lives of all who attend can be enriched.

If adherence to the neighborhood school principle frequently interferes with efforts to promote desegregation, there also is some question concerning its value as a means of providing quality education. The essence of the neighborhood school is a self-contained unit serving a relatively small student population. In larger units, however, economies of scale frequently make possible the offering of a broader curriculum and the provision of new and expensive equipment that are not economically possible in schools which serve small numbers of students.

Many rural areas, for example, in an effort to improve the quality of education, have abandoned the tradition of small individual school houses in favor of consolidated schools serving much larger student bodies. In short, adherence to the neighborhood school principle under current conditions not only tends to interfere with efforts at desegregation, but also has little bearing on efforts to improve the quality of education and in some cases may even thwart those efforts.

The Commission believes that ideally and ultimately, resolution of the problem of school segregation lies in residential desegregation, which will remove the emotional issues of the neighborhood schools from the area of civil rights controversy. Residential desegregation can be accomplished through laws and policies designed specifically to secure an open housing market, and administered with dedication and purpose. This does not mean, however, that efforts to desegregate the schools should wait the day when neighborhood desegration has been achieved. We cannot afford to make integrated education wholly dependent upon open housing, for to do so would be to consign at least another generation of children to education in racially isolated schools.

What, then, are the legitimate and factual concerns about busing? The figures demonstrate conclusively that there is no reason to fear for the safety of children who are bused to school. There is simply no safer way to get there. And busing costs are a tiny fraction of the school budget. Take the example of Norfolk, Va., which has never provided transportation for any of its students, but now has been ordered by a court to do so in connection with desegregating its schools. The amortized cost of the entire bus fleet will be $600,000 per year out of an annual school budget of $35 million. Ironically, the Nixon administration has made certain that the entire cost of busing for desegregation will have to be borne by hard-pressed local taxpayers, because it has stopped granting Federal funds for transportation under the Emergency School Assistance Act and title I of the Elementary and Secondary Education Act.

As with everything else, however, busing can be carried too far. There are legitimate concerns. Children should not have to ride so far and for so long as to sap their energies for study and for play. Under desegregation plans, children should not be forced to attend schools which are inferior. Along with desegregation, our schools must be upgraded and made equal. I supported the Scott-Mansfield amendment to the omnibus education bill which we considered earlier this year, because it provided safeguards against the busing of children which would risk their health or significantly impinge on their education or place them in inferior schools. Ultimately, the Congress adopted even more stringent limits on busing in title VIII of the Education Amendments of 1972. In addition, the Supreme Court in the Swann case specified that the time or distance of travel under desegregation plans should not be "so great as to either risk the health of the children or significantly impinge on the educational process."

But the bill now before us is not needed to express again these legitimate concerns and provide safeguards against excessive busing. The Congress and the Supreme Court have already provided the necessary limitations and guidelines. It should now be left to the courts to work out specific desegregation plans for individual school districts so as to guarantee the constitutional rights of our children.

Last, but by no means least, there is a widespread concern about school violence—assault, extortions, drugs and interracial fighting. Here there are not statistics, but there are facts. The drug problem is certainly worse in the ghetto than in white middle-class areas; but many suburban schools already have a severe drug problem and there is no evidence that it is better or worse in schools which are integrated. We must deal vigorously with drugs in our schools, but the drug problem is no reason to keep them segregated.

As for individual and group violence, there is no evidence of any long-term increase under desegregation. We all know that fighting in schools is an old phenomenon. But when there is a racial incident, we hear about it. If kids brawl in the cafeteria or the school yard, it simply is not news unless there is a race angle to the story. Moreover, school fights between different ethnic and social groups have been common in the past without it being suggested that children from different groups should not attend the same school. Although it is probably true that formerly white schools experience some increase in tension in the early days of desegregation, this is often stimulated by the behavior of adults and it generally subsides within a few weeks.

We know integration is difficult. But we also know that it can be successful in human terms. Willie Morris has written about it in poignant terms in Yazoo, the story of his hometown in the Mississippi Delta. Concluding his book, he said:

> One of the burdens of the people of all the Yazoos who share this place and this involvement in a common history—a history of anguish and cruelty and inhumanity, but also of courage and warmth and rare nobility—is to warn their fellow Americans of the terrible toll that bitterness and retreat can take; for this will give the nation some feel of itself, and help it to endure.

This bill is a product of bitterness, a call to retreat. We must offer, instead, a reasoned appeal to hope. For, if we abandon the effort to assure full equality in educational opportunity, we will stifle hope and, if we pass this bill, we will be turning our backs on the goal of a decent education for all American youngsters. And, if we enact this legislation, as I warned before, we will start a terrifying process of undermining the Constitution and the courts' role as the exclusive arbiter of the Constitution.

This bill has many faults, but there are two provisions which are especially dangerous. The first of these is section 403(a), which provides that—

> No Federal court or agency shall order the implementation of a plan (that is, a school desegregation plan) that would require the transportation of any student to a school other than the school closest or next closest to his place of residence which provides the appropriate grade level and type of education for such student.

In an unbroken line of unanimous decisions extending over 17 years, the Supreme Court has made clear the duty of every school system to desegregate its schools. In Green, Swann, and a host of other decisions, the Court has made clear that this duty requires school authorities to make every effort "to achieve the greatest possible degree of actual desegregation." The Court has approved the mandatory use of all available devices, including busing. It has explicitly sanctioned, in Swann, the use of noncontiguous zoning, stating that such zones may, indeed, "be on opposite ends of the city." Section 403(a) would overrule Swann and countless other decisions of the Supreme Court and the lower Federal courts as well.

One of the justifications advanced for section 403(a) is that it does not restrict or diminish constitutional rights, but only the remedies available to cure the violation of such rights. Now, the first thing every law school student learns is that without a remedy there is no right. A moment's thought reveals why this is so. If a child has the right not to be assigned to a segregated school but the courts have no power to order him enrolled in a desegregated one, does that child truly have a right?

The Supreme Court dealt squarely with this very point in a second Swann decision, North Carolina Board of Education against Swann. There the Court unanimously declared unconstitutional a State statute which sought to bar the assignment of pupils on the basis of race and to prohibit the use of public funds for involuntary busing of pupils to achieve racial balance. The North Carolina statute was found to "conflict with the duty of school authorities to disestablish dual school systems" and to "obstruct the remedies granted" by courts seeking to enforce that duty. Surely if a State legislature may not enact a statute which obstructs or restricts the power of Federal courts to remedy violations of the Federal Constitution, the Congress cannot and should not assert the power to do so. Any such attempt would clearly run afoul of the fifth amendment, which restricts the power of Congress in much the same manner as the 14th amendment restricts the power of the States.

But proponents of this bill point to section 5 of the 14th amendment as authority for section 403(a). This is cruel irony. Section 5 empowers Congress "to enforce, by appropriate legislation, the provisions of" the amendment. Section 403(a) would equate the power to "enforce" with the power to "restrict." This interpretation distorts the meaning of language. We cannot "enforce" constitutional rights by "restricting" ways to remedy violations of those rights.

The very idea of twisting logic as this bill's supporters would have us do reminds me of Alice's conversation with Humpty-Dumpty in Wonderland.

> "But 'glory' doesn't mean 'a nice, knock-down argument,'" Alice said.
>
> "When I use a word," Humpty-Dumpty replied, "it means just what I choose it to mean—neither more nor less."
>
> "The question is whether you can make a word mean so many different things."
>
> "The question is," said Humpty-Dumpty, "which is to be master—that's all."

In support of their argument, proponents refer to a dissenting opinion in the case of Katzenbach against Morgan, which upheld the Voting Rights Act of 1965 as an appropriate use of Congress' power under section 5 of the 14th amendment. What they ignore is the majority's very clear rejection of their argument:

> Contrary to the suggestion of the dissent, section 5 does not grant Congress power to exercise discretion in the other direction and to enact "statutes so as in effect to dilute equal protection and due process decisions of this Court." We emphasize that Congress' power under section 5 is limited to adopting measures to enforce the guarantees of the Amendment; section 5 grants Congress no power to restrict, abrogate, or dilute these guarantees. Thus, for example, an enactment authorizing, the States to establish racially segregated systems of education would not be—as required by section 5—a measure "to enforce" the Equal Protection Clause since that clause of its own force prohibits such State laws.

The final argument relied on to support section 403(a) is more abstruse. It rests on Congress' power under article III of the Constitution to create lower Federal courts and regulate their jurisdiction, and to regulate the appellate jurisdiction of the Supreme Court. This argument has been rejected in a thorough opinion of the Association of the Bar of the City of New York. Its fundamental defect is that it ignores the Constitution's basic grant of power to the Federal courts to decide "all cases arising under the Constitution."

Let me read part of the report of the Association of the Bar of the City of New York:

> Proponents of the proposed legislation have argued that it merely restricts the jurisdiction of Federal courts, denying or limiting the use in these courts of a particular remedy, and that Congress has clear power to do this under Article III of the Constitution as well as existing case law.
>
> Article III of the Constitution vests the judicial power of the United States in the Supreme Court "and in such interior Courts as the Congress may from time to time ordain and establish." It provides among other things that the judicial power shall extend to "all Cases . . . arising under this Constitution." It gives the Supreme Court original jurisdiction in certain specified cases and provides that that Court shall have appellate jurisdiction "with such Exceptions and under such Regulations as the Congress shall make." The few cases arising under this Article have made it clear that the Congress has substantial power to restrict the jurisdiction of the Federal Courts, including the appellate jurisdiction of the Supreme Court. *Ex Parte McCardle*. In *McCardle*, Congress had enacted a statute withdrawing jurisdiction from the Supreme Court to hear appeals in habeas corpus cases. The statute was passed during the pendency of a particular appeal, with the deliberate intent to prevent Supreme Court review of the case. The Supreme Court upheld the power of Congress to do so, and dismissed the case, citing the provisions of Article III of the Constitution, giving Congress the power to make exceptions to the appellate jurisdiction.

But the *McCardle* case, assuming *arguendo* that it is still good law, does not stand for the proposition that Congress has unlimited power to prevent the Supreme Court from considering Constitutional claims. The Supreme Court retained the power to issue writs of habeas corpus in the exercise of its original jurisdiction. The withdrawal of appellate jurisdiction therefore merely closed one avenue and did not prevent access to the Court. Indeed, within months after the *McCardle* decision the Court held that it had the power in the exercise of its original jurisdiction to resolve the substantive issues raised by the *McCardle* case. *Ex Parte Yerger.*

Aside from the *McCardle* case, there appears to be little authority to support Congressional interference with the courts in enforcing the Constitution.

While the Emergency Price Control Act of 1942 prohibited the Federal District Courts from reviewing the validity of regulations made pursuant to the Act, the legislation also established a special court, the Emergency Court of Appeals, to adjudicate these controversies. Its decisions were made reviewable by the Supreme Court. That legislation was upheld because it preserved a full remedy in the Federal Courts. See *Yakus* v. *United States* and *Lockerty* v. *Phillips.*

The line of cases under the Norris-LaGuardia Act, which declares that the Federal Courts have no "jurisdiction" to issue injunctions in certain labor disputes, do not involve Constitutional matters. That Act therefore does not purport to deny the right of an injunction to vindicate Constitutional rights.

In the present situation it is apparent that in many cases, as a practical matter, no effective alternative to busing exists in carrying out the mandate of *Brown* v. *Bd. of Education* to desegregate schools where segregated residential patterns exist. In many such situations, the denial of busing as a remedy will constitute the denial of any effective remedy in redressing the unconstitutional condition of segregated schools. Thus, while purporting only to prohibit or restrict a particular remedy, Congress would in fact be requiring the courts to reach a particular result at odds with previous court decisions as to what is Constitutionally required.

Article III has to be read with the rest of the Constitution, and, as shown above, we believe that the proposed legislation clearly violates the Fifth Amendment. Leaving aside the question of whether or not Congress may take away from an individual the oportunity to obtain a judicial determination in a Federal court of constitutional rights, it can scarcely be seriously contended that, under the guise of limiting the jurisdiction of the Federal courts, Congress may do indirectly what it may not do directly, that is, restrict the scope of the Fourteenth Amendment.

Since Marbury against Madison was decided in 1803, it has been a fundamental principle of American government that the courts are the final arbiters of constitutional rights. Article III has never been held to permit Congress to withdraw from all of the Federal courts the power to consider asserted violations of constitutional rights and to provide necessary remedies for such violations. To give such a reading to article III would be to give Congress the power to nullify the Constitution.

The only occasion on which Congress did seek to restrict the Federal judicial power to enforce constitutional rights was when it withdrew the Supreme Court's jurisdiction to hear appeals in habeas corpus cases after the Civil War, an action which was upheld in ex parte McCardle. But that legislative restriction left the jurisdiction of the lower Federal courts intact, permitting them to continue to protect constitutional rights as fully as before. The legislation also left intact the Supreme Court's original jurisdiction—which the Court subsequently exercised in ex parte Yerger to decide the very question which Congress had sought to keep from the Court.

The legislation upheld in ex parte McCardle is therefore no precedent for the bill now before us. Nor is the Norris-LaGuardia Act, which prohibited the Federal courts from issuing injunctive relief in labor dispute cases. The cases covered by that legislation did not involve constitutional rights, and the legislation therefore did not constitute a congressional restriction on the Constitution. This bill, by contrast, breaks utterly with the past and shatters the barrier wisely erected by the Founding Fathers between the legislative and judicial branches.

Prof. Alexander Bickel of the Yale Law School, widely known as an opponent of busing, has described the bill before us as "recklessly radical in undertaking to alter the balance of power between the judiciary and the political institutions of the Federal Government." He says:

Congress ought not be held to have power to take away a remedy for a constitutional violation in circumstances in which the courts have decided that it is the only and the essential remedy . . . If Congress has this power, it has in fact, if not in form, the power to alter the substance of most constitutional rights, not merely the right to go to one or another school.

No warning could be more clear. If we assert today the power to eliminate judicial remedies for violations of the equal protection clause of the 14th amendment, what is to stop our successors on another day from foreclosing the courts from adequately protecting other basic rights—the right of free speech, free press and religion?

If, in this session, we tell the Judiciary that its powers in desegregation cases are curtailed, what is to prevent a future Congress—in another moment of partisanship and passion—from telling the courts that they cannot provide citizens any recourse against wire-tapping, if some Attorney General decides wiretapping is called for? Or what is to stop our successors in this Chamber from decreeing that Federal courts have no protection to offer against coerced confessions or mass arrests?

We are contemplating in this legislation a major break with precedent. Let us, at least, acknowledge clearly the danger we run.

If there were any doubt as to the purpose of this bill to overstep constitutional bounds, its history in the other body lays the doubt to rest. Two amendments were offered during debate stating that none of the bill's provisions were to be construed as inconsistent with constitutional rights or remedies. The sponsors urged their defeat and they were vote down.

One Member of the other body who has been a consistent and outspoken opponent of the antibusing legislation is the distinguished senior minority member of the House Judiciary Committee, Representative WILLIAM M. MCCULLOCH of Ohio. Representative MCCULLOCH, who has championed civil rights legislation in Congress throughout his career, had this to say on April 12, 1972, about the antibusing legislation proposed by the leader of his own party:

On March 20, 1972, I introduced H.R. 13916 at the request of the Administration. That bill, if enacted, would prospectively limit, for a time, the power of the Federal courts to desegregate public schools where desegregation would require new or additional busing of school children.

Certainly, Congress has in the past enacted legislation limiting the remedies that the Federal courts might give in particular cases. But never like this. In all prior instances of limiting legislation, Congress had either made certain that other effective remedies were available, such as in *Cary* v. *Curtis* and *ex parte McCardle*, or had eliminated a remedy where it had already constitutionally eliminated the right, as with the anti-injunction provision of the Norris-LaGuardia Act.

But Congress does not have the power to eliminate *constitutional* rights, and it is not uncommon that the only effective remedy for the unconstitutional wrong of school segregation involves the busing of school children. Could it be that although Congress does not have the power to eliminate constitutional rights, it can abridge them indirectly by denying the only effective remedy for their violation! If so, I submit that our written charter, our living Constitution, breathes no more.

Make no mistake about my question. I do not deny to Congress the power to regulate the jurisdictional growth of the Federal courts. Rather, I suggest that Congress cannot use the courts to accomplish unconstitutional ends. This is what *Marbury* v. *Madison* and *United States* v. *Klein* tell us. Once the Federal courts are granted jurisdiction over the subject matter, the courts decide the cases according to the law of the land, and congressionally enacted limitations on the powers of the courts to reach the result required by the law of the land are null and void. Congress need not use the Federal courts, but if it decides to do so, it cannot prostitute the courts for an unconstitutional end.

Indeed, the end is unconstitutional. In *Green* and in *Alexander*, the Supreme Court held that the Constitution required school desegregation 'now' and 'at once.' How then can Congress defer the right to desegregated schooling until July 1, 1973? And if it could, how could it justify the delay? As providing time to seek answers to questions which have already been answered by the Supreme Court? As providing time to adopt a bill that would prohibit busing younger students even short distances to remedy constitutional violations?

It is with the deepest regret that I sit here today to listen to a spokesman for the Administration asking the Congress to prostitute the courts by obligating them to suspend the equal protection clause for a time so that Congress may debate the merits of further slowing down and perhaps even rolling back desegregation in public schools.

I fear that long after I have ceased representing the fourth district of Ohio, the nation will be paying the price for the politics of 1972, as we have long paid the price for the politics of 1876.

Wasn't it only yesterday that we in Congress told our deprived citizens to press their claims not in the streets but in the courts? Now, when some of them have taken their case to the courts and under the law of the land have won victories, it is suggested that it is time to change the rules. What message are we sending to our black people? Is this any way to govern a country? Is this any way to bring peace to a troubled land?

In addition to being constitutionally unsound, section 403(a) ignores the realities of school systems. For example, what is the "next closest" school? Is it the one which is closest as the crow flies? Closest as the child walks? Or closest by existing or potential schoolbus routes? Does "closest" refer to nearness in distance or in time? In determining which schools are "closest" may a school board consider safety? Efficient bus routing? Must the board ignore the fact that the next closest school is overcrowded while the third closest has empty desks? As Chief Justice Burger has said in his Swann opinion, "maps do not tell the whole story."

Section 403(a) may make more difficult the efforts of local school boards to comply with the requirements of the Constitution in the way which best serves sound education goals. There are a variety of techniques which have been successfully used to desegregate school systems; pairing schools, closing antiquated buildings, creating magnet schools, organizing clusters of schools with different grades and different specialties serving an enlarged attendance area. Some of these methods enable school authorities to improve the education services offered to the entire community. But where they require assignment of students beyond the "next closest" school, all of these methods would be prohibited by this bill.

It is true that section 405 permits the adoption of a plan which violates section 403 "if such plan is voluntarily proposed by the appropriate educational agency." The term "voluntarily proposed" does not appear, however, to cover plans proposed by school boards by order of a court. Accordingly, the bill appears to prevent local school systems from complying with the Constitution in the most educationally desirable way. A similar objection applies to section 402, which restricts the means by which courts and HEW may order the accomplishment of desegregation.

It is most unwise for the Congress to lay down a rigid national rule on school desegregation. As Chief Justice Burger said in Swann:

> Conditions in different localities will vary so widely that no rigid rules can be laid down to govern all situations.

Let me point out an example which might particularly pain the sponsors of this legislation: Consider a black residential enclave surrounding a black segregated school. There are two smaller white schools nearby. It appears that the bill would permit a court to order the black school paired with the nearest white school but not also with the one slightly further away. The result would be two majority black schools and one all white school, instead of three majority white schools of approximately equal composition.

The "next closest" restriction has another effect which perhaps the sponsors have not had the opportunity to consider fully. Census data discloses that the neighborhoods closest to black ghettos are most frequently occupied by working class white residents. Section 403(a) will permit busing only to schools on the fringes of the ghetto. The bill thus places the burden of school desegregation squarely on working class city dwellers while the more affluent residents of middle class neighborhoods and the suburban refugees from reality can remain aloof and protected.

The effects of section 403(a) are easy to foresee. In the first place, mixing impoverished black children with the poorest white children is, educationally, the least effective form of desegregation. It may also produce the greatest degree of racial hostility. It will almost certainly encourage "white flight" and play into the hands of "blockbusters" in the real estate brokerage community. Section 403(a) is a prescription for neighborhood instability and is bound to produce an expanding ghetto. By the same token, it will foreclose efforts, which we all should encourage, toward combining school desegregation with neighborhood stability.

The consequences of this "next closest" school provision have been discussed editorially by the Washington Post and in a column in the New York Times by Tom Wicker. I would like to read from these analyses. First, on September 13, 1972, the Post editorial said:

> In their eagerness to do themselves some political good this year, the House members who voted for these and other features of HR 13915 displayed a stunning indifference to the possible real-life consequences of such a statute were it to become law. Beyond the prospect of disruptive relitigation of closed cases throughout the South and beyond the prospect of newly exacerbated racial conflicts among the poor in the big cities of the North, there is the prospect that communities all over the country would find themselves in a new financial bind of Congress' making—one that might even inspire nostalgia for the days of the complicated busing order. For among the methods by which this legislation seeks to eliminate busing is that of setting forth a list of preferable remedies the courts or the executive branch can compel. And among these alternatives which the courts would be encouraged to invoke is that of ordering the closing down of old or "inferior" schools and the construction of new ones. That this provision could cost affected communities plenty and also interfere with their ability to make their own plans and control their own taxes, does not seem to trouble those legislators who want an "anti-busing" record at all costs. Why should it, when the cost is not one that they themselves must bear? Indeed, the House rejected an amendment to HR 13915 that would have provided Federal financial help in building such new schools.

Four days later in his New York Times column, Mr. Wicker wrote:

> Prince Georges County, Maryland, is a sprawling sub-suburban area outside Washington, D.C. that contains acre after acre of low-to-middle-income housing, and which operates the tenth largest school system in the nation. Twenty-four per cent of its 163,000 pupils are black; but four years ago, in 1968, only 15 per cent were black.
>
> If Prince Georges is allowed to look upon itself as a cohesive whole, it can distribute this startling increase in black pupils, via busing, throughout all county schools in rough proportion to their numbers. In fact, a study by the Lambda Corporation shows that Prince Georges schools could be so balanced by busing "only slightly more" than 47 per cent of its pupils who already are bused for purposes other than desegregation.
>
> This would produce what is contemptuously known to President Nixon and others as "racial balance" in the schools, but it also would prevent (a) the development of all- or nearly all-black schools, and (b) the concurrent development of all-black suburbs and neighborhoods as fearful whites fled before the influx of black families and pupils.
>
> Prince Georges would not be able to deal with the problems of desegregation in this sensible manner, however, if a bill already passed by the House of Representatives, and conforming closely to President Nixon's ideas, can win approval in the Senate. This measure, which members of Congress flocked to support under the banner of protecting working-class white Americans from the supposed evils of racial balance, would prevent Federal courts from ordering any busing at all until every other remedy had been exhausted and would prevent even such last-resort busing to any but the next closest school to a pupil's home. Busing across a school district line would be absolutely prohibited.
>
> This is a measure that sounds perfectly logical—don't bus a pupil if you can help it, but if you have to bus him or her, bus no farther than necessary. The only problem is that, when analyzed, it turns out to be a formula that would put the heaviest burdens of desegregation on low-income, working-class white neighborhoods, and which would allow affluent white suburbs and neighborhoods to escape desegregation, as they usually have in the past.
>
> This is because, if pupils can be bused no farther than the next closest school and then not across district lines, no county or metropolitan area or city can be considered as a whole for purposes of desegregation; and in that case those white neighborhoods nearest geographically to black neighborhoods are going to have their schools paired with presently all-black schools. This may leave a line of escape for whites in such neighborhoods who can afford to flee to better neighborhoods or to the suburbs; but those who cannot so escape are precisely those low-income, working, often ethnic Americans for whom so many crocodile tears currently are being shed by politicians and some segments of the press.
>
> Take the case of Richmond, Virginia. There, when busing originally was ordered to achieve desegregation, substantial "white flight" took place, with the result that the city school district became about 70 per cent black, while the school districts of two suburban counties became about 91 per cent white. Now Federal Judge Robert R. Merhige has ordered all these districts combined into one, which would produce, through busing, a district each of whose schools—suburban as well as city—would be roughly 66 per cent white and 33 per cent black. Whatever else may be said of this plan, it does not permit the more affluent to escape desegregated schools while giving the less affluent no such escape.
>
> But the House bill now pending in the Senate would prohibit such court orders; in a city like Richmond, the affluent would continue to move away—defeating the purposes of desegregation, leaving behind schools nearly all-black and usually without the tax base or the political influence required for anything like equality of education, and angering those whites without the means to flee.
>
> The pending bill is somewhat stiffer than the one Mr. Nixon recommended, but he has not repudiated it and in this election year obviously must support it as being closest to his own proposals. It is ironic, therefore, that so many working people—for instance, about six of ten former Wallace voters—now indicate their preference for the President, in many cases because of the busing issue. They apparently believe that he would spare them from busing and therefore from desegregation.

But anybody in a blue collar who actually believes Richard Nixon is his true friend ought to think through the President's busing proposals as generally reflected in the House bill. Like so many other policies of this Administration, they are tailored for the well-to-do suburbanite; only the rhetoric is aimed at people with calluses on their hands.

The second provision of this bill which must particularly concern us in section 406. This section permits any school systems which is subject to a court-ordered or HEW-imposed desegregation plan to secure the reopening and modification of the plan to comply with the provisions of the bill—that is to conform to the bill's limitations. This provision invites a rollback in the process of desegregation which began 18 years ago with Brown against Board of Education. It is perhaps the most disruptive and pernicious provision in the entire bill. Perhaps that is why it was deleted by the House Education and Labor Committee from the administration bill which was proposed to it.

Why is this provision, which evidently seeks only to assure a consistent, nationwide standard of desegregation, so disruptive? In the first place, it permits the reopening of every school desegregation case—including every case affirmed by the U.S. Supreme Court itself—going back to Brown against Board of Education. Approximately 1,350 cases could be reopened. Districts which have been operating quietly and successfully under court decrees or HEW plans would face a new era of uncertainty, and parents would confront new bouts of frustration.

Section 406 permits the reopening even of cases which do not involve busing at all, on the ground that the remedies applied do not conform with the rigid priority list embodied in section 402 of the bill. Attorney General Kleindienst made this clear when he testified before the House Judiciary Committee that under section 406, "all desegregation cases, even when busing might not even be an issue involved in it," could be reopened.

The text of the Attorney General's testimony on this provision before Subcommittee No. 5 of the House Committee on the Judiciary on April 12, 1972, is clear on this point and is as follows:

Mr. McCLORY. In reviewing H.R. 13915 in your statement, you mention that the Congress is considering a permanent solution to the busing problem—"one that permits reopening of existing busing orders.

Mr. KLEINDIENST. Right. Section 406 of the substantive legislation says that upon the application of any school agency, every desegregation order that exists in this country may be reopened to see to it that it meets the standards set forth in this legislation. And that, it seems to me, is the great remedying feature of this legislation. I do not thing that there is anybody in the country that can speak with more convincing clarity and persuasion than the Congress of the United States, as it has done so many times in the past, and say that we have a national problem here, that there is a national standard that is going to be met by everyone. If you are going to say that, then it seems to me that you have got to permit the reopening of cases to come within that standard. Some will require more and some will require less busing.

Mr. McCLORY. Is it your opinion that the enactment of H.R. 13915 would provide a right then to reopen all of the desegregation cases that have already been litigated, even those that have been decided by the Supreme Court?

Mr. KLEINDIENST. And if reopened, with respect to many where there is no busing, under this law there could be some busing.

Chairman CELLER. Will the gentleman yield?

Mr. McCLORY. Would the right to reopen apply only to cases which involve busing?

Mr. KLEINDIENST. No, sir.

Mr. McCLORY. Are we talking about only busing cases or all desegregation cases?

Mr. KLEINDIENST. All desegregation cases, even where busing might not even be an issue involved in it. You are going to have an opportunity for a school agency to come into a Federal district judge and say, this order was entered into 12 years ago, Congress has laid down a national standard and we want to reexamine this and apply the remedies and priorities set forth in the national standards, and obtain a new order in this particular case.

Mr. McCLORY. So all desegregation cases that have been litigated and in which there have been final decisions can be reopened?

Mr. KLEINDIENST. Yes, sir; and if they reopen them, the Court could order, as a remedy, busing, where they had none before.

Even southern school superintendents have expressed their dismay at the prospect of a new period of instability, uncertainty and tension in their schools. Desegregation would become again a political issue in areas where there has been acceptance and adjustment. Those school administrators and community leaders who have courageously and conscientiously lead their communities through the difficult period of compliance with constitutional requirements would find that Congress had pulled the rug out from under them. Children—white and black—who have been told that their school assignments were mandated by our Constitution would now be told that the Congress of the United States has said "no" to desegregation and "no" to the courts.

There is a special irony to section 406. Its final sentence actually directs the Attorney General, the Nation's chief law enforcement officer, to assist local school authorities in reopening desegregation plans so as to roll back or restrict the exercise of constitutional rights. Such a provision is an explicit invitation to local school boards to revive cases already closed and a promise that the leading law-enforcement agency in the Nation will be at their disposal.

The burden such a step would place on minority groups, civil rights organizations and their lawyers, would be intolerable. They would be forced back over old ground, required to defend scores perhaps hundreds, of desegregation decisions already won. The bill would place them in a form of double jeopardy, and, worse, its section 306 provides that the loser in any cases instituted under the new law would have to pay "a reasonable attorney's fee as part of the costs."

Asking black parents to run the risk of paying for a school board's lawyer is on a moral level with the rest of this legislation. The proposition would be absurd, if it were not so nearly tragic.

This bill is a product of those who are unwilling to abide by the results of the traditional American processes of law, who would withdraw from the courts a part of their constitutional power so as to subvert judicial efforts to vindicate the constitutional rights of nonwhite American citizens. Consider the impact of this effort upon black people and others who have fought to secure their rights through the courts. On the threshold of vindication they will see white America slam the courthouse door shut in their faces. Surely our Nation will reap a harvest of bitterness.

There are some who say that black people themselves oppose busing. Indeed, some do. Despairing of ever seeing desegregation accomplished, some blacks have sought to gain control of their schools and keep them black. Others understandably resent the implication that they see in school desegregation—that black children learn better when their classmates are white and that "white schools" are "better" than "black schools." But most black people are aware that schools in the white parts of town are generally newer, better maintained, and better equipped than those in their neighborhoods, and most do not expect this to change until white children are assigned to their neighborhood schools. And they want for their children what all parents want: the best possible education.

In any event, we should let black people speak for themselves. Roy Wilkins, director of the largest black organization in the land, the NAACP, has written:

Anti-busing is but another way of reinstating racial segregation . . . Negro Americans ask access for black children to the best possible available education. If that requires a bus ride, then so be it. They believe that opponents of busing would bar children from good educations as surely as if they stood in the door of a school and physically turned away blacks.

Most significantly, let us listen to the Congressional Black Caucus, whose members, I presume, represent their black constituents as truly as the rest of us represent our white constituents. On March 15 of this year they issued a statement, part of which read:

As the Black elected representatives to the U.S. Congress, we strongly reaffirm our support of busing as one of the many ways to implement the Constitutional requirement of equal educational opportunities. . . . At the same time we strongly condemn those who would exploit this issue for personal, political, or monetary gain. Racists must not be allowed to formulate our policies in education, and especially to educationally brutalize Black children who are the chief victims of inferior schools and discriminatory practices.

Other black leaders and black organizations also have spoken forcefully on this issue.

Vernon Jordan, executive director of the National Urban League, said:

The fact is that most black people are solidly for busing to desegregate the schools. Most black elected officials support it, from the Congressional Black Caucus on down to lower elected offices. Concern over the proposed legislation has even been publicly

voiced by black appointed officials within the Administration . . .

The busing issue is the latest manifestation of that timid spirit of withdrawal and defeatism in the struggle for human rights and dignity. It marks a key test of whether we, as a nation, have the moral fortitude to persist in our efforts to become a truly open, democratic, multi-racial society . . .

We stand, then, at one of those turning points in history when a nation decides whether it will press forward to fulfill its noblest ideals, or whether it will give in to the basest impulses of the dark, hidden underside of the national spirit. I am seriously concerned that we are witnessing the beginning of the end of the Second Reconstruction. I am moved to ask whether the moral fervor of the sixties will give way to moral cowardice in the seventies, and whether the faith and dreams of black people will be sabotaged once more.

Prof. Derrick A. Bell, Jr., a black professor at Harvard Law School and former HEW official, has written one of the best analyses of the educational alternatives facing Blacks. In "Integration: A No Win Policy for Blacks?" Professor Bell concludes:

The beginning of this article recalled that opposition to school desegregation is neither new nor novel. Because of its pathological components, it is likely to continue. Because white resistance to integrated schools is symbolic—and represents the core of the philosophy that America is a white man's country—it must be fought even by blacks who are convinced that the educational merits of integrated schools are overstated, misconceived, or simply nonexistent. The right of black children to attend integrated public schools—quite literally whether exercised or not—is a right that is crucial not only to black success, but to black survival in this country.

Anyone doubting this need only re-read the constitutional amendment supposedly designed to curb "forced busing." With so much at stake, we cannot afford to surrender, and dare not risk compromise. Our efforts may or may not be successful, but fighting for survival is never a "no-win" policy. It is much more a "for better or worse" situation in which, for all our weariness and frustration, we can only, as the current expression goes, "keep on-keeping on." But Langston Hughes said it better when he concluded his "Mother to Son" poem, capturing in his lines what is the apparent heritage and inheritance of black men in America:

So boy, don't you turn back,
Don't you set down on the steps
'Cause you finds it's kinder hard.
Don't you fall now—
For I'se still goin, honey,
I'se still climbin',
And life for me ain't been no crystal stair.

Black lawyers at the Department of Justice openly opposed the President's antibusing legislation. On April 25, 1972, 10 black lawyers wrote this to the Washington Post:

First, and fundamentally, busing is not a real issue; it is instead a sham, a "last straw" embraced by those who have disappointedly watched busing and other tools of desegregation bring blacks to the better schools, wherever they are. Quite frankly, we as ardent students of the civil rights struggle, have concluded that this recent fervor in the area of busing is nothing more than a thinly veiled attempt to sacrifice the rights of minority children to racist pressure groups and political expedience.

Dr. Kenneth Clark, the noted black psychologist and executive director of the Metropolitan Applied Research Center—MARC—recently condemned the "political hyprocrisy of the antibusing-for-desegregation advocates." Dr. Clark contends that "all of the proposals for prohibiting the transportation of students for purposes of desegregation are racially restrictive proposals" and he outlines various reasons for rejecting the antibusing legislation. He states:

In seeking to turn back the clock of racial progress in America, President Nixon and his advisors must be aware of the fact that he is threatening the constitutional protections of all Americans—and that in doing so he is eroding the foundations of a constitutional government, substituting a government by the tyranny of whim and passion rather than a government of law. This is the very high price of racial prejudice and political expediency which he seeks to extract from all the American people—white as well as black.

Dr. Clark also discusses the reasons that some blacks oppose busing and school desegregation. He stresses that—

It is important to understand that black separatists emerged as a consequence of the slow pace of public school desegregation in the South and as a reaction to the subtle and insidious forms of evasion of desegregation of the *de facto* segregated schools in northern cities.

Dr. Clark strongly rejects reliance on black separatists to support antibusing legislation:

In this regard it might be significant to note that in seeking to justify his position, the President stated that some black separatists were in favor of antibusing legislation. The fundamental constitutional questions, however, are not answered by this diversion. Constitutional rights can no more be abrogated by the alleged desires of the victims of oppression than by those who would seek to oppress. In seeking to obtain control over all black schools and insisting upon racially segregated schools through their support of anti-busing-for-desegregation legislation, black separatists are not only pursuing an impossible mirage but they are also, cynically or naively, giving aid and comfort to those who would use the laws of the Federal government to constrict the rights of Negroes—and to erode the democratic rights of all American citizens. In this regard they are indistinguishable from racial reactionaries—and they are accessories to the crime of destroying the democratic safeguards inherent in our constitutional government of checks and balances.

This bill is supported by those who say that the way to provide equal educational opportunities is not to desegregate through busing, but rather to improve the quality of schools attended by minority children. There are a number of defects in this line of argument.

In the first place, most of the scientific studies of the question have reached the conclusion that spending more money in ghetto schools does not improve the educational performance of children in those schools. The most massive study, the so-called Coleman report, financed by the Congress, clearly reached that conclusion. Evaluation of "compensatory education" programs since then has generally confirmed the results of the Coleman study.

In any event, to fund compensatory programs throughout the country will obviously cost a great deal more than the $500 million which this bill would devote to that purpose. Those who truly believe that compensatory education is the proper path to equal educational opportunities should be prepared to support appropriations commensurate with the need. They must also face the fact that the cost per child of compensatory education is many times greater than the cost per child of busing.

This bill would take $500 million away from programs authorized by the Emergency School Aid Act to assist in school desegregation and devote that sum instead to compensatory programs for children of low-income families. Of course, we already have ample authority to upgrade the education of poor children. Title I of the Elementary and Secondary Education Act authorizes appropriations of $6 billion annually for this purpose. This year, we appropriated only $1.8 billion and our effort to increase education appropriations was vetoed by the President—a President who supports the bill now before us. If we are serious about upgrading ghetto schools we would be supporting more adequate appropriations under title I of ESEA. $500 million taken from desegregation programs under the Emergency School Aid Act will not expand educational appropriations for minority children. On the contrary, it will reduce these opportunities still further.

Of course, even if compensatory education programs were successful in improving the test-scores of children—which is the usual measure of success in these matters—compensatory education cannot provide a key element in a child's learning and maturing process. We live in a diverse, heterogeneous society. There was a time when the "neighborhood school" reflected the entire community—the butcher, the baker, the candlestick maker, the lawyer, the doctor, and the banker all sent their children to the local public school. This was the meeting ground of children from all walks of life and social backgrounds. In the great metropolitan areas where most of our people now live, this is no longer true, and education has suffered as a result. Through desegregation, but not through compensatory programs, we can restore this traditional element, at least to a degree. If our children are to become good citizens of a multiracial society the place to start is in the public school.

I have spoken today to show up this bill for what it is: A dangerous violation of the constitutional separation of powers and an attempt to reverse the process of desegregation to which we have committed our Government and ourselves.

We have made progress since 1954. This bill would repeal it.

We have offered hope. This bill would strangle it.

We have moved toward an open and equal society. This bill would call us to retreat.

I say, instead, we must advance, advance in the hope that we can find better answers, advance in the field of housing, jobs, urban transportation, and all the other areas that can make our society whole and just. But if we refuse equal access to quality education for all children—as this legislation would ask us

to do—then we assure the failure of all our efforts.

One hundred years after the Battle of Gettysburg, then Vice President Lyndon Johnson visited the battlefield and made a moving plea for justice that we need to hear again today:

> The Negro says, "Now." Others say, "Never." The voice of responsible Americans—the voice of those who died here and the great man who spoke here—their voices say, "Together." There is no other way.
>
> Until justice is blind to color, until education is unaware of race, until opportunity is unconcerned with the color of men's skins, emancipation will be a proclamation but not a fact. To the extent that the proclamation of emancipation is not fulfilled in fact, to that extent we shall have fallen short of assuring freedom to the free.

I ask the Senate today not to fall short of its principles. I ask for the defeat of this measure and for a renewal of the movement of responsible Americans going forward together. There is no other way.

Mr. HART. Mr. President, will the Senator yield very briefly?

Mr. MUSKIE. I yield.

Mr. HART. At the risk of embarrassing the Senator from Maine and acknowledging that we use the word "distinguished" so frequently that we demean the coin, I would suggest, having been present throughout the speech of the Senator from Maine, that, as he concluded by quoting a President, one with whom he and I served in this body, speaking at Gettysburg and describing another former President as a great man, that we in the Senate today heard a great speech by a great man. It was moving, it was eloquent, it was also factual; and I am sure that, as the country begins to develop an understanding of the concerns that have been voiced here, most particularly by the Senator from Maine this afternoon, a measure of restraint will attach. Buses will become less ominous, even in the city where they are manufactured.

Mr. MUSKIE. I am grateful to my friend from Michigan. With all respect to my other colleagues, there is no Senator whose approval means more to me, particularly in this field where his own efforts have been preeminent as a symbol of humanity, compassion, and dedication to freedom for all our people.

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.

ORDER FOR RECOGNITION OF SENATOR SCOTT ON FRIDAY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on Friday, immediately following the remarks by the distinguished Senator from Arizona (Mr. FANNIN) and preceding the remarks of the distinguished Senator from Iowa (Mr. HUGHES), the distinguished Republican leader (Mr. SCOTT) be recognized for not to exceed 15 minutes.

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

ORDER FOR RECOGNITION OF SENATOR HANSEN ON FRIDAY, OCTOBER 13, 1972

Mr. HANSEN. Mr. President, I ask unanimous consent for an order for one-quarter hour on Friday morning, October 13, 1972. This quarter hour's time would be devoted to paying tribute to our good friend and colleague, Senator LEN B. JORDAN, who will be retiring from this body.

It is my understanding that Senators SCOTT, HARRY F. BYRD, JR., TALMADGE, STENNIS, and FANNIN wish to join with me in honoring the distinguished Senator from Idaho. Senators CHURCH and HATFIELD will be out of town on Friday, but have expressed their interest in submitting their tributes to Senator JORDAN, and I ask unanimous consent that their statements be printed in the RECORD at that time.

Further, if any other Senator is able to be present for this tribute, I would certainly welcome his participation.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Wyoming? The Chair hears none, and it is so ordered.

ORDER FOR RECOGNITION OF SENATOR FANNIN ON FRIDAY, OCTOBER 13, 1972

Mr. FANNIN. Mr. President, I ask unanimous consent that I may be permitted to speak on Friday morning following the remarks of the distinguished Senator from Wyoming to pay tribute to the distinguished Senator from Idaho (Mr. JORDAN), who is leaving the Senate at the close of this session.

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

AMENDMENT OF THE SOCKEYE SALMON FISHERIES ACT OF 1947

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Commerce be discharged from the further consideration of H.R. 16870, and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 16870) to amend the Sockeye Salmon and Pink Salmon Fisheries Act of 1947.

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia?

There being no objection, the Senate proceeded to consider the bill.

The PRESIDING OFFICER. The question is on the third reading and passage of the bill.

The bill (H.R. 16870) was read the third time and passed.

Mr. ROBERT C. BYRD. I ask unanimous consent that the action taken earlier today on S. 4037 be rescinded.

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

Mr. ROBERT C. BYRD. I ask unanimous consent that S. 4037 be indefinitely postponed.

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

EQUAL EDUCATIONAL OPPORTUNITIES ACT OF 1972

The Senate continued with the consideration of the bill (H.R. 13915) to further the achievement of equal educational opportunities.

Mr. GAMBRELL. Mr. President, in the absence of any further debate on the part of the opponents of the pending measure, I should like to take this opportunity to complete the record on a matter which I mentioned yesterday in the course of the discussion of the so-called antibusing bill.

I mentioned yesterday that last Friday or last Thursday, the Fifth Circuit Court of Appeals, in New Orleans, had announced a decision in the Atlanta School Board desegregation case, the latest round of court battles in that matter. I referred to the fact that, much to everyone's surprise and amazement, the Fifth Circuit Court of Appeals issued a fairly brief order not containing any significant findings of fact but ordering within 6 weeks the implementation of what would have to be a large-scale plan of crosstown busing.

Mr. President, there is not a bill pending for consideration, is there?

The PRESIDING OFFICER. The unfinished business is before the Senate, which the Senator is discussing.

Mr. GAMBRELL. The Fifth Circuit Court's order, although it does not say anything about busing, says that there are a certain number of schools in certain sections of Atlanta which are substantially black in racial composition and that there are a certain number of schools in other sections of the city which are substantially white in racial composition and that, for no reason contained in the opinion, that is apparently an intolerable situation, and that some plan for achieving some racial mix in those schools must be accomplished. It does not say they have to be desegregated. It simply says that something has to be done about having a racial mix in those schools.

Incidentally, the Atlanta case has been going on for some 11 years, to my knowledge. The Atlanta school system has complied with every order. In fact, it has anticipated most of the orders that have been issued and has done what we thought at various stages had been desegregation of the school system in Atlanta.

The Federal district court, in July of 1971, issued an order describing the history of the Atlanta case, describing the fact that Atlanta has become a majority black city; that the school system is made up of a majority of black pupils; that, although the Atlanta School Board does not have a majority of black members, it has a number of black members,

and its president is none other than Dr. Benjamin Mays, the president of the predominantly black Morehouse College in Atlanta, the same gentleman who delivered the funeral address at the funeral of Martin Luther King, Jr.

The court mentions the fact that the Urban League of Atlanta, by majority vote, with no dissents, passed a resolution praising the school board's efforts recommending against busing; and the Department of Health, Education, and Welfare, as the court says, had long ago approved the court's desegregation plan. The court said:

> The remedy of mass busing under these circumstances is rejected. Atlanta's de jure status—that is, its previously segregated status—has long since been removed by board action and by successive court decrees. Its present problems are entirely de facto.

That is, the fact that there are substantially all white and substantially all black schools is the result of housing patterns and other things not accomplished by legal requirements of the board or otherwise:

> There is absolutely no evidence of any affirmative action by the board to increase segregation. To the contrary, all official actions for many years have been to promote integration. It appears to be a unitary system.

Then the court quotes from the Charlotte case—

> Within which no person is to be effectively excluded from any school because of race or color.

On such basis, the Court says, Atlanta is entitled to a dismissal.

The Court goes on to say:

> Insofar as one-race schools are concerned, the board has satisfied its burden of showing that their racial composition is not the result of present or past discriminatory action on their part.

Mr. President, the Fifth Circuit Court takes notice of the finding that Atlanta has a unitary system; but, as I say, it goes on, pointing out the existence of these substantially one-race schools and requiring a new plan which would accomplish some racial mix. It does not say that it has to achieve the 70–30 black-white balance that the system as a whole has; but it seems to me that the requirement that anyone be placed in any school on the basis of his race is a requirement of achieving some racial balance, and it is certainly a requirement that action be taken diametrically to the contrary of the Supreme Court's decision in Brown against the Board of Education.

Last spring, when we debated the so-called Griffin amendment in the Senate, I proposed an amendment which would impose a moratorium on busing until what amounted to 75 percent of all the school systems and of all the pupils in the United States had come under plans which were approved by the Justice Department and the Department of Health, Education, and Welfare as being utterly free of discrimination. I believe the Senator from Florida was a cosponsor of that proposal. That amendment was opposed on the basis that this plan would require the integration of school systems which were possibly segregated by race in the sense of racial separation and isolation but which were the result of de facto segregation, so-called.

That proposal was voted down by many of those who are opposing this bill, on the theory that it would be a wonderful thing if we could have national unanimity of desegregation practices, and that it would not be right—it would be unconstitutional, in fact—to have any mix of races by court order where any segregation that existed was purely a matter of de facto segregation.

Here, Mr. President, is a situation in which a court has required integration of a school system that has been found to be nondiscriminatory, not segregated by law, unitary, whatever description you want to use for it and one in which racial separation exists, yes, but it exists, as we say, de facto.

Now, what is more disturbing aside from the legal situation that we are looking at, is the practical situation.

The district court added this comment:

> Looking ahead, the court is compelled to note that the critical point for public education in the City of Atlanta and its environs has been reached. The situation calls for a sweeping examination of its relationship to housing, planning, finances, rapid transit and all the other external factors which vitally affect its role in the community. Apparently, no serious effort has been expended on the question of consolidation of the Atlanta system with the Fulton County system. In terms of efficiency, taxes and quality education, such consolidation normally produce long-range improvements. In terms of the current problem, such consolidation might well produce partial, even though not perfect solutions. Certainly for many reasons connected and unconnected with this case, this one aspect ought to be studied without delay. In any such investigation, the proper vehicle should be community-wide, crossing lines of industry, government, and transportation as well as educational. While the School Board should certainly participate, it cannot function successfully alone. A special Mayor's Committee of both races might be appropriate. The existing Biracial Committee might well be expanded to 20–30 members to undertake such a task. If so, the court would gladly entertain a motion by any party or the committee itself to add sufficient members to represent the other community aspects involved. Short of such critical re-evaluation, the Atlanta system faces a difficult task in merely "hanging on" to its present position, awaiting the uncertain reversal of white flight from its limits.

What the court is talking about is the result of a partial study made by a biracial committee, under a previous court order, of a search to discover ways and means of retention in the city of Atlanta of a biracial community living together in peace.

It is not the only place or the first place, as I understand the discussion, as the Richmond case is very similar.

Just to give an example, in the past 3 years my ad valorem tax rates on my residence in Atlanta have gone up by nearly 200 percent. About 85 percent of that increase is due to the increase in school taxes.

The reason for that is that there has been a decline in property values in many areas of the city due to just exactly the problem we are talking about. That means that the assessment on all property in the city must be increased in order to raise the money that is necessary to continue operating the schools within the city.

But some might say, "Why don't we just draw a bigger and bigger circle around Atlanta and desegregate it throughout the whole metropolitan area, as we have in Detroit, in Duluth, or in other areas, as the court has ordered in Richmond?"

That might solve some of the problems of the so-called white flight, but actually that still avoids the basic problem, and that is, the undermining and the destruction of important community institutions within a metropolitan area.

People live near the churches. People live near the clubs, and in lodge houses that they belong to. People live near the people that they like to associate with. The so-called ethnic groups live in communities that they choose for themselves. This is the sense of community that people have within our civilization that is to be encouraged and not discouraged.

But this is what we are facing in Atlanta, a complete turnover in the racial composition of the entire community and a destruction of the ability of the Atlanta Board of Education to finance education for whatever children are left there, black or white.

Mr. President, this decision has caused a great deal of concern in Atlanta, and in the area, and among the children and the parents affected.

I have taken some time and been at some pains in my brief tenure here in the Senate to try to encourage, if not a turning away from this, what has been found to be an unproductive, in fact, a counterproductive remedy for desegregation, to find some means of equalizing it throughout the country, to be sure it is something that we all want.

At one time or another, I have urged various measures to achieve equal desegregation enforcement and equal protection of the law in terms of desegregation enforcement. I have called on the President a number of times to offer the school systems in Georgia the same kind of desegregation relief that has been offered in other areas of the country. But, I felt sufficiently concerned about the Atlanta case, and the fact that after 11 or 12 years of trying, after 6 or 7 years of complying, and after doing everything that I think any reasonable person or group of people who had tried not only to give equal educational opportunities but to save our community, that we are now faced with something which, I think, borders on being a disaster for the community.

I mentioned yesterday that there are black areas in Atlanta—and when I say black areas I mean black communities—where the homes and residences are of a quality not equaled in Washington. The schools in those communities are of a quality, also, that are not equaled by anything here in Washington.

I might say that I have had a child attend probably what is one of the better public schools in the Washington, D.C., public school system.

These people who live in the black communities are not interested in having their children transported out of those

communities. They are not interested in having anyone transported in, be they black or white. They see the destruction of their communities in this Court order and in many of the orders which have already taken place. Here, in a matter of 6 weeks, after 11 or 12 years of complying, the Atlanta system is right in the middle of the school year and has got to come up and implement a plan on crosstown busing.

But, Mr. President, it so happens that President Nixon will be in Atlanta on Thursday of this week. I suppose his visit has something to do with politics although among other things he is to dedicate a municipal facility. It occurred to me that his visit was timely, insofar as this current question is concerned before the Senate and before the country. So I have written him a letter, which reads as follows:

OCTOBER 10, 1972.

DEAR MR. PRESIDENT: The people of Atlanta will welcome you to our capital city on Thursday. I hope that you will be prepared to address yourself to a matter currently weighing most heavily upon them. Last week, the Fifth Circuit Court of Appeals ordered the Atlanta Public School System to prepare a student assignment plan which would require massive cross-town busing of school children beginning November 27, 1972. I hope that you will declare Thursday that you are doing everything within your power as President of the United States to see that this order will not be implemented, and that you have instructed the Justice Department to intervene in the Atlanta case seeking a stay of the busing order, as you have done in similar cases in Detroit, Michigan, Dallas, Tex., Richmond, Va., Oklahoma City, Okla., Las Vegas, Nevada, Nashville, Tenn. and others.

To assist with your consideration of this matter, I am enclosing copies of the decisions of the Fifth Circuit Court of Appeals and the U.S. District Court for the Northern District of Georgia in the Atlanta case. As incredible as it must seem, the Court recognizes the District Court's holding that Atlanta has, and has had, a unitary school system, but yet goes on to require massive busing aparently for the sole purpose of having some racial mix in all schools.

The District Court, in its decision in July, 1971, pointed out that the application of previous desegregation remedies had simply resulted in housing and population shifts, and resegregation, and rejected the type remedy being ordered by the Court of Appeals, with the following observation:

"Of paramount significance, however, is the obvious result. Atlanta now stands on the brink of becoming an all-black city. A fruit-basket turnover through busing to create a 30 percent white—70 percent black uniformity throughout the system would unquestionably cause such a result in a few months time. Intelligent black and white leadership in the community realizes and fears it. Responsible citizens both in and out of the school system are deeply concerned with preservation of the biracial identity of the city. Without it, the ultimate goal of equality in all its aspects is doomed and Atlanta's position of leadership is severely threatened."

In other words, the Fifth Circuit Court held that regardless of the absence for many years of segregation by law or official policy, regardless of the absence of any Supreme Court decision requiring such a remedy, regardless of the fact that blacks are in the majority throughout the system, regardless of the fact that a black dominated school board presided over by a leading black educator, has urged against it, regardless of the fact that it is opposed by an overwhelming majority of both black and white communities in Atlanta, regardless of the fact that the effect of these orders has undermined the biracial stability and financial security of the City of Atlanta, and regardless of the fact that black children may now elect to attend any majority white school of their choice in the city, nonetheless, the School Board must assign some students on the basis of race, against their wills, to schools at great distance from their own communities. This is assinine.

The people of Atlanta deserve better than this. I will match Atlanta's progress toward achieving racial harmony with any community in the country. The paranoia of the Federal judiciary in achieving a black-white ratio with white students fleeing in droves will soon produce a perfect ratio in Atlanta—100 percent black. What price success?

I am doing everything in my power this week to secure positive action in the Senate on the pending Equal Educational Opportunities bill which would bring an end to forced busing. I call on you to do everything in your power to stop implementation of the Atlanta busing order.

With best regards, I am,

Sincerely,

DAVID H. GAMBRELL.

Mr. President, I am sincere about that. We have had busing in every major city in Georgia. I think in every case that busing has been required if the district court finds that there had been a stubborn and obstinate resistance by the school board or by the community as a whole. This is not true in the case of Atlanta. Frankly, I think desegregation could be accomplished in the cities, and it has been accomplished in Atlanta, without the necessity of forced school busing across town. This is why I am in favor of the bill, because I think it is a very narrowminded person—in fact, it is a person who does not want to actually solve the problem—who says that we have to have forced school busing, as we have had it, in order to desegregate.

I have heard a lot of talk here about the constitutional rights that are being deprived from little children. Of course, the Supreme Court in none of these cases that have been decided, and particularly in the Swann case, ever said that anybody had a constitutional right to have busing. And the Supreme Court has recognized many other remedies for desegregation.

It is absolutely foolish to say that there is a constitutional right to a particular remedy when there are any number of other remedies available and when this remedy has been applied and has been proved to be a false educational premise, and that is that there is more gain to be achieved by transporting little children out of their own communities across town to other communities than would be gained by upgrading the quality of the education in their own communities.

So there is nothing, essentially, to the argument of constitutionality or constitutional rights. There is a constitutional right not to be discriminated against. But there is no educational achievement in massive crosstown busing. And there is no constitutional right to have it.

Mr. President, I am a little disappointed that, for all of the supposed cogent reasons that have been alleged to exist for putting this decision off or for voting it down, not one single amendment has been called up to this bill. For all we know, cloture may be invoked tomorrow, and any opportunity to present an amendment beyond those at the desk will have been missed. The opportunity for amending the bill with amendments that may not be considered germane would have been missed.

It seems to me that those who are opposed to this bill might as well get down to the proposition of saying, "Yes, we are against the bill in all its forms. And we are simply stalling until Friday or Saturday, whenever adjournment time comes. We have got a lot of reasons stacked up here, but we are not serious about them. We are just talking."

Mr. President, I heard some noble speeches on the floor here today. I think it is fine to have noble sentiments and to express them in the U.S. Senate. However, I would have to say that those noble speeches that were made were made, I think, primarily from a lack of exposure to this problem.

I would have to observe that the Senator from Michigan is the only Senator that I know of who is directly faced with this problem in his own home community who has staunchly defended the practice, as he has.

There may be other resolutions to this problem than that which has been offered. There might be some that I would prefer. I have proposed amendments of my own. However, we are getting down to the point where we are talking about whether we will have this one or not, because no one seems to be interested in proposing alternatives.

I think the time for being noble is passed, because all we are doing is stalling. And frankly, I have heard something about its being a political year and that something will be done about it next year.

I believe, though I will not be here next year, that the Members of the Congress who come back next year will be even more determined, because I have noticed that the more this spreads, the more vigorous people are in trying to do away with it.

It may be that the opponents will be successful in putting it off until two-thirds of the membership of both Houses have assembled and acted against this practice and a constitutional amendment is passed. I would say that would be an achievement on the part of the opponents of this legislation who have been so stubborn about the matter that they have brought down around their heads, their shoulders, and their principles, a constitutional amendment to put an end to it.

Mr. GRIFFIN. Mr. President, will the Senator yield to me without losing his right to the floor?

Mr. GAMBRELL. I am happy to yield to the Senator from Michigan.

Mr. GRIFFIN. I think the distinguished Senator from Georgia is correct. I have made that assessment myself: Those who are blocking a vote on a legislative remedy in this session may well rue the day, because I foresee that, as this threat and reality of busing spreads

throughout the country, in the next session of Congress there will be an overwhelming demand not for legislative remedies but for a constitutional amendment.

Unfortunately, and I say unfortunately because it is unfortunate, people are losing faith in the courts—at least insofar as this particular issue is concerned.

The Broomfield amendment was passed and the courts, through use of semantic differences, ignored the intent of Congress, even though it was very clearly stated in both Houses of Congress; and even though I am the sponsor of a constitutional amendment I have said on other occasions I would much rather deal with this problem legislatively. I do not want to clutter up the Constitution with additional amendments.

But if we are going to be extended to the point that it will be necessary to get a two-thirds vote in order to have a vote on the merits of a legislative proposal, which is the situation we are in, we might just as well adopt the constitutional amendment, which is a sure-fire way to deal with it, and then we do not have to be concerned about whether the court is going to hold it to be constitutional.

I agree with the Senator from Georgia; I think that in the next session of Congress there will be even more Senators, as a result of the election, who will want to do something about this problem, and they will want to do something that is effective. If we are going to be required to marshal and muster a two-thirds vote, we are very likely to have a constitutional amendment.

Mr. GAMBRELL. I thank the junior Senator from Michigan for those remarks. They are certainly apt and bring to mind another situation that has occurred to me.

We have been criticized, and I do not recall all the various terms used, for tying the hands of the court, stretching the powers of the court, undermining the courts, cutting down the balance of powers by pruning one of the three branches of government.

Actually, I consider this type legislation to be a matter of saving the court system for itself. We have a system, whether one wants to call it law enforcement, school administration, educational policy, what have you, that is obviously a controversial and highly emotional matter, which is being applied in a patchwork way, some here, some over there, some over here, and some down there; this sort of plan here, that sort of plan here, and another type plan over there. People in one community look over to the other community and say, "How come they are doing it that way and we have to do it this way?" They are told that they have a different judge over there, and that he looks at it in a different way.

We have had this situation in Georgia. I find it difficult to explain why we did not have busing in Atlanta and we did in every other community. Now we do, but for several years Atlanta was said to have a unitary system and, "You do not have to have busing." The people do not understand the distinction between de facto and de jure.

But beyond that Michigan, Georgia, and other States have widespread busing, and other States have busing requirements. The people are indignant about this. They would accept it in Georgia and in Atlanta if they had it in every other city, and they do not, and the reason is that the court system does not apply uniformly throughout the country. This is a legislative problem, not a judicial problem. That is what we are trying to do here.

It may outrage a number of people, but I suggest that the opposition to this does not say, "We have a better plan and a different type plan." The opposition simply sits by and indulges in stalling. If the court system in this country collapses, and I say it is on the verge of collapse, and it will collapse if something is not done to regularize the forced busing system throughout the country, either by doing away with it or setting up a uniform system, or giving everybody some of it, the courts share the responsibility for this type enforcement.

I hear in political campaigns around the country of people calling for Federal judges to be elected. In my opinion that would be a disaster, but that is the type thing that comes out of this type controversy where judges are required to attempt to administer something that is primarily a legislative problem.

I say that if the opponents of this bill have some other solution to the overall problem, some way to save our communities that want to be saved from being destroyed through being undermined by this type so-called desegregation enforcement, let them say so. It has gotten to the point where it is not desegregation anymore, it is plain integration, just integration; something the parent would not agree to is being forced on children.

Mr. President, I simply wanted to point out where this type of court enforcement can lead. It can lead to what we have in Atlanta, which is what opponents of this legislation last spring said it would never come to: de facto type desegregation. It is there. I think it is important that the opponents of the legislation realize they are undermining the court system, they are defeating their own purposes, asking the people of this country to come back even harder and stronger than now, to make even harsher remedies.

I ask the opponents of this legislation to give serious consideration to offering some alternatives, by letting us have an up and down vote on this problem before Congress adjourns.

Mr. President, I yield the floor.

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the program for tomorrow is as follows:

The Senate will convene at 8:30 a.m.

After the two leaders are recognized, the following Senators will be recognized for the times stated and in the order listed:

Mr. YOUNG, 5 minutes.
Mr. WEICKER, 15 minutes.
Mr. MATHIAS, 10 minutes.
Mr. HARRY F. BYRD, JR., 15 minutes.
Mr. AIKEN, 10 minutes.
Mr. RANDOLPH, 10 minutes.
Mr. HART, 10 minutes.
Mr. SCOTT, 10 minutes.
Mr. CASE, 10 minutes.
Mr. JAVITS, 10 minutes.
Mr. STENNIS, 10 minutes.
Mr. HUGHES, 15 minutes.
Mr. ROBERT C. BYRD, 15 minutes.

In the event there is any remaining time, following the orders just mentioned and prior to 11 a.m., such remaining time will be utilized for the transaction of routine morning business, with the usual limitation on statements therein of 3 minutes.

In any event, at 11 a.m. the 1 hour of controlled debate under rule XXII on the motion to invoke cloture on H.R. 13915, the equal educational opportunities bill, will begin.

At 12 o'clock noon, the mandatory quorum call will start, and as soon as a quorum is established, the yea-and-nay vote on the motion to invoke cloture will be automatic and should begin circa 12:15 p.m.

If cloture is invoked, the unfinished business will continue under consideration until finished. If cloture is not involved, another vote on a motion to invoke cloture will occur on Thursday.

As stated earlier today by the distinguished majority leader, the Abrams nomination will be called up tomorrow afternoon in the event cloture is not invoked.

The supplemental appropriations bill may be brought up, hopefully, by Thursday afternoon.

The debt limitation will be ready by the latter part of the week.

There will be lesser measures on the calendar, which may or may not be called up, depending upon the circumstances.

Conference reports may be called up at any time.

Yea-and-nay votes are expected to occur daily from here on out through Saturday, October 14, the hoped-for sine die adjournment date.

ADJOURNMENT TO 8:30 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 8:30 a.m. tomorrow.

The motion was agreed to; and at 6:30 p.m. the Senate adjourned until tomorrow, Wednesday, October 11, 1972, at 8:30 a.m.

NOMINATIONS

Executive nominations received by the Senate October 10, 1972:

U.S. NAVY

Vice Adm. Dick H. Guinn, U.S. Navy, for appointment to the grade of vice admiral, when retired, pursuant to the provisions of title 10, United States Code, section 5233.

Vice Adm. Fred G. Bennett, U.S. Navy, for appointment to the grade of vice admiral, when retired, pursuant to the provisions of title 10, United States Code, section 5233.

Vice Adm. George E. Moore II, Supply Corps, U.S. Navy, for appointment to the grade of vice admiral, when retired, pursuant to the provisions of title 10, United States Code, section 5233.

Vice Adm. Ralph Weymouth, U.S. Navy, for appointment to the grade of vice admiral, when retired, pursuant to the provisions of title 10, United States Code, section 5233.

IN THE ARMY

The following-named officers for promotion in the Regular Army of the United States, under the provisions of title 10, United States Code, sections 3284 and 3299:

ARMY PROMOTION LIST

To be lieutenant colonel

Irkzarry-Toro, Enrique, xxx-xx-xxxx.
McCreary, John J., Jr., xxx-xx-xxxx.
McDonnell, James E., xxx-xx-xxxx.
Spearing, James M., xxx-xx-xxxx.

MEDICAL SERVICE CORPS

To be lieutenant colonel

Fields, James S., xxx-xx-xxxx.

ARMY PROMOTION LIST

To be major

Banks, James H., xxx-xx-xxxx.
Benson, William L., Jr., xxx-xx-xxxx.
Cochran, Pinckney C., xxx-xx-xxxx.
Evans, George O., xxx-xx-xxxx.
Flesher, Dale D., xxx-xx-xxxx.
Green, Marvin R., Jr., xxx-xx-xxxx.
Rogers, James C., xxx-xx-xxxx.

ARMY PROMOTION LIST

To be captain

Archebelle, Edwin B., xxx-xx-xxxx.
Berzins, Guntis G., xxx-xx-xxxx.
Blackwell, Leon B., xxx-xx-xxxx.
Bowers, Norman L., xxx-xx-xxxx.
Brownlee, William R., xxx-xx-xxxx.
Cerone, Daniel T., xxx-xx-xxxx.
Cestaro, Michael J., xxx-xx-xxxx.
Cowsert, Garrett T., xxx-xx-xxxx.
Dickinson, Paul W., xxx-xx-xxxx.
Elsey, David P., xxx-xx-xxxx.
Everitt, Donald B., xxx-xx-xxxx.
Fassett, Richard M., xxx-xx-xxxx.
Frankel, Ronald S., xxx-xx-xxxx.
Frost, Jerry D., xxx-xx-xxxx.
Fryer, Eugene D., xxx-xx-xxxx.
Greene, Robert E., Jr., xxx-xx-xxxx.
Halburnt, Johnny L., xxx-xx-xxxx.
Harris, Steven R., xxx-xx-xxxx.
Holland, John L., xxx-xx-xxxx.
Jacobelly, Robert C., xxx-xx-xxxx.
Mac Harrie, William R., xxx-xx-xxxx.
Mac Mullen, John D., xxx-xx-xxxx.
McDonald, James A., xxx-xx-xxxx.
Miller, Billy J., xxx-xx-xxxx.
Murray, Howard A., xxx-xx-xxxx.
Nesbitt, Ray F., xxx-xx-xxxx.
Pope, Robert J., xxx-xx-xxxx.
Reed, Ronald B., xxx-xx-xxxx.
Riley, Hubbard L., xxx-xx-xxxx.
Rochon, Kenneth J., xxx-xx-xxxx.
Ross, Edward W., xxx-xx-xxxx.
Smalls, Thomas E., xxx-xx-xxxx.
Stauffacher, Thomas, xxx-xx-xxxx.
Steiner, Darryl L., xxx-xx-xxxx.
Stokes, Willie J., xxx-xx-xxxx.
Van Fossan, James A., xxx-xx-xxxx.
Van Horn, Jerry, xxx-xx-xxxx.
Viner, Tommy J., xxx-xx-xxxx.
Wald, Ralph L., xxx-xx-xxxx.
Whittier, Walter C., xxx-xx-xxxx.
Williams, John J., xxx-xx-xxxx.

WOMEN'S ARMY CORPS

To be captain

McFarland, Alice J., xxx-xx-xxxx.

MEDICAL CORPS

To be captain

Raines, David R. Jr., xxx-xx-xxxx.

DENTAL CORPS

To be captain

Turner, Kenneth D., xxx-xx-xxxx.

ARMY MEDICAL SPECIALIST CORPS

To be captain

Naranjo, Carmen J., xxx-xx-xxxx.
Reid, Barbara C., xxx-xx-xxxx.

The following-named officers for promotion in the Regular Army of the United States, under the provisions of title 10, United States Code, sections 3284 and 3298:

ARMY PROMOTION LIST

To be first lieutenant

Abbott, John P., xxx-xx-xxxx.
Abbott, Wayne E., xxx-xx-xxxx.
Abney, Lincoln M., xxx-xx-xxxx.
Abramovitz, Irwin J., xxx-xx-xxxx.
Adams, Ernest C., xxx-xx-xxxx.
Adams, Frank B., xxx-xx-xxxx.
Adams, James W., xxx-xx-xxxx.
Adams, Lonnie B., III, xxx-xx-xxxx.
Adams, Tommy M., xxx-xx-xxxx.
Adamson, James C., xxx-xx-xxxx.
Adinaro, Joseph T., xxx-xx-xxxx.
Adkins, Charles E., xxx-xx-xxxx.
Affeldt, John F., xxx-xx-xxxx.
Aileo, William A., xxx-xx-xxxx.
Albanese, Ernest L., xxx-xx-xxxx.
Albrecht, George W., xxx-xx-xxxx.
Albright, Paul S., xxx-xx-xxxx.
Allaire, Stephen D., xxx-xx-xxxx.
Allanach, William C., xxx-xx-xxxx.
Allen, James H., xxx-xx-xxxx.
Allen, James M., xxx-xx-xxxx.
Allen, James M., xxx-xx-xxxx.
Allen, Robert W., xxx-xx-xxxx.
Allen, Roy J., Jr., xxx-xx-xxxx.
Alley, Claude R., xxx-xx-xxxx.
Alley, Richard F., Jr., xxx-xx-xxxx.
Alvarez, Joel R., xxx-xx-xxxx.
Ammon, Peter J., xxx-xx-xxxx.
Anconetani, Anthony, xxx-xx-xxxx.
Anderson, Charles W., xxx-xx-xxxx.
Anderson, Larry E., xxx-xx-xxxx.
Anderson, Michael B., xxx-xx-xxxx.
Anderson, Robert W., xxx-xx-xxxx.
Anderson, Thomas M., xxx-xx-xxxx.
Andrasik, Joseph, xxx-xx-xxxx.
Andrews, Zalph H., Jr., xxx-xx-xxxx.
Anstrom, Charles V., xxx-xx-xxxx.
Anthony, Steven C., xxx-xx-xxxx.
Antoniotti, Joseph, xxx-xx-xxxx.
Antonitis, John E., I, xxx-xx-xxxx.
Arakaki, Don, xxx-xx-xxxx.
Archer, Laurence L., xxx-xx-xxxx.
Armstrong Marion V., xxx-xx-xxxx.
Arnold, James J., xxx-xx-xxxx.
Arthur, Ralph W., III, xxx-xx-xxxx.
Artigliere, Ralph, xxx-xx-xxxx.
Artola, George H., xxx-xx-xxxx.
Ashley, Richard C. J., xxx-xx-xxxx.
Atkins, Bruce A., xxx-xx-xxxx.
Austin, John C., xxx-xx-xxxx.
Aykroyd, Douglas S., xxx-xx-xxxx.
Babcock, Edward S. J., xxx-xx-xxxx.
Bacevich, Andrew J., xxx-xx-xxxx.
Bachta, James M., xxx-xx-xxxx.
Bacon, Terry R., xxx-xx-xxxx.
Bahr, William J., xxx-xx-xxxx.
Bailey, Alton P., xxx-xx-xxxx.
Bailey, Edward L., xxx-xx-xxxx.
Bailey, Ronald R., xxx-xx-xxxx.
Bailey, Samuel H., II, xxx-xx-xxxx.
Bailey, Sedell, xxx-xx-xxxx.
Bailey, Thomas K., xxx-xx-xxxx.
Bair, Tracy R., xxx-xx-xxxx.
Baker, David C., xxx-xx-xxxx.
Baldwin, Robert H. J., xxx-xx-xxxx.
Ball, Blaine S., xxx-xx-xxxx.
Ball, James A., xxx-xx-xxxx.
Ballenberger, Walte, xxx-xx-xxxx.
Ballenger, John P., xxx-xx-xxxx.
Ballou, Justin G., II, xxx-xx-xxxx.
Balog, Roger P., xxx-xx-xxxx.
Balough, Daniel C., xxx-xx-xxxx.
Banks, John T., xxx-xx-xxxx.
Barber, Dana Q., xxx-xx-xxxx.
Barber, David S., xxx-xx-xxxx.
Barclay, Robert P., xxx-xx-xxxx.
Barnett, Forrest W., xxx-xx-xxxx.
Barry, Charles L., xxx-xx-xxxx.
Barstis, George A., xxx-xx-xxxx.
Barszcz, Michael, Jr., xxx-xx-xxxx.
Barth, Brent B., xxx-xx-xxxx.
Bassett, Robert A., xxx-xx-xxxx.
Bastey, Mark F., xxx-xx-xxxx.
Bateman, William V., xxx-xx-xxxx.
Bates, Donald R., xxx-xx-xxxx.
Battjes, Henry, xxx-xx-xxxx.
Battles, Dennis O., xxx-xx-xxxx.
Baum, William E., xxx-xx-xxxx.
Bazan, James D., xxx-xx-xxxx.
Bazzel, Peter J., xxx-xx-xxxx.
Beach, Donald W., xxx-xx-xxxx.
Bean, Robert E., III, xxx-xx-xxxx.
Beard, William G., Jr., xxx-xx-xxxx.
Beauchamp, Frederic, xxx-xx-xxxx.
Becker, Robert J., xxx-xx-xxxx.
Beckworth, Tim K., xxx-xx-xxxx.
Begland, Robert R., xxx-xx-xxxx.
Behncke, Robert H., xxx-xx-xxxx.
Belack, Carl N., xxx-xx-xxxx.
Belden, David F., xxx-xx-xxxx.
Bell, Burwell B., III, xxx-xx-xxxx.
Bell, Thomas A., xxx-xx-xxxx.
Beller, Robert E., xxx-xx-xxxx.
Benham, Billy, xxx-xx-xxxx.
Bennett, James D., xxx-xx-xxxx.
Bensberg, Thomas E., xxx-xx-xxxx.
Berdan, Robert J., xxx-xx-xxxx.
Berenato, Joseph C., xxx-xx-xxxx.
Bergh, Roger S., xxx-xx-xxxx.
Berkson, Joseph M., xxx-xx-xxxx.
Berwick, Christopher R., xxx-xx-xxxx.
Besecker, Kenneth H., xxx-xx-xxxx.
Best, Robert B., xxx-xx-xxxx.
Bettencourt, Vernon, xxx-xx-xxxx.
Bevis, Kenneth M., xxx-xx-xxxx.
Bewley, Robert S., xxx-xx-xxxx.
Biasi, Peter M., xxx-xx-xxxx.
Bible, Michael C., xxx-xx-xxxx.
Bickel, John W., xxx-xx-xxxx.
Bidwell, Alex L., xxx-xx-xxxx.
Billingsley, Sidney, xxx-xx-xxxx.
Binder, Gregory C., xxx-xx-xxxx.
Bird, Daniel C., Jr., xxx-xx-xxxx.
Bischoff, Robert C., xxx-xx-xxxx.
Bish, Gary A., xxx-xx-xxxx.
Bishop, Robin M., xxx-xx-xxxx.
Black, John J., Jr., xxx-xx-xxxx.
Blackburn, Linwood, xxx-xx-xxxx.
Blaine, Richard C., xxx-xx-xxxx.
Blake, David C., Jr., xxx-xx-xxxx.
Blake, Thomas J., xxx-xx-xxxx.
Blaney, Daniel J., xxx-xx-xxxx.
Block, David J., xxx-xx-xxxx.
Blumer, John P., xxx-xx-xxxx.
Boggs, James D., xxx-xx-xxxx.
Boivin, Robert E., xxx-xx-xxxx.
Bolger, John T., III, xxx-xx-xxxx.
Bonebrake, Charles, xxx-xx-xxxx.
Bonno, Michel, E., xxx-xx-xxxx.
Boone, Larry G., xxx-xx-xxxx.
Bornhoft, Stewart H., xxx-xx-xxxx.
Borresen, David F., xxx-xx-xxxx.
Bortner, Jerry L., xxx-xx-xxxx.
Boswell, Robert E., xxx-xx-xxxx.
Bowen, Cotton W., xxx-xx-xxxx.
Bowers, Frame J., III, xxx-xx-xxxx.
Bown, Gilbert F., xxx-xx-xxxx.
Boyd, Leslie J., xxx-xx-xxxx.
Boye, Brooks A., xxx-xx-xxxx.
Braddy, John R., xxx-xx-xxxx.
Brandt, William M., xxx-xx-xxxx.
Brant, Philip D., Jr., xxx-xx-xxxx.
Bratton, Marshall S., xxx-xx-xxxx.
Braun, George F., xxx-xx-xxxx.
Brechtel, Michael, xxx-xx-xxxx.
Brennan, Michael A., xxx-xx-xxxx.
Brennan, Thomas J., xxx-xx-xxxx.
Bresnan, Frederick, xxx-xx-xxxx.
Bresnick, Terry A., xxx-xx-xxxx.
Briggs, Walter J., xxx-xx-xxxx.
Brigham, Robert A., xxx-xx-xxxx.
Brillante, Joseph R., xxx-xx-xxxx.
Brittain, Frank W., xxx-xx-xxxx.
Brittenham, Billy F., xxx-xx-xxxx.
Brosnan, Francis M., xxx-xx-xxxx.
Bross, Paul J., xxx-xx-xxxx.
Brower, Charles F., xxx-xx-xxxx.
Brown, Chandler R., xxx-xx-xxxx.
Brown, James D., xxx-xx-xxxx.

Brown, James R., xxx-xx-xxxx.
Brown, Jerry L., xxx-xx-xxxx.
Brown, Keirn C., Jr., xxx-xx-xxxx.
Brown, Norman A., xxx-xx-xxxx.
Brown, Richard A., xxx-xx-xxxx.
Brown, Royal A., III, xxx-xx-xxxx.
Brownback, Peter E., xxx-xx-xxxx.
Brundage, John F., xxx-xx-xxxx.
Bryan, Samuel W., xxx-xx-xxxx.
Bryant, Fred E., xxx-xx-xxxx.
Bryant, Randall H., xxx-xx-xxxx.
Bryant, Robert B., xxx-xx-xxxx.
Bubb, Earnest E., xxx-xx-xxxx.
Buchanan, Michael A., xxx-xx-xxxx.
Buechner, Daniel A., xxx-xx-xxxx.
Bueno, Antonio, xxx-xx-xxxx.
Bullock, Gary B., xxx-xx-xxxx.
Bullock, Jerry J., xxx-xx-xxxx.
Bunn, Giles F., III, xxx-xx-xxxx.
Burgess, Harold T., xxx-xx-xxxx.
Burke, William J., xxx-xx-xxxx.
Burns, Robert P., xxx-xx-xxxx.
Burwell, Jack O., Jr., xxx-xx-xxxx.
Bustamante, Roberto, xxx-xx-xxxx.
Butler, Anthony K., xxx-xx-xxxx.
Butler, George W., xxx-xx-xxxx.
Butler, Young F., xxx-xx-xxxx.
Byard, Robert W., xxx-xx-xxxx.
Byers, George G., xxx-xx-xxxx.
Byers, John B., xxx-xx-xxxx.
Byington, Michael S., xxx-xx-xxxx.
Byrnes, James, xxx-xx-xxxx.
Cababa, Robin R., xxx-xx-xxxx.
Caffo, Ronald L., xxx-xx-xxxx.
Cain, Paul F., xxx-xx-xxxx.
Cain, William E., xxx-xx-xxxx.
Calandro, James J., xxx-xx-xxxx.
Calfee, William E., xxx-xx-xxxx.
Callaway, Thomas M., xxx-xx-xxxx.
Calvert, Gary R., xxx-xx-xxxx.
Cameron, Thomas B., xxx-xx-xxxx.
Campbell, David R., xxx-xx-xxxx.
Campbell, John G., xxx-xx-xxxx.
Campbell, Paul C., xxx-xx-xxxx.
Canas, Henry R., xxx-xx-xxxx.
Cannava, Thomas J., xxx-xx-xxxx.
Cantlay, George G., xxx-xx-xxxx.
Cantrell, Gary L., xxx-xx-xxxx.
Caranto, Eriberto R., xxx-xx-xxxx.
Cardo, James J., Jr., xxx-xx-xxxx.
Caris, Roger L., xxx-xx-xxxx.
Carlisle, Ronald W., xxx-xx-xxxx.
Carlton, William, Jr., xxx-xx-xxxx.
Carpenter, Fred V., xxx-xx-xxxx.
Carpenter, Ira W., Jr., xxx-xx-xxxx.
Carpenter, James N., xxx-xx-xxxx.
Carpenter, Michael, xxx-xx-xxxx.
Carr, Michael V., xxx-xx-xxxx.
Carrigan, Leo P., Jr., xxx-xx-xxxx.
Carrigan, Yancy L., xxx-xx-xxxx.
Carroll, Ronald J., xxx-xx-xxxx.
Carter, James T., xxx-xx-xxxx.
Carter, Richard A., xxx-xx-xxxx.
Casey, John T. D., xxx-xx-xxxx.
Casey, William M., xxx-xx-xxxx.
Cassidy, Richard P., xxx-xx-xxxx.
Castner, William B., xxx-xx-xxxx.
Catani, Albert J., xxx-xx-xxxx.
Cates, Robert W., xxx-xx-xxxx.
Cato, Lemuel J., xxx-xx-xxxx.
Causey, Danny P., xxx-xx-xxxx.
Chang, Roger, xxx-xx-xxxx.
Chasler, Charles D., xxx-xx-xxxx.
Cheatham, Sidney F., xxx-xx-xxxx.
Chernauskas, Paul J., xxx-xx-xxxx.
Christian, John K., xxx-xx-xxxx.
Christian, Robert F., xxx-xx-xxxx.
Church, Scott F., xxx-xx-xxxx.
Clancy, Edward F., xxx-xx-xxxx.
Clapper, John F., xxx-xx-xxxx.
Clapper, Kip C., xxx-xx-xxxx.
Clark, Charles G., Jr., xxx-xx-xxxx.
Clark, Gregory E., xxx-xx-xxxx.
Clark, Philip A., xxx-xx-xxxx.
Claxton, John D., xxx-xx-xxxx.
Cleary, Daniel J., II, xxx-xx-xxxx.
Clegg, Robert H., xxx-xx-xxxx.
Clemens, Robert B., xxx-xx-xxxx.
Clifford, Gayne A., xxx-xx-xxxx.
Cline, Larry R., xxx-xx-xxxx.
Clowery, Stephen M., xxx-xx-xxxx.
Cloyd, Walter L., III, xxx-xx-xxxx.
Clukey, Gary P., xxx-xx-xxxx.
Coan, George P., Jr., xxx-xx-xxxx.
Colacicco, Michael, xxx-xx-xxxx.
Colbert, David K., xxx-xx-xxxx.
Cole, Ashley B., xxx-xx-xxxx.
Cole, Christopher C., xxx-xx-xxxx.
Cole, George P., xxx-xx-xxxx.
Cole, John Harrison, xxx-xx-xxxx.
Coling, James H., xxx-xx-xxxx.
Collier, Allen S., xxx-xx-xxxx.
Collins, Michael W., xxx-xx-xxxx.
Collins, Rollins J., xxx-xx-xxxx.
Comstock, James W., xxx-xx-xxxx.
Conn, Daniel J., xxx-xx-xxxx.
Connolly, Michael P., xxx-xx-xxxx.
Connor, Dennis R., xxx-xx-xxxx.
Conrad, Thomas E., xxx-xx-xxxx.
Conway, Richard G., xxx-xx-xxxx.
Cook, Gary A., xxx-xx-xxxx.
Cook, Roger M., xxx-xx-xxxx.
Cooney, Terrence E., xxx-xx-xxxx.
Copeland, Michael J., xxx-xx-xxxx.
Copeland, Rene G., xxx-xx-xxxx.
Corica, Vincent C., xxx-xx-xxxx.
Cornelison, Joseph, xxx-xx-xxxx.
Cornes, William B., xxx-xx-xxxx.
Coryell, Thompson O., xxx-xx-xxxx.
Costello, John, xxx-xx-xxxx.
Cottrell, Walter T., xxx-xx-xxxx.
Coughenour, Kavin L., xxx-xx-xxxx.
Coulter, Martin A., xxx-xx-xxxx.
Coulter, Robert J., xxx-xx-xxxx.
Cox, Daniel J., Jr., xxx-xx-xxxx.
Cox, James G., xxx-xx-xxxx.
Coyle, Philip V., xxx-xx-xxxx.
Craft, Douglas W., xxx-xx-xxxx.
Craig, Terence G., xxx-xx-xxxx.
Crayton, Juan V., xxx-xx-xxxx.
Creasey, Kenneth H., xxx-xx-xxxx.
Creech, William A., xxx-xx-xxxx.
Creek, James H., xxx-xx-xxxx.
Cregler, Anthony L., xxx-xx-xxxx.
Crenshaw, Charles E., xxx-xx-xxxx.
Crenshaw, Walter A., xxx-xx-xxxx.
Crocker, Thomas W., xxx-xx-xxxx.
Cronin, Robert M., xxx-xx-xxxx.
Crook, Thomas M., xxx-xx-xxxx.
Crosby, Ralph D., Jr., xxx-xx-xxxx.
Cross, Dale L., xxx-xx-xxxx.
Croswhite, Timothy, xxx-xx-xxxx.
Crowden, Gary G., xxx-xx-xxxx.
Crowder, Ronald G., xxx-xx-xxxx.
Culp, Trygve Howard, xxx-xx-xxxx.
Cumbie, Donovan R., xxx-xx-xxxx.
Cunningham, Dennie, xxx-xx-xxxx.
Cunningham, James E., xxx-xx-xxxx.
Cupelli, Ralph P., xxx-xx-xxxx.
Curl, Louis J., III, xxx-xx-xxxx.
Curran, Anthony K., xxx-xx-xxxx.
Curtis, Howard G., II, xxx-xx-xxxx.
Cuviello, Peter M., xxx-xx-xxxx.
Dack, Max S., xxx-xx-xxxx.
Dahlgren, Steven L., xxx-xx-xxxx.
Dalum, David B., xxx-xx-xxxx.
Damon, William E., Jr., xxx-xx-xxxx.
Dannison, Charles R., xxx-xx-xxxx.
Daprix, Barry R., xxx-xx-xxxx.
Dare, Steven N., xxx-xx-xxxx.
Darr, George J., xxx-xx-xxxx.
Daugherty, Darrel W., xxx-xx-xxxx.
Daugherty, Stanley, xxx-xx-xxxx.
David, Philip J., xxx-xx-xxxx.
Davidson, Donald G., xxx-xx-xxxx.
Davis, John L., Jr., xxx-xx-xxxx.
Davis, Jon S., xxx-xx-xxxx.
Davis, Randolph J., xxx-xx-xxxx.
Davis, Stephen F., xxx-xx-xxxx.
Davis, William T., Jr., xxx-xx-xxxx.
Day, Curtis J., Jr., xxx-xx-xxxx.
Deale, Robert C., III, xxx-xx-xxxx.
Dean, Charles L., xxx-xx-xxxx.
Dean, Robert K., xxx-xx-xxxx.
Dearwester, Harry, xxx-xx-xxxx.
Deaton, Lloyd R., xxx-xx-xxxx.
Deekens, John M., xxx-xx-xxxx.
Deeker, Donald L., xxx-xx-xxxx.
Delacruz, Peter L., xxx-xx-xxxx.
Delacy, Peter W., xxx-xx-xxxx.
Delaney, Michael F., xxx-xx-xxxx.
Deleonardis, James, xxx-xx-xxxx.
Deller, William J., xxx-xx-xxxx.
Demartinis, Nicholas, xxx-xx-xxxx.
Demetriou, George, xxx-xx-xxxx.
Dencker, Peter A., xxx-xx-xxxx.
Dent, Samuel R., xxx-xx-xxxx.
Denton, Samuel E., xxx-xx-xxxx.
Dessel, Gregory F., xxx-xx-xxxx.
Devos, Edward G., Jr., xxx-xx-xxxx.
Dewald Lee S., xxx-xx-xxxx.
Dey, Michael J., xxx-xx-xxxx.
Deyoung, Willis B., xxx-xx-xxxx.
Dibella, Alfred L., xxx-xx-xxxx.
Dickinson, Don P., II, xxx-xx-xxxx.
Dickinson, Mark V., xxx-xx-xxxx.
Dickson, Dwight B., xxx-xx-xxxx.
Dickson, Michael A., xxx-xx-xxxx.
Diffley, Michael, xxx-xx-xxxx.
Dillon, Mark E., xxx-xx-xxxx.
Dinger, John A., xxx-xx-xxxx.
Dittmar, Joseph A., xxx-xx-xxxx.
Dixon, James W., xxx-xx-xxxx.
Dixon, Michael L., xxx-xx-xxxx.
Dobbs, Norman A., xxx-xx-xxxx.
Dolton, Henry J. Jr., xxx-xx-xxxx.
Domino, Thomas C., xxx-xx-xxxx.
Donah, Paul A., xxx-xx-xxxx.
Donaldson, Jeffrey, xxx-xx-xxxx.
Donoghue, Richard G., xxx-xx-xxxx.
Donohue, Hugh J., Jr., xxx-xx-xxxx.
Dooley, Joseph C., xxx-xx-xxxx.
Dorn, William E., Jr., xxx-xx-xxxx.
Dotsey, George J., xxx-xx-xxxx.
Dow, Steven H., xxx-xx-xxxx.
Dowling, Raymond B., xxx-xx-xxxx.
Downey, Frederick M., xxx-xx-xxxx.
Downing, Brian T., xxx-xx-xxxx.
Doyle, Edward, xxx-xx-xxxx.
Doyle, John E., xxx-xx-xxxx.
Drake, Lincoln T., xxx-xx-xxxx.
Drescher, Gary A., xxx-xx-xxxx.
Drower, Peter G., xxx-xx-xxxx.
Druener, Ronald K., xxx-xx-xxxx.
Drzik, John M., xxx-xx-xxxx.
Duffy, Richard F., xxx-xx-xxxx.
Dull, Robert J., xxx-xx-xxxx.
Dunham, James M., xxx-xx-xxxx.
Dunn, Richard J., III, xxx-xx-xxxx.
Durgin, Chesley F., xxx-xx-xxxx.
Durham, Donald S., xxx-xx-xxxx.
Duvall, William E., xxx-xx-xxxx.
Duveneck, William S., xxx-xx-xxxx.
Duvic, Robert C., xxx-xx-xxxx.
Dyer, Joseph C., xxx-xx-xxxx.
Dyson, James H., Jr., xxx-xx-xxxx.
Eargle, Francis L., xxx-xx-xxxx.
Ebertz, David C., xxx-xx-xxxx.
Edens, James E., xxx-xx-xxxx.
Edmonds, Lucien L., xxx-xx-xxxx.
Edwald, William R., xxx-xx-xxxx.
Edwards, Alan E., xxx-xx-xxxx.
Edwards, Emory H., II, xxx-xx-xxxx.
Edwards, Fred H., xxx-xx-xxxx.
Edwards, William C., xxx-xx-xxxx.
Egan, John J., xxx-xx-xxxx.
Ehrenreich, Stuart, xxx-xx-xxxx.
Eichel, James L., xxx-xx-xxxx.
Eichler, Clifford L., xxx-xx-xxxx.
Eisenhardt, Kenneth, xxx-xx-xxxx.
Eisentrout, Bruce M., xxx-xx-xxxx.
Eisert, James T., xxx-xx-xxxx.
Elfner, Alan G., xxx-xx-xxxx.
Elias, Thomas E., xxx-xx-xxxx.
Ellertson, Jack W., xxx-xx-xxxx.
Ellis, Thomas W., xxx-xx-xxxx.
Engiles, James G., xxx-xx-xxxx.
England, John C., xxx-xx-xxxx.
Epting, Richard M., xxx-xx-xxxx.
Erb, Allan L., xxx-xx-xxxx.
Erickson, Andrew E., xxx-xx-xxxx.
Erickson, Matthew H., xxx-xx-xxxx.
Esterrich, Tomas, xxx-xx-xxxx.
Estler, Gary L., xxx-xx-xxxx.
Evans, Edgar A., xxx-xx-xxxx.
Evans, Randall L., xxx-xx-xxxx.
Evans, Richard A., xxx-xx-xxxx.
Ewen, John E., xxx-xx-xxxx.
Eyermann, Louis J., I, xxx-xx-xxxx.
Eyrich, Norviel R., xxx-xx-xxxx.
Fagan, Thomas W., xxx-xx-xxxx.
Fahl, Gary M., xxx-xx-xxxx.

Fairlamb, John R., xxx-xx-xxxx
Fairman, Fredric C., xxx-xx-xxxx
Fall, Stephen M., xxx-xx-xxxx
Farber, Charles W., xxx-xx-xxxx
Farel, Douglas G., xxx-xx-xxxx
Faris, Arthur L., xxx-xx-xxxx
Farquhar, Benjamin, xxx-xx-xxxx
Faul, Jerry W., xxx-xx-xxxx
Faulkner, Ronald W., xxx-xx-xxxx
Featherstone, Willi, xxx-xx-xxxx
Feigenbaum, Larry J., xxx-xx-xxxx
Fellenz, Lloyd E., Jr., xxx-xx-xxxx
Fenimore, David, xxx-xx-xxxx
Ferchek, Gary R., xxx-xx-xxxx
Ferraro, Glenn Robe, xxx-xx-xxxx
Ferrell, James C., xxx-xx-xxxx
Fettis, Larry M., xxx-xx-xxxx
Feuge, Dennis W., xxx-xx-xxxx
Feyereisen, Paul S., xxx-xx-xxxx
Finch, Frank R., xxx-xx-xxxx
Finch, John R., xxx-xx-xxxx
Finger, Michael J., xxx-xx-xxxx
Finley, Stephen A., xxx-xx-xxxx
Fiorito, Michael, xxx-xx-xxxx
Fisher, Michael F., xxx-xx-xxxx
Fitzgerald, Douglas, xxx-xx-xxxx
Flack, Michael M., xxx-xx-xxxx
Flaugh, Keith O., xxx-xx-xxxx
Flauto, Frank J., xxx-xx-xxxx
Fleeger, Howard W., xxx-xx-xxxx
Fleming, Kenneth W., xxx-xx-xxxx
Flowers, Earl W., xxx-xx-xxxx
Flowers, Robert B., xxx-xx-xxxx
Flusche, Mark S., xxx-xx-xxxx
Fogle, George C., Jr., xxx-xx-xxxx
Folsom, James D., xxx-xx-xxxx
Fontana, Dennis J., xxx-xx-xxxx
Foos, Robert C., xxx-xx-xxxx
Ford, Jimmy M., xxx-xx-xxxx
Fore, Robert L., xxx-xx-xxxx
Forrest, Christophe, xxx-xx-xxxx
Forsyth, Gordon, III, xxx-xx-xxxx
Forsythe, Preston L., xxx-xx-xxxx
Fortune, John O., xxx-xx-xxxx
Foss, James D., xxx-xx-xxxx
Foster, Gregory D., xxx-xx-xxxx
Foster, William G., xxx-xx-xxxx
Fotenos, John, xxx-xx-xxxx
Fouche, James T., Jr. xxx-xx-xxxx
Fouts, Benjamin F., xxx-xx-xxxx
Fowler, Richard T., xxx-xx-xxxx
Frandsen, Dana C., Jr., xxx-xx-xxxx
Frantz, William T., xxx-xx-xxxx
Frazier, Dennis J., xxx-xx-xxxx
Frederick, Richard, xxx-xx-xxxx
Freeman, Carl H., xxx-xx-xxxx
Freeman, Robert L., xxx-xx-xxxx
Freeman, Terence M., xxx-xx-xxxx
French, John D., xxx-xx-xxxx
Frey, Mark L., xxx-xx-xxxx
Friedrichs, Louis G., xxx-xx-xxxx
Friese, William F., xxx-xx-xxxx
Fritchley, William, xxx-xx-xxxx
Frost, Donald C., Jr., xxx-xx-xxxx
Fruge, James E., xxx-xx-xxxx
Frykman, Richard M., xxx-xx-xxxx
Fucci, Joseph A., xxx-xx-xxxx
Fueger, Gregory G., xxx-xx-xxxx
Fullerton, Robert, xxx-xx-xxxx
Furbank, Jeffrey E., xxx-xx-xxxx
Furneaux, John E., xxx-xx-xxxx
Gafford, Jack B., xxx-xx-xxxx
Gagnaire, William C., xxx-xx-xxxx
Gallagher, Robert B., xxx-xx-xxxx
Galos, Steven W., xxx-xx-xxxx
Gamel, Gary L., xxx-xx-xxxx
Garczynski, Casimir, xxx-xx-xxxx
Garfield, Jefferson, xxx-xx-xxxx
Gargano, Ronald A., xxx-xx-xxxx
Garrett, Creig R., xxx-xx-xxxx
Garrett, Joseph G. xxx-xx-xxxx
Garrett, Robert W., xxx-xx-xxxx
Garrett, Thomas W., xxx-xx-xxxx
Garwood, Charles E., xxx-xx-xxxx
Gass, Robert G., xxx-xx-xxxx
Gates, Roland C., xxx-xx-xxxx
Gavitt, James S., xxx-xx-xxxx
Gaylord, Stanley C., xxx-xx-xxxx
Geiger, Charles R., xxx-xx-xxxx
Geis, John P., xxx-xx-xxxx
Gelineau, Joseph C., xxx-xx-xxxx
Geraghty, Richard W., xxx-xx-xxxx
Gerlinger, Rex E., xxx-xx-xxxx
Gfeller, Larry D., xxx-xx-xxxx
Giacomini, James L., xxx-xx-xxxx
Gibbens, Charles A., xxx-xx-xxxx
Gibney, Alan W., xxx-xx-xxxx
Giguere, Michael J., xxx-xx-xxxx
Gilbert, Edward C., xxx-xx-xxxx
Gilbert, Michael D., xxx-xx-xxxx
Gilpin, Harry D., Jr., xxx-xx-xxxx
Gilson, Jeffrey J., xxx-xx-xxxx
Glacel, Robert A., xxx-xx-xxxx
Glazner, Alan M., xxx-xx-xxxx
Glen, James D., xxx-xx-xxxx
Glore, Jodie K., xxx-xx-xxxx
Gloriod, John A., xxx-xx-xxxx
Glover, Donald L., xxx-xx-xxxx
Godwin, David C., xxx-xx-xxxx
Goff, Donald G., xxx-xx-xxxx
Goff, Leroy R., III, xxx-xx-xxxx
Gonser, Kent R., xxx-xx-xxxx
Goodenough, James D., xxx-xx-xxxx
Gossett, Warren C., xxx-xx-xxxx
Gotowko, Peter F., xxx-xx-xxxx
Gottshall, John F., xxx-xx-xxxx
Graham, Jimmie C., xxx-xx-xxxx
Granett, Samuel R., xxx-xx-xxxx
Grant, Johnnie W., Jr., xxx-xx-xxxx
Grant, Paul D., xxx-xx-xxxx
Grauel, John R., xxx-xx-xxxx
Gray, Ronald W., xxx-xx-xxxx
Greathouse, John M., xxx-xx-xxxx
Green, Michael T., xxx-xx-xxxx
Greer, Jason H., xxx-xx-xxxx
Gregor, William J., xxx-xx-xxxx
Griffin, Robert W., xxx-xx-xxxx
Griffin, Troy D., Jr., xxx-xx-xxxx
Griffith, Joseph H., xxx-xx-xxxx
Grimm, Henry F., III, xxx-xx-xxxx
Grisham, Danny S., xxx-xx-xxxx
Grist, Wing A., xxx-xx-xxxx
Groce, James H., xxx-xx-xxxx
Groening, William H., xxx-xx-xxxx
Grote, Richard E., xxx-xx-xxxx
Groves, Sheridon H., xxx-xx-xxxx
Gruenke, Raymond D., xxx-xx-xxxx
Guernsey, John A., xxx-xx-xxxx
Guerreio, Anthony, xxx-xx-xxxx
Guest, Robert S., xxx-xx-xxxx
Gwynne, Charles S., xxx-xx-xxxx
Haake, Arnold J., Jr., xxx-xx-xxxx
Haas, Helmut H., xxx-xx-xxxx
Haas, Joseph, xxx-xx-xxxx
Hackett, Jerome R., xxx-xx-xxxx
Hagan, Michael P., xxx-xx-xxxx
Hagberg, Jon M., xxx-xx-xxxx
Hagewood, Eugene G., xxx-xx-xxxx
Hahn, John E., Jr., xxx-xx-xxxx
Haines, Robert W., xxx-xx-xxxx
Haker, John W., xxx-xx-xxxx
Hall, Lawrence B., xxx-xx-xxxx
Hall, Thomas M., Jr., xxx-xx-xxxx
Halloran, Joseph E., xxx-xx-xxxx
Ham, Robert C., xxx-xx-xxxx
Hamilton, John R., II, xxx-xx-xxxx
Hammond, Harry S., xxx-xx-xxxx
Hand, William M., xxx-xx-xxxx
Haney, Jay B., xxx-xx-xxxx
Hanna, George M., xxx-xx-xxxx
Hanna, Tom A., III, xxx-xx-xxxx
Hansen, Chris J., xxx-xx-xxxx
Hanson, Michael D., xxx-xx-xxxx
Harben, Harley J., xxx-xx-xxxx
Harmeling, Henry J., xxx-xx-xxxx
Harms, John W., xxx-xx-xxxx
Harper, Joseph N., Jr., xxx-xx-xxxx
Harper, Melvin G., xxx-xx-xxxx
Harper, Michael V., xxx-xx-xxxx
Harper, Robert R., Jr., xxx-xx-xxxx
Harrington, Thomas, xxx-xx-xxxx
Harris, Alfred L., xxx-xx-xxxx
Harris, Thomas G., xxx-xx-xxxx
Harris, William H., xxx-xx-xxxx
Harrison, James P., xxx-xx-xxxx
Harrold, Lyman L., xxx-xx-xxxx
Hartley, Donald S., xxx-xx-xxxx
Hartrum, Thomas V., xxx-xx-xxxx
Hartz, James A., xxx-xx-xxxx
Harvey, David D., xxx-xx-xxxx
Hastings, Charles A., xxx-xx-xxxx
Hatley, Curtis D., xxx-xx-xxxx
Hawking, Arthur J., xxx-xx-xxxx
Hawkins, Edward G., xxx-xx-xxxx
Hawkins, Eric W., xxx-xx-xxxx
Hawley, Leonard R., xxx-xx-xxxx
Hay, Richard O., xxx-xx-xxxx
Haydon, Dennis R., xxx-xx-xxxx
Hayes, David W., Jr., xxx-xx-xxxx
Hayes, Raymond H., xxx-xx-xxxx
Hayes, Thomas M., xxx-xx-xxxx
Hays, Scott L., xxx-xx-xxxx
Hays, Thomas E., xxx-xx-xxxx
Hays, William J., Jr., xxx-xx-xxxx
Hayton, Gerald R., xxx-xx-xxxx
Hearn, Charles C., xxx-xx-xxxx
Heath, Charles E., xxx-xx-xxxx
Hebert, Ronald J., xxx-xx-xxxx
Hedin, Nyle E., xxx-xx-xxxx
Heesch, Peter, Jr., xxx-xx-xxxx
Heffernan, Clyde L., xxx-xx-xxxx
Heinrich, Charles H., xxx-xx-xxxx
Heitman, Robert H., xxx-xx-xxxx
Hellerstedt, Howard, xxx-xx-xxxx
Helmich, Bruce L., xxx-xx-xxxx
Helsel, Dennis E., xxx-xx-xxxx
Helton, Roy T., xxx-xx-xxxx
Henderson, Thomas A., xxx-xx-xxxx
Hendrickson, Thomas, xxx-xx-xxxx
Henslee, Don R., xxx-xx-xxxx
Herbert, Stephen L., xxx-xx-xxxx
Heritsch, Robert R., xxx-xx-xxxx
Herold, Thomas J., xxx-xx-xxxx
Herzog, Robert C., Jr., xxx-xx-xxxx
Hesson, John E., xxx-xx-xxxx
Hilburn, Ronald D., xxx-xx-xxxx
Hiler, Thomas S., xxx-xx-xxxx
Hill, David W., xxx-xx-xxxx
Hines, John G., Jr., xxx-xx-xxxx
Hinz, James W., xxx-xx-xxxx
Hirabayashi, Glen T., xxx-xx-xxxx
Hitch, Kenneth E., xxx-xx-xxxx
Hitchcock, Raymond, xxx-xx-xxxx
Hitzeman, Dennis W., xxx-xx-xxxx
Ho, Randall Y. C., xxx-xx-xxxx
Hobbs, Stephen D., xxx-xx-xxxx
Hodge, Henry E., xxx-xx-xxxx
Hoege, Howard H., Jr., xxx-xx-xxxx
Hoffman, John T., xxx-xx-xxxx
Hoffman, Mark B., xxx-xx-xxxx
Hoffman, Robert J., xxx-xx-xxxx
Hoffman, Robert S., xxx-xx-xxxx
Hoffman, Terrance W., xxx-xx-xxxx
Hoffmann, Erich H., xxx-xx-xxxx
Hoffmeyer, James H., xxx-xx-xxxx
Hofstetter, David G., xxx-xx-xxxx
Hogan, Gary F., xxx-xx-xxxx
Holbrook, William E., xxx-xx-xxxx
Holden, Philip W., xxx-xx-xxxx
Hollings, Richard W., xxx-xx-xxxx
Hollist, J. Penton, xxx-xx-xxxx
Holt, Jimmie F., xxx-xx-xxxx
Homann, Dwight F., xxx-xx-xxxx
Homza, Eli A., Jr., xxx-xx-xxxx
Hood, James V., xxx-xx-xxxx
Hoopengardner, Roge, xxx-xx-xxxx
Hooper, Kenny A., Jr., xxx-xx-xxxx
Horn, Wiliam W., IV, xxx-xx-xxxx
Horne, Daniel W., III, xxx-xx-xxxx
Hornyak, Roberthorn, xxx-xx-xxxx
Hoschouer, Jack D., xxx-xx-xxxx
Hoskins, Gilman G., xxx-xx-xxxx
House, George W., xxx-xx-xxxx
Houston, Kenneth F., xxx-xx-xxxx
Howe, Stephan D., xxx-xx-xxxx
Howery, David C., xxx-xx-xxxx
Hudnell, James R., xxx-xx-xxxx
Hudson, Willie J., xxx-xx-xxxx
Hufnagel, Oscar E., xxx-xx-xxxx
Hughes, Kenneth W., xxx-xx-xxxx
Hulin, Terry M., xxx-xx-xxxx
Hull, David F., Jr., xxx-xx-xxxx
Hull, Kenneth S., xxx-xx-xxxx
Hulten, Michael P., xxx-xx-xxxx
Hunkele, Lester M., xxx-xx-xxxx
Hunt, Henry B., xxx-xx-xxxx
Hunt, Stephen L. xxx-xx-xxxx
Hunter, Andrew D., xxx-xx-xxxx
Hurtado, Arthur D., xxx-xx-xxxx
Hutchinson, Dennis, xxx-xx-xxxx

Illingworth, Willia, xxx-xx-xxxx
Inge, Joseph R., xxx-xx-xxxx
Ingle, David L., xxx-xx-xxxx
Inselman, John J., xxx-xx-xxxx
Isenhower, James P., xxx-xx-xxxx
Ivany, Robert R., xxx-xx-xxxx
Ivey, Karl F., xxx-xx-xxxx
Jaccard, John T., xxx-xx-xxxx
Jackson, James H., xxx-xx-xxxx
Jackson, Jobe, xxx-xx-xxxx
Jacobs, John C., IV., xxx-xx-xxxx
Jacobs, William A., xxx-xx-xxxx
Jacobsen, William W., xxx-xx-xxxx
Jahnke, Edward J., II, xxx-xx-xxxx
James, Ralph W., xxx-xx-xxxx
Jamison, Clarence C., xxx-xx-xxxx
Jamison, David K., II, xxx-xx-xxxx
Jamison, Marc A., xxx-xx-xxxx
Jannarone, Robert N., xxx-xx-xxxx
Jarmon, Randall F., xxx-xx-xxxx
Jeary, Michael J., xxx-xx-xxxx
Jefferis, Robert J., xxx-xx-xxxx
Jeffrey, Douglas J., xxx-xx-xxxx
Jeffrey, Jewell W. J., xxx-xx-xxxx
Jeffrey, Thomas S. I., xxx-xx-xxxx
Jenkins, Gerald L., xxx-xx-xxxx
Jenkins, Lynn A., xxx-xx-xxxx
Jenkins, Park T., Jr., xxx-xx-xxxx
Jenkins, Richard W., xxx-xx-xxxx
Jeter, Manning T., xxx-xx-xxxx
Jobe, Gordon B., xxx-xx-xxxx
Jobe, Jerry L., xxx-xx-xxxx
Johns, Richard C., xxx-xx-xxxx
Johnsmeyer, William, xxx-xx-xxxx
Johnson, Douglas E., xxx-xx-xxxx
Johnson, James E., xxx-xx-xxxx
Johnson, James H., xxx-xx-xxxx
Johnson, James M., xxx-xx-xxxx
Johnson, James R., xxx-xx-xxxx
Johnson, Jeffry M., xxx-xx-xxxx
Johnson, Lawrence F., xxx-xx-xxxx
Johnson, Lester K., xxx-xx-xxxx
Johnson, Ronald A., xxx-xx-xxxx
Johnson, Steven E., xxx-xx-xxxx
Johnson, William J., xxx-xx-xxxx
Johnston, Dana C., xxx-xx-xxxx
Johnston, James H., xxx-xx-xxxx
Johnston, Steven D., xxx-xx-xxxx
Johnston, Wayne R., xxx-xx-xxxx
Jones, David L., xxx-xx-xxxx
Jones, John A., xxx-xx-xxxx
Jones, Michael W., xxx-xx-xxxx
Jones, Paul G., xxx-xx-xxxx
Jones, Paul G., xxx-xx-xxxx
Jones, Robert P., xxx-xx-xxxx
Jones, William L., xxx-xx-xxxx
Jordan, Robert P., xxx-xx-xxxx
Joyce, William J., xxx-xx-xxxx
Jozwiak, Stanley D., xxx-xx-xxxx
Judge, David J., xxx-xx-xxxx
Kain, John M., xxx-xx-xxxx
Kaiser, Anton C., Jr., xxx-xx-xxxx
Kamimura, Dennis A., xxx-xx-xxxx
Kanan, John F., xxx-xx-xxxx
Kanarkowski, Edward, xxx-xx-xxxx
Kanelakos, James L., xxx-xx-xxxx
Kannenberg, Mark E., xxx-xx-xxxx
Kanner, Leonard J., xxx-xx-xxxx
Kaplan, David M., xxx-xx-xxxx
Karstens, Thomas E., xxx-xx-xxxx
Karwan, Charles W., xxx-xx-xxxx
Kavanagh, Thomas W., xxx-xx-xxxx
Kedrow, Paul J., III, xxx-xx-xxxx
Keith, Lewis C., xxx-xx-xxxx
Keller, John B., Jr., xxx-xx-xxxx
Kelley, Rodney L., xxx-xx-xxxx
Kelly, Michael H., xxx-xx-xxxx
Kelly, Paul L., xxx-xx-xxxx
Kemmitz, Joel D., xxx-xx-xxxx
Kennedy, Robert V., xxx-xx-xxxx
Kerestes, Thomas E., xxx-xx-xxxx
Kersey, Daniel E., xxx-xx-xxxx
Kettler, Ronnye E., xxx-xx-xxxx
Kibert, Charles J., xxx-xx-xxxx
Kiefer, David S., xxx-xx-xxxx
Kiehne, Thomas M., xxx-xx-xxxx
Killeen, John W., xxx-xx-xxxx
Killian, Lewis M., Jr., xxx-xx-xxxx
Kimball, Jeffrey L., xxx-xx-xxxx
Kimmitt, Robert M., xxx-xx-xxxx
King, Bernard F., xxx-xx-xxxx
King, Michael A., xxx-xx-xxxx
King, Robert A., III, xxx-xx-xxxx
King, Ronald G., xxx-xx-xxxx
Kinnison, Edward T., xxx-xx-xxxx
Kish, Robert J., xxx-xx-xxxx
Kithcart, Herbert M., xxx-xx-xxxx
Kleinsteiber, Larry, xxx-xx-xxxx
Klekner, Jeffrey G., xxx-xx-xxxx
Klinck, Earl F., II, xxx-xx-xxxx
Kluever, Emil K., xxx-xx-xxxx
Knabb, John A., xxx-xx-xxxx
Knickerbocker, Will, xxx-xx-xxxx
Knighton, Douglas W., xxx-xx-xxxx
Knoll, Jeffery A., xxx-xx-xxxx
Knox, Richard L., xxx-xx-xxxx
Kohl, Ronald L., xxx-xx-xxxx
Kolb, Rickey A., xxx-xx-xxxx
Kopp, Daniel L., xxx-xx-xxxx
Korach, Steven M., xxx-xx-xxxx
Krafinski, Peter, Jr., xxx-xx-xxxx
Kramer, John J., III, xxx-xx-xxxx
Kransdorf, Mark J., xxx-xx-xxxx
Krueger, Robert J., xxx-xx-xxxx
Krull, Erwin J., xxx-xx-xxxx
Krzyzewski, Michael, xxx-xx-xxxx
Kuhn, Robert C., xxx-xx-xxxx
Kuklok, James G., xxx-xx-xxxx
Kulbacki, James W., xxx-xx-xxxx
Kyckelhahn, Jerry A., xxx-xx-xxxx
Labelle, John L., Jr., xxx-xx-xxxx
Lachey, Edward R., xxx-xx-xxxx
Lafond, Ronald J., xxx-xx-xxxx
Lagle, Carl W., xxx-xx-xxxx
Lamb, Michael K., xxx-xx-xxxx
Lambert, James H., xxx-xx-xxxx
Lamkin, Charles E., xxx-xx-xxxx
Lamneck, Philip W., xxx-xx-xxxx
Landrum, James M., xxx-xx-xxxx
Landry, Robert R., xxx-xx-xxxx
Lanigan, Dennis M., xxx-xx-xxxx
Lantz, John H., xxx-xx-xxxx
Lanzoni, Lynn E., xxx-xx-xxxx
Lapenta, Frank A., xxx-xx-xxxx
Larensen, William R., xxx-xx-xxxx
Laroe, Stephen K., xxx-xx-xxxx
Larson, Kip L., xxx-xx-xxxx
Larson, Lars E., xxx-xx-xxxx
Lasche, George P., xxx-xx-xxxx
Lash, Frederick F., xxx-xx-xxxx
Laska, Leo M., Jr., xxx-xx-xxxx
Laswell, Bruce H., xxx-xx-xxxx
Latimer, Larry D., xxx-xx-xxxx
Laundon, Walter C., xxx-xx-xxxx
Lavallee, Roland J., xxx-xx-xxxx
Lee, Danwill A., xxx-xx-xxxx
Lee, Larry R., xxx-xx-xxxx
Leeper, Daniel M., xxx-xx-xxxx
Legere, John Benton, xxx-xx-xxxx
Legg, Donald B., xxx-xx-xxxx
Liebecke, Robert C., xxx-xx-xxxx
Leister, Albert F. J., xxx-xx-xxxx
Leitzke, Charles W., xxx-xx-xxxx
Leketa, Anthony F., xxx-xx-xxxx
Lenehan, Daniel W., xxx-xx-xxxx
Lennon, Daniel F., xxx-xx-xxxx
Leone, John R., xxx-xx-xxxx
Leraas, Ronald E., xxx-xx-xxxx
Lesher, Donald S., xxx-xx-xxxx
Leslie, Robert L., xxx-xx-xxxx
Levy, Lewis R., xxx-xx-xxxx
Lheureux, Roy W., xxx-xx-xxxx
Liggett, Glade M., xxx-xx-xxxx
Lightman, Donald R., xxx-xx-xxxx
Lilienthal, John G., xxx-xx-xxxx
Lindauer, David B., xxx-xx-xxxx
Lindsey, James S., xxx-xx-xxxx
Lindsey, Wallace R., xxx-xx-xxxx
Lipham, David K., xxx-xx-xxxx
Lipkie, Daniel E., xxx-xx-xxxx
Littlejohn, Edward, xxx-xx-xxxx
Livingston, James T., xxx-xx-xxxx
Lobdell, Harrison I., xxx-xx-xxxx
Lockhart, James H., xxx-xx-xxxx
Lockwood, Burton G., xxx-xx-xxxx
Loder, Roger W., xxx-xx-xxxx
Loftis, Donald D., xxx-xx-xxxx
Lohmann, John R., xxx-xx-xxxx
Lopez, James F., xxx-xx-xxxx
Lorenz, Grant G., xxx-xx-xxxx
Love, George U., II, xxx-xx-xxxx
Love, James F., xxx-xx-xxxx
Lucas, Jimmy R., xxx-xx-xxxx
Lucas, Ronald L., xxx-xx-xxxx
Lucas, Walter W., xxx-xx-xxxx
Luchak, John M., xxx-xx-xxxx
Ludlow, Michael E., xxx-xx-xxxx
Luecke, Richard W., xxx-xx-xxxx
Luedeke, James A., xxx-xx-xxxx
Lumpkin, Harry Nath, xxx-xx-xxxx
Lutz, John P., xxx-xx-xxxx
Lutz, Michael J., xxx-xx-xxxx
Lynett, Michael K., xxx-xx-xxxx
Lyons, Gary J., xxx-xx-xxxx
Maasberg, Michael W., xxx-xx-xxxx
Macias, Julian G., Jr., xxx-xx-xxxx
Mack, Gregory A., xxx-xx-xxxx
Mackey, Richard H., xxx-xx-xxxx
Mackin, Joseph L., xxx-xx-xxxx
Maclaren, Geddes F., xxx-xx-xxxx
Maddocks, Emery A., xxx-xx-xxxx
Madigan, Douglas H., xxx-xx-xxxx
Maeger, Henry V., xxx-xx-xxxx
Mailey, Jerry C., xxx-xx-xxxx
Malachosky, Edward, xxx-xx-xxxx
Maldonado, Jose, xxx-xx-xxxx
Male, Ronald M., xxx-xx-xxxx
Malguarnera, Salvatore C., xxx-xx-xxxx
Mann, Gary D., xxx-xx-xxxx
Maravola, Anthony M., xxx-xx-xxxx
Marble, Louise E., xxx-xx-xxxx
Marchitto, Dominick, xxx-xx-xxxx
Marks, William D., xxx-xx-xxxx
Marshall, Gary E., xxx-xx-xxxx
Martin, David G., xxx-xx-xxxx
Martin, Hilton G., xxx-xx-xxxx
Martin, James D., xxx-xx-xxxx
Martin, Jerry R., xxx-xx-xxxx
Martin, Robert N., xxx-xx-xxxx
Martin, Walter D., Jr., xxx-xx-xxxx
Martray, Robert A., xxx-xx-xxxx
Maruska, Wayne G., xxx-xx-xxxx
Mastaglio, Thomas W., xxx-xx-xxxx
Mataxis, Theodore C., xxx-xx-xxxx
Matthews, Michael D., xxx-xx-xxxx
Matthews, Van L., xxx-xx-xxxx
Mattingly, Paul K., xxx-xx-xxxx
Maxfield, Le Roy A., xxx-xx-xxxx
Maxson, Harold L., xxx-xx-xxxx
May, John W., xxx-xx-xxxx
May, Randall Loran, xxx-xx-xxxx
Mayer, Edward W., xxx-xx-xxxx
Mayer-Kielmann Michael, xxx-xx-xxxx
Mazur, Daniel H., xxx-xx-xxxx
McBeth, John Irvin, xxx-xx-xxxx
McAdoo, Ronald D., xxx-xx-xxxx
McAvoy, Kevin J., xxx-xx-xxxx
McBane, Robert B., xxx-xx-xxxx
McCall, James A., Jr., xxx-xx-xxxx
McCarty, James J., xxx-xx-xxxx
McCarty, Richard K., xxx-xx-xxxx
McCaslin, Thomas W., xxx-xx-xxxx
McClendon, Richarde, xxx-xx-xxxx
McCloy, Robert J., xxx-xx-xxxx
McClung, Kenneth A. J., xxx-xx-xxxx
McCord, Thomas H., xxx-xx-xxxx
McCrory, Michael A., xxx-xx-xxxx
McCullough, Francis, xxx-xx-xxxx
McCullough, James L., xxx-xx-xxxx
McCullough, Thomasa, xxx-xx-xxxx
McDonald, Lawrence V., xxx-xx-xxxx
McDonough, James R., xxx-xx-xxxx
McGill, Dennis R., xxx-xx-xxxx
McGourin, James P., xxx-xx-xxxx
McGovern, Michael F., xxx-xx-xxxx
McGowan, Jeffrey L., xxx-xx-xxxx
McGruder, Gregory, xxx-xx-xxxx
McGue, Stephen C., xxx-xx-xxxx
McKay, Michael E., xxx-xx-xxxx
McKelvey, Dennis C., xxx-xx-xxxx
McKendrick, John T., xxx-xx-xxxx
McPherson, Robert S., xxx-xx-xxxx
McSwigaan, Wayne E., xxx-xx-xxxx
Mead, James L., xxx-xx-xxxx
Mealus, Peter M., xxx-xx-xxxx
Megginson, Joseph R., xxx-xx-xxxx
Meier, George M., xxx-xx-xxxx
Meischen, Danford R., xxx-xx-xxxx
Melchior, William G., xxx-xx-xxxx
Mensch, Eugene M., II, xxx-xx-xxxx

Merchant, Berkeley, xxx-xx-xxxx.
Merhar, David M., xxx-xx-xxxx.
Merkle, Robert D., xxx-xx-xxxx.
Merriken, Harry E., xxx-xx-xxxx.
Mesite, James F., Jr., xxx-xx-xxxx.
Messinger, Keith, J., xxx-xx-xxxx.
Metcalf, Stephen R., xxx-xx-xxxx.
Metzger, Stephen L., xxx-xx-xxxx.
Metzler, David A., xxx-xx-xxxx.
Michaliga, Michael, xxx-xx-xxxx.
Midgette, Hallas C., xxx-xx-xxxx.
Mikelk, Terris W., xxx-xx-xxxx.
Mikolashek, Paul T., xxx-xx-xxxx.
Miles, Peter C., xxx-xx-xxxx.
Miller, Charles E., xxx-xx-xxxx.
Miller, Gregory S., xxx-xx-xxxx.
Miller, Guy E., xxx-xx-xxxx.
Miller, Jacob R., xxx-xx-xxxx.
Miller, Terry L., xxx-xx-xxxx.
Miller, William J., xxx-xx-xxxx.
Mills, Warren E., xxx-xx-xxxx.
Mills, William A., Jr., xxx-xx-xxxx.
Milnes, Russel E., Jr., xxx-xx-xxxx.
Miniclier, John C., xxx-xx-xxxx.
Minor, James A., Jr., xxx-xx-xxxx.
Minshew, Jimmy W., xxx-xx-xxxx.
Mirakian, Peter, Jr., xxx-xx-xxxx.
Mische, Gary D., xxx-xx-xxxx.
Mischler, Walter M., xxx-xx-xxxx.
Mitchell, George H., xxx-xx-xxxx.
Mitchell, Thomas E., xxx-xx-xxxx.
Modeen, Michael D., xxx-xx-xxxx.
Moeller, Ralph J., xxx-xx-xxxx.
Moen, Dennis Milton, xxx-xx-xxxx.
Mohney, Thomas L., xxx-xx-xxxx.
Molter, Albert C., Jr., xxx-xx-xxxx.
Monden, Gerald W., xxx-xx-xxxx.
Monshower, Alvin C., xxx-xx-xxxx.
Montgomery, Gilbert, xxx-xx-xxxx.
Montgomery, John E., xxx-xx-xxxx.
Moody, Thomas P., Jr., xxx-xx-xxxx.
Moore, David B., xxx-xx-xxxx.
Moore, Harold D., xxx-xx-xxxx.
Moore, Ronald A., xxx-xx-xxxx.
Moore, Roy S., xxx-xx-xxxx.
Moran, Geoffrey H., xxx-xx-xxxx.
Morelock, Jerry D., xxx-xx-xxxx.
Morgan, George W., Jr., xxx-xx-xxxx.
Morgan, Jerry L., xxx-xx-xxxx.
Morgan, Michael M., xxx-xx-xxxx.
Morgan, Wayne J., xxx-xx-xxxx.
Morris, Andrew N., xxx-xx-xxxx.
Morris, John L., Jr., xxx-xx-xxxx.
Morton, John M., xxx-xx-xxxx.
Mosbacker, Rodney E., xxx-xx-xxxx.
Moser, Kenneth R., xxx-xx-xxxx.
Moses, David L., xxx-xx-xxxx.
Mote, Doyle K., xxx-xx-xxxx.
Mott, Frederick P., xxx-xx-xxxx.
Moulder, Erwin D., xxx-xx-xxxx.
Mountain, Michael B., xxx-xx-xxxx.
Mowen, John C., III, xxx-xx-xxxx.
Mueller, John F., xxx-xx-xxxx.
Mueller, Warren D., xxx-xx-xxxx.
Mullen, James D., xxx-xx-xxxx.
Muller, Donald F., xxx-xx-xxxx.
Munro, Mark F., xxx-xx-xxxx.
Munson, William M., xxx-xx-xxxx.
Murguia, Gerard J., xxx-xx-xxxx.
Murphy, Brian P., xxx-xx-xxxx.
Murphy, James M., Jr., xxx-xx-xxxx.
Murphy, Wayne K., xxx-xx-xxxx.
Murray, Paul E., xxx-xx-xxxx.
Myers, Robert B., Jr., xxx-xx-xxxx.
Myers, Thomas C., xxx-xx-xxxx.
Nagel, Donald W., xxx-xx-xxxx.
Nagengast, Paul F. J., xxx-xx-xxxx.
Nagle, Robert H., xxx-xx-xxxx.
Nance, Willie B., Jr., xxx-xx-xxxx.
Nanney, Guy V., xxx-xx-xxxx.
Nardotti, Michael J., xxx-xx-xxxx.
Narel, James L., xxx-xx-xxxx.
Narrell, James E., Jr., xxx-xx-xxxx.
Navor, Donald L., xxx-xx-xxxx.
Neerman, Marc A., xxx-xx-xxxx.
Neff, Lawrence T., xxx-xx-xxxx.
Neitzke, Walter C., xxx-xx-xxxx.
Nelson, David R., xxx-xx-xxxx.
Nelson, Gary W., xxx-xx-xxxx.
Nelson, James R., xxx-xx-xxxx.
Nery, Gerard B., Jr., xxx-xx-xxxx.
Neslage, Robert L., xxx-xx-xxxx.
Nestor, Douglas D., xxx-xx-xxxx.
Nettrour, Byron F. J., xxx-xx-xxxx.
New, Dale W., xxx-xx-xxxx.
Newton, Charles A., xxx-xx-xxxx.
Newtown, Glenford A., xxx-xx-xxxx.
Neyland, Mayo W., xxx-xx-xxxx.
Nichols, Howard V., xxx-xx-xxxx.
Nielson, James E., xxx-xx-xxxx.
Nishida, Dennis T., xxx-xx-xxxx.
Nishimoto, James K., xxx-xx-xxxx.
Noll, Frederick E., xxx-xx-xxxx.
Noreen, Robert S., xxx-xx-xxxx.
North, Teddy R., xxx-xx-xxxx.
Northup, Edwin G., xxx-xx-xxxx.
Nosal, Gregory, Jr., xxx-xx-xxxx.
Nowak, Kenneth A., xxx-xx-xxxx.
Nuffer, William L., xxx-xx-xxxx.
Nygren, Kip P., xxx-xx-xxxx.
Oborski, Clemence C., xxx-xx-xxxx.
O'Brien, Charles L., xxx-xx-xxxx.
O'Cain, James M., xxx-xx-xxxx.
O'Connell, Edward P., xxx-xx-xxxx.
O'Connell, Thomas W., xxx-xx-xxxx.
O'Dawe, Nicholas P., xxx-xx-xxxx.
Ogden, Glenn A., xxx-xx-xxxx.
Ogle, Robert H., xxx-xx-xxxx.
O'Halloran, Peter F., xxx-xx-xxxx.
O'Halloran, Robert P., xxx-xx-xxxx.
O'Keefe, Raymond W., xxx-xx-xxxx.
Oliver, Frank G., xxx-xx-xxxx.
Oliver, Young P., xxx-xx-xxxx.
Olner, Jay C., xxx-xx-xxxx.
Olson, George M., xxx-xx-xxxx.
Olson, Joseph L., xxx-xx-xxxx.
Olson, Stewart O., xxx-xx-xxxx.
Ondo, James L., xxx-xx-xxxx.
O'Neal, James P., xxx-xx-xxxx.
O'Neill, Brian B., Jr., xxx-xx-xxxx.
Oristian, John E., xxx-xx-xxxx.
Osgood, Arthur H., Jr., xxx-xx-xxxx.
Oshea, Daniel J., xxx-xx-xxxx.
Osterhoudt, Henry J., xxx-xx-xxxx.
Otoole, James W., xxx-xx-xxxx.
Overstreet, Stephen, xxx-xx-xxxx.
Owens, Brian D., xxx-xx-xxxx.
Owens, James H., Jr., xxx-xx-xxxx.
Ozimek, Carl D., xxx-xx-xxxx.
Ozment, Oliver J., Jr., xxx-xx-xxxx.
Palacios, Noe, xxx-xx-xxxx.
Parobek, Jonathan D., xxx-xx-xxxx.
Parsons, Eugene, xxx-xx-xxxx.
Paskauskas, Vitas G., xxx-xx-xxxx.
Pasko, Chester E., xxx-xx-xxxx.
Patch, Harry J., xxx-xx-xxxx.
Patrick, Thomas E., xxx-xx-xxxx.
Patterson, Phillip, xxx-xx-xxxx.
Pearsall, Russell L., xxx-xx-xxxx.
Pedersen, Charles J., xxx-xx-xxxx.
Pedersen, Robert H., xxx-xx-xxxx.
Pelis, Joel M., xxx-xx-xxxx.
Penwell, Robert D., xxx-xx-xxxx.
Pepper, James D., Jr., xxx-xx-xxxx.
Perry, Donald H., xxx-xx-xxxx.
Perry, Michael A., xxx-xx-xxxx.
Peters, John V., xxx-xx-xxxx.
Peters, Randall R., xxx-xx-xxxx.
Pettit, Michael W., xxx-xx-xxxx.
Pettitt, Reggie, L., xxx-xx-xxxx.
Pfeiffer, Ronald D., xxx-xx-xxxx.
Phelps, Gary A., xxx-xx-xxxx.
Pherson, James W., xxx-xx-xxxx.
Phillips, Gail C., xxx-xx-xxxx.
Phillips, Robert J., xxx-xx-xxxx.
Piazze, Thomas E., Jr., xxx-xx-xxxx.
Picard, George A., xxx-xx-xxxx.
Pichon, Gary W., xxx-xx-xxxx.
Pickard, Andrew D. I., xxx-xx-xxxx.
Pierce, Kurt A., xxx-xx-xxxx.
Pierce, Steven D., xxx-xx-xxxx.
Pittman, Garry L., xxx-xx-xxxx.
Pitz, Robert A., xxx-xx-xxxx.
Plumer, David B., xxx-xx-xxxx.
Pogany, Dennis S., xxx-xx-xxxx.
Pohlmann, William E., xxx-xx-xxxx.
Polin, Richard B., xxx-xx-xxxx.
Pope, Glynn E., xxx-xx-xxxx.
Popwell, William L., xxx-xx-xxxx.
Porter, Danny S., xxx-xx-xxxx.
Porter, Glenn A., xxx-xx-xxxx.
Post, Gerald M., xxx-xx-xxxx.
Poston, Albert B., xxx-xx-xxxx.
Potter, James M., xxx-xx-xxxx.
Potts, Joseph L., xxx-xx-xxxx.
Poucher, Edward B., xxx-xx-xxxx.
Powell, Terry E., xxx-xx-xxxx.
Pratt, Robert P., xxx-xx-xxxx.
Price, Dale E., xxx-xx-xxxx.
Pridgen, Eugene C., xxx-xx-xxxx.
Prondzinski, James, xxx-xx-xxxx.
Prosch, Geoffrey G., xxx-xx-xxxx.
Prudhomme, Robert K., xxx-xx-xxxx.
Pryplesh, Stephen J., xxx-xx-xxxx.
Przybyla, Ernest F., xxx-xx-xxxx.
Psaki, Nicholas G. I., xxx-xx-xxxx.
Quinn, Edward L., xxx-xx-xxxx.
Radsky, Peter B., xxx-xx-xxxx.
Raglin, Paul S., xxx-xx-xxxx.
Ramos, Thomas F., xxx-xx-xxxx.
Ramsey, Robert D., II, xxx-xx-xxxx.
Randolph, Donald C., xxx-xx-xxxx.
Rankin, Jerry A., xxx-xx-xxxx.
Rast, John E., xxx-xx-xxxx.
Ratcliffe, Donald R., xxx-xx-xxxx.
Raupp, Lloyd N., xxx-xx-xxxx.
Rausch, Steven F., xxx-xx-xxxx.
Raymond, Brian L., xxx-xx-xxxx.
Read, Richard D., xxx-xx-xxxx.
Reams, James P., xxx-xx-xxxx.
Rehkopf, Edward N., xxx-xx-xxxx.
Rehm, Donald A., xxx-xx-xxxx.
Reiff, Martin H., Jr., xxx-xx-xxxx.
Reilly, John M., xxx-xx-xxxx.
Reimers, Ronald J., xxx-xx-xxxx.
Reinhardt, Thomas T., xxx-xx-xxxx.
Reinker, James R., xxx-xx-xxxx.
Reiss, David M., xxx-xx-xxxx.
Remmel, Carl L., xxx-xx-xxxx.
Renner, Earl W., xxx-xx-xxxx.
Revilak, Stephen A., xxx-xx-xxxx.
Reynolds, James F., xxx-xx-xxxx.
Reynolds, James P., xxx-xx-xxxx.
Reynolds, Jesse E., xxx-xx-xxxx.
Rhodes, Danny L., xxx-xx-xxxx.
Rhodes, Eugene G., xxx-xx-xxxx.
Rhyne, Stephen K., xxx-xx-xxxx.
Rice, Terry L., xxx-xx-xxxx.
Rice, William J., xxx-xx-xxxx.
Richard, Floyd H., xxx-xx-xxxx.
Richards, James D., xxx-xx-xxxx.
Richardson, Paul T., xxx-xx-xxxx.
Richmond, Henry B. I., xxx-xx-xxxx.
Richmond, Terry L., xxx-xx-xxxx.
Ricker, Gerald W., xxx-xx-xxxx.
Riddell, Robert C., xxx-xx-xxxx.
Riffle, Scottie R., xxx-xx-xxxx.
Riggsby, Lewis D., xxx-xx-xxxx.
Rine, James M., xxx-xx-xxxx.
Robella, Barry J., xxx-xx-xxxx.
Robinette, Stephen, xxx-xx-xxxx.
Robinson, J. Paul, xxx-xx-xxxx.
Robyn, Eric W., xxx-xx-xxxx.
Rock, Clifford T., Jr., xxx-xx-xxxx.
Rockhold, Neal W., xxx-xx-xxxx.
Rodrigues, Alfred B., xxx-xx-xxxx.
Rogers, Douglas C., xxx-xx-xxxx.
Rogers, Thomas E., Jr., xxx-xx-xxxx.
Rohacik, James J., xxx-xx-xxxx.
Rohler, Dennis I., xxx-xx-xxxx.
Rosa, Robert J., Jr., xxx-xx-xxxx.
Rose, Joseph C., xxx-xx-xxxx.
Roseta, Robert E., xxx-xx-xxxx.
Rosine, Philip E., xxx-xx-xxxx.
Ross, Steven C., xxx-xx-xxxx.
Roszkowski, Joseph, xxx-xx-xxxx.
Roth, Lester C., xxx-xx-xxxx.
Rothwell, John C., II, xxx-xx-xxxx.
Rountree, John E., xxx-xx-xxxx.
Roux, Russell P., xxx-xx-xxxx.
Rowan, James M., III, xxx-xx-xxxx.
Rowe, Robert B., xxx-xx-xxxx.
Rowlett, Ricky M., xxx-xx-xxxx.
Rowley, Stephen H., xxx-xx-xxxx.
Roy, James W., Jr., xxx-xx-xxxx.
Rucker, Tinsley W., xxx-xx-xxxx.
Ruesch, Kenneth J., xxx-xx-xxxx.
Ruiz, Daniel, Jr., xxx-xx-xxxx.
Rumney, Thomas N., xxx-xx-xxxx.
Rundle, Michael T., xxx-xx-xxxx.
Rusk, Jon G., xxx-xx-xxxx.

Russell, David R., xxx-xx-xxxx
Russell, Henry P., xxx-xx-xxxx
Russell, James A., xxx-xx-xxxx
Russell, James P., xxx-xx-xxxx
Russell, John J., Jr., xxx-xx-xxxx
Rust, Charles M., xxx-xx-xxxx
Ryan, Michael F., xxx-xx-xxxx
Rynearson, William, xxx-xx-xxxx
Rystrom, Robert E., xxx-xx-xxxx
Sadoff, Laurence R., xxx-xx-xxxx
Saffold, Donnell F., xxx-xx-xxxx
Salisbury, Michael, xxx-xx-xxxx
Sanders, Clarence S., xxx-xx-xxxx
Sanders, John T., xxx-xx-xxxx
Sarratt, James S., xxx-xx-xxxx
Sartor, Billy F., xxx-xx-xxxx
Sautter, Fred C., III, xxx-xx-xxxx
Savage, Frank R., xxx-xx-xxxx
Scarangella, Henry, xxx-xx-xxxx
Schade, Jon C., xxx-xx-xxxx
Schaefer, James A., xxx-xx-xxxx
Schafer, Thomas C., xxx-xx-xxxx
Scheer, Richard L., xxx-xx-xxxx
Schempf, Bryan H., xxx-xx-xxxx
Schierholz, Orval P., xxx-xx-xxxx
Schiraldi, Glenn R., xxx-xx-xxxx
Schmitz, Thomas F., xxx-xx-xxxx
Schneider, Lawrence, xxx-xx-xxxx
Schoenberger, Dale, xxx-xx-xxxx
Schoettmer, Gerald, xxx-xx-xxxx
Schonewetter, Denni, xxx-xx-xxxx
Schoomaker, Peter J., xxx-xx-xxxx
Schopfer, George F., xxx-xx-xxxx
Schoville, Robert T., xxx-xx-xxxx
Schreifer, Stephen, xxx-xx-xxxx
Schroeder, Henry J., xxx-xx-xxxx
Schroeder, Waldo, Jr., xxx-xx-xxxx
Schultz, John T., xxx-xx-xxxx
Schulz, Bruce D., xxx-xx-xxxx
Schulze, Richard F., xxx-xx-xxxx
Schuyler, Jack R., xxx-xx-xxxx
Schwabe, Francis E., xxx-xx-xxxx
Schwan, Carlton F. I., xxx-xx-xxxx
Schwankl, David N., xxx-xx-xxxx
Schwartzman, Charle, xxx-xx-xxxx
Schwender, Craig S., xxx-xx-xxxx
Scibetta, David L., xxx-xx-xxxx
Scott, Frederick R., xxx-xx-xxxx
Scott, Harry A., xxx-xx-xxxx
Scribner, Charles R., xxx-xx-xxxx
Scull, Kenneth C., xxx-xx-xxxx
Seals, James L., xxx-xx-xxxx
Seck, John F., Jr., xxx-xx-xxxx
Seeman, Michael J., xxx-xx-xxxx
Seitz, Richard R. M., xxx-xx-xxxx
Seland, Charles O., xxx-xx-xxxx
Selby, Frederick S., xxx-xx-xxxx
Selden, George H., Jr., xxx-xx-xxxx
Selechman, William H., xxx-xx-xxxx
Sell, Mark F., xxx-xx-xxxx
Semmens, Eugene P., xxx-xx-xxxx
Serrano, Alfredo, xxx-xx-xxxx
Setty, Thomas J., xxx-xx-xxxx
Setzer, Robert D., Jr., xxx-xx-xxxx
Seymour, John F., xxx-xx-xxxx
Shaffer, Joseph K., xxx-xx-xxxx
Shaffer, Richard A., xxx-xx-xxxx
Shane, Michael J., xxx-xx-xxxx
Shannon, William P., xxx-xx-xxxx
Sharphorn, Daniel H., xxx-xx-xxxx
Shaw, Johnnie D., xxx-xx-xxxx
Shean, Arthur R., xxx-xx-xxxx
Sheehan, Robert P., xxx-xx-xxxx
Shelton, Travis D., xxx-xx-xxxx
Sheon, Jesse P., Jr., xxx-xx-xxxx
Shipp, Michael D., xxx-xx-xxxx
Shirron, William E., xxx-xx-xxxx
Short, Earle J., III, xxx-xx-xxxx
Sieving, Immanuel C., xxx-xx-xxxx
Silver, Paul D., xxx-xx-xxxx
Simmons, Oscar W., II, xxx-xx-xxxx
Simmons, Richard L., xxx-xx-xxxx
Simmons, William T., xxx-xx-xxxx
Simms, Edward D., Jr., xxx-xx-xxxx
Singer, Tony C., xxx-xx-xxxx
Sitter, Paul J., xxx-xx-xxxx
Skells, Peter J., xxx-xx-xxxx
Skidmore, Keith L., xxx-xx-xxxx
Slack, Timothy J., xxx-xx-xxxx
Slenker, William T., xxx-xx-xxxx
Slonina, John R., xxx-xx-xxxx
Smaagaard, Arthur G., xxx-xx-xxxx
Smith, Bill G., Jr., xxx-xx-xxxx
Smith, Clark A., xxx-xx-xxxx
Smith, David O., xxx-xx-xxxx
Smith, David S., xxx-xx-xxxx
Smith, Dean E., xxx-xx-xxxx
Smith, Dean T., xxx-xx-xxxx
Smith, Donald B., xxx-xx-xxxx
Smith, Floyd R., xxx-xx-xxxx
Smith, Kevin B., xxx-xx-xxxx
Smith, Leigh W., xxx-xx-xxxx
Smith, Maurice L., Jr., xxx-xx-xxxx
Smith, Michael E., xxx-xx-xxxx
Smith, Michael G., xxx-xx-xxxx
Smith, Milton D., xxx-xx-xxxx
Smith, Paul S., Jr., xxx-xx-xxxx
Smith, Phillip R., xxx-xx-xxxx
Smith, Thomas A., xxx-xx-xxxx
Smith, Thomas Q., xxx-xx-xxxx
Smrtic, Jon T., xxx-xx-xxxx
Smylie, Robert P., xxx-xx-xxxx
Snedeker, Donald C., xxx-xx-xxxx
Snell, Michael G., xxx-xx-xxxx
Snow, Joel J., xxx-xx-xxxx
Snow, Richard A., xxx-xx-xxxx
Snyder, James C., xxx-xx-xxxx
Sohrakoff, John B., xxx-xx-xxxx
Sokoloff, Leonard J., xxx-xx-xxxx
Solomon, John O., xxx-xx-xxxx
Southcombe, William, xxx-xx-xxxx
Spann, Patrick J., xxx-xx-xxxx
Sparks, Bradley E., xxx-xx-xxxx
Spearman, Johnnie J., xxx-xx-xxxx
Speltz, Michael J., xxx-xx-xxxx
Spencer, Weldon O., xxx-xx-xxxx
Spencer, Wilfred F., xxx-xx-xxxx
Spiceland, Evans C., xxx-xx-xxxx
Spicer, Joseph G., Jr., xxx-xx-xxxx
Springer, Carl D., xxx-xx-xxxx
Stafford, James B., xxx-xx-xxxx
Stafford, Nicholas, xxx-xx-xxxx
Stanfield, Charles, xxx-xx-xxxx
Stapler, John G., Jr., xxx-xx-xxxx
Staples, John P., xxx-xx-xxxx
States, Alan E., xxx-xx-xxxx
Stauffer, George A., xxx-xx-xxxx
Stcyr, David A., xxx-xx-xxxx
Steeb, John E., xxx-xx-xxxx
Steele, Robert L., xxx-xx-xxxx
Stees, Ray R., xxx-xx-xxxx
Steiger, William A., xxx-xx-xxxx
Steinbach, George R., xxx-xx-xxxx
Steiner, Charles V., xxx-xx-xxxx
Stenger, John E., Jr., xxx-xx-xxxx
Stephenson, Michael, xxx-xx-xxxx
Stevens, John H., xxx-xx-xxxx
Stevens, Vlad, xxx-xx-xxxx
Stewart, John F., xxx-xx-xxxx
Stewart, Robert D., xxx-xx-xxxx
Stewart, William G., xxx-xx-xxxx
Stirts, Hugh M., xxx-xx-xxxx
Stobbs, Emmett E., Jr., xxx-xx-xxxx
Stockwell, Robert L., xxx-xx-xxxx
Stolt, Gregory A., xxx-xx-xxxx
Stone, William E., xxx-xx-xxxx
Stonge, Robert J., Jr., xxx-xx-xxxx
Stovall, Willard M., xxx-xx-xxxx
Strabel, Edward W., xxx-xx-xxxx
Straw, Dale E., xxx-xx-xxxx
Strickler, Terry E., xxx-xx-xxxx
Strother, Walter T., xxx-xx-xxxx
Strouble, Dennis D., xxx-xx-xxxx
Stubbs, Richard W., xxx-xx-xxxx
Stube, John D., xxx-xx-xxxx
Subelsky, Lewis B., xxx-xx-xxxx
Sudnik, Michael P., xxx-xx-xxxx
Suermann, John F., xxx-xx-xxxx
Suggs, William J., xxx-xx-xxxx
Sullivan, John K., xxx-xx-xxxx
Sullivan, Neil L., xxx-xx-xxxx
Sutton, Joseph W., xxx-xx-xxxx
Suyama, Robert M., xxx-xx-xxxx
Swaim, Norman M., xxx-xx-xxxx
Sweat, George W., Jr., xxx-xx-xxxx
Swesey, Lawrence E., xxx-xx-xxxx
Swick, Richard L., Jr., xxx-xx-xxxx
Sydow, John H., xxx-xx-xxxx
Sylvester, John B., xxx-xx-xxxx
Tabela, Francis E. J., xxx-xx-xxxx
Tanksley, James E., xxx-xx-xxxx
Tanzillo, John M., Jr., xxx-xx-xxxx
Taricska, Richard C., xxx-xx-xxxx
Tatro, Bernard J., xxx-xx-xxxx
Tatum, Larry D., xxx-xx-xxxx
Taylor, Douglas E., xxx-xx-xxxx
Taylor, Jeffrey W., xxx-xx-xxxx
Taylor, Michael W., xxx-xx-xxxx
Taylor, Thomas W., xxx-xx-xxxx
Taylor, William B. J., xxx-xx-xxxx
Taylor, William R., xxx-xx-xxxx
Teagarden, William, xxx-xx-xxxx
Terrien, Max V., xxx-xx-xxxx
Tesdahl, Robert M., xxx-xx-xxxx
Tesko, Steven R., xxx-xx-xxxx
Thain, Harry L., xxx-xx-xxxx
Thede, Peter J., xxx-xx-xxxx
Theiling, Henry D., xxx-xx-xxxx
Thensted, Charles F., xxx-xx-xxxx
Thieme, Thomas N., xxx-xx-xxxx
Thomas, David L., xxx-xx-xxxx
Thomas, Kenneth A., xxx-xx-xxxx
Thomasson, Duncan A., xxx-xx-xxxx
Thompson, Darrell G., xxx-xx-xxxx
Thompson, William K., xxx-xx-xxxx
Thorlakson, Robert, xxx-xx-xxxx
Thorne, William H. J., xxx-xx-xxxx
Thorstens, Gary H., xxx-xx-xxxx
Thrasher, Warren A., xxx-xx-xxxx
Throckmorton, John, xxx-xx-xxxx
Thurnbeck, Robert J., xxx-xx-xxxx
Tice, Robert S., xxx-xx-xxxx
Tigges, Daniel L., xxx-xx-xxxx
Tighe, Dennis W., xxx-xx-xxxx
Timmons, Thomas H., xxx-xx-xxxx
Tobin, Edward J., Jr., xxx-xx-xxxx
Toland, Ray B., xxx-xx-xxxx
Totten, James P., xxx-xx-xxxx
Townsend, Donald P., xxx-xx-xxxx
Townsend, James W., xxx-xx-xxxx
Townsend, Ronald E., xxx-xx-xxxx
Traynor, Stephen P., xxx-xx-xxxx
Trevino, Romero C., xxx-xx-xxxx
Trinidad, Wilfredo, xxx-xx-xxxx
Troup, Craig A., xxx-xx-xxxx
Tryon, John E., xxx-xx-xxxx
Tunstall, Donald W., xxx-xx-xxxx
Turner, Lamont D., xxx-xx-xxxx
Turner, Stephen D., xxx-xx-xxxx
Tyer, Gary S., xxx-xx-xxxx
Uhler, Robert D., xxx-xx-xxxx
Updike, Godfrey, W. J., xxx-xx-xxxx
Urban, Gordon W., xxx-xx-xxxx
Vacca, William J., xxx-xx-xxxx
Vanaskie, William F., xxx-xx-xxxx
Vanatta, Fred H., xxx-xx-xxxx
Vance, Robert W., Jr., xxx-xx-xxxx
Vandenberg, Roger A., xxx-xx-xxxx
Varner, George C., xxx-xx-xxxx
Varrieur, Michael R., xxx-xx-xxxx
Vassaur, Tommy W., xxx-xx-xxxx
Vaughn, Everett S., xxx-xx-xxxx
Vaughn, Rayford B., xxx-xx-xxxx
Venard, Thomas G., xxx-xx-xxxx
Vengelen, Frederick, xxx-xx-xxxx
Vereb, Thomas A., xxx-xx-xxxx
Viehweg, Peter A., xxx-xx-xxxx
Vitucci, Samuel S., xxx-xx-xxxx
Vogas, James L., xxx-xx-xxxx
Voigt, Thomas F., xxx-xx-xxxx
Vollrath, Thomas L., xxx-xx-xxxx
Vonasek, Stanley C., xxx-xx-xxxx
Vonkaenel, Howard J., xxx-xx-xxxx
Vorder, Bruegge, H., xxx-xx-xxxx
Vornehm, George F., xxx-xx-xxxx
Vreeland, Neal C., xxx-xx-xxxx
Wade, Gregory K., xxx-xx-xxxx
Wagner, Donald P., xxx-xx-xxxx
Wagner, Kenneth E., xxx-xx-xxxx
Wagner, Robert A., xxx-xx-xxxx
Wagstaff, David A., Jr., xxx-xx-xxxx
Wahl, Robert G., xxx-xx-xxxx
Wainwright, Richard, xxx-xx-xxxx
Walker, Henry P., Jr., xxx-xx-xxxx
Wallace, John R., xxx-xx-xxxx
Wallace, William H., xxx-xx-xxxx
Wallace, William S., xxx-xx-xxxx
Wallestad, David K., xxx-xx-xxxx
Walsh, Robert J., xxx-xx-xxxx
Walters, Douglas F., xxx-xx-xxxx
Wance, Dennis M., xxx-xx-xxxx
Wanless, Kenneth M., xxx-xx-xxxx
Ward, William H., xxx-xx-xxxx

Warner, Donald E., xxx-xx-xxxx
Warner, Donald E., xxx-xx-xxxx
Warren, James C., Jr., xxx-xx-xxxx
Washington, Donald, xxx-xx-xxxx
Watson, Edwin A., Jr., xxx-xx-xxxx
Watson, Jerome A., xxx-xx-xxxx
Watson, Thomas D., xxx-xx-xxxx
Watters, David R., xxx-xx-xxxx
Watts, Benjamin G., xxx-xx-xxxx
Weaver, Phillip A., xxx-xx-xxxx
Webb, James L., xxx-xx-xxxx
Wehmeyer, John G., xxx-xx-xxxx
Weien, Glen F., II, xxx-xx-xxxx
Weill, Randall B., xxx-xx-xxxx
Weinberg, Michael H., xxx-xx-xxxx
Welch, James M., xxx-xx-xxxx
Wellman, Jay S., xxx-xx-xxxx
Wells, Larry J., xxx-xx-xxxx
Wells, Robert W., Jr., xxx-xx-xxxx
Welsh, Johnnie L., xxx-xx-xxxx
West, Richard D., xxx-xx-xxxx
Westerhoff, Corneli, xxx-xx-xxxx
Whatton, Charles W., xxx-xx-xxxx
Wheel, Thomas B., xxx-xx-xxxx
Wheeler, Bruce R., xxx-xx-xxxx
Wheeler, James S., xxx-xx-xxxx
Wheeler, Joseph J., xxx-xx-xxxx
Wheelock, Thomas R., xxx-xx-xxxx
Whitaker, Frederick, xxx-xx-xxxx
Whitaker, Steven J., xxx-xx-xxxx
Whitaker, Thomas E., xxx-xx-xxxx
White, Charles S., xxx-xx-xxxx
White, Lance M., xxx-xx-xxxx
White, Langfred W., xxx-xx-xxxx
White, Lawrence J., xxx-xx-xxxx
White, Ralph R., xxx-xx-xxxx
White, Terry W., xxx-xx-xxxx
Whitley, Thomas H., xxx-xx-xxxx
Whitlow, William D., xxx-xx-xxxx
Whitney, Richard G., xxx-xx-xxxx
Wielkoszewski, Andrew, xxx-xx-xxxx
Wilber, Rick A., xxx-xx-xxxx
Wiley, Kenneth L., xxx-xx-xxxx
Wilkes, Greg S., xxx-xx-xxxx
Wilks, John E., III, xxx-xx-xxxx
Willbanks, James H., xxx-xx-xxxx
Williams, Albert J., xxx-xx-xxxx
Williams, Alfred E., xxx-xx-xxxx
Williams, James D., xxx-xx-xxxx
Williams, Jimmy W., xxx-xx-xxxx
Williams, Jonathan, xxx-xx-xxxx
Williams, Kennetht H., xxx-xx-xxxx
Williams, Stephen D., xxx-xx-xxxx
Williams, Stephen J., xxx-xx-xxxx
Williams, Wayne Q., xxx-xx-xxxx
Willis, Clifford G., xxx-xx-xxxx
Willut, John C., xxx-xx-xxxx
Wilson, Frederick R., xxx-xx-xxxx
Wilson, Randy A., xxx-xx-xxxx
Wilson, Robert J., xxx-xx-xxxx
Windham, Rodney E., xxx-xx-xxxx
Wintermute, Sheldon, xxx-xx-xxxx
Wisser, George R., Jr., xxx-xx-xxxx
Witchen, Gary L., xxx-xx-xxxx
Witt, Thomas B., xxx-xx-xxxx
Woelfer, Carl W., xxx-xx-xxxx
Wolvington, William, xxx-xx-xxxx
Wood, Ernest E., Jr., xxx-xx-xxxx
Wood, Kenneth R., xxx-xx-xxxx
Woodard, Michael C., xxx-xx-xxxx
Woodbury, George A., xxx-xx-xxxx
Woods, George, Jr., xxx-xx-xxxx
Woods, James G., xxx-xx-xxxx
Woodson, Kenneth L., xxx-xx-xxxx
Woodward, William R., xxx-xx-xxxx
Woodyard, Leon W., xxx-xx-xxxx
Worley, Joe R., xxx-xx-xxxx
Wright, James M., xxx-xx-xxxx
Wright, Michael A., xxx-xx-xxxx
Yaap, Robert W., xxx-xx-xxxx
Yarnell, John S., xxx-xx-xxxx
Yeisley, John C., xxx-xx-xxxx
Yerkes, William N., xxx-xx-xxxx
Yerks, Austin J., III xxx-xx-xxxx
Yocom, Michael L., xxx-xx-xxxx
Yonan, Kenneth J., xxx-xx-xxxx
Yonushonis, William, xxx-xx-xxxx
Yoste, Harry M., Jr., xxx-xx-xxxx
Young, Randolph S. I., xxx-xx-xxxx
Young, Robert A., xxx-xx-xxxx
Young, Terry H., xxx-xx-xxxx
Yount, Everett R., Jr., xxx-xx-xxxx
Zagrodny, Michael D., xxx-xx-xxxx
Zais, Mitchell M., xxx-xx-xxxx
Zalewski, Alan R., xxx-xx-xxxx
Zamora, Richard O. J., xxx-xx-xxxx
Zappacosta, Thomas, xxx-xx-xxxx
Zepko, William F., xxx-xx-xxxx
Zilinskas, Matthew, xxx-xx-xxxx
Zook, William E., Jr., xxx-xx-xxxx
Zumwalt, Marvin C., xxx-xx-xxxx
Zupsich, Alexander, xxx-xx-xxxx

WOMEN'S ARMY CORPS

To be first lieutenant

Hewitt, Eleanor V., 267-'70-9904.
West, Kathryn G., xxx-xx-xxxx

MEDICAL SERVICE CORPS

To be first lieutenant

Arner, Mark C., xxx-xx-xxxx
Bassham, Lanny R., xxx-xx-xxxx
Beane, Charles B., xxx-xx-xxxx
Bellamy, Thomas N., xxx-xx-xxxx
Bodie, George A., xxx-xx-xxxx
Bradford, Ralph E., xxx-xx-xxxx
Bryant, Gordon V., Jr., xxx-xx-xxxx
Burden, Charles G., xxx-xx-xxxx
Burgos, Victor L., xxx-xx-xxxx
Butler, Victor D., xxx-xx-xxxx
Byers, Norman T., xxx-xx-xxxx
Coffman, James H., xxx-xx-xxxx
Cook, David R., Jr., xxx-xx-xxxx
Cook, Phillip A., xxx-xx-xxxx
Cox, John C., xxx-xx-xxxx
Cruz, Juan A., xxx-xx-xxxx
Dismukes, James O., xxx-xx-xxxx
Dixey, Robert J., xxx-xx-xxxx
Dohanos, Dennis W., xxx-xx-xxxx
Donahue, Richard I., xxx-xx-xxxx
Dorfman, William I., xxx-xx-xxxx
Eaton, Gary H., xxx-xx-xxxx
Emerick, James T., xxx-xx-xxxx
Farlow, Joseph E., xxx-xx-xxxx
Ferrell, Richard J., xxx-xx-xxxx
Freeley, Douglas A., xxx-xx-xxxx
Gans, David N., xxx-xx-xxxx
Gerig, Donald D., xxx-xx-xxxx
Haburchak, David R., xxx-xx-xxxx
Hess, William W., xxx-xx-xxxx
High, Blanco T., xxx-xx-xxxx
Houston, Donald A., xxx-xx-xxxx
Hudak, Ronald P., xxx-xx-xxxx
Irish, Arthur S., II, xxx-xx-xxxx
Jarvis, Charles J. J., xxx-xx-xxxx
Kanaly, George W., Jr., xxx-xx-xxxx
Kirstein, Kenneth W., xxx-xx-xxxx
Kramer, Richard D., xxx-xx-xxxx
Krieger, Donald A., xxx-xx-xxxx
Lacher, Gary N., xxx-xx-xxxx
Langkamp, Joseph P., xxx-xx-xxxx
Leary, William J., xxx-xx-xxxx
Lindell, Steven W., xxx-xx-xxxx
Makela, Glenn R., xxx-xx-xxxx
Mcatee, William E., xxx-xx-xxxx
McPhail, John F., xxx-xx-xxxx
Mitchell, Walter, Jr., xxx-xx-xxxx
Moore, Peter A., xxx-xx-xxxx
Mortimer, Evan E., xxx-xx-xxxx
Noe, Anthony M., xxx-xx-xxxx
Norder, Nickolas W., xxx-xx-xxxx
Oetgen, William J. J., xxx-xx-xxxx
Olejnik, Kenneth R., xxx-xx-xxxx
Parker, Raymond A. J., xxx-xx-xxxx
Phillips, George L., xxx-xx-xxxx
Piacente, David A., xxx-xx-xxxx
Saunders, Theodore, xxx-xx-xxxx
Schlomer, Duane R., xxx-xx-xxxx
Schwartz, Allen, xxx-xx-xxxx
Seremet, Joseph H., xxx-xx-xxxx
Shaw, Peter B., xxx-xx-xxxx
Slay, Robert D., Jr., xxx-xx-xxxx
Smith, Steven R., xxx-xx-xxxx
Spencer, Kenneth E., xxx-xx-xxxx
Stewart, Charles E., xxx-xx-xxxx
Strohmeyer, Michael, xxx-xx-xxxx
Sutton, Ernest L., xxx-xx-xxxx
Sykes, Fred L., xxx-xx-xxxx
Sylvain, Richard W., xxx-xx-xxxx
Tancredi, Peter L., xxx-xx-xxxx
Tatum, Charles H., Jr., xxx-xx-xxxx
Tremblay, Peter D., xxx-xx-xxxx
Vigna, John E., xxx-xx-xxxx
Voelpel, Stuart G., xxx-xx-xxxx
Voss, James E., xxx-xx-xxxx
Walkenbach, James E., xxx-xx-xxxx
Washburn, Lee P., xxx-xx-xxxx
Washburn, Michael E., xxx-xx-xxxx
Watts, Dennis R., xxx-xx-xxxx
Wika, Norman A., xxx-xx-xxxx
Williams, Barry O., xxx-xx-xxxx
Wise, George R., xxx-xx-xxxx
Wooldridge, Michael, xxx-xx-xxxx
Youngblood, Lloyd A., xxx-xx-xxxx

ARMY MEDICAL SPECIALIST CORPS

To be first lieutenant

Stevens, Douglass L., xxx-xx-xxxx
Vinyard, Wayne A., xxx-xx-xxxx
Yamamoto, Steven K., xxx-xx-xxxx

ARMY NURSE CORPS

To be first lieutenant

Bennett, Dennis H., xxx-xx-xxxx
Florine, James E., xxx-xx-xxxx
Ison, Constance G., xxx-xx-xxxx
Kray, Jerome G., xxx-xx-xxxx
Pelton, Richard P., xxx-xx-xxxx
Rennie, Donald S., xxx-xx-xxxx

IN THE NAVY

The following-named officers of the Naval Reserve for permanent promotion to the grade of captain in the line and staff corps, as indicated, subject to qualification therefor as provided by law:

LINE

Abernathy, Roger E.
Achee, Emile W.
Adkins, Edward C.
Ahlborn, Gale
Aiello, Leonard
Alair, Gene L.
Alexander, Owens F.
Allen, Francis F., Jr.
Allen, Milton R.
Allen, Thomas E.
Amirault, Francis R.
Anderson, Burton M.
Anderson, Raymond Louis M.
Anderson, Roland C.
Anderson, Wilford D.
Anderson, Randall E.
Andrews, Wallace J.
Andrew, Martin J.
Appel, Robert L., Jr.
Ardis, Robert B.
Armstrong, Edward L.
Arnold, Alison M.
Aron, Linwood M.
Arveson, Donald F.
Aschenbrenner, Frank A.
Atkinson, Bernard O.
Aubry, Jacques D.
Avila, Andrew J.
Babbe, George M.
Bahr, Franklin E.
Bailey, Charles Streater, Jr.
Bajak, Sigmund F.
Baker, Richard M., Jr.
Baldwin, William W.
Baldwin, George H.
Ballantyne, Douglas Cumings
Barker, Gilbert H.
Barnett, John S., Jr.
Barnes, Richard L.
Barnhill, Philip C.
Barros, Jack R.
Bartlett, Shirley Carnett J.
Barton, William B.
Barton, William J.
Baumann, Raphael F.
Beacham, Ernest P., Jr.
Beaumont, Robert T.
Beck, Clayton H.
Becker, David G.
Bellizio, Elgie L.
Benedetti, Aldo J.
Bennett, Harry Hoffman, Jr.
Bergesen, Albert G.

Berkemose, Paul H.
Bertoldi, John B., Jr.
Best, Guy A.
Beveridge, John H.
Biggart, Stephenson Robert
Black, James B.
Blackwell, Enoch D.
Blakey, Blake V.
Blam, Norman
Blessing, Wilfred E.
Block, Leo
Blumenthal, Philip Lee, Jr.
Boelens, John H.
Bohan, Walter A.
Boles, Max G.
Bollinger, Lawrence F., Jr.
Bonney, John R.
Boom, Glenn L.
Bouldry, John M.
Bradbeer, George B.
Bratches, Harold F.
Braue, John C.
Breslau, Maxwell
Bridge, Herbert M.
Brodhag, Donald James
Brooks, Paul Robert Michael
Brown, John N.
Brown, Frank C.
Bruce, Robert G.
Brueckbauer, Roger I.
Budd, Thomas William, Jr.
Buell, Lloyd Elmer
Bunten, Richard C.
Burns, William A.
Burns, Willard A.
Butler, Bethel Hardin
Butler, Lloyd M., Jr.
Butters, James A.
Caldwell, William Frederick
Calkins, Don R., Jr.
Callahan, Francis Joseph, Jr.
Calnan, Thomas J., Jr.
Carl, Frederick D.
Carlson, John E., Jr.
Carroll, Marshall E.
Casey, Francis J.
Chamberlain, Edward Thoyt J.
Chandler, Henry M., Jr.
Chappell, William Venroe, Jr.
Chase, Robert R.
Chicas, Samuel A.
Childs, Herbert C.
Christoph, Edward C.
Chwalek, Charles J.
Cibula, Charles, Jr.
Ciungan, Virgil
Clark, Robert W. K.
Clark, Kenneth B.
Claughton, James Calvin, Jr.
Clegg, William H.
Cements, Edward W.
Clemensen, Owen N.
Clifford, Charles Francis J.
Cochran, Carl E.
Cochran, Sam Victor, Jr.
Cofer, Joseph Pleasant, Jr.
Colburn, Daniel W.
Coleman, Curtin R., II
Collins, Paul H.
Colwell, Delbert E.
Cooper, Charles Simpson
Cooper, Donald W.
Copson, David A.
Cormier, Warren G.
Corrigan, Claud H.
Coughlan, James Francis, III
Cox, James L., Jr.
Crawford, Burnett Hayden, Jr.
Cronin, John W., Jr.
Crotty, Leo J.
Cucullu, Roy T.
Cullen, Michael
Culver, John A.
Cummins, Samuel Amspoker
Cunningham, Charles
Curtis, Donald E.
Cutler, Robert J.
Daeger, Edward
Dallen, Robert D.
Dalton, Richard C.
Darezzo, Buddy T.
Darrough, Paul G., Jr.
Daubin, Scott Crittenden
Davenport, Stephen C.
David, Marshall J.
Davis, Charles R.
Davison, Germain A.
Davis, Charles F., Jr.
Day, John E., Jr.
Delaney, David P.
Delaney, Robert F.
Denny, James H.
Denney, Robert.
Derby, Lawrence Hedrick, Jr.
Devito, George Michael
Devoe, Sherman W.
Dewey, Dudley O., Jr.
Dick, Robert D.
Dill, William A.
Dillon, Melvin J.
Dillon, Frank T., Jr.
Dinger, John A., Jr.
Dipaco, Gino.
Dixon, Boyd R.
Dodds, Robert D.
Donnelly, Alton S.
Dowd, John F.
Dowling, George Elbert
Drach, John H.
Drennen, Grant A.
Duby, Charles W., Jr.
Dudzik, Donald M.
Duff, John, Jr.
Dunlap, James Arthur
Duvall, Dale J.
Dybens, Paul A.
Easterling, Verlin R.
Eastman, Latham Champion
Eggleston, Ervin L.
Eidson, Robert Ansel
Ellickson, Leroy W.
Elliott, William H.
Elmore, Lowell E.
Elwood, Albert A.
Engel, John H.
Eppling, Frederic J.
Ericson, Paul J.
Evans, James L.
Evans, Roy C.
Evans, Charles R. Jr.
Evetts, Robert Stanley
Ewan, Thomas K.
Fairhurst, Franklin Edison
Falvey, Daniel J. Jr.
Fason, Theodore
Feldstein, Joel I.
Ferber, Arthur H.
Ferguson, James D.
Ferrero, James Vercelli Jr.
Fields, Victor
Files, Henry C. Jr.
Filipic, Allen J.
Flaherty, Richard L.
Fleming, Henry J. Jr.
Fleming, Michael B.
Flynn, William D.
Foley, Brady
Fonville, Amon
Ford, Glenn
Fortunato, Michael M.
Fowler, Robert E. G.
Fox, Charles E.
Frassrand, Michael A.
Freeman, Peter Hampden
Friedemann, Conrad J.
Fritz, Wilbert
Frost, John J.
Frost, George R.
Fry, Byron W.
Gairing, Donald A.
Galbut, Hyman P.
Gallaway, John M.
Gannon, Philip J.
Garbler, Paul
Gardner, Benjamin Hill II
Gardow, Gordon A.
Garrett, Theodore E.
Garrett, Tom W. Jr.
Garrick, Robert M.
Gasser, Blaine E.
Gaucher, John H.
Gaventa, Lawrence K.
George, Clark B.
Gershkoff, Robert Stanley
Gibbons, Thomas P.
Gibbons, Hugh E.
Gibney, Robert Alexander Jr.
Gies, Richard C.
Gilardi, Robert C.
Gilliam, Otis R.
Gilmore, William J.
Gitlin, Allen R.
Glass, William O.
Glazier, Francis M.
Glenn, Eugene H.
Goldsmith, Myron J.
Goodenough, Robin W.
Goodell, Horace G.
Goodgame, Thomas H.
Goodwin, James G.
Graham, Robert F.
Graham, John H.
Grant, Ernest E., Jr.
Gravitt, Thurl O.
Green, Thomas A.
Greiner, Harold F.
Grimsby, Alvin E.
Gross, Mose
Gryde, Stanley K.
Guthrie, Gene E.
Haag, William J.
Hagen, Merle E., Jr.
Hall, Aaron L.
Hallquist, Ralph F.
Hanley, Joseph Martin
Hansen, Julian R.
Hardy, Donald A.
Harned, Charles C.
Harrison, Robert C.
Harrison, Curtis B.
Harrington, Wayne B.
Harshman, Sterling R.
Hartmann, Frederick Howard
Harvey, Robert W.
Hathaway, Samuel H.
Hayes, Louis Joseph, Jr.
Hedin, Dan E.
Heim, John L.
Helmick, Richard R.
Hendricks, Gordon E.
Herrink, Louis S., Jr.
Hersch, John.
Hess, Paul W.
Hessey, John Hamilton, IV
Heyer, Nelson O.
Higgins, Eugene P.
Hill, Dexter B., Jr.
Hill, Frederick A., III
Hirsch, Robert G.
Hobbs, Edward H.
Hobrock, Howard H.
Hoctor, John M.
Hoff, John R.
Hoffmeyer, John T.
Hogan, Richard R.
Hogan, Donald A.
Holmgren, Allan F.
Holstrom, Robert William P.
Holton, Abner L., Jr.
Hook, Byron J.
Horan, Thomas F.
Horn, Elford W.
Hornberger, Lalon D.
Houlihan, James E.
Housiaux, John E.
Howe, Clement W.
Howland, Daniel
Hudgins, John J.
Hudson, Floyd E.
Hughes, Donald E.
Hummel, Paul L.
Hutton, Harry B.
Ingram, Samuel P.
Irwin, John J.
Jackson, Warren E.
Jameson, Davis E.
Jancsy, Henry P.
Janson, Nils F.
Jasper, Richard E.
Jenkins, William, Jr.
Jensen, Carl P.
Jewett, David M.
Johnston, Charles R.
Johnson, Clarence Einer, Jr.

Johnson, Fredrick E.
Johnson, Bruce A.
Jones, John C.
Jones, Malcolm Stephen, Jr.
Jones, Alfred W., Jr.
Jones, Robert L.
Joy, Charles Turner, Jr.
Justus, James S.
Kadison, Herbert
Kaelin, Joseph
Kallman, Robert E.
Keast, Kenneth M.
Keeley, Wesley M.
Kellick, William L.
Kelly, Robert N.
Ketcham, Raymond.
Kincaid, Harry G.
King, Richard G.
King, Stanley R.
King, Benny G.
King, Arthur Robert, Jr.
Kirkwood, Kenneth S.
Kitchel, Donald V.
Kleinhenz, William A.
Klotz, Alfred A., Jr.
Kluge, Rolland H.
Knudsen, Russell D.
Kolander, Jerome M.
Kopchak, George.
Kovach, Eugene G.
Kraft, Frank Aloysius, Jr.
Krstich, Walter J.
Lambert, George Samuel, Jr.
Landry, Robert A.
Lane, Frederick S.
Lang, William W., Jr.
Lang, James Talley.
Lawson, Melvin J.
Lazar, James T., Jr.
Leary, Charles C.
Lee, John P.
Leeper, Wesley Roy.
Lefon, Carroll Fairfax.
Lelacheur, Arthur Joseph, Jr.
Lepetich, Joseph E.
Lesslie, William H.
Leute, George M., Jr.
Lewis, William C.
Lewis, Harvin R.
Libby, Richard S.
Lindsay, Johnathan W.
Litton, Donald L.
Lockwood, William L.
Lockwood, George Willis
Loehnert, John T.
Loeppert, Henry V.
Loes, Philip A.
Logan, Edwin M.
Lomas, Charles W.
Longwell, Robert A.
Lotzenhiser, George William
Loughran, Joseph Louis.
Lowe, Dean V.
Lowry, Wayne L.
Lubar, Charles
Lucas, Fielding G.
Luckenbach, Edgar F., Jr.
Lungren, Charles Robert
Luppino, Rocco, Jr.
Lutz, George J., Jr.
Lynch, William C., Jr.
Lyon, Horace L.
Lyon, Richard
MacDonald, John B.
Macinnes, James
MacLeod, Thomas Lebreton, Jr.
Maddock, Herbert J.
Maginn, Charles Ernest, Jr.
Mahoney, Francis X.
Mair, Donald R.
Malehorn, Merlin K.
Manfredi, Dominick
Mann, James A.
Maple, Thomas S., Jr.
Markloff, Raymond.
Marshall, Robert Logan
Martin, Leo N.
Martin, Cletus O.
Masterson, Paul F.
Mate, Hubert E.
Mathias, Charles McCurdy, Jr.
Matson, Jack B.
Matthews, Robert Allison, Jr.
Mattson, Kenneth
Maw, Herbert W.
Mayfield, Carl.
McCall, James A.
McCambridge, Clarence P., Jr.
McCarthy, James L.
McConnaughey, William Eugen
McConkey, Frank V., Jr.
McCorkle, Richard K.
McCrave, Byran
McCrea, William E.
McDonald, Harry G.
McDonald, Clyde W.
McDonnell, James J.
McFarlane, William D., Jr.
McGillivray, Duncan Raymond
McGraw, Doonan D.
McIvaine, James William
McMillan, Howard A.
McMorris, Armstrong Cliffor
McMurdo, Robert Bryce
McNamara, Michael F.
McSweeney, Eugene Sutton, Jr.
McWhorter, Hezzie Boyd
Mearig, Hebert C.
Medd, John S., Jr.
Messe, Harold
Mehmel, Charles H., Jr.
Merenda, Peter F.
Merrill, Philip R.
Messner, Russel John, Jr.
Metzger, John M.
Meyers, Edward W.
Michel, Eugene W.
Michon, Edward J.
Miles, John Lindsey, Jr.
Miller, Robert W.
Miller, Maynard M.
Miller, William James
Miller, Frederick A.
Miller, John J.
Milloy, Robert D.
Mills, Barton D.
Mills, Alfred P.
Mobley, Charles Andrew, Jr.
Moehring, Bruce H.
Moeller, Gerald H.
Molfino, Ted A.
Mooney, Thomas B.
Moore, John P.
Moore, Charles B.
Moore, Robert W.
Moose, James M., Jr.
Moro, Joseph A.
Morris, Joel D.
Morrison, James E.
Morris, Thomas E.
Moser, Raymond V., Jr.
Murphy, John F.
Murphy, William, Jr.
Myers, Joseph H.
Naas, David D., Jr.
Nall, Julian C.
Nash, Bernard Elbert
Nelick, Franklin Charles
Nestlerode, William Austin
Neth, Willis J., Jr.
Nickel, Kenneth W.
Nicolls, Keith K.
Nielson, Thomas William
Nieznay, Walter M.
Noetzel, Ewald R.
Norman, Raymond E.
Northcraft, Julian O.
Norton, Wallace E.
O'Connell, Robert F.
O'Connell, George Aloysius J.
O'Keefe, Andrew V.
Oldford, Allister W.
Olinder, Everett J.
Olis, Andrew F.
Olson, David O., Jr.
O'Neil, John J., Jr.
O'Reilly, Robert W.
Orley, William J.
O'Shea, Jeremiah Francis
O'Shea, John T.
O'Such, Eugene B.
O'Toole, John F., Jr.
Overman, Harold S., Jr.
Pabst, Richard J.
Paden, Jack G.
Palmatier, Harry Caleb
Paradiso, Angelo E.
Parks, William T.
Paulson, Jean D.
Peck, Albert D.
Perles, Benjamin M.
Perry, George W.
Peschke, Jerome M.
Peterson, John E.
Peterson, Arthur Paul, Jr.
Peterson, Carl V.
Peters, Robert L.
Petrusek, Benjamin J.
Pineau, Roger
Pitts, Theodore Robert
Planton, David N.
Poehler, Allen
Polglase, William Malone
Poll, Harry F.
Pope, Robert G.
Portz, Matthew H.
Prentice, Robert W.
Prestwich, Horace L.
Quigley, Stephen T.
Quigley, Kenneth L.
Rappeport, Myron H.
Rau, Charles E.
Rechnitzer, Andreas Buchwald
Rector, Hartman, Jr.
Redd, J. C.
Redgate, Laurence K.
Reed, Willis E.
Reichard, Edmund C.
Reiff, Glenn Austin
Reiser, Leroy Franklin, Jr.
Reit, Ronald O.
Rice, Hallie P.
Rich, William L.
Reigger, William J.
Ritter, Robert A.
Roach, Philip H., Jr.
Robbins, Frank Faulkner
Robertson, Hugh A.
Robin, Clinton G., Jr.
Robinson, Jack W.
Rock, Calvin Charles
Rodgers, Robert L.
Roebuck, Robert Jackson
Rodgers, Julian L.
Rohleder, John R.
Roland, Robert F.
Rome, Richard M.
Rosenblum, Everett A.
Ross, William H.
Ross, Jesse G.
Rowe, Charles S.
Rowe, Earl L.
Royce, Frederick Spargo
Rozsypal, Edward J.
Rudin, Sidney
Runge, Robert W.
Rusbosin, Vincent
Russell, Donald Ernest
Rust, Robert D.
Saarela, Victor R.
Sadler, Frederick T.
Sandberg, Emanuel Wilson, Jr.
Sander, George Richard
Sapinsky, Joseph C.
Saul, Thomas J.
Sawyer, Kenneth Elmore, Jr.
Schade, Walter B., Jr.
Schemenauer, Loyd G.
Schoenig, Arthur F.
Schottke, Lorry S.
Schriber, Raymond J.
Schroeder, Joseph Herman
Schulz, Charles James
Schuler, Lawrence E.
Schumann, Otho D.
Schwartz, Benjamin
Schweppe, Joseph L.
Selden, Armistead, Jr.
Semcken, Duane
Sguros, Peter L.
Sharp, Charles Edgar, Jr.
Shelly, Willard M.
Sheppard, James A., Jr.

Shirikian, Stephen P.
Shriver, Mark O.
Simes, Robert F.
Simmelink, Lawrence T.
Simpson, Samuel William
Sims, James H.
Sing, Calvin Y.
Sisco, August C.
Slepicka, Irvin M., Jr.
Sloan, Frank K.
Small, Sidney H.
Smiley, Robert William
Smith, Albert L.
Smith, Edward Curtis, II
Smith, Edward P. A.
Smith, Horton
Smith, Hugh R., Jr.
Smith, Kenneth A.
Smith, Paul R., Jr.
Smith, Philip L.
Smith, Philip W., Jr.
Smith, Robert H.
Smith, Samuel Theodore, Jr.
Smith, Willard W.
Smouse, Ramon L.
Soltes, Aaron S.
Spengler, Louis J. J.
Speros, Peter J.
Spring, William B.
Starwyck, Stephen Louis
Stasney, Joseph, Jr.
Steinhoff, George L.
Stein, Robert J.
Stephens, Edward Carl
Stewart, Charles E.
Stewart, David B.
Stoutenburgh, Joseph Sanford
Stringfield, David H., Jr.
Strom, Victor T.
Strunck, Thomas F.
Stuart, Fred W.
Stunz, Emil G.
Sullivan, John V.
Sullivan, Phillip J.
Sunok, Stanley I.
Sweet, Charles P., Jr.
Swenson, Carl E.
Tallian, Francis F.
Tanner, Dawn Dean
Tate, Robert H.
Taylor, Edward Alexander
Taylor, George P.
Thomas, Robert L.
Thornton, Ralph H., Jr.
Tiedemann, Albert William J.
Todis, Constantine C.
Toombs, William E.
Toothman, Robert A.
Trainor, Joseph F.
Tredinnick, Robert Wesley
Trejo, Paul Edgar
Trieschmann, Charles Raymond
Tucker, Robert S.
Tuleja, Thaddeus V.
Tunnicliffe, William Warren
Turbeville, John Franklin J.
Turnbull, Herbert F.
Udd, Elmer
Ulum, James C.
Usher, Frederic L.
Valencia, Wallace
Vanosdol, Jack
Veale, William Richard
Verlin, James A.
Vinton, Benjamin, Jr.
Wagstaffe, Desmond Harold
Wakefield, Zachary T.
Walker, W. Parks, Jr.
Walker, Douglas B.
Wallace, John C.
Walter, Francis X.
Warchol, Edward J.
Warfield, Lemuel O.
Warren, Raymond J.
Watson, John C., Jr.
Watt, Earl J.
Webber, Willard Southgate
Weber, John G.
Weigandt, Carl F., Jr.
Welmaker, Forrest N.
Wendell, William David, Jr.
Wendler, Henry C.
Wendt, George
West, Edgar F
Wetzel, Blair H.
Wiebush, Joseph R.
Wilken, Leon O., Jr.
Willgress, Edwin R.
Willig, Leslie A.
Willwerth, Robert E.
Wilson, William K.
Winter, Joseph P.
Winton, Calhoun
Wise, Robert W.
Wither, Ross P.
Witt, James P.
Witt, Dean E.
Wolfe, Harry W. Jr.
Womack, John W.
Woodcock, Roland F.
Woolley, John R.
Wren, Harold G.
Wright, Richard Y.
Wright, William F.
Wright, Edwin S.
Wulff, Alden T.
Yard, Rix N.
Young, Joseph J., Jr.
Young, Charles E.
Young, David C.
Ziesmer, Raymond, Jr.
Ziffrin, Norman R.
Zumwalt, William T.

MEDICAL CORPS

Adamson, Nathaniel E., Jr.
Barnes, Kirk K.
Bartkowski, Joseph E.
Bond, Victor P.
Bradfield, James Y.
Briggs, Leon Royden, Jr.
Brooks, Frank P.
Callaway, Guy D., Jr.
Conn, Julian H.
Councill, Wilford A. H., Jr.
Crue, Benjamin Lane, Jr.
Ecker, Paul G.
Edwards, William M., Jr.
Ferguson, Emmet F., Jr.
Fleetwood, Joseph A., Jr.
Frost, Dwight M.
Galen, Robert S.
Garcia, Joseph I., Jr.
Gillen, Howard W.
Grice, Paul F.
Hastedt, Robert Coleman
Havron, James B.
Henner, Charles Mason
Herlihy, Charles Edward
Hirsch, Joe E.
Holt, Waldo S.
Howard, David Snow
Jenkins, Louie Boyd
Jones, William R., Jr.
Kellogg, Huston G.
Khairallah, Philip A.
Krepp, Martin W., Jr.
Kuhlman, William K.
Kurtzke, John F.
Laforet, Eugene G.
Lasher, Robert L.
Lewis, Jack J.
Ligon, Champ.
Lindberg, John H.
Livingston, Norloso B., Jr.
Lofgren, Karl A.
Lykins, Robert W.
Lyons, Thomas G.
Malkinson, Frederick David.
Marks, John Roy.
McCoy, Herbert I.
McDonald, Khlar E.
Meredith, Charles E.
Metzger, Paul St. Clair.
Mills, William James, Jr.
Moore, Floy J.
Morgan, Frank J., Jr.
Mulder, Donald W.
Nesbitt, Kenneth Alexander.
Neville, James B.
O'Hanlan, Joseph T.
O'Meara, Mark T.
Ricks, Henry C., Jr.
Robertson, James S.
Rogers, Fred B.
Sarver, Richard Boss.
Scott, William C.
Senhauser, Donald A.
Shreeve, Walton W.
Stein, Robert B.
Stuckey, Walter J., Jr.
Swenson, Edward W.
Taquino, Maurice A.
Volk, Herbert.
Waldmann, Edward B.
Walker, William W.
Weese, Winston H.
Werner, Dean F.
Willis, Park W., III.
Wulsin, John H.

SUPPLY CORPS

Anderson, Edward E.
Armstrong, William A.
Ashe, James H.
Bienvenu, Bernard J.
Boyles, Harry V., Jr.
Browning, Bernard S.
Cochran, Thomas Rodney.
Cofer, Fred L., Jr.
Corry, Daniel J.
Crouse, Harold U.
Daum, Richard O.
Drake, Sherman F.
Farrell, Joseph M.
Force, William W., Jr.
Frasure, William W.
Gage, James R.
Gay, William W., Jr.
Gieseke, Willard C.
Graf, Bayard M.
Griggs, Austin C.
Hartman, Don A.
Hellstrom, Ralph E.
Hermann, Frederick W.
Ihlanfeldt, William J.
James, Robert G.
Johnson, Bernard A.
Jones, William R.
Kavanagh, James L. G.
Kay, James, Jr.
Knight, Roy E.
Kurtonick, Nicholas, Jr.
Lemay, J. W., Jr.
Lentz, Malcolm L.
Loudon, Donald J.
Lunde, Walter A.
Lyons, Charles V.
Macban, Michael F. B.
Madden, John J.
Maloney, Richard F.
Martin, James M.
Mayfield, Charles H.
McDonald, Raymond Oswald, Jr.
McGlothlin, James H.
Meyer, Sam
Nelson, George P., Jr.
Notch, Maurice A.
Olson, Cecil E.
Pruis, John J.
Purdy, Delbert C.
Quinn, Gerard J.
Schoman, Charles M., Jr.
Schwendiman, Fred A.
Seiler, Dean B.
Smith, Joseph P.
Stromquist, James T.
Thomas, Neil S., Jr.
Thompson, Robert W.
White, Francis H.
Wilcox, Howard E.

CHAPLAIN CORPS

Ditmer, Merlin A., Jr.
Edwards, Thomas V.
Garman, Quentin P.
Megee, Robert E., Jr.
Nordby, Walter H.
Peeters, Richard T.
Smith, Taylor C.
Thomas, John R.

CIVIL ENGINEER CORPS

Alberts, Carl D.
Benson, Fred J.
Berbower, Raymond F.
Biege, Ray R. Jr.
Cahill, Harold Philip Jr.
Cusack, John.
Dibble, Benjamin Tolman.
Ellingson, Harold G.
Englert, Eugene R.
Fichter, William F.
Hamilton, Rolland Morris.
Harkness, Ralph C.
Jackson, Robert G.
Keller, Samuel H.
King, Philip V.
Lee, James J.
Looper, Joseph Henry.
Love, Gerald D.
McCarran, Francis H.
Richards, Max Lewis Jr.
Richardson, James E.
Riley, Billy W.
Roberts, William A.
Schmidt, Joseph.
Thalheimer, John Coolidge J.
Tillman, Donald C.
Wakefield, Maunsell Clark J.
Zehrt, William H.

JUDGE ADVOCATE GENERAL'S CORPS

Albright, Penrose L.
Barrow, Charles W.
Blackmon, Jack R.
Conaway, Robert E.
Hervey, Robert W.
Low, William H.
Mattson, Leroy H.
Odenbrett, Harvey G.
Poisson, Louis J. Jr.
Rollins, Clyde T.
Stahl, Robert J. Jr.
Tabb, Linwood B. Jr.
Vandyck, Charles Douglas Jr.
Witherspoon, Joseph Parker.

DENTAL CORPS

Barr, William S.
Burnett, James V.
Carara, Charles Edward
Cassalia, Peter T.
Cassidy, Joseph M.
Culotta, Anthony P.
Donnenfeld, Oscar Walter
Eckbolm, Roger H.
Foote, Charles J.
Gay, Glenn D.
Hansen, John
Hill, Clem J.
Holliday, Joseph E.
Howard, William W.
Jackson, Robert F.
Kaplan, Herman.
Kline, William R.
Landis, Robert L.
Laskowski, Edward Stanley
Linz, Andrew M.
Lossman, Clifford Kaye
Maze, Aurelius H., Jr.
McDaniel, William L.
Meikle, Wallace M.
Miller, Lester Joseph
Patchin, Robert E.
Paulsen, Albert G.
Pejko, Walter M.
Reding, Curtis C.
Rice, Orland L.
Schaad, Thomas D.
Smith, Vernon Day
Standish, Samuel M.
Tharp, Robert John
Tolen, William
Wasley, James C., Jr.
Weaver, Edwin F., III
Wilson, John O., Jr.
Wintersteen, Leroy H.
Zerden, Edward

MEDICAL SERVICE CORPS

Alpen, Edward L.
Baker, Rollin H.
Close, Perry
Mensh, Ivan N.
Roessler, William G.
Sherwood, Warren W.
Smith, Pierre F.
Tidwell, William L.
Watts, Daniel T.
Widner, William R.

NURSE CORPS

Cole, Ruth E.
Gabig, Mary G.
Macewicz, Edna M.

The following named captains of the Naval Reserve for permanent promotion to the grade of commander in the line and staff corps, as indicated, subject to qualification therefor as provided by law:

LINE

Abel, Robert W.
Abernathy, Roger E.
Abraham, George
Adkins, Edward C.
Aine, Harry E.
Allen, Glenn L., Jr.
Anderson, Bruce E.
Aubry, Jacques, D.
Austin, Amory E., Jr.
Ayars, Charles O.
Baker, Carlos, P., Jr.
Barrons, John C.
Barton, William J.
Bauer, Lynton, G.
Beacham, Ernest P., Jr.
Beaumont, Robert T.
Beck, Alan E.
Berkemose, Paul H.
Bertoldi, John B., Jr.
Bixby, Ezra L.
Blam, Norman
Blank, Billy D.
Blumenthal, Philip Lee, Jr.
Bohan, Walter A.
Boles, Max G.
Bollinger, Lawrence F., Jr.
Bolt, Leland E.
Bolte, Carl E., Jr.
Boroody, Joseph
Bouchey, Stuart H., Jr.
Bowman, James E.
Boyd, Lon V.
Bratches, Harold F.
Brewer, Robert M.
Broadaway, Richard S.
Burton, Marion B.
Butz, Clarence E.
Caldwell, William Porter
Calkins, Don R., Jr.
Canter, Herbert M.
Carl, Frederick D.
Carlyon, William H.
Carpenter, Edwin B.
Casad, Richard D.
Chandler, Leroy
Chase, Robert R.
Chevallay, Leon Charles, Jr.
Clemensen, Owen N.
Cofer, Joseph Pleasant, Jr.
Corrigan, Donald T.
Coughlan, James Francis, III
Cragon, Stephen D.
Crawford, John D.
Crawley, Stanley W.
Criez, Louis R.
Cullen, Michael
Culver, John A.
Daeger, Edward
Dallen, Robert D.
Dalton, Richard C.
Davis, Charles R.
Davison, Germain A.
Davis, Charles F., Jr.
Debaun, Gerard B.
Decarlo, Michael A.
Delaney, Robert F.
Demeo, Julian, Jr.
Derby, Lawrence Hedrick, Jr.
Deveau, Thomas A.
DeVito, George Michael
Dewey, Dudley O., Jr.
Dicken, Wesley C., Jr.
Dillan, Johan A., Jr.
Dillon, Frank T., Jr.
Dipace, Gino
Donoho, Cecil C.
Duane, Rodman F.
Duvall, Dale J.
Dybens, Paul A.
Eastman, Latham Champion
Elliott, Richard G.
Elwood, Albert A.
Engel, John H.
Ervin, Harry C., Jr.
Eynatten, Robert J.
Falvey, Daniel J., Jr.
Ferber, Arthur H.
Files, Henry C., Jr.
Fitzgerald, James Gerald
Flaherty, Richard L.
Floyd, William B.
Fowler, William M.
Fox, Charles D., III
Francis, James A.
Froiland, Rudolf Gerald
Galbut, Hyman P.
Gallagher, Thomas E.
Gallaway, John M.
Gamble, Francis Trevor.
Gardner, Benjamin Hill, II
Garrison, Charles Parker, Jr.
Garrick, Robert M.
Garvin, Robert G.
Gawrys, Joseph A.
Gearhart, Donald C.
Gershkoff, Robert Stanley
Gibbons, Hugh E.
Gilbert, Charles Russell
Gillespie, Robert W.
Gilliland, Frank Marshall J.
Gleason, Thomas A.
Goodman, Vernon L.
Goodwin, Jack C.
Green, Robert Louis
Green, Samuel G., Jr.
Green, Roland B.
Green, Rex R.
Green, Thomas A.
Hall, Aaron L.
Hannan, William T.
Hansen, Julian R.
Hardy, Donald A.
Harper, Rollin Hill, Jr.
Harra, Joseph Shirley
Harrington, Wayne B.
Hartmann, Frederick Howard
Hartung, Francis Conrad, Jr.
Hayes, Louis Joseph, Jr.
Herder, Louis B.
Herrink, Louis S., Jr.
Hersch, John
Hill, Frederick A., III
Hofferbert, Louis E., Jr.
Hoffmeyer, John T.
Hogan, Richard R.
Hogan, Donald A.
Holman, Bud G.
Holst, William P., Jr.
Hornberger, Lalon D.
Hoyer, Carl I.
Huey, William Edward, Jr.
Husmann, Donald
Ingle, Hugh C., Jr.
Isaacson, Leroy V.
Jackson, Brian R.
Jackson, Warren E.
Jacobs, Stuart K.
Jancsy, Henry P.
Janson, Nils F.
Jasper, Richard E.
Johnson, Daren W.
Johnston, Donald B.
Johnson, Milton E., Jr.
Johnston, Albert
Joiner, Wyatt E.
Jones, Arthur V.
Jones, Robert L.
Jorgensen, Robert W.
Joslin, Robert S.
Kahler, John H., III

Karstrom, John O., Jr.
Kaunelis, Edward A.
Kendall, Jackson Warner, Jr.
Kerr, David Joseph
Killian, Michael J.
Kinghorn, Allen M.
Kittler, James P.
Knight, Robert K.
Koehler, Henry C.
Kudlacek, Robert B.
Landry, Robert A.
Lane, Frederick S.
Lang, James Talley
Laulor, Richard J.
Lazar, James T., Jr.
Leisz, George W.
Leonard, Colvin T., Jr.
Lesslie, William H.
Lewis, Harvin R.
Libby, Richard S.
Liberato, Frank Antonio
Libhart, Wayne P.
Lillegraven, Benjamin Trygv
Lindsey, John M.
Linton, James A.
Litton, Donald L.
Loes, Philip A.
Loesel, Richard O.
Longwell, Robert A.
Lowe, Beverly James
Lubar, Charles
Luce, Edgar A.
Lundgren, Charles Robert
McLane, Donald L.
Mahoney, J. Edward
Mahoney, John W.
Mair, Donald R.
Maneatis, George Arthur
Manter, John Robert
Maple, Thomas S., Jr.
Martin, Richard G.
Mathews, Jerome L.
Matson, Jack B.
Mattson, Kenneth
McCambridge, Clarence P., Jr.
McCrave, Bryan
McIlvaine, James William
McInnis, Malcolm A.
McMurdo, Robert Bryce
McNamara, Michael F.
Merrill, Philip R.
Meyer, John D.
Meyers, Edward W.
Miles, John Lindsey, Jr.
Miller, Raleigh, Jr.
Miller, Jerry J.
Miller, Thomas R., Jr.
Miller, William C.
Miller, Frederick A.
Miller, John J.
Minor, David M.
Moose, James M., Jr.
Morrison, James E.
Morris, Thomas E.
Mufatti, William F.
Murphy, John L., Jr.
Myers, Joseph H.
Nabors, Thomas Dewey, Jr.
Nelson, Rolland G.
Newman, James L.
Norton, Wallace E.
Outland, George Faulkner
Palmatier, Harry Caleb
Pappas, James P.
Paul, Richard L.
Peters, Robert L.
Pitts, Theodore Robert
Poehler, Allen
Pope, Robert G.
Prestwich, Horace L.
Prusiecki, John J.
Pusch, Robert A.
Quigley, Kenneth L.
Reade, Richard S., Jr.
Reed, Willis E.
Reichard, Edmund C.
Reinertsen, Stephen P.
Reiser, Leroy Franklin Jr.
Rice, Hallie P.
Rich, William L.
Riegger, William J.
Rising, Richard P.
Robertson, Hugh A.
Rodgers, Robert L.
Rogers, Julian L.
Rohlfing, Frederick William
Roland, Robert F.
Rosenberger, John E.
Ross, Jesse G.
Rowe, Earl L.
Rozsypal, Edward J.
Sandberg, Emanuel Wilson, Jr.
Sapinsky, Joseph C.
Saul, Thomas J.
Sawyer, Kenneth Elmore, Jr.
Schaded, Edmond W.
Schemenauer, Loyd G.
Schriber, Raymond J.
Schroeder, Joseph Herman
Schuler, Lawrence E.
Secord, William J.
Shirley, Thomas W.
Simpson, Samuel William
Sing, Calvin Y.
Slepicka, Irvin M., Jr.
Smith, Thomas P.
Smith, Barnaby F.
Smith, Douglas J.
Smith, Edmund Arthur, Jr.
Smith, Horton
Smouse, Ramon L.
Sorenson, Glenn Peter
Spence, Floyd D.
Spring, William B.
Stein, Robert J.
Stombler, Eugene H.
Stupar Branko
Sunok, Stanley I.
Snuter, Vane E.
Swan, David E.
Swank, Paul B.
Swenson, Craig J.
Tanner, Dawn Dean
Tate, Robert H.
Tiedemann, Albert William J.
Tinsman, Stewart H. W.
Trainor, Joseph F.
Tredinnick, Robert Wesley
Trejo, Paul Edgar
Tucker, Robert S.
Udd, Elmer
Ulum, James C.
Underwood, George D., Jr.
Usher, Frederic L.
Valencia, Wallace
Veale, William Richard
Verlin, James A.
Vinton, Benjamin, Jr.
Walker, Douglas B.
Walters, Charles
Watson, John C., Jr.
Wells, Raymond Anthony
Welmaker, Forrest N.
Wendler, Henry C.
Wilken, Leon D., Jr.
Williams, James Ellsworth
Wilson, Harold E.
Wilson, Raymond G.
Winter, Joseph P.
Wise, Robert W.
Witt, Dean E.
Wren, Harold G.
Wright, Edwin S.
Young, David C.

MEDICAL CORPS

Alexander, Angelo C.
Austin, James Albert
Bartlett, Richard James
Beary, Franklin David
Edmondson, Henry Turner, Jr.
Emory, Emerson
Keith, Robert E.
Kurtzke, John F.
Laforet, Eugene G.
Lyman, Frank L.
Mann, Morris Bernard
Matson, James E.
McDonald, Khlar E.
Mertz, George H.
Miller, Joseph Hardy
Nesbitt, Kenneth Alexander
Owen, John A., Jr.
Sandler, Harold
Senhauser, Donald A.
Shilling, Charles Utley
Summitt, Robert Layman
Taquino, Maurice A.
Toll, Giles D.
Vanlyith, Paul
Werner, Dean F.
Woellner, Richard C.
Woodson, Riley Donald

SUPPLY CORPS

Adams, Billy J.
Allston, Frank James, Jr.
Anderson, Edward E.
Ashe, James H.
Balint, William Stephen, Jr.
Becker, William C.
Bresee, Miles H., Jr.
Burris, Thomas E.
Cannan, Harry E.
Curriden, Charles David
Gieseke, Willard C.
Griggs, Austin C.
Hankins, Paul W.
Hawkins, Frederick Case, Jr.
Howard, Lowell B.
Jackson, Alexander, III
Johnson, Bernard A.
Kane, John B.
Knight, Roy E.
Kuhn, George W.
Lazo, Leo M.
Olson, Cecil E.
Roemer, Ernest A., Jr.
Roettger, Norman C., Jr.
Seiler, Dean B.
Stierer, Richard T.
Wallin, William R.
Whitacre, Robert G.

CHAPLAIN CORPS

Albers, Arthur L.
Kokoszka, William J.
McManus, Harold L.
Opsal, Bernt C.

CIVIL ENGINEER CORPS

Bobkoff, Kenneth B.
Brown, Peter R.
Dunlap, Roy L.
Hernandez, John W., Jr.
Kirtland, John A.
Lee, James J.
Looper, Joseph Henry
Love, Gerald D.
McCarran, Francis H.
Parker, John V.

JUDGE ADVOCATE GENERAL'S CORPS

Bowling, John M.
Bradshaw, Donald R.
Dempsey, Thomas J.
Gaudio, John J.
Ledbetter, Jack W.
Mattson, Leroy H.
Stahl, Robert J., Jr.

DENTAL CORPS

Burnett, James V.
Camp, Sumter D. L.
Dages, Robert W.
Donohoo, Stanley F.
Eckblom, Roger H.
Gentile, Joseph R.
Hill, Clem J.
Kaplan, Herman
McDaniel, William L.
Nauman, Clarence O.
Richardson, Emmett Wesley J.
Seigel, Sigmund L.
Terpinas, Thomas Michael
Tharp, Robert John
Tolen, William
Vaughn, William James Hughe

MEDICAL SERVICE CORPS

Close, Perry
McGuire, Frederick Lynch
Tidwell, William L.
Widner, William R.

NURSE CORPS

Cole, Ruth E.

The following-named officers of the Naval Reserve for permanent promotion to the grade of commander in the line and staff corps, as indicated, subject to qualification therefor as provided by law:

LINE

Aanstoos, Edward Robinson
Abbey, Alfred E.
Abert, James Goodear
Abramson, Harvey
Acosta, William
Acton, James Barnes
Adams, Walter P., Jr.
Adams, James Alan
Adams, Albert
Adams, Alfred H.
Adams, Donald T.
Adams, William Harry
Adams, David D.
Adams, Harry R.
Adams, David E.
Adema, Henry Thomas
Adkins, Roy E.
Adoff, Charles Sanford
Aggson, Ronald B.
Agman, Robert S.
Ahlberg, Arnold E.
Ahlenius, William Matheson
Aikins, Louis R.
Akre, Robert C.
Alaimo, Afonso F.
Abertson, Richard C.
Aberty, Owen Nelson
Albert, Charles E., Jr.
Alberternst, Kenneth John
Albin, Harold Cornelius, Jr.
Alden, Raynor F.
Alecxih, Peter Charles
Alexander, Jaime Paul
Alexander, Thomas Williams
Alfieri, Donal John
Allan, Richard E.
Allan, Gayord T.
Allen, George Millard, Jr.
Allen, Craig R.
Allen, Douglas G.
Allen, Raymond Clifford
Allen, Richard M.
Allen, Richard Franklin
Allen, Forrest M.
Allison, Leroy M., Jr.
Allmon, William B.
Althouse, John H.
Ammon, Peter C.
Anderson, Andrew G.
Andes, Paul Gowdy
Anderson, Richard Wood
Anderson, Don R.
Anderson, Thomas Y.
Anderson, Samuel A.
Anderson, Albert Carl, Jr.
Andersen, Charles W.
Anderson, William Thomas
Anderson, Akins B.
Anderson, George W.
Anderson, Coe M.
Anderson, William Junior
Anders, Isaac W.
Anderson, Samuel Bert
Andrews, Frederick Clifford
Andrews, Marshall Henry, Jr.
Andrews, Donald
Andrews, Reece Lillard
Angell, Abe Louis, Jr.
Anselmo, Guy, Jr.
Anson, Harry Calvin
Anthony, Benjamin Allen, Jr.
Anthuis, John W., Jr.
Antkowiak, Edward T.
Anzilotti, Vincent J., Jr.
Arado, Joseph E.
Archibald, Robert T.
Archer, John Joseph
Arment, Duane R.
Armstrong, George Albert, Jr.
Armstrong, Lloyd Roy
Armstrong, John Ellis
Armstrong, William D.
Armstrong, Richard E.
Arnold, Edward Robert
Arrigo, Arthur Robert
Arris, Daniel Jay
Arrington, Robert Anthony
Aschan, Harry R.
Ash, Roy F., Jr.
Ash, John Morgan, IV
Ashleigh, Robert F.
Ashworth, Winthrop F.
Asmus, Rodger W.
Asquith, Leslie W.
Aster, George Harry
Atwater, Donald Edgar
Auerbach, Richard Carlton
Ause, Orval L.
Austin, Wills G.
Austin, Russell A., Jr.
Austin, Tom A.
Avedon, Burt S.
Avellar, George Lawrence, Jr.
Azer, Thomas B.
Babcock, Clifford Shreve, Jr.
Baber, Charles A., Jr.
Babigian, George Robert
Bach, Lester E.
Bacon, Walter L.
Bader, William Banks
Bader, John Parker, Jr.
Baecht, Warren E.
Baer, Carl J.
Baguhn, Norman E.
Baguley, Norman A.
Bailey, Fredric Nelson
Bailey, Robert C.
Bailes, James V.
Baines, Richard S.
Baird, Robert M.
Baird, John M.
Baker, Joseph W.
Baker, Sidney J.
Baker, Robert Paul
Baker, Donald L.
Baker, David Everett
Baker, John H.
Baker, Norman L.
Baker, John L.
Baldridge, Paul E., Jr.
Baldry, George Kendall
Balfour, David N.
Ballow, Robert E.
Ball, Derwin R.
Ballard, Gaylord Bernard
Ball, Robert O.
Balo, Harold A.
Bambo, Gregory Bautista, Jr.
Bancroft, William H.
Band, Hans E.
Banfield, Thomas Vincent, II.
Bangma, John J.
Banks, William C.
Banks, Walter Dickson, Jr.
Bannecker, William Randolf
Bannister, William W.
Barboro, Alfred John, Jr.
Bardell, William E.
Bareikis, Robert P.
Bare, Leland D.
Barham, Don R.
Barham, Charles D., Jr.
Barilla, Louis J.
Barker, Lowell Reed
Barksdale, James C.
Barker, Thomas C.
Barnett, Robert C.
Barnes, Donald J.
Barnes, John B.
Barnett, William M.
Barron, John S.
Barry David C.
Bartram, Francis Joseph, Jr.
Bartels, Wilhelm Friedrich
Bartholomew, Ronald Lee
Bartz, William A.
Barton, Furman Wyche
Barthelenghi, George H., Jr.
Bassanello, Adolph C.
Bassett, James Spencer
Bastin, Carl Alan
Batchelor, Norman G.
Batchelor, Kenneth F.
Batchelor, James Browder
Bates, John Ezra Barr
Battersby, Cowan B.
Batthauer, Byron E.
Baumann, Gerard Robert
Bausback, Richard F.
Baxter, Robert Hampton, III
Bazer, Alvan T.
Beahm, William J.
Beal, Norman Tull
Bean, Irving J.
Bean, Edward Wesley, Jr.
Beard, Joseph James
Beard, James W.
Bechard, Paul F.
Becker, John C., Jr.
Beckmann, Paul A., Jr.
Becklund, Robert K.
Beckmann, Archibald Baker J.
Becker, Marvin J.
Beck, Benjamin L.
Becker, William Hans
Becotte, Robert C.
Bedenbaugh, William Howard
Beemer, William F.
Beer, Dean R.
Beffel, Ernest J.
Bell, Ross Kay
Bell, Lawrence D.
Bell, Charles E., Jr.
Bellone, Elmer A.
Bell, Carney R.
Bell, Gershom Rodes
Bendel, John E.
Benford, William Rameden, Jr.
Benjamin, Herbert Sam, Jr.
Benjamin, Richard L.
Benko, Edward
Bennett, Edward G.
Bennett, Byron D.
Bennett, Charles
Bennett, John M., Jr.
Bennett, Robert Alan
Bennett, Frank Shelby
Bennett, Leroy C.
Benson, Harold Wesley
Benson, William Tallman
Benshoof, Kenneth W.
Benton, Oliver
Bentley, Alan W.
Bentley, John E.
Berchielli, Gian Luigi
Bereswill, Frederick Carl
Berg, Richard Conrad
Berhow, Donald O.
Berkley, Leonard
Bernard, Donald R.
Berni, Rene P.
Bernhardy, Albert W.
Berry, John V., Jr.
Bertelsen, Karl H.
Berwick, Robert L.
Besel, Michael N., Jr.
Betsworth, Brian C.
Betts, Harry E.
Bewley, Shelby O.
Beytagh, Francis Xavier, Jr.
Bezaire, William A.
Biache, Andrew, Jr.
Bianchi, John R.
Bickley, George H. V.
Bielka, Robert P.
Bierman, John B.
Bierhaus, Frederick William
Biggs, Robert E.
Bigler, Glade S.
Billerbeck, Frederick W., Jr.
Billingsley, William Morton
Birdwell, James E., Jr.
Bishop, William N.
Bishop, Harold E., Jr.
Bitowft, Robert J.
Black, Ralph E.
Black, Stanley A.
Black, Ralph P.
Black, Hugh C.
Blaise, Francis J., Jr.
Blair, Frank S.
Blake, Van Holt
Blakeney, Harvey N.
Bland, Francis W.

Blenkhorn, James Merritt, Jr.
Blethen, Lawrence P.
Blodgett, Emmett A.
Bloom, Thomas E.
Bloom, Raymond R.
Blum, Felix E.
Boardman, John Michael
Boatman, John G.
Bobker, Harvey P.
Bobzin, Ross D.
Bodden, John M.
Bodmer, Richard V.
Bodurtha, James N.
Body, Ralph William
Boehne, Billy L.
Boggs, Emmett J.
Boggs, Harry Warren
Bohn, Francis L.
Bole, George Thomas
Bolton, William L.
Bond, Charles R., Jr.
Bonnett, John S.
Bonz, Philip Edwin
Boone, Wilkerson
Booth, Carlen P.
Borgard, Glenn E.
Borland, James A.
Bosack, Donald E.
Bothwell, Bruce E.
Bottimore, Robert R., Jr.
Botten, James R.
Boudreaux, Luke Serapher, II
Bouldin, James A.
Bourgeois, William A.
Bowen, Bradford T., Jr.
Bower, Earl Warren
Bowen, Ray H.
Bowman, Allen L.
Bowman, Donald E.
Boyajian, Ara M.
Boyd, Marion S., Jr.
Boyd, John Wright, Jr.
Boyd, John Addison, Jr.
Boyer, Kenneth Glenn
Boyland, Jack I.
Boylan, James P.
Bozarth, Robert F., Jr.
Brady, Terence C., Jr.
Brady, Thomas F.
Bradley, Lejeune P.
Bradshaw, Jerald Sherwin
Bradshaw, Robert Daily
Brady, Francis Thomas
Brady, Paul S.
Brahm, Richard W.
Braid, Robert William
Brainerd, Donald L.
Brame, Frank Ayers, III
Branch, Frank N.
Bransfield, William James
Brasher, Samuel R.
Bratcher, Collen Dale
Brayshaw, James M., Jr.
Braybrooks, Alan D.
Brazda, Arthur R.
Brazeau, Phillip S.
Brazzatti, Joseph, Jr.
Brenner, Joseph C.
Brennan, Robert F.
Brennan, Barry Thomas
Brennan, William J.
Bressler, Harper T.
Brescia, Louis A.
Breslich, Francis N., Jr.
Bresnahan, Joseph E.
Brett, James T.
Brewster, John C.
Brewer, Richard Glenn
Bridges, Glee E.
Bright, Frederick
Briggs, Dale E.
Briskey, Thomas Joseph, Jr.
Britton, Clarold L.
Brobst, William A.
Brodeur, Robert A.
Broecker, Theodore James
Brooke, Ralph L.
Broom, Harry B., Jr.
Brooks, Gerald R.
Brooks, William M.
Brooks, David L.
Brooks, William Earl
Brooks, Phillip W.
Brower, Robert E.
Brown, Charles E.
Brown, Wilbur A.
Brown, Thomas K.
Brown, Robert James
Brown, John Lott, Jr.
Brown, Edward F.
Brown, Gordon V.
Brown, Kimberley Topping
Brown, Lawrence William
Brown, Gordon G., Jr.
Brown, Harold Rudolph
Brown, Glendon L. D.
Brown, Douglas W.
Brown, Robert D., Jr.
Brown, Stuart J.
Brown, Robert A.
Brown, Ramon E.
Bruce, Warren
Bruner, Vernon D.
Bruns, Robert E.
Brundage, Thomas Richard, Jr.
Brune, David H.
Brush, Ronald A.
Bryant, H. Donald
Bryan, Hugh M., Jr.
Bryant, Charles F.
Buchanan, Philip Norton
Buchner, Bernard
Buck, Donald E.
Buck, Kenneth J.
Budeit, James A.
Buell, Bruce T.
Bulger, William W.
Bull, Henry D., Jr.
Bulla, Joseph R.
Burchill, George W., Jr.
Burford, Robert D.
Burgess, Robert Edward
Burke, Albert Edward
Burke, Francis Howard
Burkett, Bob P.
Burkhardt, Robert J.
Burleson, Wallace R.
Burley, Richard C.
Burnham, Paul
Burns, Robert Leroy
Burns, Wesley Ray, Jr.
Burns, Robert Paul
Burns, Russell W.
Burnette, Ollen L., Jr.
Burridge, Leonard W.
Burton, Lewis L.
Burton, James D.
Burt, Richard A.
Burton, Lee C.
Bush, Phillip B. II.
Bushnell, Keith E.
Bush, Lawrence A.
Busse, Norman Westphal
Butcher, Richard E.
Butler, William S.
Butler, Leland E.
Buttner, Joseph Robert
Byerley, John D.
Byrd, James P.
Bywater, George P.
Cade, John Winthrop
Cagle, Eugene Maurice
Cahill, John D.
Caldwell, Albert Percy, Jr.
Calkins, Dean L.
Callahan, Charles E.
Callo, Joseph F., Jr.
Callahan, Francis M.
Callaghan, James R.
Cameron, John K.
Cameron, Richard S.
Cammett, Haven Paul
Camougis, George
Campillo, Armand V.
Campbell, Thomas W.
Campbell, Phillip Raymond
Campbell, Joseph Evan, Jr.
Campbell, Howard J.
Campbell, William Roland, Jr.
Campbell, John F.
Campbell, Robert W.
Campbell, Dugald R.
Campbell, Frank Charlton, Jr.
Campbell, Henry Gilfry, Jr.
Campbell, Roy Crisp
Campbell, Thomas C.
Canary, James Wilber
Canavan, John A., Jr.
Cannestra, Kenneth W.
Canon, Robert William
Cantor, Beverly W. Jr.
Capsas, Cleon W.
Cardoni, Edmund Joseph
Card, Warren Harold
Carlburg, Herbert Luther
Carlson, James Curtis
Carlson, Robert A.
Carlsen, Charles Robert
Carlson, Jack C.
Carlstrom, Glen R.
Carney, John F.
Carpenter, George C. III
Carpenter, William B.
Carpenter, Alan P.
Carpenter, Willis Vincent
Carpenter, Lewis A.
Carr, Sheridan G.
Carson, Louis Frederick Jr.
Carter, Carroll L.
Carter, Luther Eugene
Cartwright, David Lee
Case, Neil A.
Castner, Willis Hunt II
Castor, Ronald J.
Caster, Ernest Melvin
Caswell, John Harrison
Cataldo, Albert A.
Cater, Allen W.
Catuzo, Lawrence Keith
Caulfied, Thomas James
Caves, Roy Dennis
Cave, John R.
Cave, David Barnett
Caviness, Claude P.
Cawby, Walter Norman
Ceremsak, Thomas J.
Chabot, Ambrose Lawrence, Jr.
Chace, William G., Jr.
Chadwick, Ralph Garrison, Jr.
Chakmakian, Carl
Chalupnik, Adolph N.
Chamberlain, Richard Hunt
Chandler, William Dwight II
Chaney, Marvin Lee
Chanslor, John W.
Chapman, Frederick Lamar
Chapple, Robert Lee
Chapman, Raymond William, Jr.
Chapman, Huston H.
Chapman, Robert Lane
Chapman, Leonard, Ward
Charlson, David D.
Charlton, Robert
Chastain, J. D.
Chatfield, John B.
Chelf, Harris Winston
Chereek, Benjamin
Cherry, Edwin, H., Jr.
Chesley, John D.
Chinn, Ralph M.
Chisholm, Herbert Bonness
Chomeau, John Broderick
Christofferson, John Roger
Christ, Lillard M.
Christopher, Allison L.
Christensen, Robert Ingvard
Christopher, James W.
Chrisman, Dan M.
Christiansen, Robert Merton
Christman, Richard L.
Cicero, Joseph Salvatore
Cichowitz, Edward Joseph, Jr.
Cinnamon, Jerome M.
Claeys, Don H.
Clapsaddle, Arthur B.
Clark, John P.
Clark, Charles E.
Clark, Lee H.
Clark, Don B.
Clare, George

Clark, John William, Jr.
Cleary, William, A., Jr.
Clegg, Ambrose, A., Jr.
Cleveland, Max J.
Click, Bobby W.
Clingenpeel, William Arnold
Clute, Elmer L.
Clyde, Payson J.
Cobb, Norman M.
Cobb, Glenn Graham
Cobern, James C.
Coburn, Robert L.
Cocchiarella, Frederick A.
Cochran, Edward H.
Cochran, Howard E.
Coddington, Kenneth Keith J.
Coe, David Franklin
Cofer, James Herman
Cohane, William Henry
Cohen, Marvin H.
Cohen, Robert E.
Cohoon, Richard Roy
Colborn, Kenneth L., II
Colborn, Chase C.
Coleman, Charles Norton, II
Cole, Charles F.
Colegrove, Forrest Donald J.
Cole, Bruce L.
Coley, Daniel F.
Collins, Monte
Collins, Leroy, Jr.
Collins, Robert Alvin
Colletta, Edmond E.
Collison, Martin Asbury, Jr.
Collins, Alan W.
Collins, Christopher
Coltrane, Thomas W.
Colwell, Lawrence Stuart
Comer, Morton Beryl
Comerford, Gregory A.
Condra, Kenneth Irwin
Conde Arthur F.
Coney, Robert S., Jr.
Cone, Charles N., Jr.
Conkling, John Allen, Jr.
Conlin, Carter Barry
Conmy, Walsh James
Connelly, Gus L.
Connolley, Edward J.
Connor, Thomas C.
Conover, James A., Jr.
Conolly, Merton D.
Conrad, Russell R.
Conroy, John P.
Consiglio, Charles J.
Conversano, Guy J.
Cook, Julian Howard
Cook, William J.
Cook, Charles Wilkerson, Jr.
Cook, William Herman
Cook, Joseph B.
Cooley, Talmage N.
Coons, William R., Jr.
Cooper, Jack
Cooper, Joseph H.
Cooper, James R.
Cooper, Robert L.
Copeland, James Monroe
Copeland, Delbert Gene
Copeland Curtis B.
Corey, Marion W.
Cornish, Wesley J.
Cornett, Paul Allen
Cornell, Donald R.
Corrigan, John William
Corsiglia, George Frederic
Cory, Paul J.
Cosgrove, Joseph Patrick
Cotner, Joseph T.
Cottingham, Wayne R.
Cotugno, Paul Joseph
Coughlin, Joseph Edmund, Jr.
Countryman, James E.
Couperthwait, George F., Jr.
Coussons, John Stanford
Couture, Raymond R.
Covey, James W.
Cox, Herbert W.
Cox, Glawcus Carlton, Jr.
Cox, Lawrence M. C.
Cox, Gordon Leon
Craddock, James Howard
Craigie, James Baker
Craig, John E.
Crandall, Keith Charles
Crawford, Francis, Jr.
Crawford, William W.
Crawford, Douglas Bernard
Crawford, John S.
Crawford, Harold M.
Creim, Donald H.
Crilly, Eugene
Crispin, James L.
Criss, John F.
Crittendon, Carl Joseph
Crites, Will L., Jr.
Croker, Ben M.
Croll, Richard Lee
Cronkite, Donald Wayne
Crull, William L., III
Crum, James M.
Cullen, James Graham
Cummins, Josua, W.
Cunningham, Paul R.
Cunningham, Dale V.
Cunningham, William T., Jr.
Cunningham, William Gerard
Curran, John F., Jr.
Curran, John M., Jr.
Currier, Stuart Lane
Curry, Robert J.
Curtis, Harold Bacon
Curtis, Robert E.
Cutlip, Donald E.
Cotrone, Franklyn, L.
Cutter, Alan B.
Cutts, Robert L.
Czesak, Paul John
Dabbs, Joseph Samuel
Dackert, Gerald G.
Daggett, Steven B.
Dahlman, William Howard
Dahlin, Douglas G.
Dailey, Allen Herbert
Dally, James C., Jr.
Daly, Charles W., Jr.
Daly, Theodore Martin, Jr.
Damiani, Louis J.
Damm, Charles A.
Damore, Patrick R.
Danaher, James William
Daniel, Brady R.
Dannals, Harry J.
Danneels, William W.
Dann, Alan Osborn
Darby Ronald
Darrow, Donald L.
Daughtrey, Edward Lawrence
Davan, Clarence F., Jr.
Davenport, Joseph D.
Davidson, Harry H.
Davis, Chester R., Jr.
Davis, Robert G., Jr.
Davis, Horace W.
Davis, Ozro L., Jr.
Davis, Jimmie Ervin
Davis, Bruel A.
Davis, Billy Wayne
Davis, Donald Deane
Davis, Richard D.
Davis, Charles E., Jr.
Davis, William Birchard
Davis, Donald A.
Davis, Benton, V. Jr.
Davis, Frederick Gerald
Davies, Edward T.
Davis, Francis F.
Davis, Ernest G., Jr.
Davis, Peter J.
Davy, Louis H.
Day, Charles P., Jr.
Deacon, Benjamin Harold, Jr.
Dean, James C.
Dean, Robert A.
Dean, Robert M., III
DeBona, Donald J.
DeBona, Gerald J.
DeBois, Oran P., Jr.
DeCastro, Julian Edmund, Jr.
DeCarolis, Laurence Francis
Decker, Albert I.
DeCordova, Noel, Jr.
DeCordova, Donald William
Dedeke, Leslie A., Jr.
Dederick, Warren Emery
Degrafft, William Ernest, Jr.
Dehoff, John Raymond
Deise, Leroy T.
Delaney, James D.
Delling, Leonard Verne
Demars, Sylvester A.
DeMartini, Edward John
Demars, Clarence John, Jr.
Demontbreun, Wilbur Richard
Dempsey, William S.
Dennis, Victor F.
Dennis, Frank S.
Denney, Edison L.
Denton, Robert, Jr.
Denton, Terry Jack
Denworth, Raymond Keenan, Jr.
Derby, William E.
Derge, David R., Jr.
DeSamper, Ernest Justo, Jr.
Desjardins, Charles Francis
DeSoto, Leroy Edwin
Devane, Jerry A.
DeVito, Vincent N.
Devoe, Harry Leslie
DeWalt, Ronald P.
Deyak, John J.
Diamond, Marvin H.
Dice, James B.
Dickert, Donald L.
Dickhart, William Warner, II
Dickerhoff, Donald C.
Dickinson, Calhoun
Dickens, Roderick S., Jr.
Dicker, Ralph W.
Dienst, Carl S.
Dierks, Dean C.
Dietrich, Horace Wilcox, Jr.
Dietz, Carl C.
Dillon, Edward L.
Dille, Earl K.
Dimond, Michael F.
Dinegar, Robert H.
Dirks, Richard Alan
Disessa, Robert J.
Ditrick, Calvin R.
Dittmar, Donald Louis
Ditterline, Robert Nicklas
Dixon, William O.
Dixon, Thomas Monroe
Dixon, Philip E.
Dixon, Brock
Dobbertien, Francis Martin
Dobbins, Robert N., Jr.
Dockery, James R.
Dockendorf, Maynard E.
Doclar, Ernest P., Jr.
Dodd, John W., Jr.
Doggett, William Kerley
Doherty, Robert O.
Doherty, Francis J.
Dolan, Michael Patrick
Dolan, Michael Bernard, Jr.
Dolan, Robert F.
Dolan, Richard M.
Dolbow, Jacob F., III
Dolen, George Wells
Dolinger, Myles J.
Dombey, James R.
Dominguez, Arnold Charles
Donovan, Edward Maurice, Jr.
Dorney, William John
Dosland, William B.
Doty, Robert D.
Doty, Roger E.
Douglas, Burnie William
Dougherty, John E., Jr.
Dow, Charles N. D.
Dowd, William G., Jr.
Downing, George Leonard
Downing, Roland Granville
Downey, Robert E.
Drake, George N.
Draving, Robert K.
Drehoff, John J., Jr.
Drew, Kenneth J.
Drews, Robert Donnell
Drexler, Joseph S.

Dreyer, Jack K.
Dubose, Carlyle Theodore
Dubois, Loren A.
Dubois, George
Dubuc, Carroll E.
Ducey, Brian J., Jr.
Ducey, Thomas B.
Duckworth, Robert Eugene, Jr.
Duckworth, Paul R.
Dudley, Malcolm Hardy
Duerr, Edwin Clyde
Duff, Joseph W.
Dufford, Donald E.
Dugal, Gordon E., Jr.
Dugan, Joseph J., Jr.
Duke, David William
Dulk, Peter A.
Dumay, Marvin
Dumm, Richard S.
Dunbar, William M.
Duncan, Marvin E.
Duncan, Peter
Dunham, Richard M.
Dunkle, Frank Harper, Jr.
Dunne, James Robert
Dunne, James M.
Dunne, Francis Russell
Dunn, William M.
Dunn, William A., Jr.
Dunworth, Joseph M.
Durfee, Frederick G.
Durham, Jesse Clifford, Jr.
Durst, Roy
Dusik, Florian K.
Duxbury, John R.
Dvorscak, Bernard J.
Dwyer, Edward Joseph, Jr.
Dwyer, James F.
Dye, Charles A.
Eadie, Ronald E.
Eakin, Charles A.
Earl, George S.
Earley, Harold L., Jr.
Earnhardt, Wiley Jacob P., Jr.
Eaton, David C.
Eaton, Ernest G.
Ebbert, Donald G.
Ebe, Hubert Joseph
Eberly, William G.
Eberdt, Jesse S., Jr.
Eck, Richard C.
Eddy, Paul Dawson, Jr.
Eder, Michael D.
Edgar, Richard B.
Edinger, Sidney M.
Edinger, John S.
Edmondson, Edmond A., Jr.
Edmunds, Basil L.
Edquist, Paul E.
Edwards, Gerald C.
Edwards, Sam
Eells, Gerdin D.
Ehman, Donald Allen
Ehr, Richard Lee
Eiben, Donald Thomas
Eichelberg, Alvin William
Eide, Fred A.
Eilers, Robert D.
Elam, Harper J., III
Elbert, Theodore F., III
Eldridge, Ralph G.
Eliceche, Ronald Marion
Eliot, Frederick
Ellexson, Stanley Edgar, Jr.
Ellifritt, Wallace E.
Ellis, John R.
Ellis, John C.
Elliott, Buddy
Elliott, Charles Marsh
Ellis, Richard C.
Ellis, Frank D.
Ellinghuysen, Lyle Ben
Ellis, Eugene D.
Ellis, Donald A.
Ellis, William H.
Ely, Frank W.
Ely, Roland Price, Jr.
Emanuels, Donald H.
Emmerling, Henry C., Jr.
Emmick, Harold E.
Emory, Wilbur C., Jr.
Endicott, Anthony L.
Engel, Alan W.
English, Glenn Allen
English, Joseph Anthony, Jr.
Engle, Harold G., Jr.
Epstein, Charles Sasseen
Erhardt, Richard Otto
Erickson, Newell Lamont, Jr.
Erickson, Charles A.
Erickson, Kenneth John
Ernest, Francis L.
Esbensen, Philip George
Eskenazi, Jacob V.
Espeseth, Robert D.
Etheridge, Tammy Haggard
Etherington, John E.
Evans, Burl E.
Evans, Lloyd L.
Evans, Lewis S.
Evans, Albert Charles
Evans, John W.
Evans, Thomas W.
Eveleigh, Robert A.
Everett, Edwin A.
Everson, Donald B.
Everett, John E., Jr.
Evrard, Leroy
Ewanowski, Stanley J.
Ewers, John Robert
Ewing, Millard F., Jr.
Fainberg, Bertrand M.
Fairbanks, John W.
Fajer, Vincent Julius
Fall, Harry C.
Fanale, Joseph A.
Fancher, Gordon C.
Farley, Donald S., Jr.
Farmer, Fred Farrar
Farney, James E.
Farrington, Robert Hill
Farrell, William H.
Farwell, Warren Edward
Fasold, Karl J. R.
Faulwetter, William Charles
Faure, Eugene J.
Favero, Valentino R.
Faver, Don A.
Fead, Louis McPherson
Fedarko, William
Feddersohn, Richard Crosby
Fee, James W.
Felix, John L.
Felton, Kenneth Don
Fennessy, Eamon Terence
Feraco, Frank C.
Ferguson, Ray W.
Ferguson, Robert L.
Ferguson, Robert L.
Fern, George M.
Fernandes, Dale Russell
Ferrell, Dewitt Talmadge, Jr.
Ferraro, Carlo, Jr.
Ferrell, Edward Shinault
Ferry, Francis R.
Fetter, Earl R.
Fichtner, Herman
Figge, Gordon L.
Findlay, Charles Noyes
Finkemeier, Robert W.
Finlay, John D., Jr.
Fischer, G. Jack
Fischer, Walter R., Jr.
Fiscus, William S.
Fishel, Charles Edgar
Fisher, Dalmar
Fisher, Albert L.
Fisler, Harry James
Fithian, Floyd J.
Fitzmorris, Neil T.
Fitzgerald, James Francis J.
Fitzgerald, James E.
Fitzpatrick, Roger J.
Flacke, Robert F.
Flaker, James R.
Flanagan, William Joseph
Flanigan, Mark
Flannery, Gerald R.
Flatt, Earle E.
Fleming, Charles C., III
Fleming, John Roger, Jr.
Fletcher, William L., III
Fletcher, Paul Brent
Fletcher, Albert Edward, Jr.
Flick, John Albert
Flint, Franklin F.
Flittner, Glenn A.
Flowers, Jimmy R.
Floyd, James B.
Fly, Emerson Harold
Flynn, Gordon L.
Flynn, Francis P.
Foard, Thomas R.
Foleen, Carl R.
Foley, James K.
Foley, Maurice Eugene
Foley, Daniel M.
Folger, David W.
Foote, Kenneth Richard
Forbes, Malcolm H.
Foreman, Marshall Lee, Jr.
Forehand, Ronald
Formichella, Francis John J.
Forschner, Richard
Fossett, John L. Jr.
Foster, Lewis A., Jr.
Foster, Jerald D.
Foust, Samuel B., Jr.
Fox, Alvin L.
Fox, Francis H.
Fox, Leslie S.
Fox, Jack H.
Fox, Edward, I
Foxton, Frederick L.
Frainier, Richard J.
Frankel, Donald D.
Frank, Richard H., Jr.
Franz, Donald Roy
Franz, Harold Charles
Franke, Arnold Gene
Fraser, Richard R.
Fraser, George Bruce
Frazee, Douglas R.
Fredericks, Richard Paul
Frederickson, Ronald Harold
Freedson, Ralph
Freeman, Wynn G.
Freeman, Walden S.
Frieberger, Howard
French, Joe Floyd
Frey, Louis, Jr.
Frick, Edward D.
Frier, John Mason, Jr.
Friend, Thomas Patrick
Friedline, Karl W.
Frith, Robert L.
Frohlich, Andrew Sturgis
Frost, Jack A.
Frudden, Carl R.
Frye, Richard Harper
Fryman, John Elmer
Fuhs, Allen E.
Fujimoto, Akira F.
Fulcher Clay Wayland Gordo
Fuller, Gary Mack
Fullmer, Lee D., Jr.
Fuller, John G. C.
Funk, William Henry
Furdak, Edward Joseph
Furlan, Allen Joseph
Fusco, Anthony T.
Fust, William C.
Gaines, Howard Wendell
Galbraith, Robert A.
Gallagher, Daniel D.
Gallagher, John M.
Gallagher, John E., Jr.
Gall, Edward E.
Gallagher, Donald R.
Galvin Timothy F., Jr.
Gamber, Marlan E.
Ganey, John Rick
Gangloff, Charles A.
Gannon, Joseph A.
Gann, Charles T.
Garcia, Raymond P.
Gardner, Charles Arthur
Gardner, Walter G.
Gardner, Geoffrey Leland
Garlid, Wayne H.
Garland, Daniel Harper
Garner, Stanton Berry
Garner, Johnnie L., Jr.

Garner, Wilford E., Jr.
Garofalo, Raymond E.
Garrison, Richard L.
Garrett, Carlton Lee
Garrison, Joseph Fletcher J.
Garrison, William Henry, Jr.
Gasche, Arnold C.
Gaskell, Edward P., Jr.
Gasque, Charles W.
Gastley, Richard David
Gaudette, Roland E.
Gauldin, Alva C., Jr.
Gaulke, Ramon George
Gaurteaux, Harold P.
Gawronski, Richard J.
Gayley, Charles W. D.
Gebhard, James Joseph
Geer, Fred Louis
Gehman, Robert Swartz
Gehrke, Robert A.
Gehrig, Neil Edward
Geier, Edward A.
Geiken, Lloyd A.
Gelineau, Ronald G.
Gensel, Richard L.
Gentile, Vincent J.
George, Charles J.
Gerberding, Charles D.
Gerrish, Scott
Gettle, Rollin B., Jr.
Gianascol, Leroy Donald
Giaquinto, John A.
Gibbons, Floyd E.
Gibbens, Daniel G.
Giblett, David R.
Gibson, Charles Hugh, Jr.
Gilbart, Donald H.
Gilboe, David D.
Gilbert, Ralph L.
Gilbert, Robert Northcutt J.
Gilbertson, Glen
Gilcrest, Andrew Spencer
Gile, Robert Hall
Gilgore, Charles William
Gilligan, Eugene Francis, Jr.
Gillen, Joseph Francis
Gillette, Nelson Marcelous
Gill, Gerald W.
Gillespie, Edward Allan
Gillen, Thomas W.
Gillaspy, Dudley A.
Gilman, George C.
Gilmore, James L.
Gilreath, James Edson
Gilson, Carroll Paul
Gilstrap, Jack R.
Gilstad, Gerald William
Giragosian, Newman H.
Girrier, William H.
Gist, John R.
Giuffrida, Sebastian Joseph
Gjerman, Lawrence Herbert
Glahn, Gerald L.
Glass, Harry John, II
Glass, Juandell D.
Glathe, William Quincy
Glazier, John J
Glendenning, J ues Walter
Glynn, Williar .
Gobel, John C rles
Godfrey, Edw d C.
Goeders, Calvin N.
Goertz, Donald D.
Goetz, Robert C.
Goetz, Daniel H.
Goforth, Benjamin Hunter, Jr.
Golden, Roger F.
Goldberg, Michael M.
Goldschmid, Jack Powell, Jr.
Goldy, Donald C.
Goll, Edward C.
Goloway, Edward D.
Goodrich, Vincent N.
Good, John Jay, III
Goodfried, Herbert J.
Goodman, Charles H.
Goodwin, Francis X.
Goodman, Martin B.
Goodwin, William Donald
Gore. William K.
Gorham, Alden B., Jr.
Gorman, Irving X.
Gorman, Robert G.
Gorman, James G.
Gossett, Wallace B.
Gotautas, Vito A.
Goudie, James Q.
Gould, Richard Henry
Graham, James B., Jr.
Graham, James T.
Grammer, James M.
Grant, William F.
Granger, Allan Edward
Granger, Joseph F., Jr.
Granberg, Arne R.
Grant, Robert S.
Graves, Robert Muir
Gray, Charles Leroy
Grayson, William Jackson, Jr.
Gray, Donald R.
Greenwald, Marvin
Greenwood, James William, Jr.
Green, Edward B.
Green, Stephen Hathaway
Greene, Robert W., Jr.
Green, Charles D.
Greene, Charles Ralph, Jr.
Greer, John G.
Greenlaw, William Charles
Green, Philip F.
Green, Paul A.
Gregory, John B.
Gregory, Roger Milton, Jr.
Gregory, James Wilmer P., Jr.
Greinke, Everett D.
Grier, Joseph L.
Griffith, James L.
Grisham, George R.
Griswold, Leonard Lee, Jr.
Groepler, David Richard
Groff, Peter Frederick
Grogan, Robert F.
Gross, Burton J.
Gross, Philip J.
Gros, Edwin J., Jr.
Gross, Webster, Jr.
Grubb, John R.
Gruber, Charles K.
Gruhler, Frederick William
Grundtisch, Donald K.
Grupp, Fred William, Jr.
Gryzan, Chester M.
Gudmunds, Steinthor Jon
Guenther, Gordon Brewster
Guenther, Charles A.
Guercio, Vincent C.
Gugenheim, Milton G., Jr.
Guhl, Max John
Guilbault, Robert Edward
Gum, Harvey S., Jr.
Gunby, David K., III
Gunby, Stanton C.
Gunderman, Howard J.
Gunderson, Don H.
Gunwall, Gordon L.
Gurnee, George W., Jr.
Gurney, Walter John
Gurthet, Roger A.
Gwynn, John Lennon
Haase, John Albert
Hacker, Charles R.
Hackbart, Robert W.
Haefeli, Paul M., Jr.
Haest, Martin Jerome
Hagan, Harold T., Jr.
Hagelin, Ronald M.
Hagen, James P., Jr.
Hahn, William B.
Hain, William Hart
Hale, Alan D.
Hale, Richard Armour
Haley, Francis L.
Hale, Wilbur B., Jr.
Hall, James R.
Hall, Ralph N.
Hall, David P.
Hall, Alton Lowell
Hall, Robert Harry
Hallaron, John Dennis
Hall, Charles D.
Hallett, Howard Raymond, Jr.
Hallas, Donald J.
Haller, Albert J.
Halsema, Lester J.
Halzel, Isadore
Hamblen, Dana H.
Hames, Richard L.
Hamilton, Arthur N.
Hamilton, William Joseph, Jr.
Hamlet, Robert
Hammock, Billy J.
Hammond, Donal D.
Hammergren, Carl K.
Hammes, Peter Lawson
Hammer, Leon
Hampton, Clyde Robert
Hamre, Roger A.
Hanauska, George C.
Handley, John A.
Haneghan, William Joseph
Hanley, Terence
Hannahs, Fred C., Jr.
Hannagan, James Francis, Jr.
Hannen, William Donald
Hansmann, Anton C.
Hansen, Robert C.
Hanson, Marlo W.
Hansen, Arthur L.
Hanson, Edward David, Jr.
Hansen, Donald H.
Hansen, Whitney
Hansen, Maris D.
Hansen, Robert A.
Hansen, Richard A.
Hansard, Fred G., Jr.
Harbin, Robert L., Jr.
Hardesty, Loyd Blaine
Hardy, Donald G.
Hare, Gail C.
Harger, Donald D.
Hargraves, William Pearce J.
Hargrove, Haywood Henry, Jr.
Hargrove, John Quincy, III
Harkins, Richard Erle
Harlan, Thomas J., Jr.
Harman, Gerald J., Jr.
Harmon, Harold W.
Harmon, Russell R.
Harner, Harry A.
Harper, John Albert
Harper, Norman Wayne
Harper, Howard M., Jr.
Harris, Richard N.
Harrah, William F.
Harris, Robert Leighton
Harrison, Ralph Hynson, Jr.
Harris, Edwin F.
Harrison, Angus D., Jr.
Harrison, Horace
Harrison, Thomas Knight
Harris, Robert Ulrich
Harshman, Robert Lee
Hart, Richard S.
Hartman, William L., Jr.
Hartman, Donald Richard
Hartley, Richard Ridgard
Hart, Alan
Hartwell, James Orlo
Harvill, Robert W., Jr.
Harvey, Laurence E.
Harvey, Earl M., Jr.
Haskins, John William
Hasle, Roger H.
Hastings, Robert T.
Hatley, Pearl O., Jr.
Hauan, George L.
Haughton, Richard A.
Hausle, William T.
Haveman, O. H., Jr.
Hawes, Charles C., Jr.
Hawkins, Charles W., III
Hawkes, Edward Z., II
Hayman, Robert W. C.
Haynie, Fred Hollis, Jr.
Haynes, John Burton
Hazel, Gerald V.
Hazlett, William Hoyt, Jr.
Hazlett, Frederick William
Heald, Allen L.
Healy, James Vincent

Healey, John R.
Hearn, Robert E.
Heath, Thomas Roy
Heaton, William E., Jr.
Hebb, Ralph K.
Hedges, Joseph Wesley
Hedrick, John E.
Hegeman, Andrew S.
Heidt, Arthur J., Jr.
Heil, Henry C., Jr.,
Heinz, John A.
Hein, Richard Anthony
Heintzman, John S.
Hembree, Sam. M.
Hempel, Robert Emil, III
Hemphill, James Edwin
Hendrick, Louie G.
Hendricks, Albert Traver, Jr.
Hendel, Richard William
Henderson, Raymond Reed
Henderson, Edward James
Henderson, James R.
Henebry, Philip F., Jr.
Henry, Robert William
Henricks, Jerry M.
Henry, Hugh A., Jr.
Herkner, Richard Thomas
Hermitt, Thomas J.
Herman, Adam T.
Herrington, Alfred H.
Herrmann, Walter Theodore
Hersom, Walter A.
Hess, Ronald Kenneth
Hess, Robert Lee
Hess, Jacob F., Jr.
Hettinger, Michael J.
Hewett, John B.
Hewitt, Dean Jay
Hewitt, William S.
Hibbard, Curt W., Jr.
Hickmann, Charles A.
Hide, Donald L.
Higgs, Roger Allen
Higgins, Robert L.
Hildebrand, John Henry, Jr.
Hilfrank, William E.
Hilke, James L.
Hill, Karl N., Jr.
Hill, Edmund H.
Hill, Richard Thomas
Hills, John Leverett
Hillesland, Carl B.
Hill, Roland R.
Hillerud, Donald George
Hill, Cal D., Jr.
Hindman, Thomas E.
Hine, Francis Charles
Hinnant, Wallace P.
Hinsvark, Don George
Hinton, Lloyd Vernon
Hirshman, Harold M.
Hitch, Lyman B.
Hlywiak, Joseph
Hoag, William C., Jr.
Hobbs, William E.
Hoberg, Dwaine H.
Hobson, Richard B.
Hobson, Dan M.
Hocker, Walter Brockway
Hockett, William Alden, Jr.
Hodge, George Lowrance
Hodge, Herbert W.
Hodges, Thomas M.
Hoefer, Richard A.
Hoekstra, Andrew A.
Hoff, Jack Allen
Hogan, Aloysius J., Jr.
Hogan, Robert Timothy
Holdych, Harold F.
Holden, William Hoyt, Jr.
Holfelder, John L.
Holland, Walter F., Jr.
Holleman, Henry N.
Holiday, Lloyd E., Jr.
Holland, John Clayton, Jr.
Hollister, Walter Mark
Holmbeck, Glenn Eldon
Holmes, Edward Albert, Jr.
Holmes, Jack I., Jr.
Holman, William C.
Holmquist, Eric Allan
Holton, William Alexander J.
Holtgren, Wallin D.
Holyfield, George W.
Honeycutt, Joseph C.
Honeycutt, Robert D.
Honer, James A.
Hong, Leslie Kee Young
Hooper, Elbert, Jr.
Hoover, Robert Norton
Hoover, Harwood
Hope, John C., Jr.
Hopkins, William Holden P.
Hopper, William E., Jr.
Hoppe, Charles Thomson
Hopp, John Howard
Hornor, Lawson D.
Horneck, George B.
Horne, Charles E., III
Horsmon, Frederick M.
Horton, Robert C.
Hosemann, Charles Delbert
Hosea, Andrew J.
Hoskins, Robert H.
Hotton, George E.
Hough, Ward T.
House, Karl Theodore
Hovan, Stephen B.
Hovey, Gale Keith
Howard, Walter R.
Howard, Lawrence K.
Howell, Walter James
Howell, George W., Jr.
Howe, Wesley William, Jr.
Hoyt, John R.
Hoyt, Peter L.
Hubbard, James E.
Hubert, John Felix
Hudak, Leonard Andrew
Hudson, Raymond S.
Hudson, David B.
Huff, Alton B.
Huffine, Donald Harris
Hugghins, Gordon L.
Huguley, Claude H., Jr.
Huntting, Irving Willis
Hunter, Richard Francis
Huntley, Robert Carson Jr.
Hunt, Jesse F.
Hunter, Charles T., Jr.
Hunter, Fred Copelan
Hunter, Harold F., Jr.
Hunt, James Hubert
Hurd, Robert J.
Hurd, Walter L.
Hurlbut, Wendell P., III
Hurley, Walter P.
Hurt, Alfred B., Jr.
Hurt, Marc A.
Husman, Robert J.
Hutchinson, Otis H.
Hyers, Kemper Kent
Iacona, Michael Angelo
Iiannicchari, Albert Peter
Imel, John M.
Immen, Frederick H.
Ingison, Malcolm S.
Ingram, Max H.
Ingraham, John H.
Ingram, Frank Lequellec
Inman, Wayne Dewald
Inman, John S.
Innes, Bobby G.
Irby, Frank R.
Iverson, Selmer O.
Ives, John Gordon
Jackson, Oris F.
Jackson, Earl Leslie, Jr.
Jacob, Charles
Jacobson, Richard P.
Jacob, William Irvin
Jacobson, Keith Arvid
Jagel, William R.
Jahnke, Fred R.
Jahns, Arthur William
James, George A., Jr.
Jameson, William M.
James, Frederic, Jr.
James, William L.
Jamison, Robert E.
Jamison, Clark B.
Jarck, Walter
Jarrett, Bob J.
Jarrett, Elmo Donald
Javinsky, Melvyn Aaron
Jaworowski, Thomas Robert
Jedlicka, Charles, Jr.
Jefferts, Keith Bartlett
Jenik, Edward C., Jr.
Jenkins, William C.
Jenny, Robert Melvin
Jennings, John M.
Jenner, David Herbert
Jensen, Robert W.
Jensen, John Edward
Jensen, Arthur M. I.
Jeppesen, Levi J.
Jepson, William B.
Jobson, George Smart
Johnson, Joseph Daniel
Johnson, Henry G., Jr.
Johnston, Bruce Todd
Johnson, Warren W.
Johnson, Hugh Wood, III
Johnston, Robert Wallace
Johnescu, Robert John
Johnston, Gregory Roger
Johnson, Marion
Johnson, Richard William
Johnson, James H.
Johnston, Richard H.
Johnston, Charles F.
Johnson, William J.
Johnson, Paul C.
Johnson, Robert A.
Johnson, Don N.
Johnson, Douglas Andrew
Johnson, Maurice Arthur
Johnstone, Denver T., Jr.
Johnson, Lowell E.
Johnston, Ervin F.
Johnston, Richard Evander
Johnson, Charles F.
Joines, Harrell Cheek
Jolley, John M.
Jonaus, Lawrence J.
Jones, Meredith L.
Jones, Raymond E.
Jones, John P.
Jones, J. Benton, Jr.
Jones, Rolland R.
Jones, William Prichard
Jones, Samuel Roy
Jones, Charlie Crowell
Jones, Billy R.
Jones, Roger Franklin
Jones, Richard Milton
Jones, Thomas E.
Jones, Arthur Daniel, Jr.
Jones, Thomas G.
Jones, Doyle Earl Leland
Jones, Leland L.
Jones, Everett Jay, Jr.
Jones, T. Embury, Jr.
Jonnatti, Anthony J.
Jordan, Richard A.
Jordan, Thomas Michael
Jordan, Stephen Walter
Jordan, Edmund H.
Joselyn, Edwin G.
Joyce, Edward R., Jr.
Joyce, Thomas E., Jr.
Joynt, Thomas Richard
Judson, Arthur II
Kaas, Ronald B.
Kaine, Leonard Paul
Kaiser, Herbert J.
Kaiser, Richard G.
Kaiser, Dale Eugene
Kaiser, Richard
Kallestad, Robert S.
Kallen, Robert G.
Kaltenbach, John L.
Kando, Moses
Kandel, Philip J.
Kane, Robert E.
Kane, Arthur V.
Kann, Barton R.
Kanwisher, Walter Charles J.
Karabell, Irving M.
Kardon, Mitchell
Karig, Richard Douglas
Karnes, Robert D.
Kasper, Roman J.

Kastner, William J.
Kataryniak, William
Katz, Alvin E.
Kaufmann, Anders Joseph
Kauffman, Theodore G.
Kavanaugh, Michael Willard
Kay, Horace Crawford, Jr.
Keating, Donald F.
Keck, John F.
Keely, Billy J.
Keeler, Roger N.
Keigler, John E.
Keigler, George A.
Keim, Floyd N.
Keim, Richard P.
Kelety, Robert G.
Kellett, John W., Jr.
Kelly, Edward Joseph
Kelly, Peter Bernard, Jr.
Kelly, Bernard M., Jr.
Kelley, Robert B.
Kelly, Jack Carl
Kelley, William C., Jr.
Kelly, Ferdinand G.
Kelner, Richard W.
Kemmler, Earl L.
Kendall, Alf R.
Kendra, Robert Joseph
Kenkel, James Edward
Kenny, John Joseph
Kennedy, David Joseph
Kennedy, Lowell D.
Kennedy, John Harrison
Kennedy, David R., Jr.
Kennedy, Stephen Elmer, Jr.
Kenniff, Robert Leighton
Kenshald, Daniel Ralph
Kent, Donald
Kenton, Warren F.
Kepner, Charles David, Jr.
Keppel, Robert E.
Kerley, Ralph Clifton, III
Kern, Robert L.
Kern, Kenneth E.
Kerrigan John Francis
Kerr, Norman J.
Kerrigan, Paul Richard
Kessing, Charles T.
Kestenbaum, Joseph J.
Key, John M.
Keyes, Samuel W.
Kidd, James H., Jr.
Kiernan, Peter L.
Kiger, Donald H.
Kiker, Billy
Kilgo, Dewey Doyle
Kimbrough, Warren O.
Kincaid, David R.
Kiner, Richard A.
Kines, Charles R.
King, Joe Larry
King, Robert W.
King, Benjamin F., Jr.
King, William C.
Kinkade, Emmett Duane
Kinney, Edward Pollard, Jr.
Kinney, Donald C.
Kintzinger, Paul Ray
Kiper, William D.
Kitchen, William L.
Kite, Robert M.
Kittelberger, Howard Eugene
Kitzman, Lester A.
Klees, Charles F.
Klein, Donald E.
Kleven, Esrom M. O.
Kline, James Willard
Kloves, Thomas Ray
Klym, Stephen
Knapp, Blair Alan
Knier, Leonard F.
Knight, Edward A.
Knight, Robert Herman
Knight, Peter L.
Knipp, Walter John
Knoop, Roger L.
Knop, Howard P.
Knorr, George G.
Knowles, Philip D.
Knuth, Melvin R.
Knuth, Donald F.
Koch, Ulrich Hubert
Koch, Merton O., Jr.
Koch, Edgar J.
Kochert, Milton R.
Koechlin, Roy T.
Koenig, Robert M.
Koesy, Calvin Bruce
Kolb, Harold Hutchinson, Jr.
Koltun, Stanley P.
Korn, Donald L.
Kosiba, Raymond J.
Koski, Kenneth L.
Kosonen, Charles George
Kost, Don O.
Kostka, Ralph E.
Koth, Robert A.
Koverman, Gary A.
Kowalsky, Jerold David
Koyle, Myron R.
Kozischek, Albert Joseph
Kraft, Edwin E.
Kraft, Leonard Herbert
Kragseth, Norman H.
Kral, Jerome J.
Kramer, Manuel
Kramer, Stanley D.
Kramp, Robert W.
Krass, Henry C.
Kratt, Theodore Donald
Krause, Neil C.
Krause, Richard James
Kraynak, Michael, Jr.
Krblich, Charles Albert
Kreiner, Leon W.
Krochalis, Edward J.
Kronich, Peter George
Kropf, Charlie Wilber
Kropack, John A.
Kroszner, Rudolf J.
Krueger, Wayne Douglas
Kruger, Richard
Krulder, Harold C., Jr.
Kuchard, Danald D.
Kuchac, Ronald S.
Kuechle, Douglas W.
Kuehnl, Neil R.
Kuhn, Richard A.
Kuhn, Frank Stuart
Kulesza, Eugene Alexander
Kullman, Thomas B.
Kulp, Darlington R., Jr.
Kuns, Delmer Lavonne
Kurek, Raymond Herbert
Kusch, Kenneth B.
Kussman, Robert Nicholas
Kuthy, Eugene Wendel
Kuzenski, Kenneth F.
Kuzniar, Joseph F.
Kyle, Kenneth William
Kyser, Russell H.
Lacour, Joseph A., Jr.
Laegen, Robert Frank
Laffoon, Louis M.
Laib, Robert D.
Lain, Horton William
Laing, Bruce Charles
Laitala, Leilan M.
Lalicker, Robert G.
Lalley, Richard P.
Lamers, John Peter
Lamorte, James Francis, Jr.
Lampson, Matty E.
Lancaster, James Otto, Jr.
Landon, John Robert
Landau, Steven Andrew
Landis, David Harvey
Lando, Robert E.
Langley, Rolland Ament, Jr.
Langelier, Robert A.
Lanphear, Robert M.
Lapham, Arthur E.
Larkin, Will M.
Larkin, William James, III
Laroux, Harold
Larson, Howard James
Lasher, David Lowery, III
Latka, Robert A.
Laughead, Robert Reuel
Laughon, James H.
Lavan, Robert E.
Laverty, Howard Keith
Law, William G.
Lawless, Joseph Thomas, III
Lawless, John H.
Lawless, James L.
Lawrence, Harold Robert, Jr.
Lawrence, Robert Edmund
Lawrence, Frank E., Jr.
Lawrence, Paul B.
Lawson, Emmett W.
Laynor, William Giltz, Jr.
League, Joseph James
Leake, Eugene H.
Leber, William S.
Ledbetter, Roy E.
Ledford, John D.
Lee, Benjamin H. K.
Lee, James C.
Leemhuis, John P.
Leeson, Joseph F.
Leetch, James F., II
Legg, Douglas R.
Legg, William L.
Lenfest, Harold F.
Lennon, Paul S.
Leonhardt, John J.
Leonard, Robert Martin
Leonard, Ralph L.
Lerohl, Howard C.
Leslie, William Gregor M., Jr.
Leslie, Robert B., Jr.
Lessmann, Arthur Jerome
Lester, John W.
Letkeman, Herkus W., VII
Levan, Walter N.
Levey, Edward M.
Levenson, Lewis M.
Leve, Marshall S., Jr.
Levien, Frederic H.
Levy, Ted
Lewandowski, Melvin A.
Lewis, Benny G.
Lewis, Eugene R.
Lewis, John T.
Lewis, Leon D.
Lewis, Kenneth A.
Lewis, Robert E.
Lewis, Thomas D.
Lewis, Benjamin Edison, II
Leyburn, Boyd H., Jr.
Lichtenberger, Donald Ray
Lierman, Roy J.
Lier, Douglas W.
Lindquist, John R.
Lindstrom, John Douglas
Lindsey, Claude D., Jr.
Lindborg, Leonard D.
Lindsay, Robert L.
Linderman, James Stephens
Lindsay, Rodger, II
Lindley, James G.
Lind, Don L.
Lineberry, Billy Ray
Lines, Jack Herman
Linn, Daniel A.
Linscott, Roger Henry
Linton, George Howard
Liswith, Carl J.
Littell, Raymond Wallace
Littleton, Vance Crockett J.
Little, Jerry W., Jr.
Livas, Basil L.
Lively, Bobby G.
Livingstone, John A.
Livingston, Daniel S.
Lizotte, Joseph H., Jr.
Lloyd, Duane R.
Locke, Kenneth L.
Lockard, Noff S.
Lockett, Benjamin B.
Loeb, Gerald Kingsley
Loewenstein, Jordan Maurice
Loewe, Otto E., Jr.
Loffhagen, Gordon E.
Loffland, Donald Edward
Lohmann, William H.
Lokker, Eldred E.
Loktu, Alfred M.
Lombard, Thomas D.
Long, Kermit K.

Long, Jim T.
Long, Martin H.
Loomer, James A.
Looney, Robert Fain, Jr.
Lopez, Victor C.
Lord, Frank J.
Lord, Frank E.
Lord, Charles B.
Lorenz, Royal W.
Lotz, Jack C.
Loucks, Daniel Peter
Loughlin, William J.
Louis, Ronald A.
Love, Don Kenneth
Love, John E.
Lowry, Robert C.
Loyd, Allen Hubbard
Lubach, Donald W.
Lucas, William Curtis, Jr.
Lucky, George W.
Luczak, Charles T.
Lund, Donald Sterrett
Lund, David D.
Lundin, Carl David
Lupica, Louis A.
Lutts, Raymond J.
Lux, Donald G.
Lyall, Ronald N.
Lycan, Deane Richard
Lynch, John J.
Lynch, John P.
Lynn, David E., Jr.
Lynne, Donald M.
Lyon, Eugene
Lyttle, James D.
Maasbyll, Arthur G.
Macan, John Joseph
MacDonald, Roger G.
MacDonald, Ian A.
Mach, George R.
MacIntyre, Daniel George
Mackay, Stanley R.
Mackin, John C. T.
Mackey, Joseph Timothy
Mack, Chester F., Jr.
Macon, Arthur R.
Macpherson, John
Macy, Phillip F.
Maddox, Luther Galyn
Maddox, Arthur R.
Maddox, John William, Jr.
Maddox, Billy Hoyte
Madison, William Edgar
Madole, Donald W.
Madsen, Gerald M.
Madsen, Evan William
Maginnis, James B.
Magnuson, Dale Walter
Mahaffey, Tom W.
Mahan, Frank H.
Maher, John Joseph
Maher, John Henry
Maher, Peter Donald, III
Mahoney, Timothy Raymond
Makula, Robert
Male, Edwin Kirby, Jr.
Malloy, John Francis
Malone, James E., Jr.
Maloney, John F.
Maloney, Thomas P.
Malone, James O.
Mangino, Joseph
Mann, Ramon M.
Mann, Lawry Webb
Manning, James H.
Mansell, Roger L.
Mansfield, James D.
Manzano, Allen J.
Maple, William Robert
Mapp, Thomas W.
Marangiello, Daniel Angelo
Maracani, James P.
March, Bryce D.
Marchand, Theodore W.
Margotta, Robert F.
Margolin, Robert S.
Marihart, Donald J.
Mariani, Henry A.
Marlow, Edmond O., Jr.
Marlar, Richard T.
Marlowe, Harold C.
Marrow, Arnold M.
Marr, William R.
Marsh, Frank E., II
Marsden, Norman H., Jr.
Marshall, Roderick
Marsh, Barry Butler
Marshall, Stanley J.
Marston, Norris E. G.
Marshall, Freddie R.
Martin, James P.
Martin, Abbott Waite, Jr.
Martin, Thomas Joseph
Martin, Clyde Philip, Jr.
Martin, Robert E., Jr.
Martin, George J., Jr.
Martin, James R.
Martin, Manuel R., Jr.
Mason, Raymond F.
Masone, Steve A.
Mason, Timothy C.
Masters, Miles Husted
Masters, William Roy, Jr.
Matchett, Don W.
Mathews, Charles
Mathis, Leroy E., Jr.
Mathews, Robert S.
Mattoon, Peter Mills
Matthias, Williams, Jr.
Matthes, Ralph Kenneth, Jr.
Mattson, Norman D.
Matthes, Walter Louis, Jr.
Mattila, John J.
Matta, Robert Michael
Matthews, Keith Boyd
Mauhs, John S.
Maupin, Henry T.
Maupin, Milton S.
Mawha, Donald B.
May, Clifford J., Jr.
May, Joseph A., Jr.
Mayer, Matthew L.
Maynard, James H., Jr.
Mayo, Donald Richard
Mays, Jacklon Gregory
Mays, Lewis V., Jr.
Maytham, Peter
Mazziotta, Frank P.
McAffee, Douglas B.
McAniff, Edward John
McAninch, Billy E.
McBee, James L., Jr.
McBrayer, Robert Lewis
McBride, Frank White, Jr.
McBride, Richard W.
McCaw, William N.
McCann, Richard
McCabe, Paul F.
McCain, George S.
McCann, Malcolm R.
McCabe, John F., III
McCall, Wayne L.
McCambridge, Donald Wayne
McChesney, Lee Douglas
McCloskey, Jhea M.
McClain, Joseph Adolphus, II
McClure, Robert B., Jr.
McClean, Edward J.
McClure, George F.
McCoy, Thomas W.
McCormick, Robert J.
McCormick, Donald G.
McCormack, Robert M.
McCormick, William M.
McCoy, John Joseph
McCornack, John W.
McCormick, Matthew A.
McConnell, David K.
McCoy, Eugene P.
McConaughy, Donald L.
McCue, Edward Overton, III
McCullough, James M.
McCurdy, Donald Mervyn
McCurdy, William Edward, Jr.
McCurley, Robert Ulmont, Jr.
McDaniel, Coy F., Jr.
McDaniel, Joseph Wilson, Jr.
McDevit, Lester
McDonald Charles C.
McDonald, David Lee
McDonald, Eugene L.
McDonald, James L.
McDonough, Mark J.
McDonough, Thomas William
McDow, John J.
McEachern, Edward Merritt J.
McGervey, John T.
McGill, Julian Edward
McGinnis, Benjamin George
McGinn, James Francis
McGinty, John A., Jr.
McGinn, Frank L.
McGlinchey, Alexander H.
McGowan, John P.
McGrath, Thomas D.
McGregor, Bruce Michael
McGuckin, Benjamin Floyd, Jr.
McGuire, Joseph F.
McGuire, Richard J.
McHugh, Hugh J. K.
McHugh, Donald Emmett
McIntosh, Charles D.
McIntyre, Donald F.
McKay, James M.
McKeeta, Gordon S.
McKeon, William B., Jr.
McKee, Roger Curtis
McKee, Donald L.
McKenzie, Robert A.
McKinnon, Michael Warren
McLaughlin, Richard Graham
McLaughlin, Richard Francis
McLaughlin, Richard Ralph
McLean, Charles Rodrick
McLeod, Gilbert A.
McLean, David S.
McMillon, John Richard
McMillan, Louis Kelly, Jr.
McMurtry, George James
McNally, Gerald Eugene
McNaughton, Drummond
McNaught, Earl Deforest
McNallen, James B.
McNeill, Charles W.
McNeese, Henry B., Jr.
McNichols, Lynn P.
McNulty, James Anthony
McPherson, Timothy
McQuinn, Jack H.
McQueen, Ralph E.
McQuade, Francis A.
McRae, Donald Alphonse
McSally, Bernard J.
McShane, Henry R.
Mead, Carsten J.
Meehan, Robert H.
Meeker, Harmon S., Jr.
Mehrhoff, William R.
Meister, Robert A.
Mello, Gilbert D.
Melton, Chancellor G., Jr.
Melton, James C., II
Melton, Frank D.
Mencio, Charles A.
Mendenhall, Charles Dale
Menker, Donald F.
Meredith, Frank S., Jr.
Merkel, Jule F.
Merritt, Stanley Y.
Merrill, James W.
Merryman, John Robert, Jr.
Merrill, Nicholas Conrad
Messinger, Marshall R.
Messinger, Emerson B.
Metcalfe, Robert Davis, Jr.
Metz, David John
Meyer, Lewis Donald
Meyer, Robert Aldrich
Meyer, Francis Albert
Meyers, Roy D.
Michie, Harold W.
Michie, Thomas Johnson, Jr.
Michaels, Arthur Czaynomski
Mickelberry, William Charle
Midboe, Albert M.
Middleton, Blake
Mighell, Kenneth J.
Mikwold, Harold R.
Milam, George W.
Milbank, Floyd L., Jr.
Milbank, Morris Chapin
Miles, William Joseph
Miles, Richard N.

Milford, Robert Francis
Miller, Richard W.
Miller, William J. D.
Miller, Forrest Alton
Miller, Marvin E.
Millay, James, Jr.
Millon, Henry A.
Mills, Edgar Sanford, Jr.
Miller, Gordon John
Miller, George Lewis
Mills, James Richard
Miller, Bruce McNeely
Miller, Richard E.
Miller, Floyd J.
Miller, John U.
Miller, Davidson
Miller, James R.
Miller, Martin A.
Miller, Frank Lee
Miner, George D., Jr.
Minger, Eugene James
Minter, Kenneth W.
Mixon, William R., Jr.
Moeller, John W.
Moffett, Russell Golden
Mohrlok, Kenneth David
Mohr, Charles Robert
Moll, Robert Clarence
Monroe, Gordon Edward
Monroe, Robert F.
Montemurro, Frank
Montgomery, Edward E., III
Moor, Marion M.
Moore, William G.
Moore, William R.
Moorman, Daniel W.
Moore, William Thomas, Jr.
Moorman, William Luke, Jr.
Moorehead, Wells Rufus
Moore, Ernest V., Jr.
Moore, Gary L.
Moore, John M., Jr.
Moore, Charles E.
Moore, Charles Rhea
Moore, Billy W.
Moose, Charles R., Jr.
Moran, John W.
Moran, Joseph M.
Moran, Thomas C.
Mordy, James C.
Moreland, Ronald John
Moreland, James E.
Morgan, Arthur F.
Morgan, David C.
Morgan, Arthur I., Jr.
Moring, John B.
Morin, Paul Eugene
Moriarty, Edwin S.
Morledge, George A.
Morrisey, John D.
Morris, George S.
Morris, Charles Edward, Jr.
Morrison, Robert Leslie
Morris, John P.
Morris, Julius Emanuel
Morr, Arthur J.
Morris, William Levi, Jr.
Morris, Caleb Layton, Jr.
Morrison, Dexter C.
Morris, John F.
Morrogh, William P.
Morsilli, Frank P.
Morse, Edward H., II
Mortenson, Merth G.
Mosher, Bryan James
Mosman, John L.
Moss, Stanley D.
Mossop, Wallace Lincoln, Jr.
Moulton, Daniel Bailey
Mouritsen, Thorval E.
Mueller, Robert Leon, Jr.
Mueller, Arthur W.
Muir, Robert J.
Muise, Robert Freeman
Muldoon, John R.
Mullin, William E., Jr.
Mullis, Charles H., Jr.
Mullen, Robert T.
Mulligan, John L.
Mullen, Robert G.
Munn, Robert C.
Munson, Robert A.
Munson, Eugene O.
Munsey, Bernard A.
Murdock, Robert V.
Murphy, Richard T., Jr.
Murphy, John J., Jr.
Murphy, Charles H.
Murphy, Joseph Dinsmore
Murphy, Garrison Edmund
Murphy, James Francis
Murphy, Richard V.
Murphy, James R., Jr.
Murphy, Robert Irvin
Murry, Joseph A.
Murray, Thomas H., Jr.
Murray, Thomas C.
Mutty, Lewis Dow
Myers, William B.
Myers, Edwin L., Jr.
Myers, Ronald G.
Myers, Jack A.
Myhre, John J.
Myhre, John S., Jr.
Naab, Raymond H.
Narwicz, Charles A.
Nation, James T.
Naud, Harold D.
Nawrocki, James T.
Neaton, Ronald Alfred
Needham, John H., Jr.
Needham, William R.
Neely, Robert R., Jr.
Neidlinger, John D.
Neiheisel, James
Neiley, Alexander
Nellis, Richard B.
Nelson, Albert W., Jr.
Nelson, Ronald M.
Nelson, Delos W.
Nelson, John Allen
Nelson, Roger Benjamin
Nelson, Joe L.
Nelson, Robert F., Jr.
Nelson, Roy E.
Nelsen, Norman Walter
Nelson, Gordon D.
Nelson, Dean Charles
Nelson, Sanford Harry
Nelson, Donald
Nelson, Howard G.
Nelson, William E., Jr.
Nelson, Lewis M., Jr.
Nelson, Gene S.
Nemits, Frank T.
Neuman, Edwin Charles
Neuman, Louis A.
Neunzig, Frederick
Neupert, John August
Neville, Robert Geoffrey
Newall, Edgar Cyril, Jr.
Newcomb, James Francis
Newell, Edward L.
Newlan, Bruce M.
Newpher, James A., Jr.
Nicar, Reo E.
Nichols, Paul M.
Nicholas, John Robert
Nichols, Kenneth R.
Nichols, Paul H.
Nickell, Robert E.
Nicklas, Richard Timothy
Niedermeier, William
Nielsen, Foss A.
Nirenberg, Allan
Nixon, Edward Calvert
Nixon, Walter Barry
Noble, James Kendrick, Jr.
Noble, Russell E.
Nolan, James Charles
Nolan, James M.
Nolen, Calvin C.
Nordmeyer, Philip James
Nordgren, Lee A.
Nordaune, Vernon A.
Norris, David Ulmer
Norris, John C.
North, Roy A. P.
North, Evans W.
Norton, Julian H., Jr.
Northrop, Samuel, Jr.
Nusinson, Louis
Nygard, Douglas Arthur
Nyvold, Robert H.
Oaster, Leo J., Jr.
Oberholtzer, Nelson C., Jr.
Oberle, Louis Arthur
O'Brien, Thomas E.
O'Brien, Henry J.
O'Brien, Raymond D.
O'Brien, James Eagen
O'Brien, John Douglas, Jr.
O'Connell, John W.
O'Connor, Dennis Edward W.
O'Connor, Thomas F.
O'Connor, James J.
O'Connor, David
O'Connor, James F.
Odden, Conrad R.
Odden, Arvid S.
Odell, Jean M.
Oden, Richard William
O'Donnell, Richard C.
O'Donnell, Joseph E.
O'Donnell, Gerald F.
Oefelein, John J.
Oehrle, William C.
Oette, Paul Helmut
Ogara, William R.
Ogden, Charles Dennis
Oglesbee, Jack L.
Oglo, Michael F.
O'Hara, James Mardon
Olds, Hugh W., Jr.
O'Leary, Richard D.
Olivier, Joseph F.
Olivier, John L.
Olsen, Russell T.
Olsen, Jack H.
Olsen, Frederick Milton
Olsgaard, Richard B.
Olson, Maurice A.
Olson, Walter R.
Olson, John Scott
Olson, Lloyd W.
Olson, Loren W.
Olson, Charles E., Jr.
O'Meara, John Corbett
O'Neal, Hugh Lee
O'Neill, Samuel Joseph, Jr.
O'Neill, Edward Patrick
Orem, Harry B., Jr.
Orr, Roger D.
Orr, John D.
Orr, Samuel R.
Orr, George Elwood
Ort, Eddie P., III
Osborn, Douglas M.
Oscarson, Carl U. H.
O'Shaughnessy, Sterling J., Jr.
O'Shea, John P., Jr.
Ostronic, Francis J.
O'Toole, James B.
O'Toole, Charles S., Jr.
Ott, Norman K., Jr.
Overland, Leroy T.
Owens, Eugene I.
Owen, David A.
Owens, Kenneth B.
Oxenford, Robin A.
Oxford, Lewis A.
Pacala, Theodore
Pacilio, Jerry Anthony
Paget, James S., Jr.
Paige, Herbert
Painter, Jack T.
Painchaud, Noel C.
Palmer, Vernon C.
Panhorst, Donald L.
Panico, Joseph A.
Pankratz, Walter L.
Pappas, Sophocles G.
Pardue, Oscar Ward
Parker, James W., Jr.
Parker, Moses H.
Parker, Millard M.
Parker, Lutrelle F.
Parker, Gene O.
Parker, Joseph W., Jr.
Parke, John Schuyler
Parker, Ralph Lewis
Parkhill, David K.
Parker, Joseph M.

Parker, Edward Samuel
Parler, William C.
Parnell, Thomas Alfred
Parnham, Harold A., Jr.
Parr, Warren Sherman, Jr.
Parsons, William E.
Paterson, Dale Roycroft
Patterson, George, Jr.
Patterson, Reed I.
Patterson, Don L.
Patterson, David Charles
Patterson, Thomas John, Jr.
Patten, James V.
Patterson, Peter Vosper
Patterson, David A.
Pauley, James L.
Paule, Philip A.
Pauley, Gordon L.
Paulsen, Brett F.
Pausa, Clements E.
Paylor, John W., Jr.
Payne, George Patrick
Payne, James Roland
Payton, Richard L.
Peake, Douglas Avern
Peake, Robert S.
Pearsall, Morgan A.
Pearce, John E., Jr.
Pearson, Conrad Frank
Pearson, Donald V.
Pearce, James Hermon
Pearson, Herbert Clifford
Pease, Frank V.
Peden, William J, III
Peebles, John D.
Peebles, Charles Wesley, Jr.
Peeler, Philip Leroy
Peffer, Robert Lee
Peloquin, Robert D.
Pence, Dallas T.
Pender, Robert M.
Penney, William M., Jr.
Penniman, Russell S., III
Pennell, Donn F.
Pepper, Vernon D.
Perfetto, Chester
Perkins, Robert Sidney
Perkins, Richard C.
Perry, James Alfred
Perry, Roger N., Jr.
Person, Oscar C.
Pertsch, John J.
Peterson, Ralph R.
Peters, John L.
Petersen, Dean L.
Peterson, Robert Douglas
Peters, Deane Gregory
Peters, Charles B.
Peters, John
Peters, William E.
Petersen, Harry J.
Petersen, James C.
Peterson, Norman Glen
Peterson, Dana C.
Peterson, Charles K.
Pettegrew, Robert Levern, Jr.
Petzinger, Thomas V.
Peyrek, Theodore Rudolf, Jr.
Pfeil, Don Hilldrup
Pflugheber, Edward G.
Phelisse, Emile R.
Phillips, Michael J.
Philippi, Robert C.
Philipson, Willard D.
Philips, Ronald W.
Phillips, Raymond C.
Phillips, Wendal Lee, Jr.
Philbrick, Alfred Ray, Jr.
Phillips, William N.
Phinizy, Robert B.
Pickel, Theodore Carl, Jr.
Pierce, Keith A.
Pierce, William R.
Pierce, Harold Paul
Pilger, Martin Francis, Jr.
Pinette, Joseph C.
Pinel, Thomas H.
Pinkowski, Francis S.
Pinkerton, Robert L.
Pino, Joseph A.
Pintar, James R.
Piotter, Glen W.
Pipkin, Robert Glenn, Jr.
Pipkin, Cyril M.
Piscitelli, Peter A.
Pitard, Alden M.
Pitmon, Wayne M.
Pitman, William D.
Pitt, Donald A.
Pitt, Donald F.
Pittman, Charles William
Place, John Louis
Plager, Sheldon J.
Plaisance, Ronald F.
Platt, Alvin Wayne
Pleasants, Arthur Lee, III
Plessas, Gus P.
Plihal, Richard G.
Plummer, Raymond J.
Poelstra, Ray E.
Pollack, Lawrence Phillip
Ponder, Edward Allen
Pope, Charles Robert
Popham, Neal R.
Popoff, Alexander, Jr.
Popovich, Daniel E.
Porter, William C.
Porter, William B., Jr.
Pospisil, Albert C.
Potash, Matthew E.
Potter, Irvin A.
Potter, Ramon G.
Potts, Edward A.
Potter, Thomas M.
Powell, Blair Adams
Powers, Thomas Edward
Powell, Robert Francis
Power, Edward J., Jr.
Powers, William L., Jr.
Powers, Donald C.
Pratt, Loren Malcolm
Prendergast, John Joseph, Jr.
Price, Billie J.
Price, Leslie O.
Price, James O.
Price, Alan Howard
Price, Frank E.
Pritchard, John F.
Prochaska, George Emil
Proctor, Arthur Edwin
Prominski, Henry J.
Prosser, Joe C.
Provenza, Louis
Pruet, Bennett E.
Pruessner, Robert D.
Pruitt, Willie B.
Pryce, Edward A.
Puckett, Victor Lee
Pulcini, John V.
Purcell, James Carl
Purcell, Robert C.
Pusey, Paul B.
Putnam, James K.
Putterman, Donald E.
Puzio, Sylvester Anthony
Pyne, Gerard W.
Pyron, John E., Jr.
Quinn, Robert G., Jr.
Rabstejnek, George John, Jr.
Radcliffe, Robert L.
Radford, Robert J.
Ragsdale, Carl V.
Ragsdale, William Lemuel
Ragsdale, Herbert Walter
Raldiris, Raphael J.
Raley, John W., Jr.
Ralston, James S.
Yarborough, Gordon T.
Yates, Marvin L.
Yim, Herbert Conway
Yohe, John M.
Yost, Richard George
Youngstrom, George A.
Ramey, David Williamson
Ramsay, Selwyn P.
Ramsey, Allan Augustus
Range, Robert W.
Rankin, Charles A.
Ransford, Edwin W.
Rappana, Duane A.
Rardin, Hugh B.
Rast, Edward L.
Rathe, Hjalmar J.
Rattray, Alexander L., Jr.
Rattan, James E.
Rauch, Hilary John
Ray, Robert Paul
Read, Oliver Middleton, III
Ream, James W.
Reap, James B.
Rebois, Raymond V.
Recsnik, Frank A.
Reddy, John J.
Redford, John Lester
Reed, Raymond Daryl
Reed, Howard I.
Reeder, John Gordon
Reem, Glen M., II
Regan, Robert C.
Regan, James F.
Register, William Morell, Jr.
Regts, Gerald J.
Rehwoldt, Bruce D.
Reichle, Neal W.
Reich, Richard Lee
Reich, Richard J.
Reid, Alfred W., Jr.
Reierson, Paul Dean
Reiher, Herman C.
Reilly, Michael Joseph
Reilly, John C.
Reilly, Joseph F., Jr.
Reintjes, Robert J.
Rempe, Charles J., III
Remson, Ellsworth Jack, Jr.
Rende, Robert K. G.
Renick, Charles M.
Rennilson, Justin J.
Renter, Herbert Fred
Ressler, Peter James
Reynolds, David A.
Reynolds, Norman Elmer
Rheinschild, Rudolph Willia
Rhett, William M. S.
Rhodes, Jerome Pat
Rhodes, Willard C.
Rhodes, Richard Ayer, II
Riccio, Leonard R.
Rice, David Penfield
Rice, Emory Clark
Richmond, Donald Wayne
Rich, James C.
Richmond, Jay V.
Richardson, Robert Edmund
Richards, John R.
Richard, Donald Eugene
Richards, Edward Lambert, Jr.
Ricker, Huntley N.
Rickords, Ralph E.
Riester, John Edward
Riggins, Tracy, Jr.
Riha, Broydon John
Riley, Ivers Whitman, Jr.
Riley, William T.
Rindin, James A.
Ringstad, Robert Cornelius
Ringis, Romaine H.
Rinn, John P., Jr.
Ripple, John S.
Ritchie, Charles Morton
Ritchie, Lee R.
Ritola, Angelo Paul
Ritter, Jack F., Jr.
Ritter, Todd Dewey
Ritzenberg, Phillip
Rivlin, Lewis A.
Robb, John L.
Robbins, Duane Eugene
Robbins, Joseph
Robbins, Theodore Drew, Jr.
Robbins, William R.
Robb, Herbert R.
Robertson, Stanley M.
Roberts, William Ralph
Roberts, John E.
Robertson, Reece A.
Robertson, Richard A.
Robillard, Malcolm Ray
Robichaux, Joseph E.
Robinson, William H.
Robie, Eugene D.
Robinson, Irwin E.
Robinson, Guilford Allen, Jr.

Robinson, Barry H.
Robinson, John W.
Robson, Charles Armand
Robson, Harry Ernest
Roche, John W.
Roche, Clinton E.
Rock, Bertram William
Rodgers, Vernon P.
Rodgers, Joseph B., II
Rodgers, David S.
Roegner, Kenneth A., Jr.
Roemer, William F.
Roesser, James R.
Rogers, Richard H.
Rogers, Richard
Rogers, Calvin B.
Rogner, Eric E.
Rolka, Harry
Rollins, James Robert
Rome, James G.
Rood, Gerald D.
Rooney, John P.
Rooney, William E.
Roon, Eugene R.
Root, Norman J.
Rosenberg, Richard Morris
Rose, Guy P., Jr.
Rosenau, William A.
Roskopp, Frederick J.
Rosnes, Bruce H.
Ross, Kenneth
Ross, Christopher T. W.
Rossi, Ralph Anthony
Rossi, Louis A.
Rothermel, Richard R.
Rouse, James Wilfred
Rouse, Robert G., Jr.
Rovello, Michael L.
Rowe, Ronald R.
Rowe, Barry Morton
Rowe, Norman Leslie, IV
Roy, Richard P.
Rubenstein, Richard B.
Rubin, Edwin H.
Rugen, Otto N., II
Ruggles, Howard Edwin, II
Rumsfeld, Donald Henry
Ruppel, Robert W.
Russell, Harold J., Jr.
Russ, George J., Jr.
Russ, James M.
Russ, William Hardy, III
Russ, William Albert
Rutherford, Bruce J.
Rutland, Rufus Burr
Ryals, Willard G.
Ryan, William C.
Ryan, James B.
Ryan, Raymond E., Jr.
Ryder, William E.
Saft, Irwin C.
Sager, Paul H., Jr.
Sain, Frank Clinton
Salatine, Richard
Sales, Frederick C.
Sall, Carl E.
Salter, Ernest Hires, Jr.
Salter, Albert P., Jr.
Sammons, Chandler L.
Sampson, John L.
Sampson, Harvey R.
Samuels, Ivan R.
Sandberg, John Einar
Sands, Richard E.
Sanders, Jerrell L.
Sanders, William Albert
Sandstrom, Richard Batch
Sankey, Charles Howard
Sannicandro, Rocco A.
Santos, William, Jr.
Sapp, James E.
Sarber, John D., Jr.
Sargent, William B.
Sass, Arthur H.
Satterfield, Grey Wilson, Jr.
Sauerwein, Robert P.
Sauer, Gerald L.
Sava, Samuel George
Sawicki, Michael John
Sawyer, Russell D.
Sayer, George C.
Scarbrough, William Ross, Jr.
Scharf, Harry
Scharges, Horace F.
Schafer, Robert W.
Schaefer, James A.
Schaller, Clement H.
Scharff, Aaron Roos, Jr.
Schaffer, William R.
Scherer, James M.
Schisler, Robert A.
Schiller, Philip W.
Schick, Herbert Alton
Schiemer, Owen D.
Schippmann, Edward D.
Schickler, Edward R.
Schlanger, Arthur J.
Schlosser, Jack D.
Schlegel, George D.
Schmertz, John R., Jr.
Schmittle, Karl V.
Schmidt, Ray A.
Schneider, Ronald Harry
Schnurer, George T.
Schnurr, William J.
Schneider, Gilbert Donald
Schnaedelbach, Gerald
Schoenberger, Edward Smith
Schofield, Albert R., Jr.
Schofield, William J., III
Schoen, Robert M., Jr.
Schrader, Granger Dana, Jr.
Schroeder, Gilbert A.
Schroeder, Robert R.
Schroats, Richard Pryor
Schultz, Arnold C.
Schumacher, Charles Thomas
Schulte, Robert J.
Schumacher, Richard F.
Schwendeman, Joseph Raymond
Schwartz, Robert P.
Schweiger, Melvin Bernard
Schweitz, James J.
Schwarz, James K.
Schwacke, Edward A.
Schwartz, Stanley P.
Schwarz, Hans R.
Scott, Alfred L.
Scott, John E.
Scott, Robert B.
Scott, Sumner T., Jr.
Scott, Victor B.
Scott, Ronald C.
Scukas, Richard J.
Seabloom, James Andrew
Seacord, John More
Sears, Dale Dean
Seaton, James Hervey
Sedgewick, Joseph E.
Seibert, Moody G.
Selden, Paul H., Jr.
Sellers, Charles W.
Selna, Leland Robert, Jr.
Selph, Wade E.
Semcken, John Henry, Jr.
Sergeant, Russell L.
Severance, George L.
Sewall, William Bryant
Shafer, Phaon D.
Shaffer, Robert F.
Shafer, Mark L.
Shannon, James L.
Shane, John A.
Sharts, Clay Marcus
Sharkey, William Richard, II
Shaughnessy, William Michael
Shaver, Henry M., Jr.
Shaw, Ray M.
Shaw, George G., Jr.
Shea, Lincoln B.
Shea, James A.
Shechtel, Herman J.
Sheehan, William Henry, Jr.
Sheil, Dennis G.
Shepherd, Richard C.
Sherrill, Robert Worth,
Shields, John D.
Shields, Daniel Luke P., Jr.
Shinaut, Richard K.
Shippee, John Herbert
Shipman, David L.
Shipman, Dean J.
Shiver, James K.
Shonkwiler, John P.
Shoop, Ashton D.
Shopenn, Mervyn E.
Short, Laurence A.
Short, Robert T., Jr.
Shreve, Lloyd Hornor
Shuck, Thomas L.
Shultz, Harry L., Jr.
Shumaker, John J.
Shumaker, Lawrence Allen
Shumate, Donald J.
Shupp, Raymond W., Jr.
Shurtleff, Bruce Kipling
Sibley, David Nixon
Sich, Eugene J.
Sieben, Thomas H.
Siebert, John Carey
Sieber, Karl E.
Siemen, Harry A., Jr.
Sifferlen, John J.
Sikes, James K.
Siken, James Paul
Sikora, Edward
Sikorski, Edward Joseph
Silton, Sumner R.
Silverstein, Joseph Herbert
Silverman, Preston Z.
Simcoe, Richard O.
Simensen, Richard E.
Simmons, William G.
Simmons, Harold Dewey
Simmons, Glenn B., Jr.
Simons, Bruce G.
Simons, Robert Ira
Simpson, George T.
Simpson, Robert M., Jr.
Simpson, Harold N.
Sims, Thomas S.
Sims, Lloyd Hampton, Jr.
Sims, Lawrence E.
Sine, David F.
Singer, Donald Albert
Sink, James M.
Siqueland, Torger A.
Sirrine, Robert Rexford
Sisk, Lone L., Jr.
Six, Richard Henry
Sjolander, Dunn E.
Sjovall, William C.
Skerchock, Peter
Skidmore, Sidney Alfred, Jr.
Slater, George E.
Slaughter, Charles N.
Slaughter, Edward Ratliff J.
Sloan, Charles E.
Sloan, Ben L.
Small, Douglas Eugene
Smalley, Robert A.
Smart, Addison Douglas
Smiley, Robert R., III
Smith, Henry D.
Smith, Carey A.
Smith, Paul W.
Smith, Donald G.
Smith, Howard Woodruff
Smith, William E.
Smith, Douglas H.
Smith, William R.
Smith, Willard G.
Smith, Selden K.
Smith, Verne W.
Smith, Francis N.
Smith, William Oral, Jr.
Smith, Robert Syme
Smith, Neale S.
Smith, Clint Ernest
Smith, Jimmy C.
Smith, Hugh M.
Smith, Bernard S.
Smith, Robert M., Jr.
Smith, Robert W.
Smith, Stanley O.
Smith, Lowell C.
Smith, Joseph C.
Smith, Ralph E.
Smith, Walter Smallwood
Smith, Jack O.
Smith, Tracy D.
Smith, Shelby W.

Smith, David L.
Smith, James Travis
Smith, Donald John
Smythe, John W.
Snead, Charles B.
Snelgrove, Edward Robert
Sniffin, Willard F.
Snow, Worthing P.
Snyder, Robert M.
Snyder, John Edward
Snyder, Edward J.
Snyder, William C.
Snyder, Bruce E.
Sobke, Gene E.
Sokol, John
Soldatos, George E.
Soldwedel, Fred W.
Somers, Lucky W.
Sorensen, Elmer K.
Sorem, Carl D.
Southall, Charles Morton
Soutar, Alister Michael
Spann, Roderick H.
Spangrud, Raymond W.
Sparks, William C.
Sparks, Harry C.
Speer, John Spurgeon, Jr.
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Spencer, Billy Ray
Spencer, William R.
Speth, Charles T.
Speth, Harry F., Jr.
Speth, Herbert S.
Spidell, Gary Frank
Spies, Roderic A.
Spillis, James P.
Spohn, Wayne Leon
Spoliansky, Leon G. R.
Sposato, Francis T.
Spotts, James Lane
Sprague, Edgerton T. E.
Springer, Thomas Earl
Sprung, Stewart R.
Staar, Louis H.
Stacey, James W.
Staehle, John Henry
Stahlman, William K.
Stahura, Edwin E.
Stair, Robert N.
Standiford, David Millard
Stanley, Arleigh C.
Stang, Paul R.
Stanley, Henry M.
Standley, Arthur William, Jr.
Stanly, Bernard J.
Stanton, Henry M.
Starling, Ray L.
Staton, John C.
Staten, George Cowden, Jr.
Stauffer, Dale E.
Stearn, Craig J.
Steensma, Robert C.
Stefano, Frank, Jr.
Steger, William Harold
Stegner, Donald L.
Stehr, William F.
Steinmann, Bruce B.
Stein, Earl Arnold, Jr.
Steiljes, George, Jr.
Stephenson, Horace L.
Stephenson, Edward V.
Stephany, Edward Gustav, Jr.
Stern, Philip H.
Sternitzke, Vincent Leo
Stevenson, Robert E.
Stevinson, Donald
Stewart, Robert E.
Stewart, Charles William
Stewart, John H.
Stewart, Robert A.
Steyer, Cyril D.
Stiehl, Billy D.
Stiff, William Latane
Still, Rodney A.
Stirrat, John H.
Stiteler, David G.
Stmartin, Allen H., Jr.
Stockdill, Pat W.
Stockham, John K.
Stoddard, Theodore L.
Stoehr, Robert A.
Stoffer, Maurice H.
Stokely, Hugh Lawson, Jr.
Stoltz, George Frederick
Stone, Gilbert F.
Storrs, John H.
Strand, Donald Frank
Strauss, Paul A.
Straub, James S.
Strasburg, Louis Glen
Strange, Elmore C., Jr.
Strachan, John
Streit, Peter L., Jr.
Stribling, William R.
Strom, John C.
Stuble, Albert
Stubblefield, Roderick W.
Stuckel, John Edmund
Stuhlmann, Allen H.
Sturtevant, Brewster
Sturgis, John A.
Suchoza, Bernard P.
Sudbeck, Gerald F.
Sudler, Louis C., Jr.
Suflas, Constantine James
Sullivan, James H.
Sullivan, Robert G.
Sullivan, Lawrence C.
Sulzby, Joseph James, Jr.
Summitt, Paul Clayton
Summers, William Charles
Sumpf, Edward Charles, Jr.
Sumser, Raymond Joseph
Supple, George C., Jr.
Sutherland, Carl F.
Sutphen, Bobbie L.
Swall, Malcolm Francis
Swan, Benjamin D.
Swart, Calvin William
Swayne, Robert E.
Sweeney, John J.
Swegle, William F.
Swenson, Arthur H.
Swenson, Thomas F.
Swingle, Robert Lyle
Swinny, James H.
Sybeldon, William
Tafian, Simon
Taft, John R.
Taiani, Angelo J.
Takenaka, Harold Haruo
Talboom, Frank Peter, Jr.
Talbot, Edward B.
Tannhaeuser, William George
Taschner, Bruce
Taylor William N.
Taylor, James L.
Taylor, Roger Conart
Taylor, Robert Hayward
Taylor, Victor G.
Taylor, Edwin J., Jr.
Taylor, Leo P.
Taylor, Leslie L., Jr.
Taylor, William C.
Teaford, Richard L.
Teas, Richard H.
Tedder, Virgil Reams
Teeter, Howard B.
Temple, Will S., Jr.
Temples, Leo G., Jr.
Temte, Donald W.
Tenney, John W.
Teplow, Theodore H.
Terrell, Errol J.
Textor, Thomas William
Thalman, Robert N.
Thibeault, Donald W.
Thiel, David R.
Thielen, John William
Thissell, Charles W.
Thode, Thomas A.
Thomas, John W., Jr.
Thomson, Peter W.
Thompson, Donald H.
Thompson, John L.
Thomas, Alfred R., III
Thompson, Allan Robert
Thompson, Donald Homer
Thomas, Phillip A.
Thomas, Bernard Kimmel, Jr.
Thompson, Lewis W.
Thompson, Emory C.
Thomas, Carl H., Jr.
Thompson, Fred W.
Thompson, John H.
Thomas, Colin Charles
Thompson, Robert Andrew, III
Thompson, William James
Thomas, Wayne D.
Thomas, Dean C.
Thomas, Robert H.
Thorburn, Ronald L.
Thornton, Timothy Martin
Thoria, Arlin E.
Thorne, Douglass E.
Thoreson, Wayne Laverne
Thorlakson, Denis Paul
Thoralsen, Alden Justus
Thorpe, Larry Dick
Thurman, Herbert Clay
Thwing, James L.
Tice, George Dohner, Jr.
Tiernan, Robert P.
Tigert, Marion A.
Tillman, Temple H.
Tilley, Albert P.
Timmer, George W.
Timmons, King C.
Tinley, John H.
Tipton, Dennis H.
Title, Herbert
Titus, Robert W.
Tobin, John L.
Todd, Harold C.
Tollefson, Marshall R.
Tolliver, Richard H.
Tomko, Edward J.
Tompkins, Davis W.
Toner, Karl R., Jr.
Tonseth, Thomas Henrick, III
Torgen, Edward H.
Towne, Joseph Hardy
Towne, George F., III
Trafzer, William H.
Trammell, Webb Delathuy
Trandem, Robert E.
Trautwein, Robert T.
Travis, Richard L.
Treece, Guy E.
Tremant, Robert A.
Tremblay, Bernard H.
Tremain, Robert L.
Trewet, Glenn Edward
Tripp, Robert Glenn
Trippe, Jerry C.
Triplett, David M.
Trotter, Thomas Alan
Truex, Spencer L.
Trupp, Adam Richard
Truslow, Thomas W.
Tschudy, James J.
Tubbs, Richard H.
Tublin, Melvin J.
Tucker, Walter D.
Tulloch, Donald Cameron, Jr.
Tupper, Russell L.
Turley, Gerald K.
Turner, James J.
Turner, John W.
Turner, Veras D.
Turner, James Reginald
Turner, Benjamin Bynum, Jr.
Turnbull Ward E.
Turney, Bill B.
Turner, James Winslow
Turner, Wilbur E.
Turpie, Hugh M.
Tusla, Anthony Alfred, Jr.
Tweedie, Chester R.
Tyler, William Frank
Tyler, Warner W.
Tyma, John H.
Tyson, John M.
Uddenberg, Bertram, Jr.
Ukena, Cornelius Boone
Ulrich, Thomas Russell
Umbach, John C., Jr.
Underwood, Marvin K.
Underhill, William L.
Unti, Thomas John
Updegrove, Richard E.
Upton, Robert D.
Urbana, Robert D.

Uretsky, Jack L.
Utt, James W.
Utzinger, Roland J.
Vadnais, Henry A., Jr.
Valenzuela, Ernesto
Vanallsburg, Donald Earl
Vanbrimer, Russell H.
Vance, Walter Noble, III
Vandenheuvel, Robert E.
Vandekieft, Lawrence J.
Vandegriff, John H.
Vandenbiesen, James Louis C.
Vaneenenaam, John Phillip
Vanhouten, James F.
Vanhorn, Richard William
Vanhuyck, John A.
Vanzwalenburg, Paul Reyer
Varettoni, Robert J.
Vaughan, William H., Jr.
Vawter, Richard H.
Venn, Robert W.
Venning, Denis S.
Venturini, Joseph J.
Venters, Robert T.
Villars, Lawrence D.
Vincent, Dwight Harold
Vincent, Norman F.
Visnich, Sam
Vladessa, Philip
Voegel, George H.
Vogelberger, Peter John, Jr.
Vogler, William H.
Vonesch, Billy C.
Voshell, Joseph R.
Vosseller, James B.
Wachtler, William R.
Wacht, Walter F., Jr.
Waddel, Robert C.
Wade, Warren L.
Wadhams, Charles Hastings J.
Wadsworth, Roger Kipp
Wages, Ward W., Jr.
Wagenbach, Ronald J.
Wagner, Robert T.
Wagoner, Glen
Wahler, Joseph Leo
Wahlers, Gene L.
Wainwright, William Earl, Jr.
Wainwright, Norman
Waite, John J., Jr.
Wald, William G.
Wales, Gwynne H.
Walker, George Leamon
Walker, James Lafayette
Walker, Ronald Lee
Walker, Donald R
Walker, Wayne N.
Walker, John N.
Walker, William B.
Wallace, Thomas C.
Wallacavage, Michael R.
Wallace, Lewis E.
Wall, Richard V.
Wallin, Homer Norman, Jr.
Wallace, Prentice L.
Wallenius, Kenneth T.
Wallis, Elmer J.
Walls, Hollis W.
Walmsley, John M.
Walsh, William J.
Walsh, William Warren
Walsh, Leo A.
Walters, Connell G.
Walters, Thomas Joseph
Walters, Floyd Kirk
Wanamaker, Warren A.
Wanbaugh, Peter May
Ward, Arthur D.
Ward, Robert J.
Ward, Thaddeus J.
Ward, Eldon L.
Ward, Jack W.
Ware, Robert T.
Warhola, Joseph G.
Warner, Paul McCurdy, Jr.
Warnock, Gordon A.
Warren, David E., Jr.
Warren, Harry Bryant
Warren, Mitchum Ellison, Jr.
Warren, Robert W.
Warren, Frank Blair
Washburn, Dexter Allan
Wasserman, David B.
Watkins, Robert Davis
Watson, Warren R.
Watson, John
Watson, Gariepy G.
Watts, Harry C.
Wattay, Leslie J.
Wayne, Richard D.
Weatherbee, Lyle E.
Weathers, Terry Meylan
Weaver, Robert Hamilton
Weaver, Lester G.
Weaver, George Olis
Weaver, Gordon F.
Webb, Jones
Weber, James Wayne
Weber, Euen M.
Weddleton, William H.
Weed, Lee Henderson, Jr.
Weeks, Robert Doughty, Jr.
Wegher, Arnold C.
Wegman, Paul R.
Wegner, Gene H.
Weidenkopf, David Wright
Weigand, Robert Edward
Weiner, Ronald A.
Weinreich, George Francis J.
Weiss, Frederick C., Jr.
Welch, William R.
Welch, Samuel H.
Welker, Ralph O.
Wells, Alfred D.
Wermuth, Robert L.
Wernicke, Rodney K.
Wesendorf, Leonard E.
Wesson, John E.
Weston, John U.
Westergren, David P.
Westendorff, Clarence G., Jr.
West, Warren Coray
Westhusing, James K.
West, Joe E.
West, Charles A.
Wetzel, Robert H.
Whalen, William Francis
Wheaton, Walter L.
Wheeler, Carson McKeag, Jr.
Wheeler, Jerry A.
Wheeler, John Perry, Jr.
Whiddon, Elmer Courtney, Jr.
Whisler, William C.
Whisenand, Stephens Francis
Whitman, Harvey E.
White, Joseph Murray
Whittemore, Laurence F.
White, Charles E.
Whitcomb, Lee Edward
White, William Joseph
Whitehead, Lewis H.
White, Harold Oswell
Whitlock, Roy E.
White, Donald Downing
Whittle, George F.
White, John E.
Whittle, William Brooks
Wholihan, Stephen E.
Wibby, John H. Jr.,
Wicklund, Romayne C.
Wicks, Franklin Devoe
Wiese, Richard A.
Wiggins, James Marvin
Wiggins, Glenn Richard
Wight, Donald Miller, Jr.
Wike, James W.
Wilcox, Irving A.
Wilcox, Leonard A.
Wilcox, Richard H.
Wilde, Edward A., Jr.
Wild, Philip A.
Wiley, Richard B.
Wiley, William T.
Wilhelm, Frederick Sheldon
Wilkinson, Keith Allen
Wilkins, Robert C.
Wilkerson, James Edward, Jr.
Williams, Tyler E., Jr.
Williams, Roy Edward
Williams, Gerald P.
Will, Robert Lee
Williams, Edward Nash
Williamson, Kenneth Arnold
Williams, Earle A., Jr.
Williams, John C.
Williams, Edward A.
Willis, Edmund P.
Wills, Allen D.
Williams, Richard S.
Williams, David L.
Wille, David G.
Williams, Jim M.
Wilson, Vernon K., Jr.
Wilson, Gordon Malcolm
Wilson, John Stuckey
Wilson, Richard Whittingham
Wilson, William Ross, Jr.
Wilson, Everett D.
Wilson, Kennedy Lunt
Wilson, Frederick W.
Wilson, David A., Jr.
Wilson, Oscar Bryan, Jr.
Wilson, Hugh Paul
Wilson, George J.
Wilson, Robert W.
Wiltshire, James F.
Wimberley, Robert Joseph
Winslow, David K.
Winters, Raymond O.
Winter, Eugene J.
Winter, James G.
Winters, Kellis W.
Wise, Anthony John, III
Wise, John E.
Wise, Richard T.
Wise, Carlton Henry
Wise, Harold G.
Wisher, Donald F.
Wislocki, Edward
Witters, Gary
Whittman, Joseph John
Wojan, Donald
Wojnar, John J.
Wolff, Stephen J., Jr.
Wolfersberger, Jacob Robert
Wolfe, Henry B.
Wollensak, Richard J.
Wollam, John S.
Woody, John H., Jr.
Wood, David
Wood, Albert D.
Woodruff, David H.
Wood, Leon Greville, Jr.
Woodworth, Ellery B.
Wood, Donald J.
Wood, Hal Deaver
Woodhead, Royal S., Jr.
Wood, Fred M.
Woodmansee, Lloyd E.
Woomer, John R.
Wooster, Tristan M.
Workman, Arvin Leroy
Worrell, Robert H.
Woorall, Luther F.
Worth, Richard Carleton
Wright, George S.
Wright, George Kendall
Wright, Lawrence W.
Wright, Clayton H.
Wright, James N.
Wright, Jack O.
Wright, Russell A.
Wright, Joseph M.
Wright, Johnie B.
Wuerfel, Theodore H.
Wulff, John H.
Wunderlich, Robert M.
Wunsch, William F.
Wyllys, Ronald E.
Wyma, Bruce Harris
Young, Donald H.
Young, Robert H.
Young, George Leighton, Jr.
Young, Richard E.
Young, William Andrew.
Young, Robert O.
Yuscavage, John Michael
Zabielski, John A.
Zahn, Richard D.
Zahn, Raymond Charles

Zaitzeff, Lawrence P.
Zang, Allen.
Zanner, Louis H. R.
Zarker, John W.
Zavattaro, Frank A.
Zeithami, Donald Paul
Zemaitis, Robert John
Zerda, Kenneth V.
Zervas, George James
Zerwas, Richard Leroy
Zettler, John W.
Ziebell, Earl V.
Zielinski, Anthony S., Jr.
Ziglar, John Farrel
Zimmerman, Edwin Eldridge J.
Zirps, George
Zitzman, Lyle L.
Zizzi, Veniero C.
Zogran, Raymond N.
Zuniga, Guillermo
Zurnieden, Ludwig Arnold, Jr.

MEDICAL CORPS

Ackroyd, Frederick William
Adeeb, Allan Jerome
Akers, Richard Elbert
Allen, William C.
Amick, Lawrence D.
Anderson, Charles C.
Ansell, Burness F., Jr.
Anthonisen, Nicholas Rioch
Apffel, Phillip R.
Appleman, Robert Miller
Arena, Anthony Joseph
Arrington, Robert G.
Azola, Javier Arquimedes
Avedian, Victor Vartzar
Azeris, Harijs Talvaldis
Bailey, Robert Jerome
Baird, Robert Marshall
Baker, James Porter
Barker, Dell John
Barnes, James Erle
Barnhill, Claude Alton
Bates, Thomas Richard
Bellinfante, Bruno Joseph
Benoit, Richard Paul
Berg, Ben C., Jr.
Berman, Irwin
Bernard, Richard M.
Bertuch, Albert William
Bevis, William D.
Bierman, Gilbert Henry
Birdwell, Thomas Rogers
Biron, Pierre Edouard
Bistrong, Herbert Walter
Black, Paul Lelan
Blair, Charles Raymond
Bleicher, Sheldon J.
Blum, John Alan
Bonertz, George Conrad
Bourne, Charles Warren
Bouterie, Ronald Lee
Brackett, John W., Jr.
Brennan, Thomas V
Broadley, Paul Hickman
Brodmerkel, George Joseph J.
Brown, Charles Harmon
Brown James Randolph
Brown, Herbert Paul
Budd, Frank Watson Jr.
Buehler, John Arthur, Jr.
Bullington, Walter G.
Bunke, John William
Byorth, John Patrick
Cabell, Benjamin Byran
Canete, Danelo R.
Cannon, John P.
Capobianco, Faust J.
Cashion, Ernest Lowery
Chabon, Irwin
Childers, David Omer
Chopyak, John Alan
Christensen, Harvey Earl
Clarke, Francis M., Jr.
Cleary, John
Cobb, Joseph B.
Coghlan, William P.
Cole, Donald P., Jr.
Colgrove, Robert Charles
Concannon, Patrick Joseph J.
Cone, Theodore S.
Connelly, John Peter
Cook, Lynn Kenneth
Copman, Louis
Corbett, John Richard
Cortes, Felix M.
Cossman, Francis Price
Cotlier, Edward
Cottrell, Charles Daus, Jr.
Coulter, James Arthur
Cowan, David Emerson
Crawford, Edward Philip
Crittenden, Joseph Jay
Crutchfield, James D.
Cunningham, John Edmund, Jr.
Dadmun, Stewart Erving
Dahlheim, Harold D.
Dalton, Willis V.
Dangelo, Nestore John
Davis, Richard Laverne
Davis, David Benjamin, II
Davis, Gerald Lynn
Davoudiarian, David Kevork
Deen, James H.
Delaney, Leo T., Jr.
Denby, John Lambert
Deraps, Gordon Douglas
Dingle, Robert W.
Dixon, Gardner Luke
Dodson, Albertus F.
Dolan, Kenneth Dewayne
Dollinger, Armand L.
Donnell, Garrett Edwin
Donovan, Francis Michael
Dougherty, Norris Robert
Drennan, James Anderson
Ducommun, Dale Jesse
Durfey, John Q.
Edmonds, Leland Creason, II
Edward, Henry G., Jr.
Ehrlich, George E.
Ellingson, Abel Raymond
Emery, Walter C.
Ende, Norman
Esch, Albert F.
Essex, Francis Xavier
Everett, Benjamin Arthur
Farley, Robert Hugh
Faust, Kenneth Joseph
Faust, Robert Blakeslee
Fernando, Oscar Umali
Finney, Louis Arthur
Firnschild, Paul G.
Fletcher, Donald Frank, Jr.
Flynn, James M.
Forney, William Ray
Frank, Nathan R.
Frankhouser, George Vernon
Frazier, Calvin Hunter
Frazier, Wayne E.
Frerichs, Cletus T.
Funk, Martin Albert
Furuya, Clinton Masao
Gainer, James Vincent, Jr.
Gavan, Thomas L.
German, Robert George
Gibbs, Benjamin F., Jr.
Gibson, Donald Carroll
Gilson, Benjamin Jenks
Glass, James Lawrence, Jr.
Glass, Robert Leslie
Gleason, David Childs
Glenn, James Eugene
Goetz, Robert L.
Goldblatt, David
Gomatos, Peter J.
Gonzalez, Francisco Manuel
Graham, Charles R.
Grannis, William G.
Grant, Willis Jackson III
Greathouse, Richard Francis
Greenberg, Jack J.
Greenwood, Richard Jackson
Greer, William E.
Griffin, Ward O., Jr.
Grozier, Michael Lawrence
Gubin, Morton L.
Gullatt, Victor Reid
Guri, Charles Dimitri
Gyarfas, William J.
Gynn, Thomas Nunn
Gyorgy, Tilbert Rainer M.
Hagaihara, Patrick Mumio
Hall, William L.
Hamilton, Charles E.
Hamilton, Robert Charlton
Hamilton, James Edward
Hammer, Earle I.
Hamren, John Morgan
Hanauer, Frankline Alvan
Hardeman, Frank, Jr.
Hardie, James A.
Hardy, James Hazen III
Hartman, Allen P.
Haslup, Allen L.
Hathaway, William E.
Hattori, Takashi
Hayen, Donald Owen
Healy, Michael Joseph
Heggie, Alfred Dineley, Jr.
Heimark, John J.
Heisey, William George
Hendrix, James Z.
Herman, Lavern Harry
Hessing, John W.
Hill, John
Hill, Franklyn C., Jr.
Hill, George James
Hilts, Schuyler V.
Hirsch, Erwin Federico
Hoadley, William Dean
Hoekzema, Arnold David
Holmboe, Arthur Henry
Hood, Thomas R.
Hopwood, Herbert ., Jr.
Hovda, Allen A.
Howard, John L.
Howery, Stephen Edgar
Oyme, James Balfour
Uber, Kitchel Herbert
Urgens, William Robert
Ughes, Luman Harold, Jr.
Hunsaker, Darrell Herbert
Huseby, Helmer Walter Scott
Hutchings, Donald D.
Infanzon, Alejandro
Jackson, Sidney C.
Jackson, James Keith
Jaeger, Edward A.
Johnson, Joseph E. III
Johnson, J. W.
Johnson, Harry I., Jr.
Johnson, Joseph Olan
Johnson, Stancil Enos Delan
Johnson, Doyle Eugene
Johnston, Harry Buchanan, Jr
Jones, Cyril David
Jones, Daniel M.
Jones, Jimmy E.
Jorgensen, Morton C., Jr.
Joyce, Thomas Hunt, III
Juergens, John L.
Julian, Sydney Roberts, Jr.
Jung, John Marshall
Kaiser, Robert James
Kamm, William Alfred
Katz, Robert I.
Keegan, James T.
Keeler, Clifford Earle
Keeve, Jack P.
Keig, Harry Eugene
Kellett, Cyril Francis, Jr.
Kelly, James E.
Kemp, Verbon E., Jr.
Kesler, Kelvin Franklin
Kindwall, Eric Post
Kleh, Thomas Robert
Klem, Gabriel W.
Klibanoff, Edward
Knox, Henry Donald
Kodsi, Magdi Saleh
Koenecke, Fred H., Jr.
Kool, Bernard P.
Kopp, Clarence J.
Kormos, Harry Rudolf
Krill, Carl Emil, Jr.
Kuehn, John L.
Kurtis, James Thomas
Kurtzman, Joseph L.
Landau, Joseph W.
Langdale, Emory Lawrence

Lapkass, Eugene E.
Lapp, Milton C.
Lawlor, John B.
Lawrence, Harry Martin, Jr.
Lazaroff, Philip
Lebouvier, John Douglas
Leffler, Lynn Eugene
Lemmert, William A.
Lentz, Malcolm Walter
Lesko, Clarence
Leslie, Loren Richardson
Lesock, William John
Lewis, Jack L.
Libnoch, Joseph Anthony
Light, Harry Grim
Linn, Bernard S.
Lipson, Charles Sidney
Lizarralde, German
Llewellyn, Neal Nelson
Longabaugh, Thomas B.
Looney, William B.
Lorberbaum, Herman A.
Lowsma, Henry Britell
Ludlow, Lester A.
Lynn, Clyde Arthur
MacVaugh, Horace, III
Malette, William Graham
Mandle, Robert Bennie
Manring, Daniel Arthur
Mapp, Esmond M.
Marinelli, Lawrence, Jr.
Marshall, Charles Edward
Mauroner, Norman Lee
McArthur, James Roderick
McClain, Garvin Herbert
McFarland, Robert B.
McGaughey, James D., III
McGehee, Thomas Ford, Jr.
McGuire, Lockhart Bemiss
McIntyre, John Duncan
McIintyre, James Angus A.
McLaughlin, Ralph Thomas
McManamon, Thomas Vincent
McMasters, Robert Earl
Mead, Perry Avery, Jr.
Meador, Murray Wayne, Jr.
Medrek, John J.
Meier, Carl F.
Meyer, Melvin Eugene
Miller, Raymond C.
Miller, Arthur Francis
Miller, R. Paul
Miller, Jacob Thomas, Jr.
Miranda, Mario Cesar
Mitts, Murray Gordon
Monell, William Clarkson
Monger, Ralph Horace, Jr.
Moore, Donald B.
Moore, William E.
Moore, Charles Leslie
Moran, William Joseph
Mork, Gustave William
Moser, Kenneth M.
Moss, Gerald S.
Mullins, William James, Jr.
Mumma, John
Murphy, Jerome Leo
Murray, Dwight H., Jr.
Muther, Ellis Frank, III
Nelson, Theodore A.
Nelson, James Nels
Newby, James Penn
Newcomer, Albert Dallas
Nichols, Charles Edward
Nielsen, David James
Norris, James Ellsworth C.
Novak, Edward Andrew, Jr.
Nowak, Richard Martin
Ogburn, Benjamin Rivers
Ohanley, Alexander Leys
Oleinick, Samuel R.
Osius, Theodore George, Jr.
Ostroski, Joseph Thomas
Ozawa, Kenneth H.
Patriquin, David Ashley
Patterson, James Blake
Paxton, George Stratton
Payne, Stanley Ross
Peabody, Charles N.
Pearson, Roger Warren
Perry, Lawrence C.
Pettengill, Howard W., Jr.
Petty, David T.
Pierce, Chester M.
Pine, Harry Louis
Piper, Charles E., Jr.
Polglase, Vannest, Jr.
Polin, Stanton Gordon
Pollock, Norman Lee
Pomponio, Joseph G.
Potvin, Louis Edgar
Power, Curtis Garland, Jr.
Primich, Frederic Frank
Propert, David Boyd
Proskey, Aloysius J.
Pryor, Charles Allen, Jr.
Pyeatte, Jesse E.
Radelate, Paul Bernard
Ragsdale, Julian Leon
Rahn, Gordon E.
Raisbeck, Clifford C., Jr.
Ramlo, John Hale
Ramsay, Reginald Carlyle, Jr.
Real, Jack Duane
Redick, Lloyd Franklin
Reeber, Erick
Reeder, Robert C.
Reninger, Charles William J.
Reynolds, Robert Walk
Roberts, Robert Reuel R.
Rodriguez, Abe G.
Rohren, Donald Wesley
Rolen, Alvin Curry, Jr.
Romine, John Stanley
Ruben, Malcolm E.
Rumble, Wilson Baxter
Rush, Cyril B.
Russell, Robert Masters
Russell, Walter J.
Ryan, Richard Michael
Sargent, Edward C., Jr.
Sargent, Robert Taylor
Schafer, Theodore E.
Schibly, William Joseph
Scott, Daniel Joyner, Jr.
Scott, Augustus Barnett
Seal, Robert Bennie
Sedlack, Richard E.
Sharpe, Richard Garfield
Sheldon, Robert Burnett
Showery, Raymond Edward
Siemsen, Jan K.
Sierchio, Gerald Peter
Silva, Alberto
Silver, Lawrence
Sims, Norman Lemaster
Sloan, Charles R.
Smith, Gardner W.
Smith, Martin Jay
Smith, Raphael Ford
Smith, Ronald Walter
Snyder, Harry Dean
Somerndike, John M.
Southard, Ollie E.
Soybel, William Meyer
Spagna, Paschal Michael
Spierling, Paul Robert, Jr.
Spurney, Robert V.
Stafford, John Richard
Stage, Anson H.
Steagall, Robert Worth, Jr.
Stebbins, George Griswold J.
Steuer, Rudolph Robert, Jr.
Steward, John P.
Stock, Leo F.
Stone, William Michael
Sukoff, Michael Howard
Sullivan, Philip Gerard
Sutliff, Charles S.
Taft, David Allan
Talmadge, Bruce Alexander
Tanner, Clyde Vernon
Taylor, Norman Eugene
Teynor, Joseph W.
Thomas, Malcolm James, Jr.
Thomas, Don Fred
Thomas, David Frederick
Thomas, William J.
Thorsell, Harold G.
Tierney, Ralph Charles
Tilock, Fred Herbert
Tipton, Harry B.
Tolchin, Sidney
Tolmie, John Duncan
Trapp, Donald C.
Traynor, Mack V., Jr.
Tucci, Joseph Ralph
Ungersma, John Aaron
Vanderpool, Donald Warne
Vanorden, Lucas S.
Vanstone, William W.
Varma, Vijay Mohan
Vaughan, Billy L.
Vermess, Michael
Vescovo, Paul Clement, Jr.
Voet, Raymond Kenneth
Vuksta, Michael J.
Wagner, Philip Ira
Wagoner, George Frederick
Walklett, William Donald
Walsh, John J., Jr.
Wargovich, Raymond M.
Watt, Thomas B., Jr.
Weidenbacher, Richard L., Jr.
Weiner, Stanley Irwin
West, Alex Robert
Weston, James T.
Weyrens, Francis P.
Whalen, George Edward, Jr.
Wheeler, Clarence Joseph, Jr.
Whetsell, Joe Ed
Wieneke, Karl Fredric, Jr.
Williams, David Lee
Wilson, Gabriel H.
Wilson, Jack Herbert
Wilson, John D.
Wilson, Stuart Dickinson
Wintrich, Herman Peter
Wood, William Bainster
Wood, Joseph Henry, Jr.
Wood, Dewey Edward
Woodruff, James Joseph
Wooldridge, Robert M.
Worsham, Bertrand R.
Wright, James Claris, Jr.
Wyatt, Jacob Emery, Jr.
Youngs, Luther Archibald, II
Zeidman, Howard
Zvetina, James R.

SUPPLY CORPS

Abb, Richard C.
Ade, James L.
Adrian, Nick
Aiello, Anthony R.
Alarie, Paul J.
Albright, Robert T.
Allen, Frank S.
Anderson, Rodney G.
Ansel, Donald R.
Backus, John L.
Baity, Edward L.
Bang, Henry F.
Bartholomew, Charles William
Bauhofer, Robert J.
Bayless, Charles S.
Bell, Johnston B.
Benson, James F.
Beumer, Delbert Harry
Bieser, Arthur L.
Bigelow, Russell T.
Birkmann, Madison G.
Bisbano, Anthony Jr.
Blatt, William C. Jr.
Blumberg, Herbert K.
Bodden, William M.
Bolich, Joseph Patrick
Bolliger, Ralph W.
Bowers, William M. Jr.
Braun, Arthur Fredrick
Brooks, Bernard G.
Brown, Roy G.
Broz, John J.
Buckley, James A.
Burch, William E.
Burkett, Roy W.
Burleson, Aubrey R.
Butler, William G.
Cabot, David.
Callahan, Joseph F.
Campbell, Robert Laurie
Carney, Thomas R.
Carroll, Raymond Leroy

Carter, Edwin L. Jr.
Charlton, William Henry
Christiansen, David Willard
Churchill, John Alfred
Clark, Alan Fulgham
Close, Paul D. Jr.
Cohn Herbert Benjamin
Colbourn, Edward Wheeler
Cole, Benjamin I. Jr.
Connell, James J. Jr.
Conover, Julian D Jr.
Coughlin, Richard J.
Coyle, Anthony Leo.
Cross, Charles William
Culver, Gerald S.
Cunningham, Joseph C.
Cuomo, Ralph J.
Curtis, Bennett R.
Cutright, Carl R.
Daniel, Dorsey Wharton
Davis, Herbert E. Jr.
Davis, Gerald B.
Dawkins, Samuel D. Jr.
Delmar, Richard J.
Doenges, Rudolph Conrad
Dolan, Edward J.
Dolbeck, Harry C.
Donovan, James Lawrence
Eble, Frederick D.
Edgerton, Thomas C.
Elliott, Erving G. Jr.
Enger, Otto R.
Fandey, Fayze.
Farrell, Thomas J.
Felker, John J.
Ferguson, Sherill T.
Fett, Kenneth R.
Fickett, Lewis P. Jr.
Fink, Donald A.
Fitzpatrick, Julius Way
Fleming, Edmund S.
Fletcher, Richard K.
Fogle, Grover D.
Fox, Daniel W.
Fraser, Alexander H.
Frisbie, James H.
Gault, William M.
Giannini, Roland E.
Gianos, Edward A.
Gill, Leo Samuel
Gollofon, Arthur Francis, Jr.
Graham, Kendall P.
Granger, Charles F., Jr.
Grant, Ralph Stanley
Greenberg, Henry B.
Gress, John H.
Grimes, Fred Michael
Gross, Martin
Haidet, Walter R.
Hall, James Dane
Halquist, Theodore J.
Hange, Vernell M.
Hanna, Mark H.
Hannah, Joseph L.
Hansen, Bernard E.
Hardesty, Clayton D.
Harris, Robert L.
Heil, Louis Lair
Hensley, Frank Maywood
Hock, Winfield Fletcher, Jr.
Holmes, Robert M.
Hopkins, Jack Walker
Hudgens, Ronald Clinton
Hudson, Clyde E.
Huebschman, Robert B.
Huebsch, Roger M.
Jackson, David H.
Johnson, James B., Jr.
Jones, Maximilian B.
Joseph, Mark R.
Karesh, Joseph S.
Kenny, Stephen P.
Keyes, Warren R.
Kielty, Edward
Kimball, William G.
Kirms, Frederick O.
Kufus, John R.
Kurtz, Robert J.
Lafrance, Philip H.
Langdon, Arthur H.
Lebherz, John B.
Lewis, Richard D.
Liftman, Alvin H.
Liggett, Hiram S., Jr.
Lilly, Thomas G.
Link, Curtis K.
Lurensky, Robert L.
MacDonald, John F.
Mackaman, John R.
MacMullen, Clark
Malumut, Lewis
Maresh, James
Maxwell, Robert B.
May, Walter J.
McCain, Charles H., Jr.
McCann, Robert O.
McGoldrick, Robert L.
McLain, James A., Jr.
McLoone, Joseph V.
McManus, Lawrence W.
McMenamin, James P.
McPherson, Burtis E.
McPherson, William Andrew J.
Medley, Edwin W.
Mitchell, Harold Raymond
Mjelde, Carroll Verne
Mohr, Robert B.
Moore, Wyly Alsup
Morris, Herbert Kinston, Jr.
Morris, William Charles
Morrison, Roderick A.
Mundorff, Roy McClellan, Jr.
Murray, Michael T.
Nardi, Francesco P.
Neumann, Frederick L.
Nielsen, Robert L.
Northrop, Joseph A.
Olson, John G.
Osborn, Robert Hart
Osterhout, Royal H.
Owens, James K., Jr.
Paden, David L.
Page, William N. Jr.
Paterson, Thomas MacDonald
Patton, Kenneth Gene
Paul Peter Comegys
Peickert, Marlin W.
Phelps, James C.
Phillips, Howard B.
Phippard, James R.
Pickel, Robert E.
Pogue, Joe H.
Polunsky, Robert I.
Ponzeline, Dante C.
Porter, James A.
Post, Melvyn E.
Potts, William E.
Power, John F.
Prather, Charles M.
Prichard, Barry
Purcell, Alfred Stephen
Ranes, John W.
Ranieri, Walter R.
Raven, John Frederick
Reeder, Paul Alvin
Reeves, Marion Paul
Regan, George W.
Richards, Walter R.
Riley, Robert J.
Ristau, Robert G.
Rose, Rufus Edwards, Jr.
Roth, Eugene E.
Sagen, Paul G.
Sankey, Harry William
Sawczuk, Stanley R.
Scheinberg, Carl
Schmitz, Pierre P.
Schneider, Andrew George, Jr.
Shulden, William H.
Schweiger, Richard W.
Sears, Donald L.
Shahadi, Frederick F.
Silk, Arthur T.
Singleterry, Richard Walter
Smith, Gerald A.
Snipes, Wilson C.
Soranno, Michael A.
Stack, Daniel
Stangelo, Donald Gene
Starkey, Jack Lowell
Storey, Robert W.
Suffa, Frederick William
Sullivan, Gerald C.
Sullivan, William Joseph, Jr.
Taylor, Ralph F., Jr.
Test, Clayton R.
Thordarson, Richard Theodor
Thurman, K. Keith
Thweatt, John Griffin, Jr.
Tipping, Robert E.
Tormey, Edward N., Jr.
Tornlof, Albert
Trickey, Nelson G.
Trosset, Richard T.
Tryc, Roman J.
Turner, George S.
Ulmer, Edward Y.
Utman, Ronald
Vanantwerp, Malin
Vandegrift, Charles Frank
Vandervoort, Peter
Varricchio, Philip T.
Vaughan, Francis
Vawter, Wallace R., Jr.
Vikingson, Vernon F.
Vonhennig, Dieter H.
Waggoner, Wayne C.
Walsh, John William
Ward, Frederick F.
Watson, Gary E.
Weinress, Ronald A.
Weise, Robert Walter, Jr.
Wells, Don L.
West, Jon W.
Weyman, Edward B.
Wheaton, Robert G.
Whitacre, Philip Arthur
Whiteman, Ralph E.
White, Donald E.
White, Edward P.
Whitney, Carroll E.
Wick, Daniel A.
Wickman, Robert Emil
Wilson, George A.
Winterton, Boyd W.
Wix, James L.
Zimtbaum, Samuel D.

CHAPLAIN CORPS

Angus, Robert C.
Babcock, Davis J.
Bailey, Wilfred M.
Barnes, Raymond Whitney
Bartlett, Willard William J.
Beadle, Herbert J., Jr.
Beers, Donald William
Bergsma, Derke P.
Bidne, Arvid Edward
Black, Lawrence Vanwagenen
Botkin, Charles T.
Brammer, David Howard
Bray, Allen Farris, III
Brock, John Dale
Campbell, Edson E.
Carlson, Kenneth Donald
Carey, Amos Clark
Cheatham, Jeff Porter, Jr.
Christmann, Harold Lee
Conover, Eugene J.
Cooper, William David
Curtis, James Wallace
Donovan, Herbert A., Jr.
Doyle, Lawrence Hauswirth
Drew, Monroe, Jr.
Edwards, Hubbard Scudder, Jr.
Engdahl, Carl M.
Engebretson, Norman Roy
Farness, Raymond H.
Fay, Francis Aloysius
Freeman, Gaston Howard, Jr.
Gammon, Joseph W.
Gilbert, John L.
Goss, Hubert Smith, Jr.
Greene, Barry Hewitt
Hall, Marvin E.
Hancox, Jack D.
Harwell, Lacy R.
Hever, John Joseph
Hilbrands, Herman Thomas J.
Holmes, Edward A., Jr.
Hutchinson, Warner Alton, Jr.
Ives, Martin E.
Johnson, Robert K.

Kelly, Patrick Joseph
Kimbrough, William Rex
Kimmell, Elmer L.
King, Henry P., Jr.
Kloner, William
Knauer, George Arthur
Laing, Charles E.
Landes, Aaron
Lassetter, Clarence Ray
Lind, Harold E.
Love, James Neal
Lukas, Joseph Stanley
MacPherson, Keith M.
Mangum, Wallace T.
Martin, James B.
Masson, Thomas H. F.
McDonald, Elmer J.
McGinley, Charles Richard
McKinnon, Henry J.
McKnight, Peter G.
Moris, Walter Johan
Murrell, Arthur V.
Newbert, Cecil Leonard
Olooney, Martin J.
Olson, Oliver K.
Opel, William A.
Pafchik, Lawrence F.
Pauling, Chandler Freemont
Pearson, Samuel C., Jr.
Peterson, Oliver E.
Pitt, Theodore K.
Podet, Mordecai
Pomeroy, Robert Ferris
Powell, William Audrey
Quirk, John M.
Read, Edward Joseph
Rogers, Edwin William
Rothman, Robert Aaron
Schindler, Charles M.
Schuster, William Frank
Scherch, Richard Otto
Shulman, Nisson Elchanan
Silverman, Hillel E.
Simon, Matthew H.
Smith, Philip K.
Smith, Raymond Kendall
Speers, William Arthur
Stephens, James Harris
Sternberger, Richard Saul
Stenberg, Vernon Eugene
Sullivan, Edward H.
Swenson, Edward Walter
Thilking, George Stanley
Thompson, Alden L.
Thomson, Bruce Randolph
Vonalmen, Adelberta Marion
Vondracek, Benjamin Frankli
Walther, James A.
Weeks, William P.
Whitley, Larry Eugene
Willets, Robert Harrellson

CIVIL ENGINEER CORPS

Adams, William R., Jr.
Allen, William B.
Anibal, Fred Ramon
Ashley, James E.
Ashton, William Daniel, III
Ballis, Robert Joseph
Beattie, Robert T.
Bedrosian, Edward R.
Bell, David P.
Bentley, Donald R.
Besier, Rudolph F.
Block, Norman Gregory
Bloom, Elias
Bredberg, Robert E.
Bredow, Paul F.
Brodell, Irwin
Cantey, John Manning
Catlin, William G.
Clark, Ernest L.
Coats, Ernest D.
Coates, Edward E.
Collins, James Richard
Colvin, Stanley William
Connett, Dean M.
Coons, Norman J.
Copple, Fred
Cordell, Donald E.
Cosper, John C., Jr.
Creger, William Ellery
Cruikshank, Alan
Current, Neal F.
Cusano, Michael Charles
Daw, John L.
Dennis, Donald T.
Dick, Roland S., Jr.
Dodson, John R.
Donovan, Robert L.
Donoghue, Edward P.
Drake, Frank M.
Duarte, George M.
Ellis, Osborne N.
Emery, Austin H.
Erickson, Paul O.
Fair, Harlan W.
Farley, James C.
Farrell, Arthur W.
Farrell, William G.
Fisher, Jack G.
Fitzgerald, Robert William
Ford, Miller C., Jr.
Forman, Edward W., Jr.
Franck, Ernest Paul
Frega, John Victor
Gaede, Delton Abraham
Gravallese, Albert J.
Hall, William Clifton
Hamilton, Gordon W.
Hammond, Wilton N.
Hardeman, Edward L.
Harris, Weldon C., Jr.
Harris, Frank N.
Heisler, Sanford I.
Helms, Russell E.
Henderson, Richard H.
Herrmann, William A.
Hickey, Leo Alfred, Jr.
Horne, William A.
Hymel, Norwood F.
Johnson, Clarence Bud
Johnson, Wendell P.
Johnston, Albert S.
Jones, John E.
Jones, Jonah Phillip, Jr.
Jones, Robert P.
Kershner, Lyle H.
Kirby, Peter
Koehler, Melvin L.
Larsen, John Torleif
Lecount, Peter L.
Leonard, Theodore E.
Lieberknecht, Don W.
Lochtefeld, Charles Joseph
Loigman, Harold
Long, Jimmy B.
Luster, Charles K.
Maddock, Thomas S.
Madison, James R.
Mahaffey, John E.
Maleska, Edmund
Malone, Richard D.
Martin, Arthur H.
McDonell, Robert L.
McGuinness, Daniel Leo, Jr.
McKeon, Richard D.
McKinstry, Joe L.
Melcher, Albert Goodrich
Mills, Leighton D.
Mitchell, Thomas S.
Morekas, Sam
Morris, Benjamin West, Jr.
Muir, Roger W.
Nutter, John M.
Omer, John E.
Peterson, Ralph M.
Pietsch, Paul Edward
Plettner, Richard Maxwell
Post, Max Herman
Rasmussen, John W.
Richardson, Frank Alton
Robbins, Lonnie Joseph
Russell, Henry C.
Satterlee, Hugh Maxwell
Schoenagel, Fred Carl, Jr.
Smart, David Oliver, IV
Smith, William Melbury, Jr.
Smith, Harold C.
Smith, Charles R.
Sonderman, Douglas Robert
Speer, Ralph W.
Standiford, Richard Bergen
Stapp, Maurice Q., Jr.
Stein, Robert L.
Stevens, Stiles F.
Stone, Lester W.
Stopkey, Waldemar D.
Storm, David R.
Stoutamore, James B.
Summers, Curtis Dean
Tagliabue, Charles J.
Terwilliger, Robert C., Jr.
Thompson, Keith R.
Vitale, Eugene J.
Walker, Jack Wesley
Warnick, Robert L.
Watkins, Jack, Jr.
Weddle, Frank C.
Weller, Robert L.
Wells, James R.
Westervelt, Sheldon
Wilson, James G.
Witcher, Loftin V.
Witte, David A.
Young, Donald R.

JUDGE ADVOCATE GENERAL'S CORPS

Abel, George Gilkey, III
Allen, Léonard G.
Ambrose, Harry Dahringer, Jr.
Badley, Bruce P.
Banks, Myron C.
Barnett, Robert G.
Benjamin, Julian R.
Bilder, Richard B.
Bohannon, Marshall T., Jr.
Bondies, Walton Porter, Jr.
Boyer, Ralph E.
Brewster, Rudi M.
Brown, Joseph Eckford, Jr.
Catlin, George B.
Chazen, Bernard
Coleman, George P.
Connor, James M.
Copeland, Ralph C.
Corcoran, John Edward, Jr.
Cristol, A. Jay
Dail, Joseph Garner, Jr.
Delay, John K., Jr.
Dippel, Kennth Carl
Dunbar, William L.
Duncan, Robert B.
Eagleton, Richard E.
Fanseen, James Foster
Feldman, Sidney N.
Flanagan, John E.
Flanigan, Donald F.
Fowler, Robert P.
Franks, Stephen F.
Friend, Theodore H.
Geraud, Joseph R.
Geyer, Clarence R.
Green, Raymond Bert
Hannam, James L.
Harris, Martin
Hayes, David J. A., Jr.
Hebert, Stanley Paul
Hickman, Virgil W.
Hodges, John N.
Hoffman, Solomon D.
Holman, Donald R.
Howard, Jackson B.
Jackson, Robert E.
Jones, Robert E.
Kellogg, John S.
Kenney, William J.
Kennedy, William H.
Kiernan, William Joseph, Jr.
Kiley, Robert H. B.
Kirkman, Monroe W.
Kitchings, Atley Asher, Jr.
Klawitter, George A.
Klein, Jerome A.
Lamere, Robert K.
Lauck, Robert G.
Law, John M.
Leikin, Mitchell
Linehan, David C.
Luberda, George J.
Madden, Patrick J.
Maioriello, Joseph T.

Mandel, Paul M.
McDonald, James M.
McKee, Miles C.
McMahon, Thomas J.
McNeilly, William Warner, Jr.
Mioducki, Joseph
Moore, Alvy P.
Moore, Stephen Arthur
Morrison, William M., Jr.
Morgan, Howard W., Jr.
Nichols, Roger J.
Ochs, Norman P.
Oddo, Salvatore E.
Ogozalek, John F., Jr.
Olson, Ronald Wayne
Parr, Jack R.
Pearson, Charles Thomas, Jr.
Petit, Maurice R.
Phillips, Kenneth Jay
Preston, Edwin S., Jr.
Rand, Richard M.
Redd, Gordon L.
Richmond, Lyle L., Jr.
Riley, Philip T.
Rischmiller, Robert William
Rose, Leonard
Rubin, Ellis S.
Sams, Marion A.
Shamsky, Burton
Shiver, Edwin Calhoun
Smith, Don Lee
Sterbenz, Stanley R.
Stich, Frank J., Jr.
Sweeney, Joseph Conrad
Tebbetts, Harold F.
Threlkeld, William F.
Walton, Edward Lee
Wood, Hugh L.
Zeiger, Carl T.
Zerfoss, Guy E.
Zinman, Robert M.

DENTAL CORPS

Adams, Robert W.
Adams, Robert J.
Alaniva, Loyal Vernon
Anderson, Dorrance I.
Anderson, Robert L.
Armen, George Krikor, Jr.
Atkins, George
Bahn, Saul L.
Barnett, Charles B.
Barley, Martin Alan
Barden, Ralph B.
Bednar, Edward George
Beesley, Charles Vandever
Berns, Lee Charles
Berschig, Ronald Edward
Bernard, William Vernon, Jr.
Best, Billy C.
Bethune, Walter F., Jr.
Bidgood, Omer K.
Bills, Eldon D.
Black, Marion M., Jr.
Bland, George A. Jr.
Blu, Robert Elliott
Boeke, Peter Reece
Boughie, James Albert, Jr.
Boyle, Orville T., Jr.
Bray, Searles T.
Braswell, Jack Guy
Bregel, Charles E.
Brooks, Paul Cephuso, Jr.
Brown, John Baron
Bryant, Robert Earl
Buckley, Ambrose William, Jr.
Burns, Howard R.
Burton, Robert M.
Bushong, John H.
Butler, George R., Jr.
Bylicky, Henry S.
Calderone, James Joseph
Campbell, Homer R., Jr.
Carson, Earl Marshall
Carlson, Harry William, Jr.
Carrington, Paul B.
Cavalaris, Constantine John
Clary, Irl Conmey
Cooley, Fleming B., III
Cotman, Lawrence
Creason, Jack Thomas
Creedon, Robert Lewis
Dempsey, John M.
Dent, Charles F.
Derdivanis, John Peter
Diodati, Ronald Ralph
Dougherty, Lew Wallame, Jr.
Driscoll, John Michael
Duff, James Scott, Jr.
Dyer, Ted E.
Earle, Lewis Samuel
Eckstein, Walter P.
Erlandson, Charles W.
Evosevic, Nicholas
Ferguson, William W.
Finton, Abe Morgan
Fischbach, Reynolds John, II
Frank, Robert L.
Frommer, Herbert H.
Funaro, Vincent Michael
Gaines, Ben P., Jr.
Gentry, Jesse Thomas
Giglia, James V.
Gilbert, Hugh B.
Glenn, George C., Jr.
Gould, John Cleveland, Jr.
Graff, Howard T.
Graham, James E., Jr.
Gravallese, Joseph Angelo
Greenlee, William Howard
Gresens, Ronald Clifford
Grieco, Michael Francis, Jr.
Grimm, Oliver G.
Hall, Hugh D.
Halstead, Charles L.
Hands, Dale Franklin
Hardiman, Joseph Michael, Jr.
Harff, George Donald
Hatzeson, Thomas Athos
Hazard, James A.
Henderson, Lewis Sewal, Jr.
Herold, James Lanty
Hickman, Warren Justin
Hill, Jay Ward
Hogeland, John H., II
Hooley, James Robert
Horton, Leland C.
Hudson, Frank J.
Iandolo, Albert Gerald
Inscoe, Ashby Gerald
Jackson, Clyde Raymond
Jayne, John Harris
Johnson, James A.
Johnson, David A.
Kaplan, Louis D.
Keilly, Henry V. P.
Keller, Robert E.
Kennedy, William Gordon, Jr.
Kessler, William B.
Kimball, Kenneth Robert
Kittleman, Willis Virgil, Jr.
Klein, Robert Neil
Klob, Robert A., Jr.
Kornblue, Edwin B.
Kruse, James H.
Large, Nelson D.
Lattner, Richard Alfred
Laws, Robert K.
Lawler, John K.
Layton, Curtis L.
Leidich, Ray N.
Lepper, Richard W.
Lester, Robert
Lindblom, Fenner P.
MacDonell, Walter Edgar
Mahler, Harold Edwin J.
Mastandrea, Carmine A.
Mayo, Jacque L.
McAuley, Frank C.
McClelland, Richard Lee
McClain, Jimmy H.
McCann, Billy Westmoreland
McGrath, Philip S.
McKay, James R.
Meyer, Gene P.
Miller, David L.
Mill, David D.
Miller, Barry G.
Miller, Mahlon Samuel, Jr.
Miller, Arthur Simard, Jr.
Mitchell, Paul M.
Mollis, Chis A.
Molle, William Harris
Morris, Ernest C.
Mosier, Russell Benfield, Jr.
Nash, Larry Lee
Nelson, Donald W.
Nielsen, Theodore Christian
Obrien, Argyle Q.
O'Connell, Christopher J., Jr.
Ohlson, Paul H.
Olson, Donald C.
Oshea, Edward John, Jr.
Packard, Edward E.
Page, Roy Christopher
Parrish, William G.
Peeler, Lackey B.
Perlitsh, Max Joseph
Peters, Ray F.
Peterson, Robert V.
Pezzopane, Bernard
Pool, William L.
Porter, William Joseph
Porter, Myron Richard
Potter, Edgar M.
Primomo, Peter V.
Ranalli, Frank A.
Ray, R. Richard
Reeve, Charles M.
Reed, Darwin Miles
Reichel, Richard L.
Reynolds, John A. S.
Riesner, Neal R.
Riley, George F.
Rini, Charles S.
Roberts, Dennis R.
Robinson, Homer Jean
Rosenthal, Arnold M.
Russo, Raphael M.
Russell, David Terry
Rusche, John P.
Ryan, James H.
Salander, Samuel
Salyer, Thomas P.
Sather, Andrew Orlin
Schraishuhn, Robert Edwin
Shea, Richard O. Jr.
Sheridan, Robert J.
Shupala, Robert John
Shulman, Jeremy
Sluder, Troy Bunyon, Jr.
Small, Gilbert S.
Smith, Jerome Anthony
Snyder, David E.
Sommers, James H.
Spector, Richard
Stetzel, Robert M.
Stewart, Billy Ashley
Stilley, John W. L.
Stock, Feron R.
Streeter, Elwood J.
Stucky, Milo M.
Stucker, William E.
Studdard, Jerry M.
Tanner, Thomas P.
Taubman, Arthur Irvin
Taylor, Ray P.
Thomas, Robert James
Tomlin, Donald G.
Toyias, James P.
Toy, Kenneth L.
Valauri, Augustus J.
Vanort, David Paul
Vanzandt, William R.
Vandyke, James Albert
Veal, Samuel J.

Vonberg, Donald R.
Wallace, Donald Clinton
Wallace, Robert Clarke
Watson, David H.
Watkins, Ernest Charles
Watson, Cyral G.
Watts, John R.
Weston, Philip Marlowe
Williams, Claude R.
Wilson, Dwight R., Jr.
Wilson, Nathan E.
Winters, John R.
Winger, Gaydon Elliott
Wood, Matthew Thomas
Worden, Jeremy F.
Yamanouchi, Haruto W.
York, Joe Thurman
Zambito, Raymond F.
Zimmerman, Ronald
Zimmerman, Gerald

MEDICAL SERVICE CORPS

Becker, Bruce C.
Besch, Emerson L.
Brownson, Robert Henry
Cannicott, Richard G.
Capps, Daniel William
Deming, Richard W.
Easterday, Otho D.
Edwards, Earl A.
Goolishian, Harold A.
Hansen, Peter C.
Hargrave, Charles William
Harvey, Tommy L.
Hawkinson, John R.
Hendler, Edwin
James, Howard A.
Kepchar, John H.
Laubach, Robert E.
Lautenschlager, Edward W.
Long, Sterling K.
Lytle, Ralph I.
Penn, Washington K., III
Phelps, Henry W.
Pred, Gordon David
Ross, Sherman
Schwartz, Marvin
Seale, Leonard Mervin
Secrest, John P.
Seelinger, Phillip E.
Shimberg, Edmund
Strem, Bruce E.
Thomas, Walter D., Jr.
Walwick, Earle Richard
Wirth, Edward C.
Woodward, Donald P.
Yanders, Armon Frederick

NURSE CORPS

Barlow, Phyllis L.
Best, Mildred E.
Bielecki, Loretta F.
Blanke, Lovetta Dixon
Brice, Karolla
Casey, Donnabelle Anne
Cheleen, Kathlene I.
Crouch, Madge L.
Davis, Elizabeth J.
DeSita, Josephine R.
Dinardo, Mary T.
Dunne, Ellen T.
English, Mildred I.
Foltz, Frances Catherine
Gaydos, Irene M.
Georgi, Stella R.
Gilliland, Jane Grace
Gochis, Bessie
Grushinski, Jeanne E.
Hall, May B.
Hoyem, Mary Kelly
Jacobs, Roberta L.
Kellams, Hazel J.
Koehler, Eunice E.
Lesoganich, Mary Kathryn
Lutterell, Mary A.
Madsen, Carol I.
Markut, Laura E.
May, Dorothy Margaret
McLaughlin, Margaret Irene
Mellish, Mildred Weeks
Moe, Helen A.
Morgan, Dolores A.
O'Brien, Ann B.
O'Neill, Mary F.
Rambo, Beverly Jean
Richardson, Margery Augusta
Richardson, Eunice E.
Ross, Marjorie Trendell
Santeiu, Betty M.
Snedeker, Mary Carmickle
Snyder, Anne Bork
Stagg, Nancy L.
Steffens Gloria Mead
Stein, Rochelle Esther
Williamson, Helen Roberts
Yohanan, Barbara Jane
Young, Jacqueline T. E.

The following-named officers of the United States Navy, for temporary promotion to the grade of lieutenant in the various staff corps, subject to qualification therefor as provided by law:

SUPPLY CORPS

Anthony, Henry W., III
Archer, Raymond A., III
Barnes, Jerry D.
Bobulinski, Robert A.
Burgess, Roy H.
Byers, Terrance L.
Carney, David G.
Cobb, Francis R.
Dase, James R.
Delhamer, James M.
Diller, Daniel H.
Edgemon, Jack L.
Fowler, George O., III
Gibbs, David M.
Gilbart, Gordon J.
Harder, Larry D.
Harris, Craig S.
Hawxhurst, Jack M.
Hempson, Donald A., Jr.
Ishman, Michael D.
Kiefer, Roy W.
Lamb, James H.
Lengkeek, Dale R.
Marquez, Ernest B.
McCarthy, Justin D.
Mitchell, Colonus, Jr.
Nolan, Richard T.
Pierce, Randall L.
Rogers, Robert W.
Solli, Richard E.
Spencer, Richard A.
Sutton, Morris L.
Watson, Michael A.
White, Thomas M.
Zachowski, Thaddeus F.

CIVIL ENGINEER CORPS

Braddock, Robert L., Jr.
Butler, Jerry B.
Ching, Clayton Y. K.
Edickson, Stephen F.
Fehlig, Charles J.
Filson, James V.
Fincher, Thomas O.
Hart, Stephen L.
Huddleston, Geoffrey E.
Jones, John E.
Kennedy, Ronald K.
Larsen, Thomas A.
Leineweber,, Michael J.
Parker, Robert V.
Rushing, Ernest C., Jr.
Wowak, William E.

JUDGE ADVOCATE GENERAL'S CORPS

Mattson, Michael V.

MEDICAL SERVICE CORPS

Guilliams, Lewis W.

NURSE CORPS

Burns, Jesse P., Jr.
Chick, Carole L.
Devney, Anne M.
Lyons, Doris A.
Marostica, Marilyn K.
Parrotte, David F.
Poland, Edith A.
Trump, Patricia A.
Tynan, James F., Jr.
Wright, Joe A.

David J. Knight and Michael P. Vining, United States Navy, for transfer to and appointment in the Supply Corps in the permanent grade of ensign.

Richard W. Kirtley and Allan G. Taylor, Jr., United States Navy, for transfer to and appointment in the Supply Corps in the permanent grade of lieutenant (junior grade) and the temporary grade of lieutenant.

Lieutenant Commander Walter A. Reister, United States Navy and Lieutenant Commander John A. Young, Jr., Civil Engineer Corps, United States Navy, for temporary promotion to the grade of commander pursuant to Title 10, United States Code, Section 5787, while serving in, or ordered to, billets for which the grade of commander is authorized and for unrestricted appointment to the grade of commander when eligible pursuant to law and regulation subject to qualification therefor as provided by law.

Andrew J. Hill, United States Navy, for permanent promotion to the grade of lieutenant subject to qualification therefor as provided by law.

William W. Wyckoff, II, United States Navy, for temporary promotion to the grade of lieutenant subject to qualification therefor as provided by law.

The following named officers of the United States Navy for permanent promotion to the grade of lieutenant (junior grade) in the line and staff corps, as indicated, subject to qualification therefor as provided by law:

LINE

Bardsley, George P.
Brown, Michael E.
Gibson, Ethan J.
Henson, Lovell K.
Jones, John E.
Singleton, Jerry B.
Wyckoff, William W., II

SUPPLY CORPS

Carney, David G.
Dase, James R.

Commander Jacob V. Eskenazi, United States Naval Reserve, for transfer to and appointment in the Judge Advocate General's Corps in the temporary grade of commander.

IN THE AIR FORCE

The following named Air National Guard of the United States officers for promotion in the Reserve of the Air Force, under the appropriate provisions of section 593(a), title 10, United States Code, as amended.

Major to lieutenant colonel

Line of the Air Force

Philip J. Blank, [redacted].
Kenneth S. Dugan, [redacted].
Donald W. Easley, [redacted].
James W. Freston, [redacted].
Edgar J. Holt, [redacted].
Thomas R. Jennings, [redacted].
Alfred E. Krc, [redacted].
Curtis A. Madson, [redacted].
James R. Mercer, [redacted].
Earl W. Rose, Jr., [redacted].
James E. Sahr, [redacted].
Joseph J. Sannella, [redacted].
Kenneth G. Stasiewicz, [redacted].
John H. Stennis, [redacted].
Byron J. Warder, [redacted].
Charles W. Taylor, Jr., [redacted].